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RIFKIN, A DOCUMENTARY HISTORY

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INTRODUCTION

The Rifkin case, which this article presents in abridged form, shows just how awkward a major bank, a prosecutor's office, and one of the biggest bank thieves in history can appear when computer crime brings them face-to-face with unfamiliar problems. It is a case rich with unusual facts, but not uniquely so. These unexpected facts are part of what makes studying computer crime so rewarding. One does not know what the investigator, the business person, the judge, or the criminal will do next. When it comes to computer crime, they are all amateurs much of the time, and thus they seem more like you or me. They are, as we often are, caught up in an ethos not entirely their own.

What follows consists of a selection of those documents from *United States v. Rifkin* (CR #78-1050-WMB, United States District Court, Central District of California) which are most illustrative of the factual and legal aspects of the case that make it of interest to students of computer crime. Preceding the documents is a rather detailed summary of the case, in effect a prose cross-reference to the documentary highlights. The footnote references refer first to the document, and then to the page within that document. The following table lists the documents.

1. Motion to Suppress Evidence Seized as a Result of the Defendant's Arrest
2. Government's Response to Defendant's Motions to Suppress Evidence
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7. Government's Declaration of Robin Brown Re Expected Testimony of Witnesses in Switzerland
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9. Reporter's Transcript, February 22, 1979

I. THE CRIME

"Diamonds," Gary Goodgame said. Diamonds would be the best solution to Stanley Mark Rifkin's problem.

It was the middle of the summer in 1978, and Rifkin sought attorney Goodgame's legal advice. Claiming to represent a "Fortune

500" corporation, Rifkin told Goodgame that his principal wanted an "untraceable commodity" so that it could deal with another corporation. There were "political reasons" for his concern, Rifkin explained. Rifkin knew nothing about diamonds, and would need assistance in purchasing the diamonds. Goodgame suggested that Lon Stein, a diamond broker, could do the job.[1]

Rifkin's job at that time involved the creation of a "back-up" system for the "wire room" of the Security Pacific National Bank in Los Angeles.[2] The "wire room" is the hub of a communications system which handles some two to four billion dollars of fund transfers every day for the bank. The "back-up" system would allow the bank to continue to make fund transfers if its primary system became inoperable. To accomplish this task, Rifkin had to learn how the system currently in operation worked, and to be sure that all of the key elements were carried over into the system that he was helping to design. There were no specifications available to explain how the money transfer system worked, so Rifkin interviewed a number of bank employees who worked in the wire room to find out. This research provided Rifkin with an excellent opportunity to educate himself as well.[3]

As his education continued, Rifkin's interest in diamonds continued to grow. He met with Lon Stein for the first time in June of 1978, and asked if Stein could buy ten millión dollars worth of diamonds for him. "Impossible," Stein replied.[4] He said that the quantity was too large, it could not be done in a single transaction, or even a small number of large transactions.[5]

Rifkin persisted. He and Stein spoke many times between June and October 25, discussing different methods of payment, and different ways in which the diamonds might be purchased.[6] Finally, agreement was reached. Stein would go to Geneva to see if he could arrange the transaction with Russalmaz, a Russian government agency that sold diamonds.[7]

Shortly before October 25, 1978, Rifkin left his work at National Semi-Conductor "for personal reasons."[8] On October 25, he went to the Security Pacific wire room. Rosemary Hanses met him at the door and asked him what he was doing there. He replied "that I was

1. Document 2, at 543.
2. Document 9, at 665.
3. *Id.*
4. *Id.* at 668.
5. *Id.* at 669.
6. *Id.* at 670-74.
7. *Id.* at 674.
8. Document 2, at 546.

doing a study."[9] Indeed he was. Rifkin timed the operators and took counts of transactions to see if the wire transfer system was working any better than it had been previously functioning.[10] Apparently it was not. Rifkin decided to continue with his plan to rob the bank.

In order to transfer money through the wire system, it was necessary for an authorized employee to use a code symbol. Looking at a slip of paper on the wall inside the wire room, Rifkin was able to copy the code. Then he left.[11] Then Rifkin went to a pay phone located nearby and called the wire transfer room.[12] He said he was Mike Hansen, of the International Department of Security Pacific National Bank, and requested that $10.2 million be transferred to an account in the Irving Trust Company in New York. From there the amount was to be transferred for credit through the Wozchod Handels Bank in Zurich, Switzerland.[13]

It was at this point that the pieces of Rifkin's plan began to come together. Ruzzalmaz, the Russian diamond trading agency, maintained an account in the Wozchod Handels Bank.[14] Its director, Alex Malinin, received a telegram,[15] ostensibly from a Mr. Nelson, to the effect that one Lon Stein was a representative of the Security Pacific National Bank, and that he had funds for the purchase of diamonds from Russalmaz. Mr. Nelson, the head of the wire room at Security Pacific National Bank, had not sent the telegram; Stanley Mark Rifkin had, two weeks before he caused the funds to be transferred.[16]

Stein flew to Geneva on the 25th of October, and soon went to work. Between noon on October 26th, and the evening of October 27th, he examined the purchased $8.145 million worth of Russian diamonds.[17]

After effecting the funds transfer, Rifkin went home and "thought a lot about taking the next step." He decided to proceed. The next morning he boarded a plane for Switzerland.[18] On arrival he called Russalmaz. The money had not yet been credited to their account. Finally, the Zurich bank got telegraphic confirmation that the money had been transferred to its New York account with Irving

9. Document 9, at 678.
10. *Id.* at 679.
11. *Id.* at 680.
12. *Id.* at 681.
13. Document 2, at 512.
14. Document 7, at 615.
15. *Id.* at 619.
16. Document 9, at 696-98.
17. Document 2, at 544.
18. Document 9, at 684.

Trust Company. They called Russalmaz in Geneva, told them the money was there, and the transaction was virtually complete.[19]

The next day, Rifkin picked up a baggage ticket for a piece of luggage from the managing director of Russalmaz. He boarded a plane for Luxembourg assured that the diamonds would accompany him.[20] En route, Rifkin told Jacques Spalter, who sat next to him, "I am a very wealthy man now."[21]

But it was not until he got to his hotel in Luxembourg that Rifkin finally got to see the diamonds. Only then was he sure that the scheme had really worked. His reaction: "I was aghast." "I didn't have the slightest idea what to do." He decided that the only logical thing to do was to go back to the United States.[22] Rifkin then took the diamonds and reduced their bulk, taking several of them out of small packages and putting them into a smaller number of larger packages. He put the whole bunch of them in a transparent container made to store folded dress shirts.[23]

By October 29th, Rifkin was back in Los Angeles. He called attorney Goodgame, and told him that he desperately need to speak with him, saying that he had not taken Goodgame's advice not to abscond with the diamonds he planned to purchase.[24]

On the 30th, Rifkin met Goodgame in L'Ermitage Hotel in Beverly Hills. He filled an ashtray to overflowing with diamonds and gave Goodgame three of the stones. He told Goodgame that he had made an unauthorized wire transfer from Security Pacific National Bank, and added that he had acquired a new identity and was going to "places unknown." He also gave Goodgame documents to dissolve the company through which he had purported to purchase the diamonds.[25] The next day, Goodgame, in the company of his attorney, appeared at the Los Angeles office of the FBI and told an agent of his contacts with Rifkin.

By November 1st, Rifkin was in Rochester, New York, sitting in a hearing concerning rate increases for the Rochester telephone company. He was there to see Paul O'Brien, whom he had last seen during the summer of 1976. Rifkin explained that he had received payments in the form of cash and diamonds as a result of a West German land deal, and he wanted to convert the diamonds to cash. For this purpose Rifkin wanted O'Brien to set up a New York City-

19. *Id.* at 685-86.
20. *Id.* at 689.
21. Document 7, at 620.
22. Document 9, at 690-91.
23. *Id.* at 691-92.
24. Document 2, at 543-44.
25. *Id.*

based diamond brokerage. While O'Brien was thinking the proposition over, Rifkin told him that he could not be contacted since "Stanley Rifkin" was not in Rochester. Rifkin explained that he had done something several months ago that he had always wanted to do—he had disappeared.[26] The discussions continued, with Rifkin giving O'Brien $6,000 to initiate their relationship. O'Brien agreed to approach his superiors at the telephone company to arrange a leave of absence to handle Rifkin's business affairs. He was to discuss the leave on Friday afternoon, and Rifkin was to call him Saturday morning. The president of the phone company had agreed to O'Brien's leave of absence, and O'Brien was watching television Friday night, November 3rd, when he saw a news item concerning a multi-million dollar bank theft in Los Angeles. The story identified the thief as Stanley Rifkin and identified the victim as Security Pacific National Bank. Immediately O'Brien attempted to reach the appropriate parties in Los Angeles and, unable to do so, called the Buffalo, New York office of the FBI.

II. How Rifkin Was Caught

Rifkin's admissions to attorney Gary Goodgame gave the FBI a substantial lead in attempting to catch him. After receiving Goodgame's information, federal agents spoke with officials at Security Pacific National Bank and confirmed that the unauthorized wire transfer had taken place.[27] Then Lon Stein was interviewed, and he confirmed that he had gone to Switzerland and purchased diamonds at Rifkin's request. The bank ordinarily tape recorded all telephone orders to transfer money, and it had recorded Rifkin's transfer as well. Stein listened to the recording and identified the voice of the person purporting to be Mike Hanson as that of Stanley Mark Rifkin. Goodgame had surrendered the diamonds Rifkin gave him, and Stein was able to identify them as similar to the ones that he had purchased.[28]

In an effort to find Rifkin, FBI agents checked his last known address, an apartment in Sepulveda, California, and gathered background on Rifkin from driver's and vehicle license information. The next day, three people identified as employees of Rifkin's company were interviewed. They said that Rifkin had a room in a motel in La Jolla, California. Rifkin's mother was interviewed and she gave further identifying information about her son.[29] Based on the informa-

26. Document 3, at 598.
27. Document 2, at 512.
28. *Id.* at 512-13.
29. *Id.* at 545-46.

tion already received, the United States Attorney's Office in Los Angeles issued an arrest warrant for Rifkin, and a complaint charging him with interstate transportation of stolen property.[30]

The investigation continued as the FBI tried to locate Rifkin. They spoke with Mary Bruskotter, whom they characterized as his girlfriend. They checked the National Crime Information Center, and interviewed "known relatives, former associates, former employers, and those to whom Rifkin was connected via notes, memoranda, and unfounded information."[31] None of these avenues turned up anything.

At that point, O'Brien called the FBI and told them of his contact with Rifkin. He was asked if the FBI could record calls between himself and Rifkin, and he consented.[32] Rifkin called O'Brien in the afternoon of November 5th. Rifkin knew he was in trouble, and O'Brien advised him to turn himself in. "One against the FBI is real bad odds," Rifkin admitted, but he rejected O'Brien's offer of help if he turned himself in. He asked O'Brien to send back the $6,000 in a "plain brown wrapper"[33] to a post office box in the name of Daniel Wolfson. Wolfson lived in Carlsbad, California, near San Diego.[34]

Postal authorities provided the FBI with the address that Wolfson used when he obtained the Post Office box that Rifkin was using.[35] They reported a change of residence filed by Wolfson as well. The California Law Enforcement Telecommunications System showed an address on Jefferson Street in Carlsbad for Wolfson, and Carlsbad police records contained a complaint that Wolfson had filed which indicated a similar address. FBI agents were dispatched to all of these addresses, given Rifkin's license plate number and told to look for his grey 1972 Datsun 240Z.[36] Unable to find the car, the agents decided to try to arrest Rifkin at Wolfson's apartment.[37]

Late in the evening of November 5th, Daniel Wolfson responded to knocking on his door. It was Norman Wight and Robin Brown. The two identified themselves as FBI agents and asked to come in. Wolfson said that he would talk, but only at his doorway. Shown a picture of Rifkin, Wolfson said that he wanted to talk to his attorney to determine his rights. Brown asked him if he had anything to hide and Wolfson replied that he did not trust the government since

30. 18 U.S.C. § 2314 (1976).
31. Document 2, at 546.
32. Document 3, at 601.
33. *Id.* at 584-97.
34. Document 2, at 547.
35. *Id.* at 554.
36. *Id.* at 554-56.
37. *Id.* at 548.

Watergate. Brown said that he wanted to come in and talk about Rifkin, since Rifkin was a wanted federal fugitive. Wolfson said no, holding his arms on each side of the door frame. Brown told him that his failure to cooperate might result in his being guilty of harboring a federal fugitive.

Brown asked Wolfson how long it had been since he had seen Rifkin, and Wolfson said that he wanted to talk to his attorney. Brown asked if Rifkin was inside the house and Wolfson said "I don't know." Finally, the agent informed Wolfson that they were going to enter the house, using force if necessary. Wolfson moved aside and let them enter.[38]

While the search was proceeding, Rifkin appeared in the doorway of a vacant bedroom and said "here I am." The agents identified themselves and placed him under arrest. Rifkin was escorted to a bedroom and allowed to finish dressing before leaving for jail.[39] Rifkin was searched, remarking that he had practiced being searched with Wolfson the previous day. Advised of his rights, Rifkin made an attempt to sign the form before the agents finished reading it to him. Before the question began, Rifkin said "I guess you want the diamonds." He went and pointed to a black and brown canvas suitcase and removed a plastic shirt case from it. Inside were some thirty packets containing the diamonds.[40]

III. Making the Case

Once Rifkin was arrested and the diamonds were recovered, the bulk of the necessary investigation was complete. Rifkin's indictment charged him not only with interstate transportation of stolen property but also two counts of wire fraud,[41] entering a bank to commit a felony,[42] and smuggling.[43]

Much of the evidence that would be required to convict Rifkin was not readily available. Witnesses in Switzerland were necessary if the complete picture of Rifkin's crime was to be presented to the court. The documents filed by the United States Attorney's office in support of a motion for depositions to be taken in Switzerland illustrate both the problems of proof that the government faced and the procedural problems arising from the fact that the witnesses were located in another country. (It seems likely that computer crime

38. *Id.* at 556-58.
39. *Id.* at 550.
40. *Id.* at 551.
41. 18 U.S.C. § 1343 (1976).
42. *Id.* § 2113a.
43. *Id.* § 545.

cases will involve such international aspects far more frequently than other cases, since computer use often goes beyond national boundaries.) In conjunction with the FBI special agent serving as legal attache through the United States embassy in Berne, the government developed the following list of witnesses to be questioned in Switzerland:

- A Bank official from the Wozchod Handels Bank in Zurich—to lay a business records foundation for documents necessary to show that the money Rifkin stole was received by that bank from the Irving Trust Company;
- Werner Oppliger, a courier who brought the diamonds from the Russian trading company to the Swiss Airlines office in Geneva;
- Three other couriers who helped Oppliger transport the diamonds and who might be necessary to establish the chain of custody;
- Swiss air personnel who received the diamonds and could testify that Rifkin picked the diamonds up;
- Alex Malinin, the employee of Russalmaz who handled the transaction. He showed diamonds to Lon Stein and received notification that the funds to pay for them had been wire transferred into Russalmaz' account. He also received the wire sent by Rifkin under the name of Nelson from Los Angeles;
- Jacques Spalter, Renee Broon, Robin Page—other witnesses who had less crucial information about the case.[44]

The procedure for deposing witnesses in Switzerland by an English-speaking attorney is drastically different from American practice. Under Swiss law, no agent of a foreign government may conduct a criminal investigation in Switzerland. Thus, the FBI could not interview the witnesses nor could agents of the United States Attorney's office. Instead, only the Swiss authorities could conduct interviews, and this they did by deposition.

Before testifying at a deposition, each witness is reminded in great detail of Swiss perjury laws. Each question in the deposition is asked of a Swiss magistrate in English. He or she then poses that question in French or German to the witness. The two of them then discuss the question and discuss the answer. Only then is the answer summarized by the magistrate and dictated to the court reporter in English. At the completion of the witness' testimony the entire testimony is reread to the witness and thereafter the witness signs a summary transcript. A treaty between the United States and Switzerland governs these procedures. It requires that American arrangements be made through the United States Attorney General's

44. Document 7, at 615-21.

office.[45]

The issue of admissibility of the depositions became moot before the validity of the government's contentions could be tested, as it was soon decided that the Rifkin case would not go to trial.

IV. Rifkin's Defense

As in many non-computer crime cases, much of the defense effort was focused on search and seizure issues. None of these issues directly focused on computer technology, but they illustrate the difficulties in drafting a warrant and making an arrest when there is limited time.

A major part of the defense was a motion to suppress evidence seized as a result of Rifkin's arrest at Wolfson's apartment on the 5th. The arrest warrant was defective, the defense urged, since it failed to establish probable cause for Rifkin's arrest. The defense also argued the use of information from O'Brien constituted a violation of Rifkin's attorney-client relationship, and that the entry of Wolfson's apartment violated the requirements of *United States v. Prescott*.[46]

In the comments of Judge Matt Byrne granting a substantial part of the defense motion, the need for specificity in support of the arrest warrant was very clear. Byrne found the affidavit in support of the arrest warrant "totally void of any source information whatsoever." He went on to note that "it is impossible to tell where Mr. Brown [the FBI agent affidant] obtained the information that is set forth in subparagraphs (a) through (f), including such obvious shortcomings as not stating the name of the diamond broker, not stating the name of the individual who met with Mr. Rifkin in Los Angeles who Mr. Rifkin allegedly exhibited the diamonds to, not stating where the information was obtained from the bank, not stating whether the recording ever had been listened to, not stating any information whatsoever about where they heard what occurred in Switzerland, not stating how they knew the diamonds were picked up—just totally void of any information."[47]

Building on this observation, the court went on to rule that there was no exigent circumstance justifying the arrest of Rifkin inside Wolfson's home absent a valid warrant. The prosecution argued that Rifkin had a propensity to suicide, that he might hold

45. Document 6, at 611-13.

46. 581 F.2d 1343 (9th Cir. 1978). Since the court invalidated the arrest warrant, and rejected the attorney-client argument, these contentions are of relatively little interest.

47. Document 8, at 626.

Wolfson hostage, that he might escape, and that he might flush the diamonds down the toilet, trying to establish "exigent circumstances" which might justify failure to obtain a valid warrant. Byrne concluded "the only exigent circumstance is created when the agents go to the door and ask if Rifkin is there."[48]

Moving from that point the court further concluded that the statements made by Rifkin at the time of his arrest, and the evidence taken pursuant to a search at the time of his arrest were tainted by the illegal arrest, and thus had to be suppressed. Similarly, the court ruled that the items seized pursuant to a search warrant served the next day were also illegally tainted by the prior illegalities, and suppressed them as well.[49]

Though startling enough to give rise to headlines like "Key Evidence Ruled Invalid in 10.2 million Bank Theft,"[50] the court's ruling left the prosecution with a tape of Rifkin making the phone call which resulted in the transfer of the $10.2 million. This evidence, along with the testimony of attorneys Goodgame and O'Brien, Lon Stein, and the Swiss witnesses would have been enough to convict Rifkin. However, before the case proceeded to trial, Rifkin once again found himself in trouble, and probably rendered any possibility of trial close to nil.

V. Rifkin's Second Effort

On February 9, 1979, Patricia Ferguson met with Joseph Sheehan. She told him that she represented a principal who wanted to move funds, and who needed access to a bank. "You must have larceny in your heart", she told Sheehan, going on to explain the principal was "Stanley Rifkin—Security Pacific—Electronic Fund Transfers." Shortly thereafter, Rifkin met with Sheehan and told him that he wanted to make a wire transfer between $1,000,000 and $50,000,000 from the Union Bank in Los Angeles to the Bank of America in San Francisco. Once the money was there, Rifkin would arrange for the purchase of "bearer" bonds, and flee to Mexico City. This time, Rifkin said, he would do it right (referring, it appears, to his earlier theft).

Unlike Goodgame and O'Brien, Sheehan did not turn Rifkin in to the FBI. He did not have to; he was an FBI agent working in an undercover capacity. Based on these facts the government prepared a second complaint against Rifkin, this one charging him with con-

48. *Id.* at 629-31.
49. *Id.* at 631-37.
50. Los Angeles Times, Feb. 7, 1979, at 1.

spiracy to cause false entries to be made in a bank,[51] transportation of stolen property interstate,[52] and failure to appear.[53]

Within two weeks, Rifkin plead guilty to two of the charges against him in the $10.2 million theft and the government dropped the other charge and agreed not to prosecute him on the attempted theft charge.

VI. RIFKIN'S PLEA

Doubtlessly aware of the publicity that the case had received, and aware of the numerous requirements for an uncoerced and knowing plea of guilty, Judge Byrne laboriously told Rifkin his rights, and the consequences of his guilty plea.[54] Then with equal detail, the court led Rifkin through a recitation of those acts that he committed which constituted the crime of wire fraud.[55] Finally, the court found that there was a basis in fact for Rifkin's plea of guilty and summarized those acts that Mr. Rifkin had performed which constituted violations of those two statutes.[56]

On March 26, 1979, Rifkin was sentenced. His attorney argued that he was "a unique individual" and urged a unique and imaginative sentence for Rifkin. "What is so unique about the offense?" asked Judge Byrne, going on to observe that Rifkin had numerous opportunities to abandon his plan, and that there were many stops along the way that required rethinking and remotivating his decision to commit the crime. Defense attorney Robert Talcott argued that Rifkin did not commit his crime freely and voluntarily, but was motivated by an unconscious desire for self-annihilation. Everything Rifkin did, his attorney argued, was done to be caught and punished.

Though attorney Talcott stressed the possibility of a unique sentence for Rifkin, the court seemed concerned mainly with deterrence. Judge Byrne dismissed the defense suggestion that Rifkin assist financial institutions to study their wire transfer systems and prevent crimes such as his own. "If he can't deter himself, how is he going to deter others?" the Court responded.

The prosecution argued for a maximum sentence—ten years. Attorney Katherine Stolz urged that society needed to be protected from Rifkin, and that Rifkin was a con artist, a manipulator, and a

51. 18 U.S.C. § 1005 (1976).
52. *Id.* § 2314.
53. *Id.* § 3150.
54. Document 9, at 648-60.
55. 18 U.S.C. § 1343 (1976).
56. Document 9, at 708-10.

habitual liar. She scorned the idea that Rifkin could be of value to financial institutions concerned about computer crime. "I doubt that the Security Pacific Bank would want him on their premises for any reason," she noted.

Rifkin spoke at last. "I feel there are two me's", he said. "One rational and one not." The irrational Rifkin would rise up from time to time, he explained, and his conscience would not always raise to meet it. When that happened, he would take a step forward toward committing the crime.

The court found Mr. Rifkin's explanation less persuasive. Whatever his motivation, the court observed, he had many chances to get out. He didn't take any of them. He continued to evade the law. After being given the opportunity to be at liberty on bail, he again attempted to involve himself in the same criminal activity. The court saw this as a total disregard for the law, with Rifkin showing no remorse. Finally, in handing down the sentence, the judge said that he hoped his sentence would serve as a warning that a crime such as Rifkin's is serious, not just because of the money involved, but also because of Rifkin's continuing pursuit of criminal activity. Rifkin was sentenced to eight years in federal prison.

At the time of this writing, the Rifkin case is far from resolved. On May 15, 1980, a hearing for modification of Rifkin's sentence was held, and the motion denied. A civil complaint, filed in the Los Angeles Superior Court by Security Pacific National Bank charges Rifkin with fraud, conversion of personal property, and a number of other counts. It seeks the return of all monies and properties taken from the bank or purchased with money taken from the bank, plus punitive and exemplary damages, including "all profits, interest, proceeds, revenue, royalties, or other advantages gained from any publication, sale, serialization, republication rights in any form, movie, television, or video rights, speeches, seminars or any other distribution for profit of any material based on or dealing with plaintiff's [Security Pacific] secret codes or procedures or the events or circumstances dealing with Rifkin's obtaining access to or using said secret codes or procedures."

VII. The Criminal—Who Is Stanley Mark Rifkin

Given the wealth of information about the Rifkin case, it is both tempting and bewildering to try to draw conclusions about the nature of computer criminals. What made Rifkin do it? The obvious explanation, that $10.2 million is enough to motivate most people, flies in the face of a couple of facts. First, it seems clear that Rifkin was not well equipped to accomplish his criminal goal. Not only did

he fail to anticipate the problems involved in bringing the diamonds back to America,[57] but his failure to find people to work with once he returned further suggests an amateurishness.

Another explanation that would seem to fit some of the facts of this case is the "mountain climber" analogy, that Rifkin committed his crime because the challenge was there. The statement to agent Sheehan, that this time he wanted to "do it right," make this explanation plausible. Many people who deal with computing have noted the existence of a game-playing mentality which takes delight in rising to the challenge prescribed by a computer system.

At the same time, one is struck with the indecision which seemed to follow Rifkin from beginning to end. Although his statements at the time of his plea are obviously self-serving, if believed they suggest someone who never totally committed himself to his endeavor.[58] When he says "I never thought I'd get them,"[59] the statement takes on an aura of plausibility as an explanation for his failure to develop a logical plan to deal with the jewels should his plan succeed.

Rifkin certainly had an abundance of experience with electronic fund transfer systems. A memorandum written in 1976 while he worked for Payment Systems, Inc. outlined several frauds involving automated teller machines.[60] This expertise was necessary to enable him to ask questions about how the Security Pacific system worked.

Whether Rifkin fits the stereotype of a computer criminal is not clear. His lack of ability to carry out his crime successful may reflect the "loner" image that he had in the eyes of many who spoke about him. That his psychology was less than stable is suggested by comments from his mother, his girlfriend, and others who knew him.[61]

It is this suicidal side which his attorney seemed to refer to when he said that Rifkin did everything he could to get himself arrested short of hiring a skywriter and writing a confession in the sky. His offer to teach a course in computer fraud for the FBI after his arrest, his rapid admission that he had committed the crime, and his questions about the Security Pacific personnel with whom he interacted while he committed the crime, all suggest that he was out of contact with the reality of which most criminals are aware.

57. *Id.* at 687.
58. *Id.* at 679.
59. *Id.* at 687.
60. NCCCD Document No. 7216.
61. Document 2, at 570.

Whether this was because they represented parts of the puzzle that did not challenge him, because he was suicidal, or because he was a kind of idiot-savant is impossible to say.

It may also be that Rifkin, like many people, was victimized by the media's perception of crime in general, and computer crime in particular. Filling an ashtray with diamonds, talking about a new identity and going to places unknown, is the kind of derring-do that may give a TV criminal a quick shot of macho enthusism, but it also is the type of thing that both on television and in real life seldom does the criminal much good.

Finally, it is impossible to look at the Rifkin case without keeping in mind the publicity value of a $10.2 million crime. Wolfson, the man at whose house Rifkin was arrested, was talking with media people about Rifkin's ability to commit a computer crime about a year before Rifkin's theft from the Security Pacific Bank.[62]

With other computer criminals like Jerry Schneider and Bertram Seidlitz attempting to go from computer criminal to computer consultant as a result of the publicity that they received, it is possible that Rifkin too felt that even in failure he could be a commercial success. In short, the documents offer many clues—not only to Rifkin's character, but to how society can prevent, investigate, and prosecute computer crime.

62. Document 2, at 564.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB MOTION TO SUPPRESS EVIDENCE SEIZED AS A RESULT OF THE DEFENDANT'S ARREST

The defendant hereby moves to this Court for an order suppressing all evidence seized as the result, directly or indirectly, of the arrest of the defendant on November 6, 1978. As the grounds for this motion the defendant asserts that his arrest was unlawful on three distinct grounds: 1) It was made pursuant to a warrant not founded on probable cause; 2) It was the result of a deliberate and surreptitious intrusion by the Government into an attorney-client relationship of the defendant's and was a violation of his Sixth Amendment right to the assistance of counsel and his Fifth Amendment due process right; and 3) It was the product of unlawful entry.

This motion is based on the attached Memorandum of

DOCUMENT 1

Points and Authorities and Affidavit of Probable Cause of Special Agent Robin Brown, as well as any evidence that may be presented at the hearing on this matter.

Respectfully submitted,

Robert M. Talcott

ROBERT M. TALCOTT
MICHAEL J. LIGHTFOOT
CARLA M. WOEHRLE

Dated: December 14, 1978.

POINTS AND AUTHORITIES

Since it is the defendant's contention that his arrest was unlawful for three different reasons, each reason will be treated separately.

A. THE DEFENDANT'S ARREST WAS MADE PURSUANT TO A WARRANT NOT BASED ON PROBABLE CAUSE.

1. Statement of Facts

Shortly after midnight during the early morning hours of November 6, 1978, the defendant, Stanley Mark Rifkin, was arrested in Carlsbad, California by agents of the FBI in the home of an individual by the name of Daniel Wolfson.

Within minutes of his arrest, Rifkin was advised of his constitutional rights and questioned at considerable length by the arresting FBI agents at the location of the arrest. The FBI agents seized from Rifkin, and from the location where he was arrested, various items of evidence including numerous diamonds and cash.

The defendant contends that his arrest was based on an arrest warrant issued on November 2, 1978, which warrant was obtained after an affidavit of probable cause was submitted to U.S. Magistrate by Special Agent Robin Brown. It is defendant's contention that the affidavit submitted by Agent Brown is constitutionally deficient in that it does not establish probable cause to believe that the defendant committed a crime.

The affiant, Robin Brown, began the affidavit (attached) by stating that he had conducted an investigation into the transportation of stolen goods in interstate commerce. He

then went on to describe in six paragraphs information he had acquired. At no time does Brown indicate the source or sources of his information, either by name or other description.

2. Pertinent Law

a) The Constitution Requires the Identification of the Source(s) of Information.

It has become axiomatic that an affidavit in support of a warrant which does not indicate the source of information renders the warrant unconstitutional. The United States Supreme Court held in Giordenello v. United States, 357 U.S. 480, 486-487 (1958) that an affidavit in support of a warrant is constitutionally deficient when it:

> "contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein; it does not indicate any sources of the complainant's belief; and it does not set forth any other sufficient basis upon which a finding of probable cause could be made. We think these deficiencies could not be cured by the Commissioner's reliance upon a presumption that the complaint was made on the personal knowledge of the complaining officer."

Later Supreme Court cases have reiterated the constitutional principle that it is the magistrate, not the affiant-police officer, vested with the responsibility of determining

the credibility and reliability of the sources of information. Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964). See also United States v. Thornton, 545 F.2d 957, 961 (D.C. Cir. 1971) ("It is not enough, however, that the affiant himself is satisfied that the information and its source are credible. As we have said, it is for the magistrate from whom the warrant is sought, and not the officer seeking it, to determine whether there is probable cause to issue it."); United States v. Schartner, 426 F.2d 470, 473 (3rd Cir. 1970); and Di Bella v. United States, 284 F.2d 897, 899 (2nd Cir. 1960)[(vacated on other grounds, 369 U.S. 121 (1962).)].

In Saville v. O'Brien, 420 F.2d 347, 349 (1st Cir. 1969) (cert. den. 398 U.S. 938) the search affidavit stated that the informant had told the officer that the defendant had given him (the informant) counterfeit money. The Court conjectured that the officer may have been given this information by someone who had heard the informant talking at a neighborhood bar. As the "affidavit simply did not reveal when or to whom the statement had been made," the affidavit was insufficient on its face, and the Court was forced to conclude the informant's source "totally unreliable because it was totally unknown." Saville v. O'Brien, supra, at p. 350.

Similarly, because the affidavit here totally failed to identify the source or sources where Brown got his information, the magistrate was unable to test the sufficiency of that information. The consequential arrest was therefore invalid.

b) The Facts Could Not Support a Conclusion That the Diamonds Were Stolen.

The Court will note that the affidavit and complaint identify the alleged crime committed by the defendant as the "transportation of stolen diamonds in foreign commerce" in violation of 18 U.S.C. §2314. We will assume for the sake of this particular argument that the magistrate in this case had constitutionally sufficient information before him on November 2, 1978 on which to base findings that: 1) the defendant caused a fraudulent transfer of money from Los Angeles to Geneva; 2) the funds were used to purchase diamonds; and 3) the defendant caused the diamonds to be transported in foreign commerce. While the money which arrived in Geneva may have been obtained by fraud, the diamonds were not and were therefore not "stolen" goods. The information then known to the magistrate would not have constituted probable cause of the crime of transportation of stolen diamonds in foreign commerce and therefore the arrest of the defendant on November 6, 1978, not based on probable cause that a crime had been committed, was invalid.

The United States Attorney's Office has addressed itself to the question of the "stolen" nature of the diamonds in a memorandum filed on December 4, 1978. That memorandum cites a number of cases, all involving prosecutions under 18 U.S.C. §2314 for the transportation of one kind of "monetary obligation" converted from an earlier stolen "monetary obligation" of a different form. That change in form has been noted by the Courts as just that - a change in form

rather than a change in kind, thereby not affecting the stolen nature of the underlying obligation. (United States v. Levy, 579 F.2d 1332 (2nd Cir. 1978), involved a change in form from money to checks and United States v. Pomponio, 558 F.2d 1172 (4th Cir. 1977), involved a change in form from a counterfeit stock certificate to a promissory note to a cashier's check.)

