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FILED

JUN 06 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

FREDRICK THOMAS UEBBING	)	Case Nos. 140-O-00968
No. 106890)	
	)	RESPONSE TO NOTICE OF
	)	DISCIPLINARY CHARGES
	)	AND DEFAULT NOTICE
A Member of the State Bar)	
_____	)	Addendum concerning Tyler Torres
	)	Case Number 14-0-01045
	)	[SEE PAGE 4, INFRA]

This is my response: I, Fred T. Uebbing, Declare under Penalty of Perjury

1. I am requesting that I be appointed counsel competent in State Bar Matters of Discipline.

I believe that with the assistance of counsel I can straighten all of the matters concerning my alleged failures. I am not trained in this area and have no professional experience defending myself and I believe with the assistance and advice of counsel everything can be taken care of.

At the present time there is a future trial date in August 2014 and if I obtain counsel I am reasonably competent I will be able to make my case and survive these matters as an attorney.

2. I very recently spoke to a friend of mine of 40 years, with whom I went to college, who is an attorney in California. He told me I am too close to the matters and I lack the training and experience to defend myself. I respect his opinion very much and he has convinced me that as much as I believe that my defenses to these charges are more than adequate to defeat them



my ability is compromised by the fact that I am the “defendant” attorney. My sense of it is that my emotions in these matters - because I believe they are absolute injustices of the first order - have turned me virtually into a tort victim. I am probably more angry at myself than at anything else that has happened. I am a sole practitioner. I am currently homeless and suspended. I appear on the surface to be OK but I can’t seem to be able to calm down without help from someone like Ralph Slater, who is the attorney I spoke to, and is an old friend. Mr. Gerner helped me in the competence evaluation where the question was whether I was mentally competent to practice law. He was of immense assistance. He is now retired, I believe. The reason I believe this is so hard, I think, is because the injustice is so hard for me. The initial discipline, for when I was put in jail for Contempt of Court after filing two challenges for cause on the trial judge in the Jennifer Joy case - was unlawful Years later I realize that I have an absolute First Amendment