In this case we do not have a change in form (for example, a change of a stolen bank draft to Swiss francs), but a change in kind from a monetary obligation to diamonds, items of personal property. In United States v. Walker, 176 F.2d 564 (2nd Cir.), the court set up this distinction of a mere change in form:

> "We may concede that there are goods, procured by means of the property of the victim, whose transportation is not within the statute. Even so, it cannot be seriously argued that, if the accused defrauded his victim of bills of a large denomination and changed them into smaller bills, or vice versa, he would escape; and we recognize no distinction between such a case and the exchange of money from ordinary bank cheques into Travelers cheques." 176 F.2d 566

United States v. Poole, 557 F.2d 531 (5th Cir. 1977) and United States v. Caci, 401 F.2d 664 (2nd Cir. 1968), vacated in part on other grounds sub nom. Giordano v. United States, 394 U. S. 310 (1969), cert. denied in part sub nom.,

Cino v. United States, 394 U.S. 917 (1969), cert. denied in part sub nom., Sorgi v. United States, 394 U.S. 931 (1969), cited by the government, both cited Walker for this specific holding.

We are not dealing here with a change in form from larger bills to smaller bills or from bank checks to traveler's checks. Rather we are dealing with a change in kind from money to diamonds. This is exactly the distinction referred to in Walker. The diamonds, "while procured by means of the property of the victim", were not themselves taken by fraud. A holding to the contrary would mean, that a car purchased with money from a bank robbery is itself stolen. Such a result was obviously not intended by Congress.

As a consequence, the warrant which formed the basis for the defendant's arrest, based on activity not a federal crime, was invalid.

B. THE DEFENDANT'S ARREST WAS THE RESULT OF AN INTRUSION INTO AN ATTORNEY-CLIENT RELATIONSHIP AND THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL AND FIFTH AMENDMENT RIGHT TO DUE PROCESS.

1. Statement of Facts

The Government has charged the defendant by indictment with five crimes, all alleged to have been committed in October, 1978. The last (chronologically) two, the smuggling and foreign transportation of diamonds, are both alleged to have occurred on October 29, 1978.

On November 1, 2 and 3, 1978 (the week before his arrest) the defendant travelled to Rochester to meet with

an attorney, one Paul W. O'Brien. According to the FBI report of an interview of O'Brien on November 4, 1978, Rifkin "wanted O'Brien to handle the legal work to set up a New York based diamond brokerage". The two met privately in Rochester on a number of occasions over the first three days in November.

On Friday evening, November 3, 1978, O'Brien, without Rifkin's consent, called the FBI and disclosed to them the contents of the conversations he had had with Rifkin. It was the day before, November 2, that the FBI had obtained a warrant formally accusing Rifkin of a federal crime.

O'Brien consented to the installation of a recording device on his home telephone. Thereafter, on November 4 and 5, the FBI tape recorded and monitored two telephone conversations between O'Brien and Rifkin and one between Rifkin and O'Brien's wife. Copies of transcripts and tapes have been provided to defense counsel. It is apparent from these tapes that: 1) O'Brien and Rifkin were talking in what was presumed by Rifkin to be an attorney-client relationship; 2) Rifkin was led to believe by O'Brien that the conversations were not being recorded; and 3) the two discussed circumstances relating to the pending federal criminal charges.

2. Pertinent Law

a) Sixth Amendment Intrusion.

The Sixth Amendment to the United States Constitution provides:

"In all criminal prosecutions, the

> accused shall enjoy the right...to have the assistance of Counsel for his defense."

With respect to that "right to counsel", the Second Circuit has stated:

> "...the essence of the Sixth Amendment right is...privacy of communication with counsel." United States v. Rosner, 485 F.2d 1213, 1224 (2nd Cir. 1973) cert. denied 417 U.S. 950.

We contend that the surreptitious invasion of the private councils of attorney and client by the Federal Bureau of Investigation in this case show, at the very least, a callous disregard and disdain for the essential purpose, safeguards and protections of the Sixth Amendment. That conduct demands the exclusion of all evidence obtained, directly or indirectly, as a result of the intrusion, either on constitutional grounds or on the basis of this court's supervisory powers.

At the outset, we would emphasize that this motion is not based on an assertion of the traditional attorney-client privilege and therefore involves none of the problems of an evidentiary nature that many times accompany assertion of that privilege. Our claim is therefore not concerned with whether or not conversations between Rifkin and O'Brien amounted to, or looked toward, the commission of a crime. In a similar situation, the Sixth Circuit recently noted that even though the lawyer may have engaged in illegal ac-

tivities with his clients he did have discussions with the defendant "for the purpose of defending him on smuggling charges." United States v. Valencia, infra, 541 F.2d at 621. Those activities were held to fall within the ambit of the attorney-client privilege for purposes of Sixth Amendment coverage. In any event the five count indictment in this case, drafted long after the FBI interviews with O'Brien and review of the taped conversations in question, alleges that the last criminal activity engaged in by Rifkin occurred on October 29, 1978, strongly suggesting no criminal activity between O'Brien and Rifkin on November 1 through 3.

While we submit this argument on behalf of a named defendant, "it bears emphasis that...the crucial interests at stake belong to the whole community." In Re Terkeltoub, 256 F.Supp. 683, 684 (S.D.N.Y., 1966). As Judge Frankel said in an unusually perceptive ananlysis of this problem in In Re Terkeltoub, at p. 685:

> "The ultimate interest to be protected is the privacy and confidentiality of the lawyer's work in preparing the case. It is the violation of that interest that is held offensive to the Constitution in the case of eavesdropping and spying."

One of the first cases in this area dismissing an indictment on grounds of a Sixth Amendment invasion was decided twenty-five years ago. In Caldwell v. United States, 205, F.2d 879 (D.C. Cir. 1953) cert. denied 349 U.S. 930, the defendant had been charged federally with obstruction

of justice and bribery. One Bradley had been hired by the prosecution to find out who was behind Caldwell's offenses. After being solicited to work for the defense, he was advised by the Government not to undertake such employment or to take money. Bradley later reported that he had been offered large sums of money by the defense if he would negotiate the theft of the United States Attorney's files in the pending case. The prosecution then caused Bradley to extend his activities into the defense camp with a view toward collecting evidence of the planned crime. The theft was never effected. The defendant was convicted on the pending charges. Focusing on Caldwell's conviction, the Court said:

> "On these basic facts, so stated, we think our decision in the Coplon v. U.S. case [191 F.2d 749 (D.C. Cir. 1952)] is controlling. We there held flatly that 'The prosecution is not entitled to have a representative present to hear the conversations of accused and counsel'. More specifically, we held that interception of supposedly private telephone consultations between accused and counsel, before and during trial denies the accused his constitutional right to effective assistance of counsel, under the Fifth and Sixth Amendments."
>
> "We do not mean to deny the right-indeed

the duty of prosecuting officials to seek to uncover, prosecute and punish resort by accused persons and their counsel to theft of files or other lawful means of defense. We recognize that the prosecutor in this case was faced with a real dilemma, once the possibility of a theft of the files had been reported by Bradley. We do not question that he then acted with what must have seemed high motives, and certainly with active diligence. But high motives and zeal for law enforcement cannot justify spying upon and intrusion into the relationship between a person accused of crime and his counsel. The Constitution's prohibitions against unreasonable searches, and its guarantees of due process of law and effective representation of counsel, lose most of their substance if the Government can with impunity place a secret agent in a lawyer's office to inspect the confidential papers of the defedant and his advisers, to listen to their conversations, and to participate in their councils of defense. Conduct of that sort on the part of our Government is no doubt extremely rare. But if it does occur a conviction tainted by it cannot

stand." (citations ommitted) 205 F.2d at 881.

The cited Coplon and Caldwell cases are the germinal cases on the issue of the propriety of governmental intrusion. The principles established in these cases are now firmly imbedded in federal Constitutional law, having been so reccognized in Hoffa v. United States, 385 U.S. 293, 306 (1966). See also United States v. Choate, 527 F.2d 748, 751 (9th Cir. 1975); United States v. Rosner, 485 F.2d 1213, 1227 (2nd Cir. 1973); United States v. Brown, 484 F.2d 418, 424 (5th Cir. 1973); South Dakota v. Long, 465 F.2d 65, 72 (8th Cir. 1972).

The most recent case on point is United States v. Valencia, 541 F.2d 618 (6th Cir. 1976). There the defendants were charged with conspiracy and possession and distribution of cocaine. Defendant Company had travelled from Detroit to Bogota, Columbia and purchased cocaine from Valencia. One Klein then obtained cocaine from Company and Company was arrested. An attorney, Antonelli, effected Company's release and then arranged for Company to sell cocaine to one Mayes in order to obtain money to pay Antonelli's fee. Antonelli also sold cocaine to two other defendants, Brooks and Cunningham. At trial it was brought out that Susan Reichard, Antonelli's secretary, had been present during her employer's illegal dealings and had phoned a DEA agent and told him of Klein's and Company's arrest and that Antonelli had made arrangements for Company to sell cocaine to pay his fee.

In mid-trial, on hearing this evidence, the trial court dismissed the indictment with respect to Antonelli

(the lawyer), Brooks, Mayes and Cunningham, finding as to the latter three that their cases must be dismissed as the fruit of the poisonous tree--the attorney-client intrusion--since the government would not have had a case against any of them had it not been in the spying business. Insofar as the conduct of the lawyer Antonelli was concerned, the trial court was outraged, finding him to be "beneath contempt." The court nonetheless dismissed the charges refusing to permit "the law in its majesty...to be equally slimy." 541 F.2d at 621. Three other defendants, including Valencia and Company, were later convicted and appealled.

Judge (now Solicitor General) McCree, writing for the Sixth Circuit, found that the trial court had acted properly in dismissing the charges against Mayes, Brooks, Cunningham and Antonelli:

> "We agree with the district court that it was improper for the government to have intruded into an attorney-client relationship by paying an attorney's secretary for information about his clients. If any convictions were affected by the taint of this highly irregular, and we trust, unusual arrangement, we would not hesitate to set aside the convictions." 541 F.2d at 623.

As a final matter in Valencia, two defendants, including Valencia, had not retained Antonelli as their attorney. The court nonetheless reversed their convictions "under our supervisory authority over the conduct of federal prosecutions."

541 F.2d at 622. See also United States v. Payner, 434 F. Supp. 113, 133-135 (N. D. Ohio, 1977) and United States v. Jernigan, 582 F.2d 1211, 1213-1214 (9th Cir. 1978).

It is therefore the contention of the defendant that the deliberate and surreptitious invasion by the FBI into the confidential communications between himself and his lawyer, during which the pending criminal charges against the defendant were discussed amounts to a violation of his Sixth Amendment and Fifth Amendment due process rights. Since it is clear from the grand jury testimony of Agent Brown (pp. 28-29) that Rifkin's arrest resulted from information obtained during the FBI's monitoring of Rifkin's conversation with O'Brien, his arrest and its fruits are tainted by the constitutional violation.

b) Sixth Amendment violation under Massiah v. United States.

In the case of Massiah v. United States, 377 U.S. 201 (1964) the Supreme Court held that the defendant's Sixth Amendment right to counsel was violated when, following his indictment and release on bail, incriminating statements were deliberately elicited from him by a government informant. Although the defendant in Massiah was under indictment at the time his statements were made, it has been recognized that, for purposes of the right to counsel, the formal initiation of criminal proceedings may be considered to commence at the time an arrest warrant is issued. See Robinson v. Zelker, 468 F.2d 159 (2nd Cir. 1972), cert. denied 411 U.S. 939; United States v. Miller, 432 F.Supp. 382, 389 (E.D.N.Y. 1977); Burton v. Cuyler, 439 F. Supp.

1173, 1181 (E.D. Pa. 1977). But see, United States v. Duvall, 537 F.2d 15 (2nd Cir. 1976). The defendant contends that, in the instant case, the conduct of the FBI agents in recording the conversations between the defendant and Paul O'Brien constituted a Sixth Amendment violation under the principles established in Massiah.

Transcripts of the tape recorded conversations, when read in the light of facts which are now known regarding Mr. O'Brien's cooperation with the FBI, indicate that, although he was ostensibly talking with the defendant on an attorney-client basis, Mr. O'Brien was actually being used by the agents as an informant for the purpose of eliciting information from the defendant. Under these circumstances the violation of the defendants right to counsel is all the more egregious because the informant who was questioning him purported to be acting as his attorney. The statements made by Mr. Rifkin during those conversations are therefore constitutionally tainted, as is the arrest which directly resulted from the information obtained by agents in this unlawful manner.

C. THE DEFENDANT'S ARREST WAS THE PRODUCT OF AN UNLAWFUL ENTRY

1. Statement of Facts

As stated earlier in this memorandum, the defendant was arrested at the apartment of Daniel Wolfson during the early morning hours of November 6, 1978. From the telephone conversation between the defendant and his attorney, Paul O'Brien, the agents had obtained information that the defendant wished some money to be sent to Mr. Wolfson at a post office box in

Carlsbad, California.

Although they had a warrant for the defendant's arrest, the agents did not have a search warrant authorizing their entry into Mr. Wolfson's apartment. Other than the information that money would be sent to a post office box in Wolfson's name, the agents do not appear to have had any information that the defendant was present at Wolfson's apartment. The circumstances of the entry into the apartment were described by Special Agent Robin Brown in his sworn testimony before the Grand Jury:

> Mr. Wolfson refused to let us enter the apartment. We advised him of our identity, the subject's identity, showed him a picture, told him all about the harboring statutes, asked him very nicely, and finally just swept him aside as we entered the apartment and searched it.

2. Pertinent Law

It is clearly-established law that a warrantless entry into and search of a private premises is per se unreasonable under the Fourth Amendment, subject to only a few specific and carefully-delineated exceptions. G.M. Leasing Corp., et al. v. United States, 429 U.S. 338 (1977): Coolidge v. New Hampshire, 403 U.S. 443 (1971). Unless a warrantless search meets one of these exceptions, all evidence obtained thereby is inadmissible at trial. Weeks v. United States, 232 U.S. 382 (1914). It is the burden of the government to demonstrate that the warrantless entry in this case falls within such an exception. United States v. Canada, 527 F.2d 1374, 1380 (9th Cir.1975).

In the instant case, the entry into the premises where the defendant was arrested was effected without a search warrant for those premises. Furthermore, the statement of Agent Brown regarding the circumstances of the entry clearly shows that it was not consensual. It is the defendant's contention that the entry was in fact unlawful because it was not authorized by warrant and because the agents did not have probable cause to believe that the defendant was on the premises.

CONCLUSION

For all of the above stated reasons, the defendant submits that all evidence seized as a result of his arrest on November 6, 1978 must be suppressed.

Respectfully submitted,

DATED: December 14, 1978

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTIONS TO SUPPRESS EVIDENCE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF BROWN, WIGHT, MC LEAN, AND MC LARAN; EXHIBITS ONE AND TWO. Hearing Date: January 9, 1978 1:30 p.m.

The government hereby opposes the defendant's motion to suppress evidence seized as a result of defendant's arrest and motion to suppress evidence and quash the search warrant. This opposition is based on the attached memorandum, declarations and exhibits and any evidence which may be presented at the hearing.

Respectfully submitted,

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United States Attorney

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KAS:ya

Form CBD-183
12/76 DOJ

DOCUMENT 2

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I

STATEMENT OF FACTS

The FBI first received information regarding the crime charged in this case on Wednesday, November 1, 1978. At that time, Gary Goodgame, the attorney for the defendant's corporation, Rifkin, Inc., reported to the FBI information regarding a theft by Rifkin. Goodgame said that Rifkin had represented to him that Rifkin represented a company that wanted to make a large purchase of diamonds. Goodgame introduced Rifkin to a diamond broker, Lon Stein. Arrangements had been for Stein to purchase 10 million dollars worth of diamonds from the Soviets in Switzerland. Rifkin had met with Goodgame two days earlier, on Monday, October 30, 1978 at a hotel in Beverly Hills, California. At that time, Rifkin showed Goodgame the diamonds and told Goodgame he had taken them and that only Security Pacific Bank would bear the loss. He said he was changing his identity and going to places unknown. He gave Goodgame three of the diamonds.

The FBI spoke to officials at Security Pacific Bank and confirmed that an unauthorized wire transfer had occurred the prior week. On Wednesday, October 25, 1978, a person representing himself to be Mike Hansen had requested a 10.2 million dollar wire transfer to the Irving Trust Company in New York for credit through the Wozchod Handelsbank in Zurich, Switzerland. This was charged to a non-existent account.

An interview with the diamond broker, Lon Stein, confirmed that he had purchased diamonds in Switzerland for a company represented by Rifkin at Rifkin's request. He identified the voice of Mike Hansen on a tape recording of the telephone call as being that of Rifkin. He

also identified the diamonds given to Goodgame as similar to the ones he had purchased.

On November 2, 1978, the FBI obtained a complaint and a warrant for Rifkin's arrest charging an interstate transportation of stolen property.

Thereafter, the FBI obtained an additional corroborative evidence including Rifkin's statement to his girlfriend, Mary Bruskotter, that he had committed the crime. Extensive effort to locate Rifkin proved fruitless. Finally, four days after receiving the information from Goodgame, on Sunday, November 5, 1978, the FBI received information from Paul O'Brien that Rifkin had been in New York meeting O'Brien and that Rifkin had gone to California. Rifkin had requested that O'Brien mail him some money at a post office box registered to a Dan Wolfson.

The FBI located Wolfson's apartment. At midnight that night they went to the apartment. After receiving an evasive answer from Wolfson and after being refused entrance, the FBI entered and arrested Rifkin inside his friend's apartment. Rifkin signed a Miranda waiver and offered to turn over th diamonds which were located in his luggage. The defense is not contesting this consent search. Rifkin said that, in order to pay his attorney, he wanted to keep some cash he had obtained by selling some of the diamonds. The FBI said that he could not do this and that the money would also have to be turned over. The defendant is contesting the seizure of this money.

Rifkin fully confessed to the crime. He is not contesting the voluntariness of the confession. Rather, the defendant contends that the confession should be suppressed because it was the result of an illegal arrest.

On November 7, 1978, Wolfson was arrested. A search warrant was obtained for Rifkin's suitcase inside Wolfson's apartment. Pursuant to that search, documents were located, including Rifkin's handwritten note, hotel bills, and Rifkin's passport.

II

THE DEFENDANT WAS LAWFULLY ARRESTED PURSUANT TO A COMPLAINT BASED ON SUFFICIENT PROBABLE CAUSE

A. The Affidavit in Support of the arrest warrant describes in Sufficient Detail the Facts Establishing Probable Cause and the Sources of the Information.

As the defendant states in his motion, an affidavit in support of an arrest warrant must supply enough facts so that a magistrate can independently determine whether probable cause exists to arrest the suspect. See Giordenello v. United States, 357 U.S. 480, 486-87 (1958). Relying on language from Giordenello, the defendant seeks to invalidate the arrest warrant on the ground that the affidavit does not disclose the sources of the affiant's information. But as the following discussion demonstrates, the affidavit supplies enough facts so that the magistrate not only could determine the weight to be given to those facts, but also could reasonably infer the sources of the information.

The affidavit in question here, which is attached to this Memorandum as Exhibit One, was signed by Special Agent Robin C. Brown of the Federal Bureau of Investigation. After stating that he had conducted an "investigation into the transportation of stolen goods in interstate commerce," Agent Brown then described, in six separate paragraphs, the facts supporting a finding of probable cause that the defendant had committed the crime. Admittedly, the affidavit could

have been somewhat more specific with respect to the sources for certain items of information. Nevertheless, the affidavit supplied more than enough information from which the magistrate could reasonably infer the sources of that information.

For example, paragraph (b) of the affidavit states that on October 25, 1978, the defendant Rifkin, representing himself to be Mike Hansen, an employee of Security Pacific Bank, telephoned the wire transfer room of the bank in order to effect the transfer of $10.2 million to an account in Zurich, Switzerland. The affidavit next states that this telephone "conversation was recorded." Agent Brown's statement that the conversation was recorded clearly implies that he had obtained the information regarding the telephone call from officials at the bank itself.

Agent Brown further states in paragraph (b) that he had "established that the purported account from which these funds were transferred [did] not "in fact exist." The only reasonable inference from this statement, again, is that Agent Brown obtained this information from the bank.

Other specific facts detailed in the affidavit establish that Agent Brown had obtained information from the diamond broker whose services had been retained by Rifkin. In paragraph (c), Agent Brown states that on October 27, 1978, the diamond broker purchased $8,000,145 worth of diamonds in Switzerland with the funds which had been fraudulently obtained from Security Pacific Bank. The affidavit also states that the diamonds were assembled by the Russians and the broker and were delivered to a pick-up location in Geneva, Switzerland.

In paragraph (f) of the affidavit, Agent Brown stated that the diamond broker had "positively identified" the voice of Mike Hansen

on the tape recorded conversation to the bank as the voice of the defendant Stanley Rifkin. This statement in the affidavit as to the broker's positive identification indicates that the broker had been interviewed and that he had provided all the information in the preceding paragraph regarding his own activities in Switzerland.

The affidavit to the complaint further states that on October 31, 1978, the defendant Rifkin met with an individual in Los Angeles and told that individual that he had obtained the above-described diamonds. Rifkin showed this individual the diamonds and indeed gave him three diamonds. Although the source of this information is not stated in the affidavit, its reliability is supported by the very next sentence, which states: "These stones have been identified by the broker as similar to the diamonds purchased in Switzerland." This sentence contains first-hand information provided by the broker himself.

Later in paragraph (e) of the affidavit, Agent Brown quotes Rifkin as stating that Security Pacific Bank would bear the loss of $10.2 million. Although again the source of the quote from Rifkin is not identified, the information is corroborated by the previously recited information from the bank itself that an unauthorized wire transfer in the identical amount had been made from the bank.

The strength of the present affidavit is most evident when it is compared with the affidavit that was struck down by the Supreme Court in Giordenello. There, the affidavit did no more than state that:

> "On or about January 26, 1956, at Houston, Texas, in the Southern District of Texas, Veto Girodenello did receive, conceal, etc., narcotic drugs, to-wit: heroin hydrochloride with knowledge of unlawful importation; in

violation of Section 174, Title 21, United States Code." 357 U.S. at 481

By contrast, the affidavit here describes, in six paragraphs, the details of the results of Agent Brown's investigation. Those details make very clear that Agent Brown obtained much of his information from bank officials, from the tape recording of the telephone conversation from "Mike Hansen" to the Security Pacific Bank, and from the diamond broker. Since the broker and the bank officials are not professional informants, their reliability should not be questioned. United States v. Banks, 539 F.2d 14, 17 (9th Cir.), cert. denied, 429 U.S. 1024 (1976). Moreover, in a case such as this, where the offense cannot be proven by a few identifiable facts, the Magistrate can justifiably place more reliance upon the conclusions of the investigative agent. See United States v. Towill, 548 F.2d 1363, 1368 (9th Cir. 1977).

The only constitutional requirement is that an affidavit in support of an arrest state enough information to enable the Magistrate to make the "judgment that the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process." Jaben v. United States, 381 U.S. 214, 224-25 (1965). To assist in meeting this constitutional requirement, the affidavit should supply enough facts to indicate some of the sources of the affiant's information. Giordenello v. United States, supra. Both of these requirements were met here. The defendant's challenge to the specificity of the affidavit should be rejected.

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B. The Conversion of the Fraudulently Obtained Money into Diamonds was an Integral Part of the illegal Scheme and Thus the Transportation of Those Diamonds in Foreign Commerce Violated 18 U.S.C. §2314

Where property obtained by fraud is converted into a different form and the new form is transported in commerce, courts have uniformly held that the change in form of the property does not bar prosecution under 18 U.S.C. §2314. United States v. Levy, 579 F.2d 1332 (2d Cir. 1978); United States v. Pomponio, 558 F.2d 1172 (4th Cir. 1977). In the instant case, the defendant fraudulently effected the transfer of $10.2 million from the Security Pacific Bank in Los Angeles to an account in Zurich, Switzerland. This money was used to purchase diamonds, which were then transported in foreign commerce to the defendant Rifkin. The mere conversion of the money into diamonds did not remove the defendant's subsequent transportation of the diamonds from the scope of §2314.

The defendant contends, however, that the instant case involves not a change in form, as in United States v. Levy, supra, and United States v. Pomponio, supra, but a change in kind from money to diamonds. A quick examination of the defendant's scheme in this case shows the frivolity of this distinction.

As the Government's earlier memorandum discussed, the conversion of the fraudulently obtained money into diamonds was an integral part of the defendant Rifkin's illegal scheme.

The Government's evidence at trial will show that Rifkin told people that the diamonds were going to be used instead of money because diamonds could not be traced. The conversion of the money into diamonds here was no different than the conversion of cash into checks

in Levy and the conversion of a fraudulent stock certificate into a promissory note and then into a certified check in Pomponio. In each case, one medium of exchange, virtually equivalent to cash, was substituted for another medium of exchange.

It is important to note that in this case the money was not converted into diamonds as an afterthought. Instead, the conversion was part of the original plan. Under these circumstances, the defendant's argument should be rejected, and the arrest warrant should be upheld.

C. The Defendant has not Presented any Evidence that an Attorney-Client Relationship Existed Between Himself and O'Brien

The defendant claims that the Government intruded into his attorney-client relationship with a Mr. Paul O'Brien by taping telephone conversations between himself and Mr. O'Brien with O'Brien's consent. He also complains that O'Brien supplied the information as to his whereabouts to the police. However, Rifkin does not attach a supporting declaration in which he claims any attorney-client relationship between himself and Mr. O'Brien. The defendant's motion is devoid of any declaration by Rifkin under oath that O'Brien was in fact his attorney.

Therefore, no facts have been alleged by the defendant to establish a claim of attorney-client privilege. Although the defendant's attorney states that the tapes themselves establish that there existed an attorney-client relationship between O'Brien and Rifkin, the attorney's conclusion to this effect is not evidence. As there are no supporting facts to this claim of attorney-client privilege, it should be disregarded.

III

THE ARRESTING OFFICERS HAD PROBABLE CAUSE TO ARREST THE DEFENDANT, EVEN APART FROM THE COMPLAINT AND ARREST WARRANT

Courts have consistently held that even though an arrest is made pursuant to a warrant that is subsequently found to be invalid, that arrest is lawful as long as there was probable cause to arrest the suspect. Dearinger v. United States, 378 F.2d 346 (9th Cir. 1967); United States v. Hall, 348 F.2d 837 (2d Cir. 1965). In the instant case, there was an abundance of probable cause to arrest the defendant Rifkin.

As the detailed declaration of Agent Brown indicates, the agents had, prior to the arrest, obtained detailed information from Gary Goodgame that Rifkin had committed a crime. Mr. Goodgame was not a professional informant, but merely a citizen supplying information to law enforcement officers. The reliability of the information provided by Mr. Goodgame is unquestionable. The source of Mr. Goodgame's information was Rifkin himself. Prior to the wire transfer of the money, Rifkin had asked Goodgame to recommend a diamond broker to purchase diamonds that would be used in a $10 million international transaction. Goodgame had recommended Lon Stein. When Rifkin and Goodgame met on October 30, however, Rifkin not only told Goodgame that he had illegally transferred money from Security Pacific Bank, but also showed him many of the diamonds he had purchased with that money. Rifkin added that he had acquired a new identity and was going to "places unknown."

As the attached declaration notes, the information supplied by Goodgame was corroborated, prior to Rifkin's arrest, by many sources,

including the diamond broker, Lon Stein, and Rifkin's girlfriend, Mary Bruskotter. Both Stein and Bruskotter obtained their information directly from Rifkin. Stein also recounted to the FBI agents his own activities in Switzerland regarding the purchase of the diamonds. The Security Pacific Bank itself confirmed to the agents that an unauthorized wire transfer of $10.2 million to a Swiss bank had in fact occurred. Stein listened to a tape recording of the telephone call from "Mike Hansen" to the wire transfer room ordering the illegal transfer and immediately identified the voice of Mike Hansen as the voice of the defendant Rifkin.

All this information demonstrates that, at the time of Rifkin's arrest, the FBI agents had more than enough probable cause to believe that he had committed the crimes. Therefore, even if the Court finds the arrest warrant and complaint inadequate, the arrest itself was lawful.

IV

THE DEFENDANT'S STATEMENTS TO O'BRIEN WERE MADE PRIOR TO HIS ARREST AND INDICTMENT AND THUS DO NOT FALL WITHIN THE PROHIBITION OF MASSIAH v. UNITED STATES

The defendant contends that under Massiah v. United States, 377 U.S. 201 (1964), his Sixth Amendment rights were violated when the FBI agents recorded his telephone conversations with Paul O'Brien on November 3 and 4, 1978. Contrary to the defendant's assertion, the rights announced in Massiah apply only after the defendant has been arrested or indicted. United States v. Duvall, 537 F.2d 15, 19-22 (2d Cir. 1976)(Friendly, J.). In the instant case, Rifkin had not been arrested or indicted at the time the FBI agents recorded his

conversations with O'Brien. Accordingly, Rifkins rights under Massiah were not violated.

The cases cited by the defendant simply do not support his argument that his rights under Massiah were triggered at the time the arrest warrant was issued. In United States ex rel Robinson v. Zelker, 468 F.2d 159 (2d Cir. 1972), cert. denied, 411 U.S. 939 (1973), United States v. Miller, 432 F.Supp. 382 (E.D.N.Y. 1977), aff'd, 573 F.2d 1297 (2d Cir. 1978), and Burton v. Cuyler, 439 F.Supp. 1173 (E.D.Pa. 1977), the defendants had already been arrested. The Court in Cuyler actually stated that it "need not decide whether the issuance of a warrant for arrest is sufficient in itself as a matter of federal law to trigger [the defendant's] right to counsel." 439 F.Supp. at 1181.

Admittedly, there is language in United States ex. rel Robinson v. Zelker, supra, suggesting that criminal proceedings commence with the filing of an arrest warrant. But in United States v. Duvall, supra, the Second Circuit expressly limited Zelker to arrest warrants issued in New York state, where a former section of the New York Code of Criminal Procedure provided that a prosecution commenced with the filing of an information and the issuance of an arrest warrant, 537 F.2d at 21-22. Duvall goes on to hold that in federal cases the issuance of an arrest warrant does not trigger the right to counsel. Id. at 22. Because Rifkin had not been arrested or indicted at the time of his telephone conversations with O'Brien, his rights under Massiah were not violated by the recording of those conversations.

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V

NONE OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE AGENTS ENTERED A FRIEND'S APARTMENT WITHOUT CONSENT TO ARREST THE DEFENDANT

A. The Ninth Circuit's Decision in United States v. Prescott does not Apply to Rifkin's Claim.

The defendant claims that because the agents, without consent, entered an apartment belonging to Rifkin's friend in order to execute an arrest warrant for Rifkin, this entry made the arrest unlawful and all resulting evidence, including the defendant's confession, should be suppressed. The defendant argues that the agents should have obtained a search warrant for the premises before entering the premises to execute the arrest warrant for Rifkin.

Although not cited by the defendant in his moving papers, the government has an obligation to bring to the Court's attention a very recent Ninth Circuit case, United States v. Prescott, 581 F.2d 1343 (9th Cir. 1978). In Prescott, the police forcibly entered the defendant's home without either an arrest warrant or a search warrant looking for a third party whom they had reason to believe had committed a crime and was hiding in the apartment. Physical evidence seized in the apartment pursuant to the arrest of the third party was introduced against the defendant in a prosecution for being an accessory after the fact.

The Court held that the evidence seized as a result of the warrantless search of the defendant's home for the third party should be suppressed unless the government could show exigent circumstances. The Court remanded for a hearing on whether exigent circumstances existed to justify the forcible entry onto the premises.

The portion of the opinion which appears on the surface to depart radically from prior law is the indication that to enter a dwelling lawfully, the police must have either a search warrant naming the suspect as the thing to be seized or an arrest warrant setting forth the probable cause to arrest the suspect, the probable cause to believe that the suspect is on the particular premises, and a description of the premises.

Prescott should be limited to the particular facts of that case. If the holding in Prescott is construed to be simply that evidence seized during a warrantless search of a person's home, when there is no reason to believe that the person himself has committed a crime, may not be used against the person, then Prescott is a rather unremarkable case. However, if this requirement of a search warrant or a requirement that provisions for the search of the premises in question be included in an arrest warrant is construed to afford protection to a fugitive on the run at each stop along the way, this would be a radical departure from the prevailing law and would have a devastating impact on law enforcement.

The cases cited in Prescott for the proposition that a warrant is necessary to enter a dwelling to carry out an arrest do not support the additional proposition that if an arrest warrant does not contain a description of the premises to be searched and the reason to believe the suspect is on the premises, then the arrest itself would be completely invalid. In the first case, Dorman v. United States, 435 F.2d 385 (D.C. 1970), the Court held that exigent circumstances justified the nonconsensual warrantless entry into a man's own home to arrest him for robbery. Although in that case the Court discussed in dicta the possibility of including provisions for a search of

premises in an arrest warrant, the Court indicated in a footnote that this extra provision was not required for an entry to execute a lawful arrest warrant:

> ". . . While there is no strict logic in the matter it seems to be accepted, at least by implication, that the obtaining of an arrest warrant is material in supporting a search of premises as not 'unreasonable' even though the magistrate has not passed upon the need for invasion of privacy of the premises. If that issue should arise, however, a judgment by a magistrate would obviously be helpful." [(Emphasis added) 435 F.2d 396, footnote 25].

In United States v. Reed, 572 F.2d 415 (2d Cir. 1978), also cited by the Court in Prescott, the defendant Reed was arrested in her home without an arrest warrant or a search warrant. Evidence which was seized in her home pursuant to the arrest was introduced at trial. In reversing Reed's conviction, the Court stated:

> "We hold that warrantless felony arrests by federal agents effected in the suspect's home, in the absence of exigent circumstances, even when based upon statutory authority and probable cause, are unconstitutional." [(Emphasis added) 572 F.2d at 418].

There is no discussion in Reed regarding the type of warrant which would have been required to make the defendant's arrest a lawful one. There is no indication that the Court was referring to anything other than a traditional arrest warrant supported by probable cause to believe that the defendant had committed a crime.

The third case cited by Prescott, Government of Virgin Islands v. Cereau, 502 F.2d 914 (3d Cir. 1974), is more complicated. In that case, the agents went to 527 Hospital Street because they had received a tip that five persons for whom they had arrest warrants were there. Three of the persons came out of the building when requested to do so by the police. These three persons were arrested and were defendants in the Cereau case. The police then entered the premises looking for the other two suspects for whom they had arrest warrants. It later turned out that these two did not in fact exist and were simply fictional characters. The police seized evidence inside the premises which was introduced against the three people who had surrendered outside.

The Government tried to justify the search of the premises and subsequent introduction of the evidence against the three individuals by the fact that they entered the premises to find the other two individuals for whom they had arrest warrants. The Court rejected this argument , stating:

> "This Court has made clear, however, that arrest warrants are not substitutes for search warrants." [502 F.2d at 928].

However, the Court continued:

> "Although police have warrants for the arrest of suspects, they may enter premises, at least of third persons, to search for those suspects only in exigent circumstances where the police officers also have probable cause to believe that the suspects may be within." [(Emphasis added) Id.].

It seems clear that the Court added the language regarding the search of the premises of a third party for suspects to limit the holding to situations where the evidence found on the premises is used against the third party. The Cereau case does not say that if the three persons had refused to come out of the building, the police could not enter the premises to effect their arrest and use evidence seized against them. The Court in that case also does not say that if the other two people had in fact been real and had been found inside, the seized evidence could not be used against them.

Both the holdings in Cereau and Prescott can be construed to be limited to situations in which evidence is sought to be used against a third party where the evidence was seized in the third party's home while the police were searching for other individuals.

The police should not be required to obtain both an arrest warrant for a suspect and also, in order lawfully to execute that arrest warrant inside a dwelling, a search warrant or a new arrest warrant with search provisions every time they develop a new lead regarding the suspect's whereabouts. The impact of such a requirement on law enforcement would be significant.

In the instant case, the agents had an arrest warrant for the defendant, Stanley Mark Rifkin. A magistrate had already determined that there was probable cause to believe that the defendant had committed a crime. Rifkin was not the owner or permanent occupant of the premises where he was found. Rather, he was a fugitive staying only a few days in each place before moving on. It would be completely unreasonable, unwarranted, and unprecedented for the Court to find his arrest made pursuant to a lawful arrest warrant is invalid and to

suppress his ensuing confession and offer to surrender evidence simply because he was arrested inside, rather than outside, his friend's apartment.

B. The Defendant has not Asserted a Sufficient Expectation of Privacy in His Friend's Apartment.

A person can claim Fourth Amendment protection against unreasonable governmental intrusion only if that person asserts sufficient facts to establish that he has a legitimate expectation of privacy in the place that is invaded. Rakas v. Illinois, 24 Cr.L. 3009, No. 77-5781 (U.S. Dec. 5, 1978). See also Katz v. United States, 389 U.S. 347 (1967). Neither in his counsel's motion to this Court nor in his own declaration has the defendant Rifkin asserted any facts that would show such a legitimate expectation of privacy.

There is no evidence that Rifkin was anything other than a temporary guest in his friend's apartment. The defendant could not have a reasonable expectation of privacy with respect to his own person while staying with his friend. While Rifkin was staying on the premises with his friend Wolfson, Wolfson could allow access to the apartment to anyone he chose. While Rifkin could reasonably expect that his friend Wolfson would not go through Rifkin's suitcases or his personal belongings, he could not reasonably expect total privacy with respect to his physical presence in the apartment.

Indeed, it is quite clear that Rifkin did not expect privacy on the premises and actually anticipated being arrested soon. When the defendant was arrested inside the apartment, the agents had him lean against the wall while they made a search for weapons. At that time, the defendant spontaneously told the agents that he and his friend had even practiced being searched the day before. It is clear from this

remark that both the defendant and his friend were aware that Rifkin was being sought by federal agents and were expecting his imminent arrest. As the arrest warrant for Rifkin had been given nationwide publicity, this case is quite different from the usual situation where the person being sought has not been informed of an outstanding warrant for his arrest and of the fact that the police are looking for him. Rifkin certainly cannot claim that he had no expectation that the agents would enter the apartment to arrest him.

The situation here differs markedly from the facts in Jones v. United States, 362 U.S. 257 (1960), where the Supreme Court held that the defendant's Fourth Amendment rights had been violated by the police officers' entry into a dwelling leased by someone else. But, unlike Rifkin, the defendant in Jones had been given total freedom to use his friend's apartment. He had been given a key to the apartment and had used that key to enter the apartment on the day of the search. In fact, the defendant in Jones was the only person present in the apartment at the time of the search. The lessee of the apartment had been away for several days. None of these facts emphasized by the Court in Jones are present in the instant case.

C. Even if Rifkin had an Expectation of Privacy in Wolfson's Apartment, Exigent Circumstances Justified an Immediate Entry into the Apartment.

The Ninth Circuit has consistently upheld warrantless arrests inside dwellings where exigent circumstances justified immediate action by the Government agents. E.g., United States v. Flickinger, 573 F.2d 1349 (9th Cir. 1978). In the instant case, immediate action was justified by two factors--the likelihood that the defendant would flee

absent immediate arrest and the likelihood that the defendant would destroy evidence.

Not until about 7:00 p.m. on Sunday, November 5, 1978, did Agent Brown learn that earlier that day Rifkin had telephoned Paul O'Brien in Rochester, New York, and had asked him to send $6,000 to Post Office Box #1564 in the name of Daniel Wolfson in Carlsbad, California. Agent Brown immediately traveled to Carlsbad. After awaiting the results of the investigation in Carlsbad, Agent Brown decided to arrest Rifkin at Wolfson's apartment. The agents arrived there at approximately 11:45 p.m. Ten minutes later, they entered the apartment.

These facts illustrate the time pressures under which the Government agents were operating. The agents knew that Rifkin had been in Switzerland in late October and that he had then traveled to Los Angeles, where he had met with Goodgame on October 30 and with Bruskotter on October 31. They also knew that Rifkin was in Rochester, New York, on November 1, 2 and 3. It was obvious to Agent Brown, when he received the information on November 5, that Rifkin was not staying in any one place for a long period of time. Rifkin was a fugitive who undoubtedly was aware of the media publicity that was being given to his theft. He could have been fleeing not only from the FBI but also from persons who wanted to steal the diamonds from him.

Under these circumstances, the FBI agents cannot be faulted for not waiting on November 5 to obtain a warrant to enter Wolfson's premises. Although the agents conceivably could have obtained such a warrant in the middle of the night, obtaining that warrant would have

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caused a great deal of delay. During that delay, the defendant could have fled once more, possibly avoiding capture indefinitely. The likelihood of flight by Rifkin clearly justified the immediate action by the agents.

Moreover, once the agents arrived at Wolfson's apartment and were denied entry, it became much more likely that Rifkin would attempt to destroy or otherwise dispose of evidence, to escape, or to confront the agents violently. As the Ninth Circuit stated in United States v. Flickinger, 573 F.2d 1349 (9th Cir. 1978):

> "A suspect who realizes that he is in danger of immediate apprehension is clearly more likely to destroy evidence, to attempt to escape, or to engage in armed resistance than is a suspect who is taken unaware. By acting promptly, however, the police can substantially mitigate the possibility of such occurrences."

All of these occurrences were sufficiently likely to justify the agents' immediate entry into Wolfson's apartment. The diamonds themselves could have been flushed down the toilet. Other evidence could have been burned or otherwise destroyed. Moreover, since Rifkin had been frequently moving from place to place, it was very likely that, when aware of the immediate presence of Government officers, he would attempt to escape through another exit of the apartment. Finally, the sheer value of the diamonds in Rifkin's possession made his resort to violence a likely possibility.

A suspect's knowledge that he is at risk of immediate apprehension clearly qualifies as an exigent circumstance justifying immediate action. United States v. Flickinger, supra; United States v. McLaughlin, 525

F.2d 517, 521 (9th Cir. 1975); United States v. Curran, 498 F.2d 30, 35-36 (9th Cir. 1974); United States v. Bustamente-Gamez, 488 F.2d 4 (9th Cir. 1973). Moreover, the Government agents are not required to surround the residence and wait for the proper warrant. As the Ninth Circuit again stated in Flickinger:

> "The alternative to immediate action may be that the police would take escalated precautionary measures while awaiting the warrant in order to guarantee that the suspect did not escape and to insure their own safety. This may include cordoning off the residence. Such measures, while appropriate in some cases, may carry their own acceptable danters, i.e., a heightened risk of weapons play and danger to third parties . . . "

Accord United States v. Johnson, 561 F.2d 832, 843 (D.C. Cir. 1977) (en banc).

The agents had ample reason to believe that Rifkin was in Wolfson's apartment because of the negative results of the rest of their investigation and the positive information that he was either with Wolfson or in close contact with him. The agents had already determined that the defendant had left his original residence in Sepulveda to take a new job in the San Diego area. He had not been seen for the past few days at work in San Diego or at the nearby motel which he had checked into. His mother, relatives, friends, and his girlfriend did not know his whereabouts. In the space of several days he had checked into and out of a hotel in New York and in Beverly Hills.

The agents then received information that Paul O'Brien was to mail a package to Rifkin at a post office box registered to a friend,

Daniel Wolfson in Carlsbad, California. Before going to Wolfson's most recent address, the agents first went to Wolfson's place of business and then to Wolfson's previous addresses; they even drove around the area checking the parking lots of local motels for Rifkin's car. When all of this checked out negative, they were reasonably certain that Rifkin was in his friend's, Wolfson's, apartment. When the agents went to Wolfson's apartment, they told Wolfson that they had a warrant for Rifkin's arrest, showed Rifkin's picture to the friend and asked him whether Rifkin was in the apartment. Wolfson replied dumbly, "I don't know." This response added to the agents' reason to believe that Rifkin was on the premises. Most people know who else is at home with them! Wolfson's answer that he did not know whether Rifkin was on the premises was the answer of a person with a guilty conscience who was trying to be evasive. At that point in time the likelihood was very high that the defendant was in fact on the premises.

Under all these circumstances, the FBI agents in this case acted wisely and properly in entering Wolfson's apartment without waiting to obtain a warrant that authorized them to enter that apartment to arrest Rifkin. Because exigent circumstances justified this entry, Rifkin's arrest inside the apartment was lawful.

D. Even if the Agent's Entry Without Consent onto the Apartment Premises was Unlawful, the Defendant's Confession and Offer to Surrender Evidence Were not Related to Whether He was Arrested on the Premises or in a Public Place and Should Therefore not be Suppressed.

As is indicated supra, the defendant could lawfully have been arrested, with or without an arrest warrant, in a public place, as there was ample probable cause to believe he had committed a crime. The defendant was so eager to confess that he wanted to sign the Miranda form before it had even been read to him. Moreover, he offered to surrender the diamonds before being asked anything by the agent. It is quite clear from these facts that the confession and consent to seize evidence would have occurred regardless of the defendant's physical location at the time of his arrest.

Even if there were something improper about the agents' entry without consent into the friend's apartment to make the arrest, there must be some connection between the entry and the evidence sought to be suppressed. Cf. Brown v. Illinois, 422 U.S. 590, 598 (1973); United States v. Duncan, 570 F.2d 292 (9th Cir. 1978). Here there is none. This is not a situation where items were seized which were in plain view which could not have been seized if an arrest had been made on the street. The defendant's confession and voluntary surrender of the diamonds was totally independent of the fact that he happened to be inside a dwelling.

VI

EXIGENT CIRCUMSTANCES JUSTIFIED THE AGENTS' SEIZURE OF THE MONEY AT THE TIME OF THE DEFENDANT'S ARREST EVEN WITHOUT THE DEFENDANT'S CONSENT

Government agents can seize evidence of a crime without first obtaining either a search warrant or the defendant's consent where: (1) they have probable cause to believe such evidence exists, and (2) exigent circumstances justify such immediate action. As the following discussion demonstrates, both of these conditions were

satisfied here, and thus the FBI agents acted lawfully in seizing the $12,000 in cash.

Immediately following his arrest, Rifkin himself told the agents that he had about $12,000 which he had obtained by selling some of the diamonds. Thus, there is no doubt in this case that the agents had probable cause to believe that the $12,000--fruits of the crime--was located in the apartment.

Nor is there any doubt that exigent circumstances justified the agents' immediate seizure of the money. In his own declaration, the defendant Rifkin states that he "was concerned that when [he] was taken from the premises the diamonds might disappear in [his] absence." Defendant's Motion, at p. 19. Just as the diamonds might have disappeared if they had been left at the apartment, so might the money have disappeared.

The declaration of Agent Brown makes clear that Wolfson had not cooperated with the FBI agents when they had first appeared at Wolfson's door. The agents had other information that Wolfson and Rifkin were extremely close friends. The agents were certainly aware of the possibility that, if they left the $12,000 in the apartment, Wolfson would destroy, hide, or even abscond with the evidence.

In addition, the agents were fully cognizant of the extensive media coverage that had been given to Rifkin's crime. With such extensive publicity and with such a large amount of money involved in the theft, the agents realized that other persons might have been trying to locate Rifkin in order to steal the proceeds of the crime.

All these factors increased the likelihood that the $12,000 would disappear if the agents did not seize it immediately. Because of this likelihood of disappearance, the agents properly seized the $12,000 at the time of the defendant's arrest.

VII

THE SEARCH OF THE DEFENDANT'S SUITCASES PURSUANT TO A SERCH WARRANT WAS LAWFUL

A. The Affidavit in Support of the Search Warrant Establishes More Than Enough Probable Cause to Justify the issuance of the Warrant.

The Government readily agrees with the defendant that an affidavit in support of a search warrant must supply enough facts to justify a finding of probable cause that evidence of a crime will be found in the premises to be searched. Warden v. Hayden, 387 U.S. 294 (1967); Jones v. United States, 362 U.S. 257 (1960); United States v. Esparza, 546 F.2d 841, 843 (9th Cir. 1976). However, the Government is astounded by the defendant's contention that the affidavit here failed to meet that requirement. This affidavit clearly establishes the required probable cause.

The defendant argues first that the affidavit fails to allege sufficiently that the defendant Rifkin had committed the crime of interstate transportation of stolen property. This contention is completely frivolous. The affidavit states that on November 6, 1978, the defendant was arrested "on a complaint filed in federal court in the Central District of California charging him with the violation of Title 18, United States Code Section 2314--Interstate Transportation of Stolen property, arising out of the theft of $10,200,000 from the Security Pacific Bank in Los Angeles, California." The affidavit further states that other agents had informed the affiant that the crime involved the transfer of money to Switzerland, the conversion of the money there into diamonds, and the transportation of the diamonds back to the United States.

The statement in the affidavit that Rifkin had been arrested pursuant to a complaint filed in the Central District of California indicates that a judicial officer in Los Angeles had already determined that probable cause existed to believe: (1) that a crime had been committed, and (2) that Rifkin had committed the crime. The Fourth Amendment requires only that one judicial officer be presented with enough specific facts to justify a finding of probable cause. With respect to the defendant's commission of the crime, that requirement was met here when the judicial officer in Los Angeles issued the arrest warrant. The magistrate in San Diego was certainly entitled to rely upon the independent judgment of the judicial officer in Los Angeles.

The defendant's next contention is equally meritless. The defendant claims that the affidavit does not support a finding of probable cause to believe that evidence of the crime would be found in the defendant's suitcases inside the apartment. In support of this argument, the defendant cites United States v. Bailey, 458 F.2d 408 (9th Cir. 1972), which held that the mere presence of a defendant in a house or an automobile does not create probable cause to search that house or automobile.

Bailey simply does not apply to this case. The affidavit here does much more than merely assert that Rifkin was present inside the apartment. The affidavit states that at the time of his arrest Rifkin "removed a suitcase from a closet located in the southeast bedroom of the apartment, brought it into the living room, and removed from it the diamonds and $12,000 in cash." The affidavit further states that as he was leaving the apartment, Rifkin told Wolfson to put his bags back into the closet. The sources of this information--Agent Norm

Wight, Agent Charles McLaran, and Wolfson himself--are clearly indicated in the affidavit. All this information establishes probable cause to believe that since Rifkin had removed some evidence of the crime from his suitcase, other evidence might similarly be found inside the suitcase.

In addition, the affidavit states that after Wolfson had been arrested for harboring a fugitive, he stated that he still had Rifkin's suitcase in his apartment and asked whether the FBI still intended to search his apartment. Wolfson's concern for the welfare of that suitcase added to the probable cause to believe that evidence of the crime could be found in that suitcase.

The affidavit relates a conversation between Wolfson and Steven Palma, a media person in Los Angeles, in which Wolfson offered to act as a go-between in a news story about Rifkin and the theft. The affidavit also states that in that conversation, Wolfson asked Palma to remove from Rifkin's suitcase some paperwork containing information relating to the crime. The affidavit also states that Wolfson told Palma that he had not yet removed any items from the suitcases.

The defendant argues, however, that the hearsay attributed to Wolfson is not corroborated by any other facts stated in the affidavit. But Wolfson's statements to Palma are supported both by Rifkin's own acts in retrieving the diamonds and the money from the suitcase and by Wolfson's statements to Special Agent Zopp expressing concern about suitcases. Moreover, both Spinelli v. United States, 393 U.S. 410 (1969), and Aguilar v. Texas, 378 U.S. 108 (1964), involved information provided by professional informants. Wolfson is not a professional informant. See United States v. Burke, 517 F.2d 377, 380 (2d Cir. 1975), ("there has been a growing recognition that the language in Aguilar

and Spinelli was addressed to the particular problem of professional informers"). He is a friend of Rifkin whose statements were based on his personal observations.

Finally, the defendant argues that Wolfson is not credible since he was tempted to exaggerate his access to important evidence in order to interest the media. This assertion by the defendant is totally speculative.

An affidavit in support of a search warrant should be interpreted in a common-sense manner. United States v. Ventresca, 380 U.S. 102, 108-09 (1965). When the affidavit in question here is examined in this manner, it becomes very apparent that this affidavit establishes more than enough probable cause to justify the issuance of the search warrant.

B. The Government Does Not Intend to Use Any Evidence Obtained in the Search of Wolfson's Apartment that Was Not Found in Rifkin's Suitcase.

The search warrant issued in this case authorized a search of Wolfson's apartment for "suitcases belonging to Stanley Mark Rifkin that contain documents and physical evidence and/or other documents or physical evidence that may have been removed from said suitcases." (Emphasis added). The defendant contends that the underlined portion of this warrant did not sufficiently particularize the items to be seized and thus permitted a general search in violation of the Fourth Amendment.

The Government does not concede that this portion of the search warrant was impermissibly broad. In Andresen v. Maryland, 427 U.S. 463, 479 (1976), the Supreme Court upheld a search warrant that authorized the seizure of numerous documents "together with other

fruits, instrumentalities and evidence of crime at this [time] unknown." The questioned language in the warrant in this case appears no broader than the language upheld by the Court in Andreson. Nevertheless, the Court need not concern itself with this language in the warrant, since the Government does not plan to use any evidence obtained in that search that was not found in Rifkin's suitcase.

Even if the underlined language were too broad, that defect in the warrant would not invalidate either the other language in the warrant or the items seized pursuant to that other language. As the Ninth Circuit recently stated in United States v. Daniels, 549 F.2d 665, 668 (9th Cir. 1977):

> "The exclusionary rule does not require the suppression of otherwise legal seizures merely because they were part of the same search in which an illegal seizure occurred."

Accord, United States v. Artieri, 491 F.2d 440, 445-46 (2d Cir.), cert. denied, 419 U.S. 878 (1974).

The defendant does not question that portion of the search warrant allowing the agents to seize "suitcases belonging to Stanley Mark Rifkin that contain documents and physical evidence." That portion is beyond any challenge, for it specifies the exact items to be seized. As the previous discussion demonstrated, there was abundant probable cause to seize those suitcases. Any items found inside those suitcases are properly admissible.

VIII

NO MATERIAL MISSTATEMENTS WERE MADE IN THE AFFIDAVIT TO THE SEARCH WARRANT

As the attached declarations of Agents McLean and McLaran indicate,

there were no material misstatements in the affidavit to the search warrant. The only error in the facts of the affidavit, attached as Exhibit Two, was that the affidavit stated that Palma said an article on computer fraud appeared in the San Diego newspapers whereas, in fact, Palma had told the agent that it was a television program on computer fraud, not a newspaper article as reported. This error was not brought to the attention of the agent who signed the affidavit to the warrant. It was brought to the attention of the Assistant United States Attorney. However, he indicated that there was not sufficient time to retype the affidavit for such a minor point. While the Assistant's conduct is not excusable, it is understandable in view of the time pressures involved. The Government had information that Wolfson was making inquiries about selling evidence of the crime to the news media, and Wolfson had asked, after he was arrested, whether the agents intended to search his apartment. Wolfson could have made bail or had someone else go to his apartment to remove the evidence.

The only factual error in the affidavit to the warrant related only to a point of background information and was not material to a finding of probable cause. Therefore, it does not affect the validity of the warrant.

On a more serious level, Palma contends that he never told the agent that there was evidence of the crime in Rifkin's suitcases in Wolfson's apartment. Agent McLaran refutes this. Agent McLaran recounts in detail his conversation with McLaran.

It is apparent from Palma's declaration that his denials of McLaran's statements are literal denials of the exact wording rather than of the substance of the representations. Palma says that Wolfson did not call him at 4:00 p.m. on November 7, 1978. However, he admits

that he called Wolfson at that time. Palma denies telling the agent that Wolfson asked him to remove paperwork from Rifkin's suitcases relating to the theft. However, he does say that his conversation with Wolfson consisted of a series of "what if" statements to him by Wolfson. Palma characterizes these as "hypotheticals." Palma does not state what was said in these "what if" statements.

Agent McLaran says that Palma recounted Wolfson's statements as saying what if information relating to the theft were in Stan's bags in Wolfson's apartment; what if Palma would remove them from Wolfson's apartment--then Wolfson would not be involved. These are clearly not "hypotheticals", but suggestions that that is what Wolfson wants Palma to do. In the affidavit to the search warrant, this conversation was summarized as follows: "Wolfson asked if Palma would remove paperwork that was in Rifkin's suitcases that contained more information relating to the theft." Any reasonable person would conclude that that was the plain meaning of Wolfson's so called "what if" statements.

As the affidavit recounted the plain meaning of the conversation, there were no material misstatements in the evidence to believe that the bags in Rifkin's suitcases contained evidence of the crime.

The defendant's claim that the agents already knew that there was no evidence in the suitcases and fabricated Palma's statements to obtain the opportunity to make a general search of the apartment is wildly speculative and highly irresponsible. Agent Wight states that he made only a cursory search of the bags and did not read any of the documents or paperwork in the suitcases.

For the reasons stated above, the defendant's motions to suppress evidence should be denied.

DECLARATION OF ROBIN C. BROWN

I, ROBIN C. BROWN, hereby declare as follows:

1. I am employed as a Special Agent of the Federal Bureau of Investigation, now stationed in Los Angeles at 11000 Wilshire Boulevard.

2. On October 31, 1978, at about 1:00 p.m., I was assigned to investigate an allegation of a major wire fraud.

3. On October 31, 1978, at about 2:00 p.m., Gary Goodgame, an attorney, appeared at the Los Angeles Office of the FBI in the company of his attorney, H. Walter Croskey. During the next approximate two-hour period, Goodgame explained that he had known Stanley Mark Rifkin about three or four years. He said that he had done some legal work for Rifkin in respect to Stan Rifkin, Inc. He said that in mid-summer 1978, Rifkin had approached him indicating that he represented a "Fortune 500" corporation, and that this corporation desired to deal with another international corporation by using an untraceable commodity for political reasons. Diamonds were suggested and Rifkin indicated that he would present that to the company for their approval. At a subsequent meeting with Goodgame, Rifkin indicated that the company had approved the concept of using diamonds as the commodity and asked Goodgame whether he could suggest an individual knowledgeable in the diamond market that could be of assistance. Goodgame suggested the name of Lon Stein, a diamond broker. Rifkin mentioned to Goodgame and Stein in subsequent meetings that this transaction was for the amount of ten million dollars.

4. Goodgame also told me during that interview that on October 29, a Sunday, as Goodgame returned from a week's vacation, he received a phone call from Rifkin who indicated that he desperately

needed to speak with Goodgame. He indicated to Goodgame at that time that Rifkin did not take his advice. Goodgame indicated that this comment was in reference to a previous conversation where Rifkin had indicated that he might abscond with the diamonds to be purchased in this transaction. At that time, Goodgame had advised him that he should not do that. A meeting was set up for October 30, a Monday, at the L'Ermitage Hotel in Beverly Hills. During that meeting, Rifkin filled an ashtray to overflowing with diamonds to show to Goodgame. Rifkin gave him three of those stones. Rifkin further explained that he had made an unauthorized wire transfer of funds from Security Pacific National Bank. He added that all individuals, including the diamond broker and the diamond supplier, had been paid and that Security Pacific National Bank would stand the loss. Rifkin added that he had acquired a new identity and was going to "places unknown." He further indicated that Goodgame would not see him again. At that time, he gave Goodgame documents for the dissolution of Stan Rifkin, Inc.

5. Late Wednesday night, November 1, 1978, I interviewed Lon Stein, the diamond broker, at his home. He said that he had met with Rifkin a number of times regarding Rifkin representing a large corporation, and their desire to buy ten million dollars worth of diamonds. Rifkin provided only the size and quality of the diamonds to be purchased and would provide no further detail. Arrangements were made to examine diamonds in Geneva, Switzerland offered by the Soviet government. On October 25, 1978, Stein flew to Geneva using a ticket provided by Rifkin. From noon, October 26, to the evening of October 27, Stein examined and purchased 8.145 million dollars worth of diamonds. The diamonds were then picked up by couriers and taken

to the duty-free port at the airport. Stein was told that the diamonds were then picked up by someone between that time and the evening of October 28.

6. On November 2, 1978, I met with employees and officers of the Security Pacific National Bank, Los Angeles, California, to inform them of the alleged 10.2 million dollar theft from their bank. After checking the records of the bank, they informed me that their records showed that an unauthorized wire transfer had been sent on October 26, 1978, through Irving Trust Company in New York to a bank in Zurich, Switzerland, to the account of Russalmaz, a branch of the Soviet government. The bank confirmed that the offsetting customer account for this transaction did not exist. Records of the bank indicated that the wire was ordered by telephone and that call was found to have been recorded on their logging recorder. A person using the name Mike Hansen, using the secret codes and supposedly employed by the International Branch at the World Trade Center, had caused the wire transfer to be sent. I had previously been told by Stein that the Soviets confirmed to him that the 10.2 million dollars was on deposit in Zurich by mid-day October 27, 1978. The bank also determined by interview of some employees of the wire transfer room that Rifkin had been there on two or three occasions in October in the guise of a consultant for the Federal Reserve Bank. By his interviewing of employees and the observation of their work, he was able to learn the secret codes, procedures, and techniques and later use those to make the wire transfer order. Stein was present with me when the tape of the telephone call was played. He said quickly and without hesitation that the caller was Rifkin.

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7. I interviewed Mary Bruskotter, a girlfriend of Rifkin, on November 4, 1978. She indicated that she had been telephoned by Rifkin on October 29, a Sunday, and he had requested her to come to the L'Ermitage Hotel in Beverly Hills. Bruskotter was at the hotel at about 5:00 a.m. on October 31. Rifkin at that time told her that he was a fugitive and that he had committed a crime, but did not go into any detail. He told her that he would be leaving the country and would not be seeing her again. At that time, he gave her some gifts purchased in Europe. She said that Rifkin had indicated to her that he was checking out at about 8:00 that morning. Several days earlier, I confirmed that Rifkin had checked out about 8:00 a.m. on October 31, 1978. I discovered through the records of the hotel that he had used the alias of David Garnett.

8. During the night of October 31, 1978, I went to Rifkin's last known address, 15015 Parthenia, Apartment 18, Sepulveda, California, and found that no one was at the apartment and that no vehicle was in his assigned parking place. The remainder of the evening was spent gathering descriptive information and background information on Rifkin from driver's license and vehicle information, identification records from Washington, D.C. etc.

9. On November 1, 1978, I contacted three individuals at the apartment on Parthenia Street. They identified themselves as employees of Stan Rifkin, Inc. They told me that Rifkin had left the corporation and had accepted employment in the San Diego area with National Semi-Conductor. They said Rifkin had a room in a motel in the La Jolla, California area. Leads were immediately sent to San Diego to conduct investigations in that area. I spoke to Rifkin's mother on November 1, 1978. She indicated that Rifkin was driving a

gray Datsun sports vehicle, bearing California license 701EYQ. Both Rifkin's mother and the employees of Stan Rifkin, Inc. told me that a missing person's report had been filed by relatives and by National Semi-Conductor inasmuch as Rifkin had not been seen since October 25, 1978, when he left work in San Diego for personal reasons. They said that extensive searching had been done by local law enforcement agencies for Rifkin in the Southern California area. All of these were to no avail with no references to other possible locations of Rifkin.

10. On November 2, 1978, an arrest warrant for Stanley Mark Rifkin was obtained by my filing an affidavit for a complaint before a United States Magistrate in Los Angeles, California.

11. At this time, Rifkin's name was entered into the National Crime Information Center computer system in Washington, D.C., together with his physical description and the description of his automobile. This information is disseminated nationwide. In addition, teletypes were sent to other law enforcement agencies to include the United States Customs Service and the United States Immigration and Naturalization Service. Calls were made to the United States State Department to confirm his passport information, and to other government agencies known to have employed Rifkin. Leads were further sent out to a number of divisions of the FBI to interview known relatives, former associates, former employers and those to whom Rifkin was connected via notes, memoranda and unfounded information. All of this information was immediately handled by receiving agents and was found to be negative as to Rifkin's location.

12. During the evening of November 3, 1978, while conducting a surveillance in Anaheim, California, at a possible location of Rifkin, I was advised via telephone that Rifkin had been located in the

Rochester, New York area. After returning to the Los Angeles office, I relayed information to Rochester to aid in their search for Rifkin. I was informed by FBI agents in Rochester, New York that Paul O'Brien had contacted them and said that he, O'Brien, had met Rifkin in the Rochester area on November 1, 2, and 3, 1978. O'Brien also said that Rifkin had cancelled a meeting scheduled for November 4, 1978.

13. Special Agent Dennis Carney of the Rochester, New York Resident Agency was told by O'Brien that Rifkin had called O'Brien at about 7:00 p.m. on November 5 (New York time), and asked him to send the $6,000 that he had previously given O'Brien to a post office box number 1564, in the name of Daniel Wolfson in Carlsbad, California 92008. Rifkin said that he was meeting Wolfson, an attorney, soon. He requested that this money be sent immediately in a plain brown wrapper with no return address.

14. At about 7:00 p.m. on November 5 (California time), I telephonically contacted the resident agency in Rochester to determine the status of the investigation. At this time, in a conference call with a number of agents that included, I believe, Special Agents Richard Foley and Hugh Higgins, the information regarding the post office box in Carlsbad and about Wolfson was relayed to me. They indicated that they believed they were about an hour behind Rifkin on Friday and Saturday, and that after that it had appeared Rifkin had left the Rochester area.

15. At that time, I telephonically contacted the San Diego Division and requested the name and residence telephone of the agent who handles the Carlsbad area. I was provided with the residence telephone of Special Agent Norm Wight, the Senior Resident Agent of the Vista Resident Agency of the San Diego Division. I contacted

Wight and explained to him the basic facts of the case, and in detail explained to him the facts that included Rifkin being located in Rochester, and his request to have cash mailed to him in care of a post office box in Carlsbad. He was advised further that another agent and I would leave immediately to Carlsbad with photographs and additional background information on Rifkin.

16. I arrived at the Carlsbad Police Department and met approximately five other San Diego agents at about 9:00 p.m., November 5, 1978.

17. At approximately 11:45 p.m. on Sunday, November 5, 1978, Special Agent Norman I. Wight and myself, upon learning of the negative results in the fugitive investigation that was being conducted in the Carlsbad, California area that night, decided to attempt apprehension of Stanley Mark Rifkin at the residence of Daniel Wolfson. Agents were directed to go to the rear of the apartment complex so that if anyone attempted to flee from the rear of the apartment, such attempt would be thwarted.

18. Wight and I knocked on the door and rang the doorbell to the apartment. About thirty (30) seconds later, a man who identified himself as Daniel Wolfson answered the door.

19. We introduced ourselves to Wolfson and showed him our FBI credentials. We then asked Wolfson to talk with us in his apartment. At that time, Wolfson placed his arms on the door frame to bar entry. He said that he did not want to talk with us in his apartment because he did not trust the government since Watergate. He indicated a desire to contact his attorney because of that distrust.

20. I then explained to Wolfson, who continued to physically bar entry, the purpose of our visit. I explained to him that we had

a warrant for the arrest of Stanely Mark Rifkin. I further explained the warrant as I showed Wolfson a four inch by six inch black and white photograph of Rifkin. He was then asked whether or not Rifkin was in his apartment at that time. He hesitated and then said that he did not know. Wight then explained to him in great detail the consequences of harboring a fugitive. Wolfson was again asked whether Rifkin was in his apartment, and he responded by saying that he did not know. We then explained to Wolfson that we had reason to believe that Rifkin was in his apartment at that time. This discussion continued for about ten minutes, at which time entry was again requested. As we stepped forward, Wolfson stood aside and allowed us to enter the apartment.

21. Wight walked past me in the entrance hall and went to the kitchen and living room area. I stopped and commenced the search in the area of the hall closets. As Wight was finishing the kitchen and living room area, I went towards a bedroom nearest the living room and remarked to Wolfson, who was near me at the time, how much grief Rifkin had put his family through, how Rifkin's mother reacted to my explaining to her the gravity of the situation, and how dangerous it was for Rifkin to be "on the street" with the diamonds and cash. I said these things loud enough for Rifkin to hear them. I then said loudly as I approached the hallway to the bedrooms that Rifkin should immediately come out of hiding. Receiving no response, and after Wight made a similar bid and received no response, we began a systematic search of the apartment.

22. Wight left the apartment to request Special Agent Dalton to guard the front door of the apartment so as to prevent Rifkin from leaving during the search.

23. I started searching the master bedroom and adjacent ~~bath-~~ room. Wight joined me in that room and he made note of the fact that the patio door of that bedroom was locked from the inside. We then went back into the hall and I checked the hall bathroom, and then we went to the end of the hall to the bedroom that had been converted to an office. We walked past a bedroom that had no furniture in it except one lamp that illuminated the room. The closet door was closed and the shades drawn in that room.

24. As we finished our search of the office/bedroom and were in the doorway leaving, Rifkin appeared in the doorway of the vacant bedroom. He said, "Here I am," and then he thanked Wolfson for his efforts and said that he was only being a friend. We then identified ourselves and placed Rifkin under arrest. He said that he had no underwear on and I noticed that he was barefoot. Wight escorted him to the master bedroom where he put on his underwear. I escorted him to the hall bathroom where he got a pair of black socks left on the shower curtain rod to dry. He was then taken back to the master bedroom where he put his socks and shoes on. He asked us what toilet gear and clothing he should take with him to the jail. We advised him that they would not allow him access to most of the items he requested for a while, and that it would be best to leave them for someone to bring to him later.

25. I then led Rifkin out of that bedroom and placed him against the wall in the hall to search him for weapons and evidence. At this point, Rifkin said that Wolfson and he had practiced being searched the previous day. He was not handcuffed at this time. He was escorted to the living room adjacent to the area of the search. Wight asked Wolfson to step outside and allow us some time with

Rifkin alone.

26. Wight at that time left for a moment to get an Advice of Rights form. He returned shortly and I started to formally read certain of Rifkin's constitutional rights to him. He made an attempt to obtain and sign the form before I was finished. I explained to him that I had to read the form to him first to be assured that he understood all that I read to him. After I read the form aloud, I gave it to him to read. He said that he understood those rights that I read to him. He further said that he was willing to discuss the matter with us and waived those rights by signing that waiver on the form that I provided him.

27. Before any questioning started, Rifkin said, "I guess you want the diamonds." We asked their location and he said that they were in an item of luggage in the office/bedroom. We then escorted him to that room and he pointed to a black and brown canvas suitcase in the closet. It was carried into the living room where Wight watched him take a red plastic shirtcase from it. Rifkin removed a couple of shirts and it seemed that there were about thirty (30) white paper packets that he said contained the diamonds. Thereafter, he confirmed that he had sold twenty-four (24) diamonds for cash. I asked him about that cash and he said that he had $12,000 of it in his luggage, but that he wanted to give that to his attorney. He was then told that that was evidence also and would have to be turned over. We then went back to where the first suitcase was and he pointed out a blue and white plastic and nylon athletic bag. Upon opening it in the living room, a brown man's purse was given to Wight to inspect. Wight counted one hundred twenty (120) $100 dollar bills from that purse. At this time, Rifkin was seated comfortably on the

the couch with Wight and I on either side, sitting on chairs. He was not handcuffed at this time. Rifkin then freely provided Wight and I with detailed facts relative to how he planned and carried out the fraud against Security Pacific National Bank.

28. At the termination of the interview, Dalton entered the apartment as did the other agents that were waiting outside. Dalton telephoned the San Diego office of the FBI and gave them notice of our departure. As Dalton and other agents then watched Rifkin, I advised the Los Angeles office of the arrest and our departure to San Diego.

29. There was some discussion with Wolfson as to where Rifkin would be taken. As we were leaving, Rifkin told Wolfson to put his bags back in the closet.

30. As Rifkin was taken through the front door, he was handcuffed by Wight. Rifkin was placed in the back seat of Wight's Bureau automobile and then we drove to San Diego. During the drive, Rifkin continued to provide information freely regarding his activities.

31. Since we were carrying the diamonds with us, it was felt advisable to stop at the FBI office first to secure the diamonds in the vault. While at the FBI office, Rifkin continued to provide information freely regarding the crime. He was then taken across the street and booked into the Metropolitan Correctional Center.

32. During the time that agents were with Rifkin, he was treated humanely and was allowed conveniences requested. During the entire course of the interview, Rifkin never denied his involvement in the defrauding of the bank or complained of his treatment by arresting or transporting agents.

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

DATED: This 22 day of December, 1978.

ROBIN C. BROWN
Special Agent, Federal Bureau of Investigation

DECLARATION OF NORMAN I. WIGHT

1. I, Norman I. Wight, am a Special Agent with the Federal Bureau of Investigation assigned to the San Diego Division. I am in charge of the resident agency which serves North San Diego County.

2. On the evening of November 5, 1978, I received a telephone call from Special Agent Robin C. Brown, Federal Bureau of Investigation, Los Angeles, California, and he advised me he was the case agent in the investigation of Stanley Mark Rifkin and the embezzlement of 10.2 million dollars from the Security Pacific National Bank, Los Angeles. He said a warrant had been issued for the arrest of Rifkin, and investigation has revealed that Rifkin may be in Carlsbad, California, and that Rifkin may be in contact with Daniel Wolfson, Carlsbad, telephone 729-4573. Further, Special Agent Brown had received information that Rifkin expected to receive mail at Wolfson's Post Office Box, which is 1564, Carlsbad. Brown further advised that Rifkin owns a gray 1972 Datsun 240Z, California license 701EYQ, which may be in Rifkin's possession.

3. After the telephone call with Special Agent Brown was concluded, I called United States Postal Inspector Jim Jonas, who subsequently called me back and advised that Daniel Wolfson obtained P. O. Box 1564, Carlsbad, in February, 1977, at which time his address was 18681 Applewood Circle, Huntington Beach. At some point, but the date was not indicated, he moved his residence to 222 Pacific, Apartment A, Carlsbad.

4. On the evening of November 5, 1978, I also placed a telephone call to the San Diego FBI Office and had a clerk make a teletype inquiry from the California Law Enforcement Telecommunica-

tions System, and as a result of this inquiry received information that Daniel Marshal Wolfson has California driver's license K0434726 and as of May 23, 1977, listed his address as 2525 Jefferson Avenue, Apartment H, Carlsbad.

5. At my request, Special Agent Charles A. Mc Laran, who is also assigned to the San Diego Division, reviewed the records of the Carlsbad City Police Department and after doing so, he furnished me a copy of Carlsbad Police Department Case No. 78-4501 which revealed that on October 31, 1978, Dan Marshal Wolfson, 2535 Jefferson St., Apartment 13, Carlsbad, telephone 729-4573, filed a complaint with the Police Department that Eileen Mackin threw a glass cup at his vehicle. Wolfson listed his occupation as sales manager for Showcase Publications, 2821 Oceanside Boulevard, Oceanside, California. Eileen Mackin was listed as his girlfriend, and her address was listed as 874 Home Avenue, Apartment 18, Carlsbad.

6. On the night of November 5, 1978, a meeting was held in the Carlsbad City Police Department, attended by other FBI agents, including Robin C. Brown, during which a photograph, description, and warrant information of Stanley Mark Rifkin were disseminated. Additionally, available information regarding his association with Wolfson, possible addresses of Wolfson, and a previous address of Rifkin, namely the Namara Inn in Del Mar, California, were disseminated. I assigned Agents to look for Rifkin's car, the Datsun described above, in the vicinity of 2535 Jefferson Street, Apartment 13, 874 Home Avenue, Apartment 18, 2525 Jefferson Street, Apartment H, Carlsbad, 222 Pacific,

Apartment A, Carlsbad, the La Costa Country Club, and other motels in the area. I also assigned an agent to go to the Namara Inn to determine if Rifkin may have returned there. Robin Brown and I went to 2821 Oceanside Boulevard, the business address listed for Wolfson, and knocked on the door, but no one answered. We also checked a motel in Oceanside to try to find Rifkin's automobile.

7. At about 11:00 PM, November 5, 1978, the agents who were assigned the above investigation reported to me, by radio, that they had no success in locating Rifkin or his vehicle. I advised all the investigating agents to meet in the parking lot of the Carlsbad Police Department. At that time two agents were assigned to go to the residence of Eileen Mackin, and simultaneously six agents would go to the last known address of Daniel Wolfson, 2535 Jefferson Street, Apartment 13, in an effort to locate Rifkin.

8. At about 11:30 PM to 11:40 PM, November 5, 1978, four agents were assigned to station themselves around the residence of 2535 Jefferson Street, Apartment 13, and Agent Robin C. Brown and I rang the doorbell and knocked on the door of that apartment. After about 30 to 60 seconds, a man opened the door and Special Agent Brown asked the man if he was Dan Wolfson and he indicated that he was. Agent Brown and I identified ourselves to him by displaying our credentials and verbally telling him we were Special Agents, FBI, and would like to come into the house to talk to him. Wolfson said that he would talk, but would do it here at the doorway at which time he extended his arms and placed them on each side of the door frame. Brown exhibited a photograph of Stanley Mark Rifkin to Wolfson and told him that agents wanted to talk to him

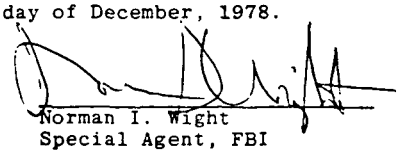
but Wolfson said that he wanted to talk to his attorney so he could see what his rights are, and Brown asked him if he had something to hide and Wolfson replied that he just did not trust the government after Watergate. Brown advised Wolfson that Rifkin was a wanted federal fugitive based on a complaint which was filed on November 2, 1978, in Los Angeles, after which a warrant was issued and therefore Rifkin is a federal fugitive. Brown told Wolfson that he wanted to come in and talk about that, but again Wolfson said "no" and continued to hold his arms up. I advised Wolfson that if Rifkin is in his house and he does not cooperate with the FBI agents by allowing agents to enter, or if he tried to impede the arrest, he could be guilty of the harboring statute for harboring a federal fugitive. I also told Wolfson that if he does cooperate with agents at this time, he will not be charged with harboring a federal fugitive. Brown asked Wolfson how long it had been since he had seen Rifkin and Wolfson did not answer but again said that he wanted to talk to his attorney. I asked Wolfson if Rifkin is inside his house now, and Wolfson said, "I don't know." Brown then told Wolfson that agents had reason to believe that Rifkin is inside and therefore agents have the legal right to enter the residence to search for Rifkin, and if necessary agents would force entry to do this. Wolfson continued to block the doorway with his arms extended on to the door frame and continued to deny agents entry and several times he said he wanted to talk to his attorney to see what his rights were. He said several times he did not know if Rifkin was there or not. This conversation continued for approximately ten more minutes during which Wolfson was told several times that he would be in trouble for harboring a federal fugitive

if he did not immediately allow agents to enter. Toward the end of this approximate ten-minute period, I departed for a short period of time from the front door, went around the corner of the walkway, and explained to Special Agent Dalton that I believed Rifkin was in the residence and that Robin Brown and I would be going in directly. At the end of this approximate ten-minute period, Brown told Wolfson that agents were now coming into his apartment and Agent Brown and I both moved forward into the door at which time Wolfson stepped aside.

9. Upon entry into the residence, both Brown and I loudly announced that we were Special Agents, FBI, and for Rifkin to come out and surrender. After searching every room in the house except one, Rifkin exited that room and was arrested by Special Agent Brown and myself.

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

Executed on this 19th day of December, 1978.



Norman I. Wight
Special Agent, FBI

Form OBD-183
12-8-76 DOJ

DECLARATION OF NORMAN I. WIGHT

1. I, Norman I. Wight, am a Special Agent with the Federal Bureau of Investigation (FBI), assigned to the San Diego Division.

2. I participated in the arrest and interview of Stanley Mark Rifkin in November, 1978. In the early morning of November 6, 1978, he was in custody, being interviewed by me and Robin C. Brown, Special Agent, FBI, at 2535 Jefferson Street, Carlsbad, California. At that time, Rifkin made available to me luggage, consisting of a garment bag and a duffle bag, which he said were his property. I made a cursory search of these bags, at the time, looking for diamonds, weapons, or money. I did not read any documents or papers which were contained in those bags.

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

Executed on this 19th day of December, 1978.

Norman I. Wight
Special Agent, FBI

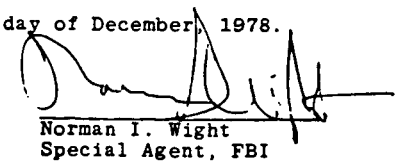
DECLARATION OF NORMAN I. WIGHT

1. I, Norman I. Wight, am a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the San Diego Division.

2. On November 7, 1978, I participated in a search of 2535 Jefferson Street, Apartment 13, Carlsbad, California. Pursuant to a search warrant, two pieces of luggage were seized, consisting of a garment bag and a duffle bag. The garment bag had a combination lock on it, and rather than break the lock, I called Stanley Mark Rifkin at the Metropolitan Correctional Center (MCC), San Diego, California, on November 8, 1978, and I advised him the FBI had seized his luggage based on a search warrant from the apartment of Daniel Wolfson. I told Stanley Mark Rifkin I would like him to give me the combination to the lock on the luggage so I would not have to break it. He did give me the combination. I did not at any time tell him I would have to obtain a search warrant to gain access to that bag.

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

Executed on this 19th day of December, 1978.



Norman I. Wight
Special Agent, FBI

DECLARATION OF DAVID G. MCLEAN

I, DAVID G. MCLEAN, declare as follows:

1. I am a Special Agent of the Federal Bureau of Investigation and am assigned to their San Diego Field Office, located at 880 Front Street, San Diego, California.

2. On November 7, 1978, I was assigned to participate in the investigation of the theft of 10.2 million dollars from the Security Pacific Bank in Los Angeles, California. My particular involvement in this case on November 7, 1978 was that of affiant for an affidavit for a search warrant on the premises known as 2535 Jefferson Street, Apartment 13, Carlsbad, California, in the name of Daniel Wolfson.

3. On this day I was handed, in the office of AUSA Michael Lipman, an affidavit prepared by AUSA Lipman. I telephonically contacted Norman Wight, Charles A. McLaren, and James L. Zopp, all Special Agents of the Federal Bureau of Investigation and assigned to the San Diego Field Office,and read to them the affidavit to confirm its contents.

4. During this reading, only two questions were raised as to the content of the affidavit: (1) Special Agent McClaren stated to me that the call signal for the radio station that Steven Palma was a reporter for was incorrect and should be KNX radio. I had AUSA Lipman's word processor make the necessary correction on the original of the affidavit. (2) Special Agent Wight was concerned about the limited wording on the face of the warrant regarding the description of the property for which there was reason to believe to exist on the premises. Special Agent Wight later contacted AUSA Lipman regarding the same, and the wording "and/or other documents or physical evidence that may have been removed from said suitcases" was added. No other

discrepancies were brought to my attention.

5. I affirmed to the affidavit before Harry R. McCue, United States Magistrate, United States District Court for the Southern District of California believing it to be true to the best of my knowledge.

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

Executed on this 18th day of December, 1978.

David G. McLean

DAVID G. MCLEAN
Special Agent, FBI

Form CBD-183
12-8-76 DOJ

DECLARATION OF CHARLES A. McLARAN

I, CHARLES A. McLARAN, declare as follows:

1. I am presently employed as a Special Agent of the Federal Bureau of Investigation, assigned to the San Diego Division. As a Special Agent of the San Diego Division, I am assigned to the Vista Resident Agency of the FBI in Vista, California.

2. On Tuesday, November 7, 1978, I was assisting in the investigation of the Stanley Mark Rifkin matter and in that regard I interviewed Steven Phillip Palma who was at that time in Vista, California.

3. At the onset of the interview, Palma advised me that he previously was a CBS correspondent for the San Diego area for the radio station KNX at Los Angeles. However, due to an automobile accident which occurred September 22, 1978, he was currently on a leave of absence recuperating from that accident. He was in Vista, California at the time of the interview but was residing in Chula Vista, California with his parents due to the automobile accident. Plama commented that in the automobile accident he sustained head injuries in that during the recuperation period he has periods when he cannot recall things clearly and other periods when his mind seems to go blank and still other periods when he is quite lucid and coherent. At the time of the interview Palma appeared to be lucid in thought and clear in his thinking and speech.

4. At the onset of the interview, Palma indicated that he had known Daniel Wolfson for several years, having met Wolfson in and around radio stations in North San Diego County. He had known Wolfson to have several business ventures, one of which was "Media Endeavors" where he worked with radio stations and another business

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was "Do It In The Dark" which was a business of photography for hobbyists.

5. Palma stated that approximately one year prior to November 7, 1978, CBS, in their television show "Sixty Minutes," had a segment featuring Terry Knoepp, who at that particular time was the United States Attorney for the Southern District of California at San Diego, California. The segment of the television program featuring Terry Knoepp dealt with computer fraud. About the same time frame as the programs' appearance on television, Palma had an occasion to meet with Dan Wolfson. During their meeting the subject of the television program with Terry Knoepp and computer fraud and the "Sixty Minutes" segment came up. Wolfson indicated to Palma at that time that he had a friend whom he identified as Stan who could do computer theft as it was stated in the program. Wolfson indicated that this friend of his had talked about computer fraud and had mentioned that banks have computer codes which are changed each day and if a person knows the codes, that person can transfer funds. Palma stated that he did not dwell on this statement of Wolfson and in fact had put it out of his mind.

6. Palma indicated that on the day previous to the interview, Monday, November 6, 1978, at about 4:00 P.M., Wolfson had called and talked to him several minutes on the telephone. Wolfson spoke to Palma about the fact that Rifkin was arrested in his apartment and that he was being charged with the theft of money from a bank and subsequently changing that money into diamonds. Wolfson indicated that several news people had spoken to him about a story but he had turned down one or more offers for a story and he was seeking Palma's advice as to how to deal with the reporters and possibly

the television network news people.

7. Palma related that at approximately 11:00 P.M., on Monday, November 6, 1978, Wolfson again contacted him by telephone and spoke to him in the context of several "what if" situations. These situations were what if evidence or other information relating to the theft of the money were in Stan's bags in Wolfson's apartment. What if Palma would physically remove these items of information from Wolfson's apartment;then Wolfson would not be directly involved. What if the information had to do with the case of Stan Rifkin. Palma stated that he got the impression from Wolfson that "more information" which Wolfson was referring to consisted of paperwork which could be evidence in the case. Palma said Wolfson never used the word evidence to him but used the words "more information." Palma also said Wolfson spoke "round about" in this conversation. Wolfson also inquired of Palma about the confidentiality between a newsman and a newsman's source.

8. During this 11:00 P.M., conversation on Monday, November 6, 1978, Palma could tell that there was someone else in the room with Wolfson while he was talking with Wolfson. He does not know who this person may have been. He also does not know where Wolfson was when Wolfson placed that call to him. During this conversation Wolfson made it very clear to Palma that the "more information" that he was talking about had to do with the Rifkin matter. Palma did not give Wolfson a definite answer and it was understood that Wolfson was to get back to Palma on Tuesday, November 7, 1978, and reach a decision. Palma indicated that during the 11:00 P.M., converstion with Wolfson on November 6, 1978, Wolfson made it clear to Palma that he had not removed the "more information" from Rifkin's

bags.

9. Palma stated that during the two conversations over the telephone which he had with Wolfson on Monday, November 6, 1978, Wolfson indicated to him that Rifkin had come to Wolfson's apartment and that Wolfson had talked Rifkin into giving himself up. Wolfson indicated that he and Rifkin talked at length about the matter.

10. Palma was asked during the interview on Tuesday, November 7, 1978, if he had any ideas who may have been with Wolfson when he was talking with Wolfson at 11:00 P.M., the night before, Monday, November 6, 1978. Palma speculated that it might have been his business partner, Ryan Miller who is in business with Wolfson in the hobby photography of "Do It In The Dark."

11. On Tuesday, November 7, 1978, I discussed the facts of the Palma interview with Assistant United States Attorney Michael Lippman, of the United States Attorney's Office, San Diego, California, who was preparing an affidavit for a search warrant for Rifkin's apartment at 2535 Jefferson Street, Apartment 13, Carlsbad, California. AUSA Lippman indicated that he would prepare the affidavit for the search warrant using the facts of the interview with Palma. AUSA Lippman indicated that he had other information from other agents that he was going to incorporate into the affidavit.

12. Later that afternoon, Special Agent David G. McLean of the San Diego Office of the FBI read to me, over the telephone, the affidavit supporting the search warrant for Wolfson's apartment at 2535 Jefferson Street, Apartment 13, Carlsbad, California. When Special Agent McLean read this affidavit to me I noted that the call letters of the radio station were listed as KNEX in Los Angeles and I brought this to SA McLean's attention that that should be

changed to KNX. I also noted to myself at that time that the affidavit indicated there had been a newspaper article in San Diego regarding computer fraud rather than the television show "Sixty Minutes" as Palma had mentioned. I also noted that the affidavit indicated that Steve Palma was a radio reporter for KNX radio in Los Angeles, California rather than being on leave of absence from that radio station at that time.

13. As soon as I heard the affidavit read to me I asked SA McLean to let me check with AUSA Lippman before he filed the affidavit. I immediately telephoned AUSA Lippman and noted those discrepancies to him, that is, the call letters of the radio station, the fact that it was a television program "Sixty Minutes" as opposed to a newspaper article on computer fraud in the San Diego papers and the fact that Palma was not then a radio reporter for KNX radio but was on leave of absence at the time of the interview. AUSA Lippman indicated that there was not time to change the affidavit and he did not feel that the corrections pointed out by me were of that importance to the affidavit to warrant being re-typed.

14. I telephonically re-contacted SA McLean who told me that the secretary had been able to change the call letters of the radio station from KNEX to KNX. I then told McLean that AUSA Lippman had instructed that he should take the affidavit with the search warrant to the U.S. Magistrate's Office as the U.S. Magistrate was waiting for the affidavit and search warrant.

15. On November 13, 1978, I received a message at my office in Vista, California, that Steve Palma had called me while I was out and left a message that he wanted me to contact him. On that date November 13, 1978, I contacted Steve Palma by telephone. Palma

told me that Dan Wolfson had been in telephone contact with him and had talked about the Rifkin matter with him. Palma said that he got the impression that Wolfson feared that the FBI was out after him to find some money or diamonds on him and to arrest him. Palma also said that he got the impression that Wolfson wanted him to recant what he had previously told the FBI. Palma said that what he told me during the interview at Vista, California, on November 7, 1978, was the truth and that he would have to stand by what he had told me.

16. During this converstion with Palma on November 13, 1978, Palma indicated that Wolfson told him that he thought there were discrepancies in the affidavit in which Palma was quoted. Palma mentioned that the affidavit spoke of a newspaper article rather than a TV program. I commented to Palma that that was correct; that that one particular item was a mistake in the affidavit and that I had brought it to the attention of the AUSA who had prepared the affidavit however, the AUSA felt that that was not a serious error. Palma also commented that he had been contacted by a national reporter who told him someone had made a comment to the effect that Palma may know more about the matter of Wolfson and Rifkin than what he (Palma) was saying. Palma said he resented that allegation and he said he wanted to assure me that he had told everything to the FBI that he knew.

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

Executed on December 18, 1978.

CHARLES A. McLARAN

Form OBD-183
12-8-76 DOJ

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB DECLARATION OF ROBIN BROWN RE EXIGENT CIRCUMSTANCES

The government hereby submits the attached Declaration of Robin Brown setting forth additional facts indicating exigent circumstances justifying entrance into Wolfson's apartment to execute the arrest warrant for the defendant, Stanley Mark Rifkin. This is to supplement the previously filed Government's Opposition to Motion to Suppress Evidence.

Respectfully submitted,

ANDREA SHERIDAN ORDIN
United States Attorney
ROBERT L. BROSIO
Assistant United States Attorney
Chief, Criminal Division

KATHRYNE ANN STOLTZ
Assistant United States Attorney
Attorneys for Plaintiff

KAS:ya

Form OBD-183

DECLARATION OF ROBIN BROWN

1. I am a Special Agent employed by the Federal Bureau of Investigation and assigned to be the case agent on United States v. Rifkin.

2. During the evening of November 1, 1978, I met with Stan Rifkin's mother at her residence on Tobias Street in Sepulveda. Among other things discussed was Rifkin's mental attitudes. His mother said that when he was seventeen years old, he tried to commit suicide by swallowing a bottle of pills. I asked her what she thought his mental condition was at his present age and disposition. She said that I should definitely consider him suicidal.

3. Agents of the Santa Ana resident agency of the FBI told me that they interviewed Ron Murray of Anaheim California on November 3, 1978. Murray told them that his association with Rifkin was long and close. He told the agents that he considered Rifkin paranoid and definitely suicidal.

4. During the morning of November 4, 1978, I interviewed Mary Bruskotter of Granada Hills, Rifkin's girl friend regarding his whereabouts, state of mind, etc. She said that she has known Rifkin as a professor, an employer, and as a close friend. She told me that I should consider Rifkin very high strung and suicidal. She provided a letter that I could read to him in the event he took a hostage or threatened suicide to avoid capture.

5. Late November 5, 1978, other agents of the FBI and myself were at 2535 Jefferson, Apartment 13, Carlsbad, California, where we believed Rifkin was hiding. Daniel Wolfson detained us at the door to his apartment refusing entry. Wolfson's statement that he did not know whether or not Rifkin was in the apartment reinforced our belief

that Rifkin was hiding in the apartment. The emotional pressure that we were obviously exerting on Rifkin by making our demands at the door, I felt, might drive him to suicide or to the possible destruction of someone else, or to a dangerous hostage situation.

6. I felt that the concern over Rifkin's safety and a potential hostage situation described above, along with our concern that Rifkin may escape or try to destroy evidence, justified our immediate entry into Wolfson's apartment to execute the arrest warrant.

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

Executed on January 9, 1979.

ROBIN BROWN, Special Agent
Federal Bureau of Investigation

Form OBD 183

ROBERT M. TALCOTT
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE; AFFIDAVITS OF STANLEY M. RIFKIN AND ROBERT M. TALCOTT; EXHIBITS A AND B.

The defendant hereby replies in the attached Memorandum of Points and Authorities to several of the arguments made in the Government's response to the defendant's motions to suppress. The remainder of the Government's arguments will be addressed orally at the time of the hearing on the motions.

Respectfully submitted,

Carla M Woehrle

ROBERT M. TALCOTT
MICHAEL J. LIGHTFOOT
CARLA M. WOEHRLE

Dated: January 3, 1979

DOCUMENT 3

MEMORANDUM OF POINTS AND AUTHORITIES

A. RESPONSE TO GOVERNMENT'S II-C.

The defendant contends that the Government intruded into his attorney-client relationship with Paul O'Brien, an attorney, by tape recording conversations between Rifkin and O'Brien which eventually led to Rifkin's arrest. In response, the Government states at p. 10, lines 22-23 , that no facts have been alleged by the defendant to establish a claim of attorney-client privilege.

We have already pointed to evidence supplied to the defense by the prosecution clearly showing that such an attorney-client relationship existed when the Government's tape recording took place. The tapes of two conversations between Rifkin and O'Brien, monitored by the FBI and attached as Exhibit A, clearly reflect such a relationship as well as the intention of Rifkin that the conversations be kept in confidence. Additionally, the FBI interviewed O'Brien on November 4, 1978, and their report of that interview (Exhibit B) discloses that O'Brien believed that Rifkin came to him in his capacity as a lawyer.

While we contend that sufficient evidence has been submitted to warrant a hearing on this matter, we attach the declarations of the defendant and his attorney, Robert M. Talcott, to corroborate the defendant's claim of an attorney-client privilege.

B. RESPONSE TO GOVERNMENT'S III, V-A and V-B.

The recent decision of the Ninth Circuit in United States v. Prescott, 581 F.2d 1343 (9th Cir.1978) establishes important principles which are directly applicable to the facts of the

instant case. In Prescott, the Court squarely held that "absent exigent circumstances, police who have probable cause to arrest a felony suspect must obtain a warrant before entering a dwelling to carry out the arrest." Id. at 1350. In adopting the rule that an arrest inside a home must ordinarily be authorized by a warrant, the Ninth Circuit followed the previous rulings of other courts which have addressed the same issue. See United States v. Reed, 572 F.2d 412, 424 (2d Cir.1978); Dorman v. United States, 435 F.2d 385, 390-391 (D.C. Cir.1970); People v. Ramey, 16 Cal.3d 263, 275, 127 Cal.Rptr 629, 636 (1976). See Also, Government of Virgin Islands v. Gereau, 502 F.2d 914, 928 (3d Cir.1974).

In the present case, it is the defendant's contention that the warrant which was obtained to authorize his arrest was invalid because it was not supported by an affidavit establishing probable cause. In opposition to this argument the Government relies on the rule that an arrest based on probable cause may be lawful despite the fact that the arrest was made pursuant to an invalid warrant (Government Memo. p. 11). This rule is based on the general principle that an arrest warrant is not required to effect a lawful arrest in a public place as long as the arrest is supported by probable cause. United States v. Santana, 427 U.S. 38, 96 S. Ct. 2406 (1976); United States v. Watson, 423 U.S. 411, 96 S. Ct. 820 (1976). In light of the decision in Prescott, however, it is clear that the rule cited by the Government has no application in this case where the defendant was arrested inside a dwelling. Therefore, it is submitted that the defendant's arrest was unlawful, regardless

of the presence of probable cause, because the arrest was not authorized by a valid warrant.

Furthermore, the decision in United States v. Prescott strongly supports the defendant's alternative contention that his arrest was unlawful because it was effected by means of an unauthorized entry into the apartment where he was staying at that time. The facts in Prescott, like those in the instant case, involved an entry into the residence of a third person for the purpose of arresting a person suspected of a crime. The court held that, in such circumstances, the entry is prima facie an unlawful one unless it is authorized by a warrant particularly describing the place to be searched - the third-party residence - and the person to be seized - the suspect. 581 F.2d at 1350. Under this standard, it is clear that the warrant for the defendant's arrest, even if it were found to be valid, could not support the entry into and the search of the apartment where the defendant was staying at the time of his arrest because the warrant did not contain any reference whatsoever to that residence. See Government of Virgin Islands v. Gereau, supra, 502 F.2d at 928 ("Although police have warrants for the arrest of suspects, they may enter premises, at least of third persons, to search for those suspects only in exigent circumstances where the police officers also have probable cause to believe that the suspects may be within.")

In opposition to the defendant's contention that his arrest was effected by an unlawful entry, the Government argues that the defendant has not asserted an expectation of privacy in the apartment where he was arrested sufficient to permit him to

contest the lawfulness of the entry. (Government memo. p. 19). In support of this argument the Government relies on the Supreme Court's recent decision in Rakas v. Illinois, 47 U.S.L.W. 4025 (December 5, 1978), and attempts to distinguish the earlier decision of Jones v. United States, 362 U.S. 257 (1960). However, the Government's assertion that the defendant somehow lacks "standing" to challenge the unlawful conduct involved in his arrest is meritless. Under the principles discussed in Rakas and in Jones, it is clear that the defendant may properly raise this issue of the violation of his Fourth Amendment rights.

In Rakas, the Supreme Court reaffirmed the basic holding of Jones that "a person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place". 47 U.S.L.W. at 4029. The attached declaration of the defendant clearly demonstrates that, like the defendant in Jones, Mr. Rifkin had a sufficiently extensive possessory interest in the premises where he was arrested to support a legitimate expectation of privacy and of freedom from unlawful governmental invasion of those premises. The Government's attempt to demonstrate the defendant's lack of a subjective expectation of privacy by reference to his knowledge that he might be arrested there is not convincing. A person's awareness that he may be subject to a lawful arrest in a place where he is temporarily residing does not destroy his basic and thoroughly legitimate expectation that his privacy in that place will not be subject to unwarranted and unlawful intrusion.

Moreover, even apart from the substantial possessory interest which the defendant had in the premises, it is clear that he must be permitted to contest the lawfulness of the entry and search made to effect his arrest because his person was, in fact, the "object" which was seized by means of that search. Again, this basic principle of Fourth Amendment "standing" law was reaffirmed by the decision in Rakas in which the Court recognized that even a casual visitor with no legitimate expectation of privacy in the premises searched could contest the legality of the search if his own property were seized as a result. 47 U.S.L.W. at 4029, fn 11. It appears beyond reasonable question, therefore, that the defendant may properly contest the legality of the entry made to effect his arrest because that entry directly infringed upon his personal interests protected by the Fourth Amendment. See Rakas, 47 U.S.L.W. at 4029.

In an additional argument in opposition to the defendant's contention that his arrest was unlawful because of the unauthorized entry the Government submits that the substantive rule announced in United States v. Prescott should be construed as applying only in cases where evidence is seized at a third-party residence during a search for a suspect and is subsequently used against the third-party (Government Memo p. 18). In effect, this argument is merely a variation on the meritless contention that the defendant in this case should not be permitted to contest the legality of the entry. The logic of the Government's position is that an unauthorized entry into a private residence would be unlawful as to the owner,

who could successfully suppress any evidence seized which was sought to be introduced against him; but that the same entry would be lawful as to a temporary resident of the same premises who was the target of the entry and whose personal Fourth Amendment interests, as discussed above, were equally infringed by the police conduct. Such a construction of the decision in Prescott is completely unwarranted by the reasoning of that case or by the earlier cases upon which it relies. The entry into the apartment where the defendant was arrested was not authorized by a warrant based on probable cause to believe that the defendant would be found there and particularly describing the premises to be searched; it was therefore presumptively unlawful under United States v. Prescott. Furthermore, under the well-established principles discussed in Jones v. United States and Rakas v. Illinois, it is clear that the defendant's own Fourth Amendment privacy and property interests were infringed by that unlawful conduct. It is therefore respectfully submitted that the Government's arguments on these grounds are not well-taken and should be rejected by this Court.

C. RESPONSE TO GOVERNMENT'S VIII

In opposition to the defendant's motion for a hearing to traverse the search warrant the Government argues that, contrary to the defendant's contention, no material misstatements were made in the affidavit in support of the warrant (Government Memo p.31). In connection with this argument, the Government has submitted the declarations of Agents David McLean and Charles McLaran. These declarations, however, frankly disclose that the search warrant affidavit signed by

Agent McLean contained deliberate false statements regarding a television program on computer fraud which was the subject of a conversation between Daniel Wolfson and Steven Palma and regarding Palma's status as a radio reporter.

The question of the effect of an intentional falsehood on the validity of a search warrant has been considered on numerous occasions by various Federal Courts of Appeal. The decisions on this issue have repeatedly held that a deliberate misstatement of fact contained in a supporting affidavit will invalidate a search warrant regardless of the non-materiality of the statement. See United States v. Damitz, 495 F.2d 50, 56 (9th Cir.1974); United States v. Marihart, 492 F.2d 897,898 (8th Cir.), cert. denied 419 U.S. 827 (1974); United States v. Carmichael, 489 F.2d 893, 988-898 (7th Cir.1973) (en banc); United States v. Thomas, 489 F.2d 664, 668-672 (5th Cir.), cert. denied 423 U.S. 844 (1973). See Also, United States v. Belculfine, 508 F.2d 58, 63 (1st Cir.1974). In its recent decision regarding the traversal of a search warrant to test the veracity of an underlying affidavit, Franks v. Delaware, ____ U.S. ____, 57 L. Ed. 2d 667 (1978), the Supreme Court did not squarely reach a holding on this issue. See 57 L.Ed.2d at 682, fn 8. It is the defendant's contention, therefore, that under the principles of the above-cited cases he is entitled to a hearing regarding the misstatements contained in the search warrant affidavit; and, furthermore, that if the evidence at the hearing reveals intentional falsity on

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the part of the affiants, the warrant authorizing the search must be invalidated on that ground.

Respectfully submitted,

Dated: January 3, 1979 Carla M. Woehrle

DECLARATION OF STANLEY MARK RIFKIN

I, STANLEY MARK RIFKIN, hereby declare as follows:

1. On Novemeber 4, 1978, at approximately 12:15 P.M., I arrived in San Diego, California and was met at Lindbergh Airport by Daniel Wolfson. I drove with Mr. Wolfson to his apartment at 2535 Jefferson Street, Carlsbad, California. I was arrested at the same apartment by FBI Agents in the late evening-early morning hours of November 5-6, 1978, having slept in the apartment the previous night.

2. I have known Mr. Wolfson since I was six years old. Aside from my own brother, I consider Mr. Wolfson to be my closest friend. I have visited Mr. Wolfson on countless occasions over the years as he has visited me. During my visit on the week-end of November 4-5, 1978, as on other visits, I had unrestricted access to all parts of his apartment and was free to come and go at my pleasure. Mr. Wolfson left me alone in the apartment on a few occasions during that week-end.

3. During the week-end of November 4-5, 1978, I unpacked my clothes at Mr. Wolfson's apartment. I cleaned my clothes at the same apartment in Mr. Wolfson's own washing machine. After arriving at Mr. Wolfson's, I unpacked my toiletries and left them in the bathroom through the week-end.

4. On November 1, 2 and 3, 1978 I met with Paul O'Brien, an attorney, in Rochester, New York. On each of the occasions that we met, no one else was present. I had contacted Mr. O'Brien in his capacity as an attorney. Each of the conversations we had was intended by me to be kept in confidence. Mr. O'Brien told me on several occasions during the three days that our conversa-

tions were protected by the attorney-client privilege.

5. On November 5, 1978 I spoke to Mr. O'Brien twice by telephone. Those conversations took place in an attorney-client relationship and were confidential. I did not give him permission to let anyone monitor or otherwise listen to our conversations or to disclose our conversations to anyone. On November 3, 1978 I paid Paul O'Brien $6,000 as an advance for fees for legal work performed during the previous three days and to be performed in the future.

Dated: January 3, 1978

Stan Rifkin
STANLEY MARK RIFKIN

DECLARATION OF ROBERT M. TALCOTT

I, ROBERT M. TALCOTT, declare as follows:

1. I am an attorney licensed to practice in the State of California and before this Honorable Court, and I am the attorney for Stanley Mark Rifkin.

2. On Thursday, December 28, 1978 I spoke telephonically with Mr. Paul O'Brien in Rochester, New York.

3. During our telephone conversation, Mr. O'Brien informed me that he had met with my client Stanley Mark Rifkin on Wednesday, November 1st; Thursday, November 2nd; Friday, November 3rd; and had spoken with Mr. Rifkin by telephone on Sunday, November 5, 1978.

4. Mr. O'Brien further stated that during his meetings on November 1st, 2nd, and 3rd, he at all times considered that Mr. Rifkin had contacted him as an attorney to perform legal services on his behalf.

5. Mr. O'Brien further stated that he had received the sum of $6,000.00 from Mr. Rifkin as a retainer for legal services.

6. Mr. O'Brien again indicated that his relationship with Mr. Rifkin was solely and exclusively as an attorney-client and was not a business associate or partner of Mr. Rifkin.

7. During this telephone conversation, Mr. O'Brien indicated that he would forward a declaration incorporating the information set forth above. When the declaration is received, I shall file it with the Court.

Dated: January 3, 1979

ROBERT M. TALCOTT

Transcription of Recorded Telephone Calls received at 716-381-7794 during the period 7:00 AM, November 4, 1978 to 7:30 PM, November 5, 1978.

Transcribed and Reviewed by:
SA DENNIS R. CARNEY
FBI
Rochester, New York

Identity of Individuals

HIGGINS - HUGH H. HIGGINS, JR., FBI, Rochester, New York

DIANE - Mrs. DIANE O'BRIEN, wife of PAUL

PAUL - PAUL W. O'BRIEN

STAN - STANLEY M. RIFKIN

THOMAS - HAROLD D. THOMAS, FBI, Rochester, New York

Saturday, November 4, 1978

HIGGINS	Hello, is uh DENNIS CARNEY there please?
DIANE	Yes. Just a minute please.
PAUL	Hello
----	Piano playing.
DIANE	well because we've had a little, u I don't know how to explain it really, but but JOHN'll explain it. Anyways I'm waiting for a call from a bank robber and I gotta get off the phone.
Neighbor	Oh my God. I'm gonna get my clothes on . . .
DIANE	Ok. . .
Neighbor	. . . I'll be back
DIANE	. . . I just wanted someone to sit with me 'cause I can't call out and I gotta sit here
Neighbor	All right. Okay. Bye
DIANE	Bye

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Approximately 10:00 AM

DIANE	Hello
STAN	Hi, May I please speak to PAUL?
DIANE	Uh He isn't here right now.
STAN	Do you know where he is or when you expect him. . .
DIANE	Yeah. He's . . . he's just out running. He should be back in 15, 20 minutes.
STAN	Un, okay, maybe you can take that complicated message for me.
DIANE	Okay
STAN	Okay
DIANE	Yes
STAN	Tell him it's ED O'REILLY . . .
DIANE	Uh huh
STAN	And that, um, everything is off.
DIANE	Uh huh
STAN	um, that he should go back to work on Monday
DIANE	Oh okay
STAN	. . . and that I'll try to call him later on in the day.

Page 3

DIANE	All right. Fine.
STAN	Okay?
DIANE	Uh huh
STAN	Thanks very much
DIANE	Okay
STAN	Bye bye
DIANE	Hello
PAUL	Hi, DIANE, this is PAUL.
DIANE	Hello
Nursing Office	Hi. Is DIANE O'BRIEN home?
DIANE	Yes. This is DIANE.
Nursing Office	This is the Nursing Office calling.
DIANE	Hello
THOMAS	Uh Mrs. O'BRIEN?
DIANE	Yes
THOMAS	HAL THOMAS down at the FBI again.
DIANE	Yes
THOMAS	I just wanted to let . . .

Sunday, November 5, 1978
Approximately 4:30 PM

STAN	PAUL
PAUL	Hello
STAN	Hi. How you doing
PAUL	Pretty good
STAN	Good. Um, does anybody know about my last phone call?
PAUL	Huh? Just the folks who were here in the house . . . my kids
STAN	Oh okay um. I think it (unintelligable) a little conference about this thing and I think I would absolutely like you to send the cash . . . in in a a Jiffy pack . . . you know that thing
PAUL	um um
STAN	with no return address
PAUL	Okay
STAN	Okay?
PAUL	Okay. Now, you're sure, STAN. . . That's uh
STAN	I am. Absolutely dead positive
PAUL	Okay. No place that I can meet you or anything?
STAN	. . . I'd love that (chuckle) but I don't think so. And, anyway, just gives you gets you i ton of trouble.

PAUL Well - - you know. Not . . .

STAN Okay?

PAUL . . . not if my intention was to go out and, you know, if you're, if you're serious about uh . . .

STAN Oh absolutely dead serious about it . . .

PAUL . . . walking in, then uh . . .

STAN . . . that's (chuckle) no, I mean you know one against the FBI is real bad odds.

PAUL Well, yeah, exactly I mean 'cause your obviously your best shot is uh . . .

STAN No doubt about it.

PAUL . . . is to just walk in and say hey uh

STAN Yuh. I don't know what's going on and let's talk about it. Sure.

PAUL . . . you know let's get this thing straightened out . . . let's get it straightened out and uh . . .

STAN That's right

PAUL . . . but I, you know really it it's certainly not an inconvenience to uh take it someplace and that sort of thing

Page 6

STAN I understand. I think the best thing would be to mail it.

PAUL Okay

STAN Okay. What do you think is the chances that your phone is tapped?

PAUL I surely wouldn't uh you know I'd I'd I'd say they're uh fifty fifty-ish, wouldn't you think?

STAN Yeah. I don't know. I mean I thought they're not allowed to tap attorneys phones because of .

PAUL Well, I don't know . . .

STAN Yeah

PAUL . . . but you know I'm not in private practice or anything. They're not thinking that, I wouldn't think . . .

STAN . . . because of what do you call it though um . . . anyway . . . okay.

PAUL Uh well. You're dead sure that that it's not easier for me uh .

STAN Dead sure.

PAUL . . . jump some place or whatever.

STAN Dead sure. I'd I would that would certainly be my first choice.

PAUL Well and you . . . I, I guess I'm not clear on why it wouldn't why it uh wouldn't work or whatever know as well as anyone else. I'm not I'm obviously not

PAUL — the guy to uh stand up eloquently and defend you but we could find somebody to do that . . . but uh

STAN — Oh uh I think you might be called. I mean don't . . . I wouldn't kiss that off yet.

PAUL — Well seriously I mean, I mean, number one it's a, it's a heck of a lot more secure way to uh.

STAN — Yuh - proceed.

PAUL — . . . to get the money and um and also if that's the intent it's just as easy.

STAN — Well what I'd like you to do is just send the money in that in the plain brown wrapper . . .

PAUL — Okay now of course that's going to take a while uh . . .

STAN — Well it should just take one day, if you send it tomorrow.

PAUL — Yuh

STAN — Okay

PAUL — Well I really I wish you'd think that over anyway 'cause uh . . .

STAN — Oh I did . . .

PAUL — . . . you know, I could get on a plane

Page 8

STAN	. . . that's why I tried to call back
PAUL	. . . I can get on a plane tonight or in the morning or whatever and be some place if you wanted.
STAN	Yeah I understand but . . . even if your phone isn't tapped you're certainly being followed so . . .
PAUL	Yeah
STAN	. . . actually it doesn't have so much to do with me, okay, if you can just do that . . .
PAUL	Okay
STAN	. .. boy that'll just be super and I'll, I'll stay in touch and let you know every inch of the way.
PAUL	Okay. Good.
STAN	Okay?
PAUL	All right, STAN
STAN	Super. Thanks.
PAUL	Right, right. Bye bye
STAN	Bye bye.

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Exhibit A - 10

PAUL	Hello
DIANE	Hi
PAUL	Hi

Approximately 4:30 PM (last part of conversation)

PAUL	. . . . don't I make it out to him?
STAN	Um . . . well you could. I think it's the best, to just put cash in the envelope. You don't care.
PAUL	(Laughter) Well, you do. If it gets . . . for heaven sakes . it's gonna be a . . .
STAN	(unintelligible) my risk . . . I would say that's the way to do it.
PAUL	Huh? Aw, come on.
STAN	Sure
PAUL	Huh?
STAN	Sure. Well you also don't want to get anybody else involved - too much. Okay?
PAUL	Yeah, but if . . . is this guy an attorney?
STAN	Yeah

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PAUL	Well, he, he's not. . . he's got a perfect right to it then, if that's what it is
STAN	Yeah, but he may not take the case I mean we don't even know what's going on yet
PAUL	Oh . . .
Telephone Operator	Three minutes. Signal when through.
PAUL	That's a . . .
STAN	Uh, you said those guys with badges, they found you?
PAUL	Huh? No, STAN, I called them. Heavens, when I heard what it was . . .
STAN	Oh, okay. Fine.
PAUL	. . . you know . . .
STAN	. . . you called them. Okay.
PAUL	. . . yeah I thought but I thought you'd be calling and that we could uh because I got some people . . .
STAN	Yeah well I tried you know I tried Saturday . . .
PAUL	. . . 'cause I got a folk some folks here that if uh, in fact, if that's, you know I've got a an acquaintance at least here who's a Assistant U. S. Attorney that we could have gone to and get the thing at least under way

STAN — Fine. Well, okay I mean I did what I thought was right too. I called I called my attorney and he's got he's got an appointment tomorrow morning. Okay?

PAUL — Okay. Um . . .

STAN — So if you do that . . . I recommend you send the cash. That would be my order, okay?

PAUL — Well, ok -, well, all right, let me think about it.

STAN — (unintelligible)

PAUL — . . . let me thing about it I'll get it out there anyway but uh I think that's not a you know if it's coming from me there's no way they can uh anybody's gonna know. I'll just send the money out.

STAN — Okay.

PAUL — Well . . . uh. . .

STAN — Take care and after this blows over we'll try again.

PAUL — Yeah. Let (laughter) . . .

STAN — Okay?

PAUL — Let me, uh yeah, let me know for heaven sakes what's going on because, because frankly, STAN, if, yeah if you need some more help, why uh . . .

STAN — Oh you'll be the first (Unintelligible)

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PAUL	. . . you know, we can get something uh . . .
STAN	Great
PAUL	. . . organized anyway.
STAN	Okay
PAUL	All right
STAN	Take care
PAUL	Good. Thanks for calling.
STAN	Bye bye.
PAUL	Right. Bye, bye.

FD-302 (REV. 3 8-77)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/13/78

PAUL W. O'BRIEN, 17 Warder Drive, Pittsford, New York furnished the following information:

O'BRIEN stated he has known an individual named STANLEY RIFKIN since approximately 1975 when RIFKIN worked for a firm known as Payment Systems, Inc. (PSI), a wholly owned subsidiary of American Express Company. PSI was doing work for Rochester Telephone Company and this is how O'BRIEN met RIFKIN. He had last seen him during the Summer, 1976.

On Wednesday, November 1, 1978, O'BRIEN was involved in the hearings regarding the proposed rate hike of Rochester Telephone Company, which were being held at the Chamber of Commerce building in Rochester. O'BRIEN noticed RIFKIN in the hearing room, and at the conclusion of the hearing on Wednesday afternoon, at about 3:30 PM to 4:00 PM, RIFKIN told him he had a business offer to discuss. RIFKIN and O'BRIEN then walked back to O'BRIEN's offices in the Midtown Plaza Office Building. RIFKIN signed the security log maintained for the telephone company by Midtown Plaza security officers on this occasion, but O'BRIEN did not notice what name RIFKIN used.

RIFKIN advised he was involved in a West Germany land deal wherein he received payments in the form of cash and diamonds. Because he had to convert these diamonds to cash, he wanted O'BRIEN to handle the legal work to set up a New York City based diamond brokerage. RIFKIN advised O'BRIEN that he currently had between $300,000.00 to $400,000.00 in diamonds, which he wished to convert into cash.

O'BRIEN asked RIFKIN how he could contact him and RIFKIN stated he could not be contacted since "STANLEY RIFKIN was not in Rochester." RIFKIN explained that he had done something several months ago that he had always wanted to do - he had disappeared.

After their conversation, RIFKIN and O'BRIEN parted company on Wednesday at O'BRIEN's office building, after agreeing to meet for lunch on Thursday at noon at the Top of the Plaza restaurant.

Investigation on 11/4/78 at Pittsford, New York File # Buffalo 196-7

By SAs DENNIS R. CARNEY and WILLIAM S. DILLON/WSD:ljd Date dictated 11/7/78

BU 196-70

On Thursday, November 2, 1978, O'BRIEN and RIFKIN met as planned at the Top of the Plaza. RIFKIN paid the bill at this restaurant, using a $50.00 bill. O'BRIEN had made the reservation in his name for this luncheon. More discussion took place at this time concerning RIFKIN's job offer. They left each other at 1:30 PM, and agreed to meet for breakfast on Friday, November 3, 1978, at the Coffee Shop of the Americana Flagship on State Street, in Rochester, New York.

They met as planned on Friday morning, with O'BRIEN arriving at the Americana Flagship at about 9:05 AM. RIFKIN had a cheese omelet, rye toast, and hot chocolate with no whipped cream. O'BRIEN had a cheese omelet, white toast, and coffee. When the bill arrived for this breakfast, O'BRIEN observed RIFKIN write something on the back of the check. This led O'BRIEN to assume that RIFKIN was staying at the Americana Flagship and was charging the breakfast to his room. RIFKIN left O'BRIEN briefly on this occasion and O'BRIEN believed RIFKIN was going to his room in the hotel.

Upon leaving the hotel, O'BRIEN and RIFKIN walked to the Chamber of Commerce building, and then RIFKIN left, walking back in the direction of the Americana. They made arrangements to meet at 12:30 PM on Friday, November 3, 1978 at the elevators at the Midtown Plaza.

At 12:30 PM, on Friday, November 3, 1978, they met as planned and drove in O'BRIEN's car to O'BRIEN's residence. RIFKIN wished to meet Mrs. O'BRIEN and take her to lunch with them. They arrived at the O'BRIEN residence at about 1:00 PM and found that Mrs. O'BRIEN was not at home. RIFKIN asked O'BRIEN if he could leave an excess piece of luggage at the O'BRIEN home, and O'BRIEN agreed. This piece was a canvass-back-pack which was empty.

BU 196-70

They then departed and went to the Depot restaurant in Pittsford, arriving at 1:30 PM for lunch. O'BRIEN did not see RIFKIN pay for this meal, but saw him go to the cashier and assumed he paid cash for their meal. It was in the parking lot of the Depot that RIFKIN gave O'BRIEN a plain white envelope containing $6,000.00 in $100 and $50 bills. This money was earnest money for the business offer RIFKIN was making to O'BRIEN.

As a result of receiving this earnest money, O'BRIEN agreed to approach his superiors at the Telephone Company, to arrange a leave of absence to handle RIFKIN's business dealings. He was to discuss this Friday afternoon, and RIFKIN was to call O'BRIEN's residence on Saturday morning. In addition, RIFKIN asked O'BRIEN to have his secretary make reservations for RIFKIN at a New York City hotel for a week's period beginning Saturday afternoon. RIFKIN furnished O'BRIEN with a list of preferred hotels including, in order of preference, the Mayfair Hotel, the Tuscany, the Park-Lane, and as a last resort, the Waldorf-Astoria. O'BRIEN advised his secretary was unable to obtain reservations at any of these hotels and he planned to so inform RIFKIN when he talked with him on Saturday morning.

O'BRIEN stated he did speak with the President of the Telephone Company on Friday afternoon and received permission to make arrangements for this leave of absence.

O'BRIEN stated that in one discussion with RIFKIN, RIFKIN told him he was a partner in a California business named Stan Rifkin, Inc. The other partner in this business was a Mr. TREVOR WONG, and that RIFKIN desired to buy out WONG's interest in this business, but wished to remain anonymous in this transaction because it was his intention to thereafter dissolve the business. RIFKIN asked O'BRIEN to call WONG's attorney (GARY GOODGAME at Mann Theatres, telephone 213-273-3336); to represent himself as ED O'REILLY, a New York attorney representing an interested purchaser; and to offer to WONG's interest for $100,000.00. Using the name ED O'REILLY, O'BRIEN called GOODGAME on Friday morning, November 3, 1978, with RIFKIN's offer, but received a non-committal response.

BU 196-70

O'BRIEN advised that RIFKIN offered him $30,000.00 for establishing the New York City diamond brokerage firm and negotiating a purchase of WONG's interest in Stan Rifkin, Inc. Thereafter, RIFKIN said he would pay O'BRIEN $100,000.00 to $200,000.00 per year to oversee the diamond brokerage firm.

O'BRIEN advised that Friday evening, November 3, 1978, he was watching the Rochester local 11 o'clock news on Channel 10 (WHEC-TV) which carried a news item concerning a multi-million dollar bank scheme in Los Angeles. He stated the story identified the subject as STANLEY M. RIFKIN, displayed a picture of RIFKIN and identified the bank as Security Pacific National Bank (SPNB). He stated he immediately attempted to reach the appropriate parties in Los Angeles and, unable to do so, then called the Buffalo, New York Office of the FBI.

Because he anticipated further telephonic contact from RIFKIN, O'BRIEN consented to the installation of a recording device on his home telephone, by signing an FD-472.

O'BRIEN provided the interviewing Agents with the following items:

1. One piece of Americana Hotels note paper, given to him by O'BRIEN, containing the following writing: "GARY GOODGAME (213) 273-3336 Mann Theatres Undisclosed principal for acquisition of Stan Rifkin Inc. $100,000. - Ed O'Reilly of New York Mr. Trevor Wong, Pres. (213) 892-0749 (Bus.) (213) 456-7836 (Res.)."

2. Business card from RIFKIN's canvas back pack, containing the following inscription: "STAN RIFKIN INC 15015 Parthenia St. Sepulveda, CA 91343 USA (213) 892-0749."

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)WMB GOVERNMENT'S MEMORANDUM RE ADMISSIBILITY OF DEPOSITIONS TAKEN IN SWITZERLAND Hearing date: January 9, 1979 1:30 p.m.

The government hereby files the attached memorandum regarding the admissibility of depositions to be taken in Switzerland.

Respectfully submitted,

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KAS:BDB:dl

Form CBD-183

DOCUMENT 4

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 15 of the Federal Rules of Criminal Procedure explicitly provides that the court may allow a party to take depositions of its own witnesses and that the depositions may be used at trial if the witness is unavailable. Section (e) of Rule 15 provides in part:

> "At the trial or upon any hearing a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Federal Rules of Evidence . . ."

"Unavailable" as a witness under the Federal Rules of Evidence includes a witness who:

> " . . . is absent from the hearing and the proponent of his statement has been unable to procure his attendance . . . by process or other reasonable means" [Rule 804(a)(5)].

Under the previous version of Rule 15 which permitted depositions only at the request of the defendant, the Court in United States v. Bronston, 321 F.Supp. 1269, 1272 (S.D.N.Y. 1971) indicated that:

> "While the mere fact that a necessary witness is a foreign national domiciled abroad and beyond the subpoena power of the court does not mandate an order pursuant to Rule 15 [footnote omitted], it is an impelling consideration [footnote omitted]."

In United States v. Kearney, 560 F.2d 1358 (9th Cir.), cert. denied, 434 U.S. 971 (1977), the trial court admitted into evidence depositions which had been taken in Japan at the request of the government.

The only conceivable objection to the admissibility of the proposed depositions is that the questions must be submitted by both parties to a Swiss magistrate who in turn asks the questions. It is anticipated that the defendant will claim that this procedure violates his Sixth Amendment right of confrontation. The only thing which might be lost by this procedure would be defense counsel's opportunity to bully or intimidate a witness. This is no great loss. A trial is a search for the truth, not a game of theatrics. The right of confrontation is only the right to have appropriate questions propounded to the witness.

In United States v. Hay, 376 F.Supp. 264 (D.C.Colo. 1974), aff'd, 527 F.2d 990 (10th Cir. 1975), cert. denied, 425 U.S. 935, (1976), the Court admitted into evidence depositions from Switzerland over defense counsel's objections. Many difficulties had been encountered by the parties in taking depositions, since the depositions were taken before the treaty with Switzerland regarding assistance in criminal matters went into effect in 1977. [27 U.S. Treaties 2019]. The defense counsel in that case objected that the questions had to be asked through a third party. The Court found that this procedure was permissible:

> "Defendant says that he was prejudiced because questions had to be asked through Consul Rand. In fact, this situation didn't last long, and most of Mr. Alman's questions were responded to by Mr. Egger without having them repeated by Consul Rand. But, even if this were not so, when an interpreter is used, the questions are given to the interpreter to ask of the witness. This inconvenience doesn't invalidate the deposition" [376 F.Supp. at 279].

Furthermore, it would be premature for the Court to find this procedure constitutionally invalid before even seeing how it works in practice.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB DECLARATION OF ROBIN BROWN RE DEPOSITIONS TO BE TAKEN IN SWITZERLAND

The government hereby files the attached declaration of Robin Brown in connection with the motion for depositions to be taken in Switzerland.

Respectfully submitted,

ANDREA SHERIDAN ORDIN
United States Attorney
ROBERT L. BROSIO
Assistant United States Attorney
Chief, Criminal Division

Kathryne Ann Stoltz

KATHRYNE ANN STOLTZ
Assistant United States Attorney
Assistant Chief, Criminal Division

Attorneys for Plaintiff
United States of America

KAS:ya

DOCUMENT 5

DECLARATION OF ROBIN BROWN

The Swiss government has been requested to arrange depositions of the following individuals for January 15, 1979. Witnesses one through nine are essential to the government's case. Witnesses ten and eleven are individuals whose names have come up in the course of the investigation and who may have relevant information to provide in connection with this case:

1. An unnamed bank official at the Wozchod Handelsbank, Zurich, that has set aside the appropriate documents re receipt of $10.2 million;

2. Werner Oppliger of Mat Securitas Express S.A., Geneva, sealed the suitcase containing the diamonds prior to transport to airport;

3. Claude Pochat of Mat Securitas Express S.A., Geneva, transported the diamond shipment to the Geneva airport;

4. Jean-Claude Medico (same as #3);

5. Alain Cochard (same as #3);

6. Martin Jaquet, of Swiss Air received the shipment from #2 - #5, and held the shipment until Rifkin picked it up in Geneva;

7. Hans Schneeberger (same as #6);

8. Jacuqes Spalter, a Swiss citizen and former associate of Rifkin, met Rifkin in Geneva October 28, 1978;

9. Alex Malinin, a Soviet citizen, employee of Russalmaz, a Soviet sales agency, sold the diamonds to Stein;

10. Rene Brun, a diamond broker that lives in Geneva that dealt with Rifkin on more than one occasion;

11. Robin Page, a former associate of Rifkin while Rifkin was employed in Geneva.

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

Executed on January 9, 1979.

ROBIN BROWN, Special Agent
Federal Bureau of Investigation

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB DECLARATION RE PROCEDURES TO BE FOLLOWED IN SWISS DEPOSITIONS

The government hereby submits the attached Declaration of Robin Brown regarding procedures to be followed in the taking of depositions in Switzerland. Names of the witnesses and their expected testimony will be provided tomorrow. The government will take one or two court reporters from the United States to record testimony. Defense counsel has agreed to waive any requirement of the witness's signature on a verbatim transcript.

Respectfully submitted,

ANDREA SHERIDAN ORDIN
United States Attorney

DOCUMENT 6

ROBERT L. BROSIO
Assistant U. S. Attorney
Chief, Criminal Division

KATHRYNE ANN STOLTZ
Assistant U. S. Attorney

Attorneys for Plaintiff
United States of America

DECLARATION OF ROBIN C. BROWN

1. I, ROBIN C. BROWN, a Special Agent of the Federal Bureau of Investigation assigned to the Los Angeles, California Division do declare the following:

2. On a number of occasions within the last week, I spoke with Special Agent Leonard Ralston, Legal Attache to the American Embassy in Bern, Switzerland. He acts as an immediatary between the United States and local law enforcement agencies on all matters. The following information was provided to him by representatives of the Swiss Federal Police and the Swiss judicial system and then subsequently provided to myself:

3. Prior to a witness testfying in a Swiss court he is, in detail, reminded of the perjury laws in Switzerland. This is the normal procedure for any testimony received in the Swiss court. If the United States government requests, an oath similar to an oath presented in a deposition taken in an American court can be administered.

4. A deposition taken within a Swiss court is taken as follows: The questions are provided orally to a Swiss Magistrate in English who would then pose that question in French or German to the witness. The Magistrate and the witness then discuss the question and then discuss the answer. The answer to the question is then summarized and dictated to the court reporter by the Magistrate in English. During the course of the deposition questions may be given by both the defense and prosecution. Virtually all the Magistrates speak English and in those rare instances where they do not, the questions would then be translated into the working language of the Magistrate by a court interpreter and the same

would apply to the answer provided by the Magistrate. There is no restriction as to how a particular question might be phrased or how the answer would be phrased except that the final answer given by the Magistrate be in summary form. Occasionally, magistrates will relax the procedures and allow counsel to ask questions directly of the witness although they are not required to do so.

5. Answers to questions provided in depositions are summarized by the Magistrate and dictated to a court reporter. At the termination of the witnesses testimony that testimony is reread to the witness where upon the witness would sign that summary transcript. The Swiss government has indicated that a verbatim transcript provided by a translator providing an English translation immediately to a court reporter would present no problem to the Magistrate or to Swiss law. In Geneva a tape recording of the court proceedings is allowed by the court. In Zurich, the witness reserves the right to refuse to be taped. The only interview to be conducted in Zurich is one bank official who has not indicated a desire not to be tape recorded.

6. All of the summary transcriptions provided by the court are either in French or German. The Swiss judicial system has been advised that the court in this matter, does not require summary transcriptions.

7. Interpreters in both German and French are available in Geneva and in Zurich and will be provided by the court and/or the Swiss Federal Police. These interpreters are court interpreters that are similar in job description, duty, and allegiance to the court, to interpreters in American courts.

8. With regards to the rules for an attorney objecting to

testimony or questions, the Swiss court system has indicated that law provides that testimony regarding third-party bank accounts under the Swiss Bank Secrecy Law would prohibit their required testimony. All other remarks regarding these depositions will go on the record.

9. The Swiss government said that there would be no problem with court reporters or other officers from the American judicial system being present in the court or assisting in the deposition.

10. At the present time SA Ralston, in concert with the Swiss Federal Police and the Swiss judicial system has so far scheduled depositions in Zurich for Monday the 15th and depositions in Geneva for Tuesday the 16th and Thursday the 18th.

11. The Swiss government has further indicated there would be no problem in Stanley Rifkin accompanying his counsel to Switzerland. They have indicated that there is presently no arrest warrant outstanding in Switzerland for Rifkin and that the Swiss government will takes steps to assure that prosecution of him will not be sought while Rifkin is within their jurisdiction. They have further been advised of a restricted passport with the life of approximately three weeks being issued to Rifkin and indicate that that would be compatible with their law and requirements.

12. I have made airplane reservations for all parties involved so as to arrive in Zurich, Switzerland on Sunday, January 14 at 1:40 P.M.

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

EXECUTED: This 10th day of January, 1979.

ROBIN C. BROWN

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STANLEY MARK RIFKIN, Defendant.	NO. CR 78-1050(A)-WMB GOVERNMENT'S DECLARATION OF ROBIN BROWN RE EXPECTED TESTIMONY OF WITNESSES IN SWITZERLAND AND SAFE CONDUCT FOR DEFENDANT

The government hereby files the attached Declaration of Agent Robin Brown regarding the expected testimony of witnesses in Switzerland and the assurances of safe conduct for the defendant in Switzerland.

Respectfully submitted,

ANDREA SHERIDAN ORDIN
United States Attorney

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KATHRYNE ANN STOLTZ
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Attorneys for Plaintiff
United States of America

Form OBD-183
12-8-76 DOJ

DOCUMENT 7

D E C L A R A T I O N

I, ROBIN BROWN, hereby declare and say as follows:

1. I am a Special Agent of the Federal Bureau of Investigation.

2. The following witnesses listed in subparagraphs a through h are essential and important witnesses to the prosecution of the case of United States v. Stanley Mark Rifkin, CR 78-1050 CA . I have been informed by F.B.I. Special Agent Leonard Ralston, Legal Attache to the United States Embassy, Bern, Switzerland that the Swiss Federal police informed him that these people have all been contacted and asked if they would be willing to come to the United States to testify with all expenses paid. All of the people listed in subparagraphs a through h have indicated that they are not willing or are not permitted by their employers to come to the United States to testify at trial. The Government expects that the witnesses will be able to provide the following information:

(a) Bank official at the Wozchod Handels Bank, Zurich:

It is anticipated that the bank official will lay a business record foundation for certain bank documents which will show that 10.2 million dollars was received by the bank pursuant to a wire transfer on October 27, 1978, for credit to account number 390302002 at their bank from the Irving Trust Company, a bank in New York. This is the bank account of Russalmaz.

On Monday, October 30, 1978, $2.055 million dollars was transferred out of that account. The Swiss Federal Police have provided the information that the bank has already turned these bank

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documents over to them, although we do not yet have copies. Copies of these documents will be turned over at the taking of the depositions. The expectation that the bank documents will contain the information outlined above comes from Lon Stein, who has informed the F.B.I. that he was at Russalmaz when they received a phone call from the bank that the money had arrived and who asked Russalmaz to have the remaining money after the purchase of the diamonds transferred out of their account. The name of Russalmaz' bank is printed on their stationery furnished to us by Lon Stein. Documents from the Irving Trust Company also show that the money was wire transferred from their bank with instructions to be credited to the Russalmaz account at the Wozchod Handels Bank. Ms. Stoltz has informed me that Stein's interviews, the stationary referred to, and all documents and information from the Irving Trust Company have been turned over to defense counsel.

(b) Werner Oppliger:

Werner Oppliger works for the Mat Securitas Express S. A., Geneva as a courier. He sealed the suitcase of diamonds obtained from Russalmaz on October 27, 1978, and traveled with the shipment from Russalmaz to Swiss Air for pickup. This information came from the Swiss Federal Police from their interview of him. It is anticipated that he will say that the seal was intact and that the suitcase and its contents were in the same condition when it was delivered as when picked up, as this would probably be the normal business practice.

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(c) Claude Pochat;

(d) Jean Claude Medico; and,

(e) Alain Cochard:

These witnesses also work for Mat Securitas Express S. A., Geneva as couriers. The Swiss Federal Police have provided the information that these individuals do not remember this particular shipment very well, however, they helped transport it. It is assumed that normal business procedures were followed which would establish chain of custody, although this information has not yet been received from the witnesses.

(f) Martin Jaquet; and,

(g) Hans Schneeberger:

Both of these witnesses work for Swiss Air in Geneva. It is anticipated that they will testify that a suitcase of diamonds arrived via Mat Securitas Express S. A., Geneva from Russalmaz on October 27, 1978. These diamonds were picked up on October 28, 1978, by an individual identifying himself as Stanley Rifkin. The person picking up the shipment must show his passport and give the passport number. It is anticipated that Swiss Air has notes or documents indicating the arrangements which were made regarding who was authorized to pick up the shipment and possibly a signed receipt by the person picking up the shipment. It is anticipated that the above two witnesses will be able to testify to the above information because of the following facts: Rifkin confessed to F.B.I. agents that he picked up the diamonds after they were purchased. He said that he had intended to use a code number to pick up the diamonds, but found out that he would have to show his passport which in fact

he did. Ms. Stoltz has informed me that the interview report of Rifkin has been turned over the defense counsel. This information was given to the Swiss Federal Police, who in turn told the F.B.I. agent in Bern that the people who could provide the information regarding te pickup of the diamonds were the above two named individuals from Swiss Air. We have no information directly from these two individuals. Lon Stein, the diamond broker, also provided information to the F.B.I. that Russalmaz told him that arrangements would have to be made regarding the name and passport number of the person picking up the diamonds.

(h) Alex Malinin:

Alex Malinin is an employee of Russalmaz, a Soviet diamond business in Geneva. It is anticipated that he will testify that Lon Stein came to Russalmaz on October 26, 1978, to select diamonds for a ten (10) million dollar purchase. Stein was shown diamonds on that day. The following day he selected 8.145 million dollars worth of diamonds which he wished to purchase. This purchase was completed on that day using funds which had been wired transferred into Russalmaz account at the Wozchod Handels Bank in Zurich, Switzerland. Stein was on occasion accompanied by another gem broker, Ron Romenella. The above information was obtained from Lon Stein and Ron Romenella. A copy of the bill of sale obtained from Lon Stein will be shown to Mr. Malinin. Ms. Stoltz has informed me that these interview and the bill of sale reports have been turned over the defense counsel.

Photographs of the diamonds and their wrappings will be shown to Malinin. I have been informed by Ms. Stoltz that defense counsel have their own set of photographs. Two of the original

paper wrappings will also be shown to Malinin. Mr. Stern told us that Malinin wrote on some of the wrappings.

It is also anticipated that Malinin will be able to testify that Russalmaz received a wire purportedly from a Mr. Nelson at Security Pacific Bank establishing some of the arrangements for the above purchase. This information came from Western Union in Van Nuys and Los Angeles who turned over their work order requesting that this cablegram be sent. The cablegram contains Rifkin's fingerprint. Western Union does not have a copy of the cablegram itself, but indicates that the receiving party, Russalmaz, should have a copy of it. I have been informed by Ms. Stoltz that a copy of this work order from Western Union has been turned over to defense counsel.

It is anticipated that Russalmaz also has a cablegram regarding the arrangements for the pickup of the diamonds which was sent from somewhere in Geneva. This information came from attorneys for Security Pacific Bank. The Government does not yet have a copy of that cablegram.

3. Martin Jaquet of Swiss Air, Hans Schneeberger of Swiss Air and Alex Malinin of Russalmaz will be shown a photospread. The following individuals are in the photospread: Ron Romenella, Stan Rifkin, Lon Stein, Gary Goodgame, Robin Page and Dan Wolfson.

4. There is also a telephone toll record for calls which the government has evidence that Rifkin made. I have been informed by Ms. Stoltz that this evidence has been turned over to defense. It is anticipated that the witness from Russalmaz will testify that one of these phone numbers is theirs as it is the same as their phone

number on their stationery.

5. Jacques Spalter is a witness who is willing to come to the United States. The Swiss Federal Police have represented to the F.B.I. agent in Bern, Switzerland that he says that he was with Rifkin when Rifkin picked up the diamonds from Swiss Air and flew with Rifkin to Frankfort, ermany. This information was not included in Rifkin's confession. The Swiss Federal Police have provided information that Rifkin said "I am a very wealthy man now," and that Rifkin had a suitcase with him. I have been informed that Spalter can be made available for a deposition if so requested.

6. Rene Brun and Robin Page are two individuals whose names have come up in the course of the investigation as possibly having some connection to Rifkin. I cannot represent at this time that these potential witnesses are essential to the case. I have been informed that they can be made available for depositions if requested.

7. Special Agent Ralston informed me that he talked to Rudolph V. Wyss of the Swiss Federal Police of the Federal Department of Justice who is the person who is designated as a liaison with the United States government in the Swiss Federal Police and who is authorized to speak for the Swiss government on matters such as this. Mr. Wyss represented to Agent Ralston that there were no arrest warrants out for Rifkin and that he can personally assure us that Rifkin will not be arrested in Switzerland for any past crimes. If Rifkin should be arrested in Switzerland for any past crimes, Mr. Wyss will exercise his authority to insure that he be immediately

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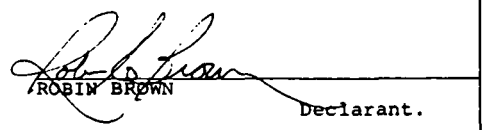
released.

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

EXECUTED ON January 12, 1979, in Los Angeles, California.



ROBIN BROWN

Declarant.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE WM. MATTHEW BYRNE, JR., JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA, Plaintiff,	]	
vs.	]	CR 78-1050-WMB
STANLEY MARK RIFKIN, Defendant.	]	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, February 6, 1979

ROBERT E. KILLION
Official Reporter
419 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012

DOCUMENT 8

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LOS ANGELES, CALIFORNIA; TUESDAY, FEBRUARY 6, 1979; 1:45 P.M.

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THE COURT: Good afternoon.

THE CLERK: Item No. 3 on the calendar, criminal No. 78-1050-WMB, United States of America vs. Stanley Mark Rifkin.

MS. STOLTZ: Kathryne Stoltz and Brad Brian for the government, your Honor.

MR. TALCOTT: Good afternoon, your Honor. Robert Talcott, Carla Woehrle, Stan Rifkin available and ready to proceed.

THE COURT: All right. I have the order on the speedy trial date. I will sign that.

Mr. Rifkin, you have read this order, have you?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: You have discussed it with your counsel?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about it whatsoever?

THE DEFENDANT: Not at all.

THE COURT: Have you explained it to him thoroughly, Mr. Talcott?

MR. TALCOTT: I have.

THE COURT: You have signed the order?

THE DEFENDANT: I have.

THE COURT: All right. Thank you. It will be filed.

With reference to the motions to suppress, is there anything additional anyone wants to add?

MS. STOLTZ: No, your Honor.

MR. TALCOTT: Nothing.

THE COURT: These decisions are, as I mentioned to you the other day, to a large extent turning on questions of cases that were not presented really by either side. In some of the cases you mentioned the other day, as I go through this, a particular case that the government relies upon -- I don't know if you have read, for instance, in the Fifth Circuit, Cravero -- the proposition you cited that case for, the case was held on rehearing, and on that proposition the court changed its opinion. Have you read that portion of the case?

MS. STOLTZ: Your Honor, we Shepardized it but did not discover rehearing had been granted.

THE COURT: Right in the same opinion, the last page of the same opinion the rehearing is granted, and the court says that it made an error on the proposition that you relied on and found there was a valid warrant in the case.

All right. At any rate, let's start off with the arrest and the search that was made pursuant to the arrest and the statement made by Mr. Rifkin at the time of that arrest.

An arrest warrant was obtained from a magistrate in Los Angeles based upon the affidavit of Robbin C. Brown,

Special Agent of the FBI. That FBI has been the subject of both oral argument and briefing with respect to the sufficiency of the affidavit. It is an affidavit that is totally void of any source information whatsoever, as we have discussed before, and I think the government has partially conceded. The affidavit for some reason when it was prepared and for some reason when the magistrate issued the warrant based upon it, no questions were apparently asked; there is no source of any information whatsoever. If you go through it paragraph by paragraph, it is impossible to tell where Mr. Brown obtained the information that is set forth in subparagraphs (a) through (f), including such obvious shortcomings as not stating the name of the diamond broker, not stating the name of the individual who met with Mr. Rifkin in Los Angeles who Mr. Rifkin allegedly exhibited the diamonds to, not stating where the information was obtained from the bank, not stating whether the recording had ever been listened to, not stating any information whatsoever about where they heard what occurred in Switzerland, not stating how they knew the diamonds were picked up -- just totally void of any information.

I have reviewed a substantial number of cases on search warrants and arrest warrants -- arrest warrants, I should say. It is clear that the courts favor and should favor the investigating officers seeking a warrant from the court and attempting to set forth the probable cause so the

magistrate can independently determine whether there is probable cause for the arrest, and the courts do tend to sustain those affidavits, but I can't find any case, nor has any side, particularly the government, referred me to any case where there is a total absence of the source information where the warrant has been sustained.

The warrant is found to be invalid and cannot be the basis of a legal arrest.

This is probably doubly so in the Ninth Circuit if Prescott is good law. Prescott would certainly indicate that, in addition to the probable cause that the defendant committed the crime, the warrant is going to have to show that the defendant is inside a premise and probable cause or, as the Fifth Circuit, I guess, talks about, reasonable belief that the defendant is in those premises. I am, having reread Prescott several times, not exactly sure what Prescott is requiring, but we really never arrived at the Prescott question because under the Supreme Court decision of Giordenello and Aguilar v. Texas, there is no way to sustain the warrant.

With the warrant being invalid, the next question comes: Is there a valid arrest and valid entry without the warrant?

There is no case authority whatsoever for the proposition that mere probable cause to arrest will allow an arrest in a non-private place without a warrant.

The government urged at one time, not in writing but in oral argument, that Cravero was authority for that, that they distinguished between arrest and search.

In the rehearing the court clearly said -- and I will quote:

> "When an officer holds a valid arrest warrant and reasonably believes that the subject is within the premises belonging to a third party, he need not obtain a search warrant to enter for the purpose of arresting the suspect."

And they found in that case that there was a valid arrest warrant and that they did have reason to believe that the suspect was in the third party's premises and they had a right to enter the premises based upon the valid arrest warrant.

Then the court says:

> "We need not consider here the broader issue which was left open by the majority opinion in Watson whether or when the police can lawfully make a warrantless arrest in a private place."

So they specifically cut out and exclude the issue that is controlling in this case, whether they can make a warrantless arrest in a private place.

There is no authority for the proposition whatsoever

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that probable cause to arrest alone allows the entry into a private place or particularly into the dwelling of a third party to make the arrest. I believe this is the way the government first argued their case in a written brief. It has to be probable cause plus, and it has to be probable cause plus exigent circumstances.

So the next question is whether there was probable cause, and, secondly, whether there was exigent circumstances.

I find that there was probable cause. I also find that if the affidavit for that warrant -- there was sufficient probable cause -- there appears to be, anyway, from the testimony and from the filings in here -- there appears that there was a sufficient probable cause for that search warrant if the government and the magistrate had required that the agent do what is a condition precedent to the issuance of that warrant, namely, giving the source.

I find that there is probable cause to arrest if the arrest were made in a public place. The question then is: Were there sufficient exigent circumstances?

The government alleges really four types of circumstances: one, that Rifkin had an alleged suicidal tendency; secondly, the possibility that Rifkin might hold Wolfson as a hostage; third, the fear that Rifkin might escape; fourth, the fear that Rifkin might flush the diamonds down the toilet.

There is no case authority for the proposition -- at least I don't believe there is from my analysis of the cases -- Can you use an exigent circumstance involving a search as an exigent circumstance to arrest? In other words, the suicidal propensity, the Wolfson hostage question, and the attempt really all go to the arrest. Flushing the diamonds goes to search.

Even assuming that you can, I find no case that would hold that these are exigent circumstances. The strongest case in this circuit, the strongest case probably in the country for the government, is the one that they rely upon, Flicksinger. In that case there were codefedants. Judge Wallace wrote the case in 1978. He found in that case, stating three times in the opinion, that there is a very close question as to exigent -- he found that the review on appeal is that of whether the finding of the district court was clearly erroneous. In that case there had been an arrest of codefendants two hours before the arrest of the defendants in question. The court found that, while it was close, that they would give weight to the district court's finding, that there was an exigent circumstance because of the fact that, the defendants' being arrested, there was a high probability that they would be warned of their arrest because of the previous arrest of the two codefendants.

That circumstance is not present here. The cases are

clear that the agents themselves cannot create the circumstances.

Here the only exigent circumstance is created when the agents go to the door and ask if Rifkin is there. There is no indication that Rifkin believed that he was going to be arrested, other than the fact that they had -- there is some testimony that they had practiced what to do if they were arrested sometime in the future. There was no indication that Wolfson was going to be a hostage. The fear of Rifkin's escape from the premises that he was in would certainly be minimal. There is no evidence that there was a weapon which could be used to either harm the agents or Rifkin or any hostage.

I can find no authority that would hold that, under the circumstances, there were exigent circumstances that existed prior to the time the agents attempted to enter the premises; therefore, I would find that the arrest of the Rifkin was not valid. It was invalid, an illegal arrest, not being based upon either a valid arrest warrant or warrant of any kind, and not being an arrest based upon probable cause coupled with exigent circumstances.

The next issue, then, is whether under the analysis of Brown v. Illinois, as set forth by the United States Supreme Court, the illegality, the taint created by the illegal arrest and illegal entry has been sufficiently attenuated and has been removed to the extent that either the search or

the statement by Mr. Rifkin can be said not to be the product of the illegal entry or illegal arrest.

We discussed the other day the analysis in Brown. We start here the same as they start in Brown with an illegal arrest. The facts in Brown, as far as the circumstances surrounding the arrest, are many, many times more aggravated than the facts here. I do not find any substantial misconduct, bad purpose, on the part of the agents. They had made the effort to get a search warrant, though the search warrant is now found to be invalid.

MS. STOLTZ: I believe you mean an arrest warrant.

THE COURT: Arrest warrant. Thank you very much. Though the arrest warrant is found to be invalid.

They did not use force tactics in entering the apartment. I don't recall the testimony with reference to whether weapons were used when they entered or not, whether their guns were drawn or not. The entry occurred after they first asked Mr. Wolfson if they could enter and whether the defendant was there and they got a response that they didn't know whether he was there and thereafter made the inquiry.

But the question is whether the four standards or the three standards of Brown have been met. The issues discussed in Brown are the temporal proximity of the arrest and the confession or search, the presence of any intervening circumstances between the illegal act of the entry or the

arrest and the search and the statement, and particularly the purpose and flagrancy of the officials' misconduct.

The strongest case, I would say, for the government is United States v. O'Looney. I don't believe it has ever been cited. It is a Ninth Circuit case in 1976. Judge Wallace again wrote the case. Judge Hufstedler dissented.

In that case there was an investigatory stop. The court found that the arrest was legal, and after finding the arrest was legal, it went on to say:

> "Even if there was an illegal detention, the post-arrest statements need not be suppressed."

After the arrest, O'Looney was taken to the police station and was given the Miranda warnings. He then contended that the statements, though he gave them after the Miranda warning, were the product of his illegal arrest and detention. As I say, first, the court said there was not an illegal arrest and really didn't have to go any further, but they said that even if there was -- they said there was a legal arrest, but even if there was an illegal arrest, we will now analyze it under the Brown guidelines.

Brown clearly says that the mere fact that you have a Miranda warning alone is not sufficient to remove the taint. The mere fact that the search or statement is voluntary is not sufficient to remove the taint. There has to be more, and the

"more" has to be in these three guidelines that I mentioned before.

The Ninth Circuit found in O'Looney that the Fourth Amendment violation was far less flagrant than it was in Brown, which is true, and that several hours had passed between the time of the illegal act and the time of the statement, and then after they discussed several hours passed, they drop a footnote, and the footnote says:

> "Indeed, the temporal interlude in O'Looney's case is of sufficient different nature as to warrant characterizing it as an intervening circumstance of significance. O'Looney waited in an interrogation room for over an hour after the initial questioning by the local detective before the ATF agents arrived. He was not questioned at all during this time, and he was free to reflect on the situation or to call his attorney."

The case found that there was sufficient change in circumstances intervening, intervening circumstances, and it found that there was sufficient temporal lapse between the illegal act and the confession.

In a case decided, again not cited, in 1977 after O'Looney -- this time Judge Hufstedler was writing the majority rather than the dissent, as she had dissented in

O'Looney, and she finds that you have an illegal arrest, and then the defendant is taken from the premises where he is arrested and taken to the Police Department and then given his warning, that even that is not sufficient. She states:

> "The fact that Sanudo was given the Miranda warning before he made his incriminating statements at the headquarters does not remove the taint."

Then she cites from Brown, saying:

> "The Miranda warnings by themselves are not sufficient."

Then she states:

> "We conclude --"

The "we" does not include Chief Judge Chambers, who dissented. She says:

> "We conclude that the government did not meet the heavy burden placed upon it to prove that Sanudo's statements were not the products of the illegal arrest at his home on the evening of November 20th. Although we consider the evidence in the light most favorable to the government, the record will, nevertheless, not support the ruling of the district court."

I might also state that the same rule applies to

searches as applies to statements. That has been held in United States v. Bazinet, an Eighth Circuit case, that states that the government has a heavy burden of proof in establishing that the consent, the consent to a search, was the voluntary act of the arrestee and was not the fruit of the illegal arrest.

It is also cited in McCalleb v. United States.

In the Duncan case, which is the other case relied upon by the government, which was the case involving the fingerprints of the minor and the illegal act was subpoenaing the minor in to have the fingerprints taken -- the court found that two days lapsed, Judge Hufstedler writing it again -- Per Curiam, with Judge Hufstedler and Browning on the court -- that two days lapsed from the time of the illegal act until the time of the obtaining of the information from the defendant, and they found that the temporal -- well, they also found that the acts of the government were not flagrant. They found that the temporal lapse was sufficient to remove the taint.

There is no case that has ever held that any search, be it consented to or not, or any statement, be it voluntary or not, even after a Miranda warning that is given immediately -- given or taken immediately after the illegal act, the arrest or the entry, is admissible. In all cases where the search or the statement immediately followed or followed within a matter of minutes the illegal act, the courts have rejected the utilization of those statements or the fruits of the search.

I find, therefore, that the statement made by Rifkin in the apartment following his illegal arrest -- I find that the motion to suppress is granted, and that statement will be suppressed from evidence.

As to the search that occurred subsequent to that arrest in the Wolfson apartment, I find that that search cannot meet the requirements of Brown, and the products of that search are suppressed.

The next question is the search that occurred -- I might also state that on the money, the search for the money, the same ruling is true. I would find that even more so with the search for the money, because under the heavy burden of the government under Brown, that is not as clear a consented to search as is the search for the diamonds.

As to the search the following day -- Was it the following day?

MR. TALCOTT: Yes.

THE COURT: -- the following day as a result of the search warrant -- Let me go back one step so you can have a complete record.

I do not find that there was a violation of any attorney-client privilege or intrusion into the Sixth Amendment rights of the defendant by the FBI or by the government. I do not find that that is a basis or grounds for the invalidation of the warrant or the searches or the

statement made.

As to the search warrant, now, that was executed in San Diego, I would find that the search warrant is based upon the fruits of the illegal search from the evening before. I believe the government conceded the other day, if I am right, Ms. Stoltz, that if the warrant was invalid, the search was invalid at the time of the arrest, then the search warrant was invalid.

MS. STOLTZ: That's correct, your Honor.

THE COURT: All right. The search warrant being invalid, the search that took place the day following the arrest, the fruits of that search and the matters obtained in that search that the government intended to use in evidence are suppressed.

As to the statement of Mr. Rifkin that he gave to the FBI following his release on bond and at the FBI building when he was copying down the addresses from his address book, while the record could be clearer as to what Mr. Rifkin's statements may have been with his attorney and whether his attorney had knowledge of the fact that Rifkin was going to the FBI building, it is clear that Rifkin initiated the contact with the FBI. It is not a Massiah problem. The FBI agents did the appropriate thing by contacting the Assistant United States Attorney for obtaining advice as to what to do. Rifkin was allowed to come to the FBI office. It is true

that in his testimony Agent --

MS. STOLTZ: Brown. Agent Brown.

THE COURT: -- Agent Brown said that he brought the other agent into the room for the dual purpose of watching the exhibits and also being a witness to anything that might be said. I would find that, at the very least, the agents were very willing listeners, but I do not find that they violated the Sixth Amendment rights or the Fifth Amendment rights of Mr. Rifkin. Mr. Rifkin volunteered those statements; he was the one who arranged for the meeting; he was the one who entered into the conversations. It does not appear that there was probing or questioning by the Bureau agents who were present.

Rifkin, as I say, volunteered the statements that he did make. I do not suppress. The motion to suppress is denied on those statements.

I would like to make it clear that even if those statements are subject to a stipulation, I reserve the right to rule on the materiality or relevancy or probative value of those statements. I am just holding that there was not a constitutional violation in the taking of those statements or in the hearing of those statements by the FBI.

I think that covers them all. Where do we stand now on the stipulations?

MS. STOLTZ: Your Honor, we will still be in the

process of preparing them. I would say that far more than half of them have been completed.

THE COURT: Is the time schedule still satisfactory with the government?

MS. STOLTZ: For the time being, yes, your Honor.

MR. TALCOTT: We may request a day or two more, your Honor, after we receive them to review them and make the appropriate objections. It is now set for next Wednesday.

THE COURT: I think we moved it one day, didn't we, or did we move it two? Let me see the book, please.

MS. STOLTZ: I believe they are due on Monday at noon, and the trial was set for Wednesday.

THE COURT: Wednesday?

MS. STOLTZ: Wednesday at 9:30.

THE COURT: How long do you anticipate now, in the size of the reading material? I can give you another day if I can get enough time to read them.

MS. STOLTZ: Well, there will be 21 stipulations. A lot of them will incorporate portions of the exhibits which will make it necessary to go through the exhibits in great detail. I would estimate, your Honor, a hundred pages.

MR. TALCOTT: Your Honor, we are going to need time once we receive these hundred pages to go over them and especially in light of the court's rulings today. I am sure that some of the material contained in those stipulations --

I am not sure of some of the material contained in those stipulations.

THE COURT: What were your time estimates again on the trial, a half day?

MS. STOLTZ: A half day, your Honor.

MR. TALCOTT: Yes, your Honor.

THE COURT: I will move it one day. You can do it Thursday, the 15th. That will give you until Tuesday to file your stipulations.

MR. TALCOTT: That is at 9:30, your Honor?

THE COURT: That would be at 9:30.

MR. TALCOTT: Your Honor, there is one other matter. When the court said, "Is there anything further," we had made a request and submitted to the court through the clerk a case which stood for the proposition that we were entitled to the regulation upon which the government relied in placing the phone monitoring in Mr. Paul O'Brien's home, and we would again request that we be made available those regulations.

THE COURT: Is that being used in the case?

MS. STOLTZ: Your Honor, I think that is a question that is still open, in light of the court's ruling today, meaning that we had not planned to use it if we had the confession. But I think that decision has to be reevaluated.

THE COURT: All right. If it is going to be used, can you and Mr. Talcott advise Mr. Janisch, and we will have

to set it for sometime later this week for a hearing on that, because the government hasn't had the opportunity to respond at all. As a matter of fact, there hasn't been a motion other than somebody handing up a xerox copy of a case.

MR. TALCOTT: That's correct, your Honor.

MS. STOLTZ: Yes, your Honor. I believe we can make that decision in the next day.

THE COURT: All right. On the stipulated facts, are there any stipulated facts that, though agreed they are facts, raise questions of admissibility?

MS. STOLTZ: Your Honor, although the stipulation -- this is one stipulation that is not written yet and has been brought to my attention, that there is another attorney in the case by the name of Garry Goodgame, who was the attorney for Mr. Rifkin's corporation, that the defense is going to raise the attorney-client privilege as to portions of his testimony.

MR. TALCOTT: That would be correct with respect to Mr. Goodgame, who is an attorney in Los Angeles, and, of course, with respect to Mr. O'Brien, if they intend to use any communications, we would interpose an attorney-client privilege.

THE COURT: Has Goodgame -- Goodgame, I assume, has given some information?

MR. TALCOTT: Yes, he has.

THE COURT: Already?

MR. TALCOTT: Yes, he has. He was very instrumental in the course of the investigation, your Honor.

THE COURT: I think we had better set this for another status conference sometime this week when you get the stipulations completed, because if we are going to have a hearing, for instance, on the admissibility and the attorney-client privilege, we are going to need more time and you are going to have to have witnesses here.

MR. TALCOTT: Can we have that next Tuesday? If the government is not going to complete the stipulations until next Tuesday --

THE COURT: It sounds pretty late. Are you both available Friday?

MS. STOLTZ: Yes, your Honor.

MR. TALCOTT: Yes, your Honor. The question is whether those stipulations will be available at that time.

THE COURT: What do you think?

MS. STOLTZ: Your Honor, we can have them finished. How much time the defense counsel will have to review them may be part that may cause a problem. There is no question in my mind that they can be completed; it's just a question as to how much time Mr. Talcott will have had to analyze them.

THE COURT: We can set it for Monday afternoon. That at least gives you the weekend.

MR. TALCOTT: That would be better, your Honor.

THE COURT: All right. Let's make it --

MR. TALCOTT: Could we make it at 3:30, your Honor?

THE COURT: There is a judges' meeting at 4:00. That might not be enough time. Let's make it at 3:00.

MR. TALCOTT: 3:00 is fine.

THE COURT: All right. If there is any possibility that the case is not going to go forward, if the government is going to be asking for a continuance in any way, unless you have made that decision -- Have you made your decision yet?

MS. STOLTZ: That decision has not been made.

THE COURT: Let us know as soon as possible. Do you know when your decision will be made on that?

MS. STOLTZ: Your Honor, it should be made, I would say, in two or three days at the outside.

THE COURT: Then if there is going to be a request on behalf of the government, let the defendants know and we will set a hearing sometime later this week to see what we will do with that.

MS. STOLTZ: Yes, your Honor.

THE COURT: All right. Anything additional?

MR. TALCOTT: Nothing additional.

THE COURT: Thank you very much.

MS. STOLTZ: Thank you.

MR. TALCOTT: Thank you, your Honor.

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE WM. MATTHEW BYRNE, JR., JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Criminal Action No. 78-1050-WMB
STANLEY MARK RIFKIN, Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, February 22, 1979

ROBERT E. KILLION
Official Reporter
419 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

DOCUMENT 9

APPEARANCES:

On behalf of the plaintiff:

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United States Attorney

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LOS ANGELES, CALIFORNIA; THURSDAY, FEBRUARY 22, 1979; 9:40 A.M.

- - -

THE CLERK: Item No. 2 on the calendar, Criminal Action No. 78-1050-WMB, United States of America v. Stanley Mark Rifkin.

MS. STOLTZ: Good morning, your Honor. Kathryne Stoltz for the government.

MR. TALCOTT: Good morning, your Honor. Michael Lightfoot, Carla Woehrle, Robert Talcott, and the defendant Stanley Mark Rifkin present in court and ready to proceed.

THE COURT: Counsel.

MR. TALCOTT: Your Honor, this is the time set for trial of this matter, and, with the Court's permission, the defendant would respectfully request to withdraw his earlier plea of not guilty to Counts Two and Three of the indictment and enter a plea of guilty to those charges.

Mr. Rifkin, will you come forward, please.

THE COURT: Is that your desire, Mr. Rifkin?

THE DEFENDANT: Yes, your Honor.

THE COURT: The government's intentions are what?

MS. STOLTZ: Your Honor, it is the government's intentions to move to dismiss the remaining counts at the time of sentencing, and an agreement has also been reached whereby the government will not prosecute Mr. Rifkin on the subsequent case on which he was arrested, although we may present evidence

of that at the time of sentencing.

THE COURT: I will get to the agreement in a moment, but there will be a dismissal of the other counts?

MS. STOLTZ: Yes.

THE COURT: The motion to withdraw the previously entered not-guilty plea to Counts Two and Three is granted.

Is Stanley Mark Rifkin your true and correct name?

THE DEFENDANT: Yes, your Honor.

THE COURT: Mr. Rifkin, how do you now plead to Count Two of the indictment, guilty or not guilty?

THE DEFENDANT: Guilty, your Honor.

THE COURT: How do you now plead to Count Three of the indictment, guilty or not guilty?

THE DEFENDANT: Guilty, your Honor.

THE COURT: Mr. Rifkin, I am going to ask you some questions to determine whether you actually are guilty of the offenses you are pleading guilty to and also to determine whether your pleas of guilty are freely and voluntarily being entered. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: I want to advise you again of your right to a speedy and public trial by jury, the right to see and hear the evidence presented against you and to cross-examine any witnesses that the government may call.

You have the right to request this Court to compel

the attendance of any witnesses that you may desire in your own behalf, and you have the right to have counsel at all stages of the proceedings. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Under the Fifth Amendment of the United States Constitution you cannot be compelled to incriminate yourself. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: In other words, you don't have to answer any questions that anybody asks you about any of the facts or circumstances surrounding these charges. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You have an absolute right to remain silent. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: When you plead guilty, though, in order for me to determine whether there is a basis in fact for your plea of guilty, in other words, whether you actually are guilty of the offense, I am going to be asking you some questions, and when you answer those questions you will be incriminating yourself. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And the government could at some subsequent time use those statements against you. Do you

understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: So in order to plead guilty you will be waiving your right against self-incrimination. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Is that what you want to do?

THE DEFENDANT: Yes, your Honor.

THE COURT: If this case goes to trial you don't have to prove that you are innocent; it is the obligation of the government to prove that you are guilty and to prove that beyond a reasonable doubt. Do you understand?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, if I accept your pleas of guilty to these counts, all those rights I told you about, you waive and give up. There is not going to be any trial; there aren't going to be any witnesses called; the government doesn't have to prove anything. You are admitting you are guilty to both of those counts, and the only thing left in the case is for me to sentence you, and that sentence could consist of time in the penitentiary. Do you understand that?

THE DEFENDANT: Yes, your Honor. I waive those rights.

THE COURT: Do you still want to plead guilty?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you discussed this case fully and completely with your attorneys?

THE DEFENDANT: Indeed.

THE COURT: Have you kept anything back from them at all?

THE DEFENDANT: Not at all.

THE COURT: Have you discussed with your attorneys the nature of the charges against you in Counts Two and Three of the indictment?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you discussed with your attorneys any possible defenses that you might have to the charges in Counts Two and Three of the indictment?

THE DEFENDANT: Yes.

THE COURT: Do you understand that when you plead guilty, you waive and give up forever the opportunity of raising any defenses whatsoever? Now, that includes entrapment, incompetency, insanity, use of drugs, use of narcotics -- any imaginable defense that you might have when you plead guilty, you waive and give that up forever. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Is that what you want to do?

THE DEFENDANT: Yes, your Honor.

THE COURT: During the course of the pretrial

proceedings here you raised certain issues with reference to the admissibility of evidence and moved to suppress certain matters, and also certain motions to dismiss were filed and then withdrawn, and certain issues were reserved to be resolved at the time of trial. Do you recall those?

THE DEFENDANT: Yes, your Honor.

THE COURT: In some instances rulings were given in your favor; in some instances rulings were given against you, and in some instances the matter was kept in abeyance until trial. Do you understand?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, when you plead guilty, you never again get a chance to raise those issues. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And when you plead guilty you give up your right to appeal any of the rulings that I made adverse to you. Do you understand?

THE DEFENDANT: Yes, your Honor.

THE COURT: Is that what you want to do?

THE DEFENDANT: Yes, your Honor.

THE COURT: Did you discuss with your attorneys any searches that were made of you or of your person or of your property or any searches that resulted in evidence that would be used against you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Did you tell them all the facts and circumstances that you were aware of with reference to those searches?

THE DEFENDANT: Definitely.

THE COURT: Did you discuss with your attorneys any statements that you may have made to any law enforcement officials during their investigation of this case or after your arrest?

THE DEFENDANT: Yes, I did, your Honor.

THE COURT: Did you tell them all the facts and circumstances surrounding those statements?

THE DEFENDANT: Completely.

THE COURT: Have you discussed with your attorneys the effect and consequences of your plea of guilty, in other words, what happens to you when you plead guilty and what you waive and give up when you plead guilty?

THE DEFENDANT: My understanding is that I waive the rights which you have mentioned and that I could face a sentence on each count of five years in prison and a thousand-dollar fine and that you could run those consecutively so I would face ten years in prison and a $2,000 fine.

THE COURT: At this time I am attempting to focus on the rights that you give up. Did you discuss those with your attorneys?

THE DEFENDANT: Yes, I did.

THE COURT: Did they tell you substantially the same as I have, as to what the effect of your plea of guilty is with reference to any rights you might have?

THE DEFENDANT: Precisely the same, your Honor.

THE COURT: Do you know the maximum penalty provided by law to the offense in Count Two?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: It is what?

THE DEFENDANT: Five years in prison and a thousand-dollar fine.

THE COURT: Mrs. Stoltz?

MS. STOLTZ: Yes, your Honor. That is as to each count, and, as the defendant mentioned, it may be run consecutively.

THE COURT: The sentence for Count Three is identical?

THE DEFENDANT: That is correct.

THE COURT: It is your understanding that the maximum penalty is ten years in prison and a $2,000 fine or both?

THE DEFENDANT: That is correct.

THE COURT: How old are you, sir?

THE DEFENDANT: Thirty-three years old.

THE COURT: Do you have any charges pending against you in any other jurisdiction?

THE DEFENDANT: No, I don't.

THE COURT: You have some charge pending against you in this jurisdiction; is that correct?

THE DEFENDANT: I believe that is correct.

THE COURT: In this federal court for the Central District of California?

THE DEFENDANT: I believe that is correct.

THE COURT: That resulted from your arrest in the last two weeks?

THE DEFENDANT: That is correct.

THE COURT: Are there any other charges that you are aware of that are pending against you?

THE DEFENDANT: None at all.

MR. TALCOTT: Your Honor, if the Court is referring to charges, there is an arrest complaint that has not gone any further.

THE COURT: I am using it in the broadest possible sense. Do you understand that of the two five-year sentences available here, those can run consecutive --

THE DEFENDANT: Yes.

THE COURT: -- to make the maximum penalty ten --

THE DEFENDANT: Yes.

THE COURT: -- years.

I don't know what will happen with the other case. The government made some statement about it, but do you understand that any sentence you get here can run consecutive to

and in addition to any sentence that you get in any other case?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, if you are committed to the custody of the Attorney General, there is a Board of Parole or a Parole Commission that will decide if and when you are to be released. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: The Board of Parole operates under certain guidelines and salient factors that they consider when someone should be released. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Have you discussed those with your attorneys?

THE DEFENDANT: Yes.

THE COURT: I want you to understand that the Board of Parole can change those at their will, absolutely any time they want. You have no rights that attach that the guidelines will be the same today as they will be when and if you are in the penitentiary. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: So if you are pleading guilty because you think that the guidelines that are in effect now or the factors that the Parole Commission or Parole Board may consider

now will be the same in the future, don't plead guilty for that reason. Do you understand that?

THE DEFENDANT: Your Honor, the plea of guilty --

THE COURT: Go ahead, Mr. Rifkin. You may say what you want. You are the one who is pleading guilty. If anybody is going to the penitentiary, it will be you and not anybody else.

THE DEFENDANT: Those factors didn't motivate me to plead guilty, your Honor.

THE COURT: All right. You do understand, though, that those factors can change?

THE DEFENDANT: Of course.

THE COURT: Has anyone made any threats against you or any member of your family to get you to plead guilty?

THE DEFENDANT: Not at all.

THE COURT: Has anyone made any promises of leniency or a particular type of sentence or some other concession on the part of the government in order to get you to plead guilty?

THE DEFENDANT: No, your Honor, not at all.

THE COURT: What is the arrangement between the government and the defense?

MS. STOLTZ: Your Honor, it is that the government will move to dismiss the remaining counts in this indictment and also the underlying indictment, since this was a superseding indictment, and that the government will not proceed against

Mr. Rifkin in the new case for which he was arrested approximately a week ago, but that we will ask the Court to consider that evidence at the time of sentencing, but he will not be prosecuted on that case, and there are no other agreements or promises in connection with his plea of guilty.

THE COURT: Mr. Talcott?

MR. TALCOTT: That is my understanding, your Honor. Nothing further. No further promises or agreements were entered into between the government and the defense counsel.

THE COURT: Is there anything else that the defendant has to do?

MS. STOLTZ: No, your Honor.

MR. TALCOTT: No, your Honor.

THE COURT: All right.

Mr. Rifkin, you have heard what Miss Stoltz said as far as agreements between your attorney and the government.

THE DEFENDANT: Yes, I have.

THE COURT: Do you think there is any other agreement whatsoever?

THE DEFENDANT: No.

THE COURT: Has anyone told you there is some private agreement that you are not going to tell me about?

THE DEFENDANT: No.

THE COURT: Do you have any idea that there is some agreement other than or different in any way from that which

Mr. Talcott and Miss Stoltz just set forth?

THE DEFENDANT: Not at all.

THE COURT: Do you understand that I am not a party to any agreement whatsoever?

THE DEFENDANT: I understand that.

THE COURT: If the government wants to dismiss some of the counts that they brought, they can dismiss it. If they don't want to indict you, they can do that. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: The mere fact that you are pleading guilty to two counts rather than all the counts isn't in any way going to affect -- Well, I guess it would affect it by not having the maximum number of years available, but it doesn't in my mind mean that you were or were not involved in the other counts. Do you understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: Incidentally, do you understand that if you are confined and when the Parole Board goes to consider whether you will be released, that they may consider counts which were dropped by the government? Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: In other words, there are counts in the indictment charging different offenses that the government will dismiss, but the Board of Parole may consider those to determine

whether you should be released or not. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: They also may consider charges that were not formalized against you; in other words, you have a complaint against you now. If the government doesn't indict, the Board of Parole can consider that as a fact as to when you should be released. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Has anyone told you what actual sentence you would get, in other words, what sentence I am going to give you?

THE DEFENDANT: Not at all. I understood that was entirely in your discretion, your decision, your Honor.

THE COURT: Is your plea of guilty freely and voluntarily being entered?

THE DEFENDANT: Yes, it is.

THE COURT: Do you have the indictment in front of you?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: Let's turn to Count Two. It reads:

"Beginning on or about the month of June, 1978, and continuing to on or about October 28, 1978, within the Central District of California and elsewhere, defendant Stanley

Mark Rifkin devised and intended to devise a scheme and artifice to defraud Security Pacific National Bank and to obtain money and property by means of false and fraudulent pretenses and representations knowing at the time that such pretenses and representations were made that they were false and fraudulent.

"It was part of said scheme and artifice to defraud that defendant Rifkin would and did contact a diamond broker in Los Angeles, California, to negotiate a large purchase of diamonds for the defendant in Geneva, Switzerland.

"It was a further part of said scheme and artifice to defraud that you would and did make various false and fraudulent representations to the diamond broker to induce him to act on your behalf, knowing that said representations were false and fraudulent when made, including, but not limited to, the representation that you were acting on behalf of a major American corporation who wanted to purchase a large quantity of diamonds.

"Fourth, it was a further part of said

scheme and artifice to defraud that you would and did gain access to the wire transfer room of the Security Pacific National Bank at 333 South Hope Street, Los Angeles, California, by false pretenses. Once in the wire transfer room, you obtained secret codes used to authorize the wire transfer of funds from the bank.

"Fifth, it was a further part of said scheme and artifice to defraud that you would and did make various false representations in telephone calls to employees of Security Pacific National Bank knowing said representations to be false and fraudulent when made, including, but not limited to, the following:

"that you were Mike Hanson from the International Department of Security Pacific National Bank;

"that you were authorized to request a wire transfer of 10.2 million dollars from Security Pacific National Bank to an account in Zurich, Switzerland, via a bank in New York, the Irving Trust Company."

The sixth paragraph charges:

"It was a further part of said scheme and artifice to defraud that you would and

did cause Security Pacific National Bank to wire transfer 10.2 million dollars in interstate and foreign commerce from Los Angeles, California, to the Irving Trust Company in New York for credit to an account in Zurich, Switzerland.

"It was a further part of said scheme and artifice to defraud that you would and did cause the diamond broker to travel to Geneva, Switzerland, and to purchase approximately 8,639.84 carats of polished diamonds from Russalmaz, an entity which handles the export of diamonds from the Soviet Union.

"Eight, it was a further part of said scheme and artifice to defraud that you would and did cause $8,145,000 of the money which had been wire transferred from the Security Pacific National Bank to be used to pay Russalmaz for the approximately 8,639.84 carats of diamonds."

The last charge reads:

"On or about October 14, 1978, within the Central District of California, for the purpose of executing the above scheme and artifice to defraud and to obtain money by

false and fraudulent pretenses, you did knowingly and willfully cause to be transmitted in interstate and foreign commerce by means of wire and radio communication certain signs, signals, pictures, and sounds, that is, that you caused Western Union to send a cablegram from Van Nuys, California, to Ruzzalmaz in Geneva, Switzerland, purportedly from Security Pacific Bank indicating that their representative had access to 10 million dollars to purchase diamonds of a specified size and quality."

Are you guilty of that offense?

THE DEFENDANT: Yes.

THE COURT: Did you commit those acts?

THE DEFENDANT: Yes.

THE COURT: Tell me what you did and start back when you put the scheme together.

THE DEFENDANT: Well, I developed a plan to have money transferred from a bank in Los Angeles to a bank in New York to purchase precious stones.

THE COURT: This indictment charges that the scheme was devised between June and October of 1978. When did you first put the scheme together in your mind?

THE DEFENDANT: In all truth, I don't think I could

say.

THE COURT: Was it during that period?

THE DEFENDANT: I would say that, yes.

THE COURT: How did it come about?

THE DEFENDANT: I'm sorry; I don't understand the question.

THE COURT: How did the scheme come about? How did you devise the scheme?

THE DEFENDANT: The firm with whom I was employed put into -- implemented a system for Security National Bank which -- Security Pacific National Bank which would automate their wire room in the event there was a failure in the primary system. My -- there was no specification of that system, and in the course of my work I interviewed a number of individuals in the room to find out how the system worked so we could supply a system in case the primary system didn't work.

THE COURT: All right. What did you do after you did that work? Was it then that you devised this scheme?

THE DEFENDANT: Yes.

THE COURT: What was the scheme that you devised?

THE DEFENDANT: It was to have money transferred from a Los Angeles bank to the New York bank to buy precious stones, and I contacted the diamond broker -- well, a gem broker to arrange the purchase, and then I called the bank and

led them to believe I had the authority to make such a transfer.

THE COURT: Before we get to what you did, what exactly was the scheme, though, from beginning to end? How did you intend to profit in the end from the scheme?

THE DEFENDANT: I could describe the scheme, but I'm not sure I knew how I was going to profit.

THE COURT: Let's describe the scheme and then we will see where --

THE DEFENDANT: The idea was to transfer the money from one bank to another for the credit of a seller of diamonds and then simply to collect the diamonds so that one would have, in principal, the asset in the form of diamonds.

THE COURT: At the conclusion of the scheme you would have the diamonds; is that correct?

THE DEFENDANT: Yes.

THE COURT: To do what you wanted with them?

THE DEFENDANT: That is correct.

THE COURT: After you devised this scheme, what steps did you take to carry it out?

THE DEFENDANT: Well, I did approximately three things. First, I contacted the diamond broker --

THE COURT: Who was the diamond broker?

THE DEFENDANT: His name? Lon Stein.

THE COURT: Where was he?

THE DEFENDANT: In Los Angeles.

THE COURT: Was your contact in person or by phone?

THE DEFENDANT: Both.

THE COURT: What was said in the first conversation? Let me ask you this. Was the first conversation by phone or in person?

THE DEFENDANT: In person.

THE COURT: Where did you meet with him?

THE DEFENDANT: We had lunch at a restaurant.

THE COURT: Where was that?

THE DEFENDANT: In Encino -- Sherman Oaks.

THE COURT: Do you recall the name?

THE DEFENDANT: Yes, Laserre, L-a-s-e-r-r-e.

THE COURT: All right.

THE DEFENDANT: We discussed purchase in the amount of ten million dollars, and he said it was impossible.

THE COURT: Purchasing ten million dollars of diamonds?

THE DEFENDANT: Yes.

THE COURT: Did you tell him what you wanted the diamonds for?

THE DEFENDANT: No.

THE COURT: Did you tell him who you were representing?

THE DEFENDANT: No. I don't think -- I believe -- I may have said I was representing a large American corporation.

THE COURT: You sat down with this fellow you had never met before and said you wanted ten million dollars' worth of diamonds?

THE DEFENDANT: Yes.

THE COURT: What did you tell him your name was?

THE DEFENDANT: Stan Rifkin.

THE COURT: Did he inquire of you at all as to where you were going to get the money to buy these diamonds?

THE DEFENDANT: I would say not very much.

THE COURT: What did he say?

THE DEFENDANT: How would you -- were he to arrange such a purchase, he didn't want his credibility damaged. He would have to know the money existed.

THE COURT: Did you tell him where you wanted to make the purchase?

THE DEFENDANT: Oh, no, absolutely not.

THE COURT: Just that you wanted to buy ten million dollars worth of diamonds?

THE DEFENDANT: Yes.

THE COURT: You wanted him to get the diamonds for you?

THE DEFENDANT: I wanted him -- he is a broker. I wanted him to negotiate the deal.

THE COURT: How did the conversation conclude?

THE DEFENDANT: It was impossible.

THE COURT: Was that the end of the conversation that first time?

THE DEFENDANT: Yes.

THE COURT: When did you next talk to him?

THE DEFENDANT: I would say perhaps a week later. I tried to find out the facts of why it was impossible, and it seemed that our conversations were basically my trying to find out why it was impossible and his not being able to find out why it was impossible, and it seemed that as he tried to explain he opened up new avenues, additional avenues he had not hitherto considered.

THE COURT: Between the time that you talked to him in the first conversation and the second conversation, did you do anything else in furtherance of your scheme?

THE DEFENDANT: Oh, no.

THE COURT: In your second conversation with him did he tell you why he thought it was impossible?

THE DEFENDANT: Yes.

THE COURT: What did he tell you?

THE DEFENDANT: Just the quantity was too large; it couldn't be done in either a single transaction or even a small number of large transactions.

THE COURT: Did you suggest to him possible ways of doing it?

THE DEFENDANT: No, not at all.

THE COURT: At the conclusion of your second conversation, what was the status of your negotiation?

THE DEFENDANT: Couldn't be done.

THE COURT: When did you next talk to him?

THE DEFENDANT: I would say that I -- in the period in the indictment. I probably spoke with him every week or two from June to October.

THE COURT: How did the discussions progress?

THE DEFENDANT: They were nearly always the same. I would ask detailed questions about why it was impossible; that would generate new prospects; he would run down those prospects and talk again. Nearly always those prospects led to not being possible.

THE COURT: What type of suggestions were you making?

THE DEFENDANT: I'm sorry; was I making suggestions?

THE COURT: Were you making suggestions?

THE DEFENDANT: No.

THE COURT: He was making --

THE DEFENDANT: Yes. I was asking questions about how he thought it was impossible, and he would make -- my questions about why it wasn't possible would stimulate him to think of new possibilities.

THE COURT: Then he would run those down?

THE DEFENDANT: Yes.

THE COURT: What were some of the possibilities?

THE DEFENDANT: One was to buy uncut diamonds, not polished; one was to go directly to a -- I guess the world source or one of the primary sources for cut and uncut diamonds; another one was to try to arrange this at the New York Diamond Club, I think it is called, where large transactions -- although not this large -- are done on the floor in an open market.

THE COURT: Up to this point had he talked to you at all about the source of funds?

THE DEFENDANT: Not very much. No. No.

THE COURT: Or who you represented?

THE DEFENDANT: No, not after the first conversation.

THE COURT: Did he discuss with you any way the style of payment would be made?

THE DEFENDANT: Each time he had a suggestion. He suggested a style.

THE COURT: How would it be made?

THE DEFENDANT: It depended on the -- since he was not familiar with transactions of this size, he was, more or less, asking questions about it. He would suggest, for example, that just putting -- Well, let me back up.

The biggest problem was what I stated before. It was how would he not -- be sure to not damage his own credibility. So he needed to know the money existed. That was about which there was a great deal of discussion, such as putting funds in

an escrow, putting money up front, schemes like that.

THE COURT: Do you recall all this?

THE DEFENDANT: I would say I don't recall every detail.

THE COURT: Do you recall what you did?

THE DEFENDANT: Oh, yes.

THE COURT: Vividly?

THE DEFENDANT: Vividly?

THE COURT: Your attorney the other day made some mention about a mental condition, and that's why I am going through some of this in detail with you. You recall it all, right?

THE DEFENDANT: No. I don't recall it all.

THE COURT: You said you recalled it vividly.

THE DEFENDANT: I believe you asked me if I recalled it vividly, and I said, querulously, "Vividly?"

THE COURT: Yes.

THE DEFENDANT: I would say that I don't remember vividly.

THE COURT: You know what you did.

THE DEFENDANT: Yes.

THE COURT: You recall what you did.

THE DEFENDANT: Yes.

THE COURT: You recall the scheme.

THE DEFENDANT: Yes.

THE COURT: You recall what you were attempting to do.

THE DEFENDANT: Yes.

THE COURT: Were you attempting to defraud the bank?

THE DEFENDANT: Yes.

THE COURT: You were attempting to get some diamonds in return from the bank?

THE DEFENDANT: No.

THE COURT: Is there any question that you recall exactly what you did? I don't mean word-for-word conversation.

THE DEFENDANT: There is no question that in the broad terms presented in the indictment, I remember that.

THE COURT: All right. Let's go ahead with your conversations, then, with the diamond broker.

THE DEFENDANT: I'm not sure where we left.

THE COURT: You left where he was trying various methods. None of them worked out. You talked about different methods of payments and you talked to him about once a week from June until October of 1978. Did you finally formalize an arrangement?

THE DEFENDANT: No.

THE COURT: Did you finally work out some agreement with him?

THE DEFENDANT: No.

THE COURT: When did you terminate your conversations

with him?

THE DEFENDANT: My understanding was that he was to travel to Geneva to see if an arrangement could be made with the prospective seller there.

THE COURT: Who would that be?

THE DEFENDANT: Russalmaz.

THE COURT: When was that discussion?

THE DEFENDANT: I would guess the beginning of October.

THE COURT: Was that by phone or in person?

THE DEFENDANT: Telephone.

THE COURT: Were you advancing costs to him?

THE DEFENDANT: Only on one -- only once.

THE COURT: How much did you advance him?

THE DEFENDANT: The price of a one-way ticket from Los Angeles to Geneva.

THE COURT: How much was that?

THE DEFENDANT: I don't know. I think it is about $700.

THE COURT: Had you done any research yourself or reading yourself on the diamond market or anything?

THE DEFENDANT: Not at all.

THE COURT: Nothing at all?

THE DEFENDANT: Nothing at all.

THE COURT: What happened after he went to Switzerland?

THE DEFENDANT: He phoned and said it couldn't be done.

THE COURT: Did he say why?

THE DEFENDANT: Yes, that apparently Russalmaz had an inventory in the amount required but it would take too long to sift through all of the -- he couldn't select -- he couldn't -- he couldn't do his clients service in the time required to select an inventory he felt was worth the amount.

THE COURT: Let me ask you this, Mr. Rifkin. From June until October you massaged this scheme in your -- bad word -- you contemplated this scheme in your mind; is that correct?

THE DEFENDANT: Yes.

THE COURT: During that time did you ever think, "Maybe I won't go through with the scheme"?

THE DEFENDANT: I would say that I felt that a preponderance of the time.

THE COURT: Each time you thought it, you put it aside and continued forward with the scheme; is that right?

THE DEFENDANT: No; just the other way around. I would put the scheme aside and continue with daily life, and I probably spent five minutes a week thinking about the scheme.

THE COURT: And every time you thought about it, you went further with it?

THE DEFENDANT: That is correct.

THE COURT: And you continued to think about it from June until it finally was put into existence?

THE DEFENDANT: Yes.

THE COURT: You had ample time to withdraw it?

THE DEFENDANT: I would say that.

THE COURT: But you didn't take that opportunity?

THE DEFENDANT: I would say I withdrew it many times.

THE COURT: Came right back to it?

THE DEFENDANT: Came back.

THE COURT: All right. After he called you from Switzerland, what happened then?

THE DEFENDANT: I worked a counterproposal where he didn't have to worry about assessing the exact value, but he could make an approximate evaluation; that would be enough; he was satisfied with that, and he said he would go to work on it.

THE COURT: What happened then?

THE DEFENDANT: Then I went to Switzerland, and we conversed a number of times over the telephone.

THE COURT: In Switzerland?

THE DEFENDANT: In Switzerland.

THE COURT: When did you go to Switzerland?

THE DEFENDANT: If I could stay away from dates for the moment, as I don't remember the dates.

THE COURT: Just your best estimate.

THE DEFENDANT: I could name the day in the sense that he called me on a Thursday and I must have left Thursday morning and we talked all day Friday.

THE COURT: This was before any transactions at the bank?

THE DEFENDANT: The transaction at the bank was Wednesday afternoon.

THE COURT: Before you left for Switzerland?

THE DEFENDANT: That is correct.

THE COURT: What prompted you to undertake the transaction at the bank at that particular time on Wednesday afternoon?

What is the government's proof on the date?

MR. TALCOTT: October 25, your Honor.

THE COURT: October 25?

MS. STOLTZ: Your Honor, that is correct. Yes.

THE COURT: All right.

THE DEFENDANT: My conviction that he would succeed.

THE COURT: Your conversations with him led you to believe that the diamonds would be available if the money was there, right?

THE DEFENDANT: That is correct.

THE COURT: What had you done in preparation for your transaction at the bank? You have told us now what you had

done in preparation for getting the diamonds. What had you done in preparation for your transaction at the bank?

THE DEFENDANT: Well, I hadn't done very much specifically, your Honor. In the study that I had made in the spring of that year, I felt that I knew the wire room operation, and so I knew that it was basically a matter of making a telephone call.

THE COURT: The indictment charges that by false pretenses you gained access to the wire room. When was that?

THE DEFENDANT: Wednesday -- the Wednesday.

THE COURT: How did you gain access to the wire room?

THE DEFENDANT: I walked in.

THE COURT: What were the false pretenses that you used?

THE DEFENDANT: That I was doing a study.

THE COURT: What name did you use?

THE DEFENDANT: "Stan Rifkin."

THE COURT: How did you get into the room?

THE DEFENDANT: I opened the door, walked in.

THE COURT: Who did you tell you were doing a study to?

THE DEFENDANT: Her name is Rosemary Hanses, H-a-n-s-e-s.

THE COURT: What was her position?

THE DEFENDANT: I don't know her official position.

She was the head of a project to automate the wire room. She was a client contact in the -- the first job.

THE COURT: When you went into the wire room, what did you do that day?

THE DEFENDANT: I observed -- I timed the operators and took counts of transactions to see if the primary system had a better behavior, was behaving better than it had before. One of the reasons for going at all ever to the wire room before was to give an unsolicited proposal to the vendor there where we could go in and improve the system substantially.

THE COURT: When you went on the 25th, you went to get the code, right?

THE DEFENDANT: Well, since I hadn't made the decision to do it, I had not -- I had not made a decision to go ahead with the plan.

THE COURT: What do you mean when you say you hadn't made a decision?

THE DEFENDANT: I was still very much rolling it around in my mind.

THE COURT: Your purpose for going to the bank on the 25th was to get data that would make the plan operational; is that correct, whether you used it or not?

THE DEFENDANT: Yes.

THE COURT: So that's why you went to the wire room?

THE DEFENDANT: Yes.

THE COURT: And the false pretenses that you told them, that you were doing a study, wasn't correct?

THE DEFENDANT: I was doing a study. That was correct. That was the reason I was there that day.

THE COURT: But you were studying it from a little different viewpoint than you led them to believe.

THE DEFENDANT: I was also studying it from a different point.

THE COURT: Namely, you were going to attempt to take the money from them.

THE DEFENDANT: Yes.

THE COURT: Now, after you got into the wire room, what did you do about obtaining what the indictment calls secret codes?

THE DEFENDANT: I assume that the code to which they are referring is a means of identification used by bank employees, authorized bank employees, to effect transfers, and the code is in plain view in the wire room.

THE COURT: And you obtained that code that day?

THE DEFENDANT: Yes.

THE COURT: Did you write it down?

THE DEFENDANT: Yes.

THE COURT: Does the government have that piece of paper?

MS. STOLTZ: No, your Honor.

THE COURT: All right. What did you do with that piece of paper then?

THE DEFENDANT: I carried it.

THE COURT: You took it out with you?

THE DEFENDANT: Yes.

THE COURT: If I could go back one second, looking at the indictment, did you ever at any time tell this diamond broker you were acting on behalf of an American corporation who wanted to purchase large quantities of diamonds?

THE DEFENDANT: Yes. I believe I did. That was at the first meeting.

THE COURT: I'm sorry?

THE DEFENDANT: That was at the first meeting.

THE COURT: After you left the wire room that day, what did you then do?

THE DEFENDANT: I went to a telephone and phoned the wire room, said I wanted to make a transfer.

THE COURT: Who did you tell them you were?

THE DEFENDANT: Mike Hanson.

THE COURT: Where was the telephone?

THE DEFENDANT: It is a pay station located near the headquarters building.

THE COURT: At this time you decided you were going to put the scheme into operation, correct?

THE DEFENDANT: I was going to take the next step.

THE COURT: The next step of getting the money sent?

THE DEFENDANT: Yes.

THE COURT: Who did you talk to?

THE DEFENDANT: I don't know.

THE COURT: What did you tell them?

THE DEFENDANT: I told them details of the transaction I wanted them to effect.

THE COURT: Did you tell them what your position was, what Mike Hanson's position was?

THE DEFENDANT: No.

THE COURT: Pardon me?

THE DEFENDANT: No.

THE COURT: Do you know a Mike Hanson?

THE DEFENDANT: No.

THE COURT: Did you tell them you were from the International Department of Security Pacific National Bank?

THE DEFENDANT: Yes.

THE COURT: Did you authorize them to request a wire transfer?

THE DEFENDANT: Yes.

THE COURT: And of how much money?

THE DEFENDANT: $10,200,000.

THE COURT: How did you happen to pick that amount?

THE DEFENDANT: Ten million was in principal, the amount of the indictment, and the two hundred was the broker's

commission.

THE COURT: What instructions did you give them as far as the transfer?

THE DEFENDANT: Well, I gave them information which they convert to instructions. I gave them the name of the payee, the payor, to whose account to credit.

THE COURT: Did you mention the Irving Trust Company?

THE DEFENDANT: Yes.

THE COURT: Then you gave them some code; is that correct?

THE DEFENDANT: Your Honor, when the conversation commences and the operator on the other end asks who you are in order to assure that you are authorized, you are asked to give this code of the day.

THE COURT: That is what you did?

THE DEFENDANT: Yes.

THE COURT: The code changes every day?

THE DEFENDANT: That is my understanding, although I have no personal knowledge.

THE COURT: Anything else in that phone conversation?

THE DEFENDANT: No.

THE COURT: Then what did you do?

THE DEFENDANT: Went home.

THE COURT: What did you do after you got home?

THE DEFENDANT: Thought a lot about taking the next

step.

THE COURT: The next step in your scheme was what?

THE DEFENDANT: Go to Geneva.

THE COURT: When did you go?

THE DEFENDANT: The following morning.

THE COURT: Had you obtained a passport?

THE DEFENDANT: I had a passport.

THE COURT: Before this time?

THE DEFENDANT: Yes.

THE COURT: When did you purchase an airline ticket?

THE DEFENDANT: At the airport.

THE COURT: Had you made a reservation?

THE DEFENDANT: I don't recall.

THE COURT: Does the government have proof on reservations?

MS. STOLTZ: Not for Mr. Rifkin, your Honor. He purchased the ticket for Mr. Stein. We have those reservations and that payment, but not for himself.

THE COURT: All right. What name did you use when you flew to Switzerland?

THE DEFENDANT: Stan Rifkin, I believe.

THE COURT: That is the name your passport was in?

THE DEFENDANT: Yes.

THE COURT: What did you do when you got to Switzerland?

THE DEFENDANT: I contacted Russalmaz and asked how things were going.

THE COURT: Up to this point had you ever checked to see if the money was credited to you in the Zurich bank?

THE DEFENDANT: Oh, I tried -- In the Zurich bank? No.

THE COURT: Yes.

THE DEFENDANT: No. No.

THE COURT: Irving Trust?

THE DEFENDANT: Yes. I tried but couldn't find the information.

THE COURT: Had you tried that before you went to Switzerland?

THE DEFENDANT: Yes.

THE COURT: Go ahead, if you will. Continue what you did in Switzerland.

THE DEFENDANT: The contact with Russalmaz was basically that the money had not been credited to their account. They were unaware of the money being credited, so I contacted their bank and alerted them the money should be coming, and some hours later it arrived -- it didn't arrive; a telegraphic confirmation that the money was in the account of the New York bank of the Zurich bank, and the Zurich bank called its clients in Geneva and informed them it was there.

THE COURT: When you gave the bank authority to

transfer, was it to transfer to Russalmaz?

THE DEFENDANT: Yes.

THE COURT: Then what happened?

THE DEFENDANT: I went to Russalmaz to pick up the baggage ticket for a piece of luggage in which was supposed to be the diamonds.

THE COURT: Who gave you those instructions?

THE DEFENDANT: Either Mr. Stein or the managing director of Russalmaz.

THE COURT: Would that be by phone or in person?

THE DEFENDANT: By phone.

THE COURT: Did you ever have any discussion as to why you would go pick up the luggage rather than just getting the diamonds?

THE DEFENDANT: Yes.

THE COURT: What was that discussion, and who was it with?

THE DEFENDANT: If I could say that is a very long story, basically.

THE COURT: Do you recall it?

THE DEFENDANT: Yes.

THE COURT: You have all these thoughts in mind now?

THE DEFENDANT: I think so.

THE COURT: All right. Go ahead.

THE DEFENDANT: The diamonds had to be exported. I

don't know why. Therefore, they could not be picked up at the office; they had to be picked up in the duty-free port of Geneva, which is at the airport. That's the reason it couldn't be done.

So someone had to pick up a baggage ticket, the baggage claim ticket for a piece of luggage in the duty-free port.

THE COURT: Did you intend to bring these diamonds as part of your scheme back to the United States undeclared?

THE DEFENDANT: No.

THE COURT: Did you intend to declare them?

THE DEFENDANT: No. I didn't --

THE COURT: My question might have been unclear. As part of your scheme, did you intend to declare these diamonds with Customs?

THE DEFENDANT: No.

THE COURT: You intended to bring them illegally into the United States?

THE DEFENDANT: No. I didn't intend -- This is a difficult point. I never thought I would get them, so I didn't -- there was no plan or scheme.

THE COURT: Well, if you didn't think you would get them, and you now had ten million dollars over in the bank in Zurich -- Is that right?

THE DEFENDANT: I just never thought it could go all

the way through.

THE COURT: If it went all the way through, your intention was to get the diamonds back into the United States; correct?

THE DEFENDANT: No.

THE COURT: What were you going to do with them?

THE DEFENDANT: I didn't know.

THE COURT: At some point did you decide what you were going to do with them?

THE DEFENDANT: I would say at some point I thought I should go back to the United States.

THE COURT: Without the diamonds?

THE DEFENDANT: I didn't know what to do with the diamonds.

THE COURT: Let's go ahead with what happened. I guess you haven't got the diamonds yet. You got the baggage ticket.

THE DEFENDANT: Yes. The next morning --

THE COURT: Who did you get that from?

THE DEFENDANT: The managing director of Russalmaz.

THE COURT: Where did you meet him?

THE DEFENDANT: In his office.

THE COURT: What did he tell you?

THE DEFENDANT: Nothing.

THE COURT: Just gave you the ticket?

THE DEFENDANT: Yes. He wanted to check my passport. Then there was a number we had used to identify the individual coming to pick up the baggage claim ticket.

THE COURT: You say "we used." Who would use it?

THE DEFENDANT: He and I agreed that the individual coming to pick up the baggage claim ticket would have a passport in my name with my passport number and would give him a number in addition to that.

THE COURT: Then what happened?

THE DEFENDANT: The next morning I presented the baggage claim ticket to Swissair, who assured me it would be on a flight, and I flew to Luxembourg.

THE COURT: Why did you fly to Luxembourg?

THE DEFENDANT: I believe a colleague of Mr. Stein's told me that the diamonds -- precious gems could be imported duty free there.

THE COURT: What flight did Swissair assure you they would be on?

THE DEFENDANT: I don't know the number.

THE COURT: A flight to where?

THE DEFENDANT: To Luxembourg, via Frankfurt.

THE COURT: The same flight you would be taking?

THE DEFENDANT: Yes.

THE COURT: So you flew to Luxembourg. Did the diamonds go with you?

THE DEFENDANT: Apparently.

THE COURT: When you got to Luxembourg, did you get some luggage?

THE DEFENDANT: Yes.

THE COURT: Did you get that luggage with the diamonds?

THE DEFENDANT: Yes.

THE COURT: Up to this point had you seen the diamonds?

THE DEFENDANT: Not at all.

THE COURT: What happened when you got to Luxembourg?

THE DEFENDANT: I retrieved the bag with the baggage claim ticket, went to a hotel and discovered that the diamonds were in the bag.

THE COURT: How did you make that discovery?

THE DEFENDANT: Opened the bag, looked in.

THE COURT: Then what did you do?

Was Stein with you at that time?

THE DEFENDANT: Not at all. I think it is important to say that what you have observed -- that is the first time I saw the diamonds, and it was the first indication I had really that this scheme worked. I was aghast. I didn't have the slightest idea what to do. I thought for a long time. It just seemed to me that the only logical thing for me to do was to go back to the United States, but I had

this cargo.

THE COURT: Could I interrupt one moment?

On the Pago Pago case, it will be about fifteen more minutes.

So you made arrangements to return to the United States?

THE DEFENDANT: So I made arrangements to return to the United States, which I did.

THE COURT: Did you do anything in Luxembourg with the diamonds?

THE DEFENDANT: I reduced their bulk -- not the bulk of the diamonds. The diamonds are packed in very, very small packages, and it was very bulky. I just reduced it.

THE COURT: You repacked it?

THE DEFENDANT: Yes.

THE COURT: Did you talk to anybody about the diamonds there?

THE DEFENDANT: Not at all.

THE COURT: Did you attempt to do anything as far as getting rid of them?

THE DEFENDANT: No.

THE COURT: How long did you stay in Luxembourg?

THE DEFENDANT: Overnight.

THE COURT: Then came to the United States?

THE DEFENDANT: Yes.

THE COURT: What did you do with the diamonds?

THE DEFENDANT: Put them in my luggage.

THE COURT: Where in your luggage?

THE DEFENDANT: I don't know how to answer; just in the bag.

THE COURT: Did you conceal them in the bag?

THE DEFENDANT: Not really.

THE COURT: Did you take the lining out of the bag?

THE DEFENDANT: No. No.

THE COURT: You just stuck them in there?

THE DEFENDANT: I put them in a container that was made to contain folded dress shirts, but it is transparent.

THE COURT: All right. Then what happened?

THE DEFENDANT: I arrived back in the United States.

THE COURT: Did you declare them?

THE DEFENDANT: No, I didn't.

MR. TALCOTT: Your Honor, I will interrupt at this time and indicate to the Court that that completes the allegations of Counts Two and Three with respect to the wire fraud.

THE COURT: It might complete the allegations, but I am going to make sure there is a basis in fact and he was totally competent and, based upon the statements that you made the other day, I am going to go through the entire scheme of it.

MR. TALCOTT: We would object to that, your Honor, beyond the --

THE COURT: You may do so. As a matter of fact, you may withdraw the plea if you desire.

MR. TALCOTT: I am just indicating to the Court that there has been a factual basis indicated to the Court on Counts Two and Three.

THE COURT: Do you have any desire to withdraw the plea?

MR. TALCOTT: No.

THE COURT: All right. When you got back to the United States, what did you do?

THE DEFENDANT: Do you want to concentrate on the Customs episode?

THE COURT: You went through Customs and didn't declare them?

THE DEFENDANT: Right. The bags were searched. For some reason the agent didn't find them.

THE COURT: Then what did you do?

THE DEFENDANT: I went to a hotel, contacted an attorney friend of mine.

THE COURT: What did you subsequently do with the diamonds?

THE DEFENDANT: Nothing.

THE COURT: Kept the diamonds with you?

THE DEFENDANT: Yes.

THE COURT: The diamonds were with you when you were arrested in California?

THE DEFENDANT: Yes -- I'm sorry; in the interim, well -- well, there is a few days in the interim that I tried to sell some. I had also given some to my attorney friend.

THE COURT: Given some of the diamonds to him?

THE DEFENDANT: Yes.

THE COURT: Where did you attempt to sell them?

THE DEFENDANT: Excuse me?

THE COURT: Where did you attempt to sell some?

THE DEFENDANT: Beverly Hills.

THE COURT: On October 14, 1978, do you remember what day that was?

THE DEFENDANT: October 14?

THE COURT: That is what the indictment charges. Is that date right?

MS. STOLTZ: Is this the Western Union telegram?

THE COURT: Yes.

MS. STOLTZ: That is correct.

THE COURT: October 14, 1978. Do you have that date in mind?

THE DEFENDANT: Yes.

THE COURT: Did you transmit in interstate and foreign commerce a Western Union telegram?

THE DEFENDANT: Yes.

THE COURT: What did that telegram say?

THE DEFENDANT: Did you ask me if I transmitted it?

THE COURT: Yes.

THE DEFENDANT: No.

THE COURT: Did you have it transmitted?

THE DEFENDANT: Yes.

THE COURT: What did you do with reference to that telegram?

THE DEFENDANT: I typed it and handed it to the clerk in a Western Union office and asked to have it sent.

THE COURT: And the telegram was addressed to whom?

THE DEFENDANT: To Russalmaz.

THE COURT: And it was sent by whom?

THE DEFENDANT: Western Union.

THE COURT: Who was the named --

THE DEFENDANT: Nelson.

THE COURT: The name that you were using?

THE DEFENDANT: Yes. It wasn't my name.

THE COURT: So when you went to the bank on Wednesday, October 25 -- I might have the dates wrong. What date did you go to the bank?

MR. TALCOTT: That is correct, your Honor.

THE DEFENDANT: Yes.

MS. STOLTZ: This was two weeks -- a week before he

wire transferred the funds.

THE COURT: All right. Did the telegram go under the name of Nelson?

THE DEFENDANT: Yes.

THE COURT: How did you come upon the name "Nelson"

THE DEFENDANT: Mr. Nelson works for Security Pacific National Bank.

THE COURT: How did you know that?

THE DEFENDANT: I had some contact with him.

THE COURT: What was his position?

THE DEFENDANT: He is, I believe, the head of the wire room.

THE COURT: So ten days before you went to the wire room you were using Nelson's name; is that correct?

THE DEFENDANT: Yes.

THE COURT: Is that the first time you used his name?

THE DEFENDANT: Yes.

THE COURT: What did the telegram say?

THE DEFENDANT: I don't remember the exact words. It was to the effect that Stein was a representative of the bank and had the funds for the purchase of diamonds.

THE COURT: When you sent that telegram, did you know it was false?

THE DEFENDANT: Yes.

THE COURT: What was the purpose of sending the telegram?

THE DEFENDANT: In order to induce Russalmaz to complete the sale.

THE COURT: Was one of the purposes also putting into execution the scheme to defraud?

THE DEFENDANT: Oh, yes.

THE COURT: All part of that same scheme?

THE DEFENDANT: Yes.

THE COURT: When you sent the telegram, did you know it was false?

THE DEFENDANT: Yes.

THE COURT: Did you willfully send it?

THE DEFENDANT: Yes.

THE COURT: When you sent it, did you know it would be transmitted in interstate or foreign commerce?

THE DEFENDANT: I assumed so.

THE COURT: That was the purpose of it; is that correct?

THE DEFENDANT: Yes.

THE COURT: Is there any other information with reference to Count Two that has not been covered?

MS. STOLTZ: No, your Honor.

THE COURT: All right. As to Count Three, do you have that in front of you?

THE DEFENDANT: Yes, I do.

THE COURT: Count Three realleges paragraphs 1 through 8, which I will not reread to you. Do you have those in mind?

THE DEFENDANT: Yes, I do.

THE COURT: It then states -- I am talking about paragraphs 1 through 8 of Count Two.

It then states:

"On or about October 25, 1978, within the Central District of California, for the purpose of executing the above scheme and artifice to defraud and to obtain money by false and fraudulent pretenses, you did knowingly and willfully cause to be transmitted in interstate commerce by means of wire communications certain signs and signals, that is, defendant Rifkin, yourself, caused the Security Pacific Bank to wire transfer 10.2 million dollars from Los Angeles, California, to the Irving Trust Company in New York, New York, for credit to the account of Russalmaz at Wozchod Handelsbank in Zurich, Switzerland."

Did you commit those acts?

THE DEFENDANT: Yes.

THE COURT: Are you guilty of that offense?

THE DEFENDANT: Yes.

THE COURT: Tell me what you did with reference to that particular transaction.

THE DEFENDANT: If you will excuse me, your Honor, I believe we have explained that.

THE COURT: Let's do it again for this count.

THE DEFENDANT: Do it again for this count?

THE COURT: We didn't explain what you requested be done by the bank.

THE DEFENDANT: I requested the bank to make a wire transfer of 10.2 million dollars from Los Angeles to the Irving Trust Company in New York.

THE COURT: That was the telephone call from the pay phone?

THE DEFENDANT: That is correct.

THE COURT: All right. When you did that, did you know how the transfer would be done?

THE DEFENDANT: I had an idea.

THE COURT: What was your idea?

THE DEFENDANT: Do you mean that it was done by wire?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: You are not being charged here with a

telephone call.

THE DEFENDANT: No. Oh, no.

THE COURT: You are being charged here with causing them to send a cable.

THE DEFENDANT: Yes. I knew it would be done by cable.

THE COURT: How did you know that?

THE DEFENDANT: I had done the system which enabled them to do that.

THE COURT: All right. What was the purpose of your requesting them and causing them to send that cable?

THE DEFENDANT: For furtherance of the plan.

THE COURT: The scheme to defraud?

THE DEFENDANT: Yes.

THE COURT: At the time that you requested them to do that, did you do so willfully?

THE DEFENDANT: Yes.

THE COURT: Knowing that it would be done?

THE DEFENDANT: Yes.

THE COURT: And anticipating it would be done?

THE DEFENDANT: Anticipating it would be done.

THE COURT: When I said, "It would be done," that is, there would be a wire communication from the bank to the Irving Trust Company in New York?

THE DEFENDANT: That is correct.

THE COURT: And the wire communication would be to the effect as set forth in Count Three?

THE DEFENDANT: That is right.

THE COURT: Any other information on Count Three that the government has that hasn't been covered?

MS. STOLTZ: No, your Honor.

THE COURT: Do you know of any reason I shouldn't accept your plea of guilty?

THE DEFENDANT: Not at all, your Honor.

THE COURT: Have you ever been seen by a psychiatrist?

THE DEFENDANT: Yes, your Honor.

THE COURT: When was that?

THE DEFENDANT: If you would broaden it to psychologist as well --

THE COURT: All right.

THE DEFENDANT: Two days ago.

THE COURT: Before that had you ever?

THE DEFENDANT: Yes.

THE COURT: When was that?

THE DEFENDANT: In the time since I have been out on bail I have seen psychologists or psychiatrists two to three times a week.

THE COURT: Have you ever seen one before this October of 1978?

THE DEFENDANT: Yes. I saw one about a year before

that for a month and a half.

THE COURT: Any other than that?

THE DEFENDANT: Yes. When I was seventeen I was an inpatient at County General Hospital.

THE COURT: In the psychiatric ward?

THE DEFENDANT: Yes.

THE COURT: For how long?

THE DEFENDANT: Three months.

THE COURT: Have you discussed all of these with your attorney?

THE DEFENDANT: Yes.

THE COURT: You have told them everything about any psychiatrist or psychologist or mental treatment you have received?

THE DEFENDANT: Absolutely.

THE COURT: Did you discuss with your attorneys any injuries you may have ever had to your head?

THE DEFENDANT: Yes.

THE COURT: You told them everything about it?

THE DEFENDANT: Yes.

THE COURT: Is there anything that you left out at all?

THE DEFENDANT: Not at all.

THE COURT: Do you understand, as I mentioned to you a moment ago, that when you plead guilty you waive and give up

the right to ever raise any defenses?

THE DEFENDANT: Yes.

THE COURT: That is, a defense of incompetency or a defense of insanity or a defense of diminished capacity, if there be such a thing in federal court, or any other type of defense relating to your mental condition. Do you understand?

THE DEFENDANT: Yes, I do.

THE COURT: Is that what you want to do?

THE DEFENDANT: Yes.

THE COURT: You have discussed that fully with your attorney?

THE DEFENDANT: Fully.

THE COURT: Have you taken any medication, drugs, or pills regularly?

THE DEFENDANT: No.

THE COURT: Have you taken any today?

THE DEFENDANT: No.

THE COURT: Have you taken any during the time between June and October of 1978?

THE DEFENDANT: Minor medication.

THE COURT: Such as?

THE DEFENDANT: Tetracycline compound.

THE COURT: Was there anything that you were taking during the time from October 14 to October 28?

THE DEFENDANT: Except for that, no.

THE COURT: Did that in any way affect your thinking?

THE DEFENDANT: No.

THE COURT: Mr. Talcott, have you discussed with Mr. Rifkin the nature of the charges against him and any possible defenses he might have?

MR. TALCOTT: Fully and --

THE COURT: Have you --

MR. TALCOTT: -- completely, your Honor.

THE COURT: -- explained to him that his plea of guilty waives his right to ever raise any defenses to these charges?

MR. TALCOTT: I have, your Honor.

THE COURT: Have you discussed with him the possibility of any illegally-obtained evidence in the possession of the government?

MR. TALCOTT: I have.

THE COURT: And you made motions in that regard --

MR. TALCOTT: Yes.

THE COURT: -- to suppress?

MR. TALCOTT: Correct.

THE COURT: Is he pleading guilty because of any illegally-obtained evidence in the possession of the government?

MR. TALCOTT: Not to my knowledge.

THE COURT: Do you know anything about his condition today that would make you feel in any way his judgment is impaired?

MR. TALCOTT: There is nothing that I have knowledge of that would make me feel his judgment is impaired at this time.

THE COURT: Do you have any indication at all from doctors' reports or anything that you have received that he is not capable of knowingly waiving his right to trial and is capable of entering a meaningful and knowing plea of guilty?

MR. TALCOTT: No and yes.

No, I have no information that he is not in a position now to knowingly --

THE COURT: If you had asked that question, I probably would have growled at you --

MR. TALCOTT: Objected --

THE COURT: -- for compounding a question.

Let me break it up. Do you have any information that would lead you to believe that he is not capable of waiving his right to trial?

MR. TALCOTT: I have no such information.

THE COURT: Do you have any information that would lead you to believe that he was not capable at the time he waived a right to a jury to knowingly make such waiver?

MR. TALCOTT: I have no such information.

THE COURT: Do you have any information that would lead you to believe that he cannot now knowingly and intelligently enter a plea of guilty?

MR. TALCOTT: There is no such information available to me.

THE COURT: And none that you are aware of?

MR. TALCOTT: None I am aware of.

THE COURT: Do you know of any reason I should not accept his plea of guilty?

MR. TALCOTT: No.

THE COURT: Have there been any promises made to him other than those put forth on the record?

MR. TALCOTT: No.

THE COURT: Mr. Rifkin, have you had sufficient time to discuss this case with your attorneys?

THE DEFENDANT: Yes, I have.

THE COURT: Are you satisfied with their representation of you in this case?

THE DEFENDANT: It is completely competent, your Honor.

THE COURT: Mr. Rifkin and Mr. Talcott have advised me that they have discussed the nature of the charges against Mr. Rifkin and any possible defenses he might have. Mr. Rifkin appears to understand the nature and consequences of his plea of guilty and the nature of the charges that he is pleading

guilty to. He also understands that by his plea of guilty to Counts Two and Three he waives and gives up the right of ever raising any defenses that might have been or were asserted to those charges, and also he waives his right to appeal any previous rulings of this Court.

I find there is a basis in fact for the plea of guilty, and I incorporate in my findings the statements made by Mr. Rifkin in the discussion that I had with him in that regard.

Just generally, Mr. Rifkin in June of 1978, after having worked at the Security Pacific Bank wire room, devised a scheme whereby he would transfer money from the bank through the wire room to an account somewhere else where the money could be used later for the purchase of diamonds.

In furtherance of that scheme on numerous occasions between June and October of 1978 he met with the diamond broker and attempted to work out different methods by which diamonds in a substantial value, namely, in the area of ten million dollars, could be acquired.

After numerous unsuccessful attempts on the part of Mr. Rifkin and the broker, it was finally worked out where perhaps diamonds could be obtained in Switzerland through Russalmaz. After Mr. Rifkin was convinced that the diamonds could be obtained, in furtherance of his scheme he went to the bank, as set forth in Count Two, went to the wire room and

by falsc pretenses gained cntry into the wire room, telling him he was doing a study of the -- further study of the system.

While in the wire room he copied down on a piece of paper the secret code necessary to bring about the transfer of funds.

After leaving the wire room he went to a pay telephone, made a call to the bank using the code,and he supplied them information by which 10.2 million dollars would be transferred to the Irving Trust Company, to the account of Russalmaz in Switzerland.

The 10.2 million was arrived at with $200,000 being for commission, the ten million for the diamonds.

After that occurred he went home, gave further contemplation to his scheme and got a ticket to Switzerland, flew to Switzerland.

In dealings with Mr. Stein and Russalmaz representatives in Switzerland, he obtained a baggage check that he utilized in getting the luggage, the baggage he had been told would contain the diamonds.

He had previously checked to make sure the money was at the bank. After that was accomplished, he went to get the -- After checking with Russalmaz representatives, he went to the luggage area, was assured by Swissair that the baggage would be on the flight to Luxembourg, went to Luxembourg, opened the baggage, found it to be diamonds,

repackaged it in such a way to get it back into the United States, put it in a shirt container in his luggage, did not declare it, got it into the United States.

After the diamonds were here he attempted to sell some of the diamonds, apparently did sell or give away some of the diamonds, and the remaining diamonds were with him at the time of his arrest.

Mr. Rifkin specifically recalls in substantial detail the events during this time period. He recalls on October 14, 1978, in furtherance of the scheme and for the purpose of carrying out the scheme, he knowingly, willfully made or caused a cablegram to be sent under the name of "Nelson" to Switzerland advising that Stein would be the representative of the bank and that the money would be put in the account of Russalmaz.

In Count Three he states that on October 25, the purpose of his telephone conversation to the bank was so that they would transmit by wire a communication to the Irving Trust Company. He knew that that would be the procedure used, because he had set up the procedure and was familiar with the practices of the bank, so he knowingly and willfully caused that transmission to take place.

I find the plea of guilty is freely and voluntarily being entered; there have been no promises made to Mr. Rifkin other than those set forth on the record. I find that he is

pleading guilty, not because of these concessions on the part of the government, but rather because he is, in fact, guilty of the offenses charged.

I also find that there has been no coercion or duress exerted upon him. The pleas of guilty to Counts Two and Three will be accepted and entered.

The matter will be referred to the Probation Department for a pre-sentence report.

Where have you lived other than California, if anywhere, Mr. Rifkin?

THE DEFENDANT: Brief periods abroad.

THE COURT: Have you ever been arrested?

THE DEFENDANT: No, never.

THE COURT: Either the 19th or the 26th. What is the status of the other case?

MS. STOLTZ: Your Honor, I expect the other case against the woman will be presented to the grand jury next week. We are scheduled to dismiss his complaint tomorrow.

MR. TALCOTT: May we ask for the 26th, your Honor?

THE COURT: Any objection?

MS. STOLTZ: No objection, your Honor.

THE COURT: All right. The 26th of March.

MR. TALCOTT: Yes. May we have it at 3:30, your Honor?

THE COURT: I will have to let you know then. Let

me see the book.

(Brief pause.)

MR. TALCOTT: Or for in the morning.

THE DEFENDANT: 4:00 in the morning?

MR. TALCOTT: Or in the morning.

THE COURT: 11:00 a.m.?

MR. TALCOTT: That is fine, your Honor.

THE COURT: All right. Thank you very much.

MR. TALCOTT: Your Honor, there are two other matters.

THE COURT: Yes?

MR. TALCOTT: At this time we would respectfully request that the $200,000 bond that has been previously posted in this case be exonerated at this time and a new bond in an amount to be determined by the Court set until the time of sentencing.

MS. STOLTZ: Your Honor, we are --

THE COURT: We have two problems. The bond I have set, he made.

MS. STOLTZ: That is correct. There is a one million-dollar bond which was set by the Magistrate in the new complaint. The preliminary hearing date on that is set for tomorrow, and pursuant to our agreement we are scheduled to dismiss that case tomorrow, so at that time the only remaining charge against him will be this case.

In view of the fact that he has pled guilty, we would ask that he be remanded on this case and no bond be set and that the bond which was previously set be exonerated. He has made the bond in this case, and when the charges in the new case are dismissed, this will be the only case and the only bond remaining.

THE COURT: What is your request?

MR. TALCOTT: My request is substantially the same, except that I would request that an amount of a bond be indicated and that it not be a no-bail situation, and I would suggest to the Court that, in practicality, any amount in excess of the existing bond -- and even less than that -- would not be able to be made by the defendant. I suggest to the Court a half million dollars.

THE COURT: Has Pretrial Services made a -- I have no bail information. Has Pretrial Services made a study on the bail?

MS. STOLTZ: Yes, your Honor. Pretrial Services recommended, I believe it was, two hundred thousand or two hundred fifty thousand on the new case and said that was also taking into consideration the bond in this case and indicated that if something happened to this case, in the new case they would recommend -- it was either four hundred thousand or a half million.

THE COURT: When are you going to dismiss that case,

tomorrow?

MS. STOLTZ: Your Honor, the preliminary hearing, I believe, is scheduled for 3:30 tomorrow, so we either have to indict him, present the case to the grand jury, or dismiss the case at that time.

THE COURT: I will keep my bail in effect, rather than exonerating it now. I will reset the bail. The bail will have to be changed --

MR. TALCOTT: Yes.

THE COURT: -- as I think you are each aware. Could you contact Pretrial Services and see if they have done a written report on this, which I assume they have?

MS. STOLTZ: Yes, they have.

THE COURT: May I have a copy of that report? I will set this tomorrow morning for a bail hearing at -- what time is convenient for you?

MR. TALCOTT: Well, your Honor, we have no objection to appearing for the bail hearing, but I would suggest to the Court that the Pretrial Services recommended a half million dollars, and that's what the Court is going to discover. We would have no objection to that amount or, if the Court wants to have it higher, to have it set higher.

THE COURT: If you don't want to appear, you don't have to. I will just give a bail order, but I want to see the report.

MR. TALCOTT: All right.

THE COURT: And if you want to appear and to be heard on it, you may certainly do so. I don't know what the government's position is.

Do you have a position? Do you have any bail position?

MS. STOLTZ: Well, your Honor, we would definitely recommend there be no bail. If any bail is set, we recommend that it be in the amount of one million dollars, in view of the fact that there was --

THE COURT: I don't think you can sustain a no-bail --

MS. STOLTZ: Your Honor, if a bail is set we would definitely recommend it be --

THE COURT: 9:30 tomorrow morning.

MR. TALCOTT: All right.

THE COURT: Will you fill out, if you desire to, a Bail Reform Act form. You may do that. If not, you can present it orally.

MR. TALCOTT: Thank you.

THE COURT: Is there anything additional? You had better give me a copy of that affidavit. I had it at one time. I am talking about the affidavit filed with the complaint in this last action.

MS. STOLTZ: Yes, your Honor. We will provide your Honor with a copy.

THE COURT: Any objection to that?

MR. TALCOTT: Yes, we have an objection to that.

THE COURT: What is your objection?

MR. TALCOTT: It is not clear at this time whether the law in our opinion permits latitude for the Court to draw conclusions from that arrest complaint. We would submit that the basis of the submission of that arrest complaint to the Court is solely and exclusively to increase the sentence that the Court might anticipate giving.

THE COURT: Increase the sentence? I am talking about bail.

MR. TALCOTT: Oh, bail. All right. I would object.

THE COURT: I am talking about it for tomorrow's hearing, because the fact that there is an allegation against him, the fact that he has been arrested again is certainly a factor that I am going to consider in setting bail.

MR. TALCOTT: Your Honor, the Court is aware that some time after 9:30 tomorrow morning that arrest complaint is going to be dismissed.

THE COURT: I am aware it is going to be dismissed, and I am aware of why it is going to be dismissed.

MR. TALCOTT: Yes.

THE COURT: You know, you have made arrangements, but I am also going to be aware of what the allegations are against him anyway. It is certainly a factor to consider as

to what the appropriate bail is.

MR. TALCOTT: Well, we would object to that. We feel it has no bearing at all and would make our objection.

THE COURT: All right. That objection is overruled. The government will supply me with a copy of the complaint.

MS. STOLTZ: Yes, we will, your Honor.

THE COURT: All right. Anything additional?

MR. TALCOTT: Yes.

THE COURT: Is that a convenient time?

MR. TALCOTT: That is fine.

THE COURT: May I inquire for one moment?

Mr. Cathcart, your doctor tomorrow -- what time do you have him set up?

MR. CATHCART: 9:30.

THE COURT: We shouldn't be more than a few minutes.

MR. TALCOTT: Your Honor, we would respectfully ask the Court to allow Mr. Rifkin to place one telephone call per day until the time of his sentencing, and the reason for that is that Mr. Rifkin is in what is euphemistically described as high power, which is an isolation area. They do not have access, as does the general population of county jail, to the telephone. We would ask that he be allowed to make one phone call a day.

THE COURT: To whom?

MR. TALCOTT: To a number of persons to obtain

information that we would like to present to the Court if he has to make those contacts.

THE COURT: You can supply a list of people he is going to call and let the government take a look at the list and I will make that order tomorrow.

MR. TALCOTT: All right.

THE COURT: Any objection to that?

MS. STOLTZ: None whatsoever, your Honor.

MR. TALCOTT: In that case, may I request that Mr. Rifkin be brought over tomorrow morning?

THE COURT: Yes. He can be present for the bail hearing.

MR. TALCOTT: Thank you.

THE COURT: Anything additional?

MR. TALCOTT: Nothing additional.

THE COURT: Thank you very much.

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

- - -

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Criminal Action No. 78-1050-WMB
STANLEY MARK RIFKIN, Defendant.	)	

C E R T I F I C A T E

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Central District of California.

I further certify that the foregoing 73 pages are a true and correct transcript of the proceedings had in the above-entitled cause on Thursday, February 22, 1979, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this_____day of March, 1979.

ROBERT E. KILLION
Official Reporter

A F F I D A V I T

I, Robin C. Brown, a Special Agent of the Federal Bureau of Investigation (FBI) for over 3 years hereby declare and say as follows:

I have conducted an investigation into the transportation of stolen goods in interstate commerce and have acquired the following information:

1. Beginning on or about October 1, 1978 and continuing to the present in Los Angeles County and elswhere outside the Central District of California STANLEY MARK RIFKIN aka Mike Hanson, David Garnett and Stan Rifkin representing himself as an agent for a large United States business firm interested in purchasing a quantity of diamonds overseas committed the following acts:

(a) During the first week of October STANLEY RIFKIN obtained the services of a reputable diamond broker in Los Angeles, California to conduct the necessary negotiations for and purchase of diamonds in Geneva, Switzerland.

(b) On or about October 25, 1978 STANLEY MARK RIFKIN, represently himself to be one Mike Hanson, an employee of the International Banking Office of Security Pacific National Bank, Los Angeles, California telephoned the Wire Transfer room of the above Security Pacific Bank and by the use of secret codes affected the transfer of 10.2 million dollars to an account in Zurich, Switzerland. This conversation was recorded. I have established that the purported account from which these funds were transferred does not in fact exist. These funds were later confirmed to be on deposit in Zurich, Switzerland with "RUSSALMAZ", an arm of the Soviet Government that handles the export of diamonds.

(c) On or about October 27, 1978 a purchase of $8,145,000.00 worth of diamonds was made in Geneva, Switzerland by the same diamond broker whose services had been obtained by STANLEY MARK RIFKIN. These diamonds were purchased from Russian authorities following confirmation of the deposit of funds fraudulently obtained by STANLEY MARK RIFKIN which were deposited to the above mentioned Zurich, Switzerland bank account. These diamonds were assembled by the Russians and broker and delivered to a courier pickup location in Geneva, Switzerland.

(d) These diamonds were subsequently picked up by an individual during the period October 27-29, 1978.

(e) On or about October 31, 1978 RIFKIN met with an individual in Los Angeles and said that he had

acquired the above noted diamonds. RIFKIN exhibited approximately 1 million dollars worth of the diamonds to the individual and left three stones with that person. These stones have been identified by the broker as similar to the diamonds purchased in Switzerland. In discussing this matter, RIFKIN admitted that he had acquired a new identity and was going to "places unknown". He further stated that Security Pacific Bank would bear the loss of the $10.2 million dollars.

(f) The diamond broker who had acquired the diamonds in Switzerland has positively identified the purported voice of Mike Hanson referred to above as the man known to him as STANLEY MARK RIFKIN.

ROBIN E. BROWN
SPECIAL AGENT, FBI

SWORN AND SUBSCRIBED TO BEFORE ME
THIS_____DAY OF NOVEMBER, 1978.

UNITED STATES MAGISTRATE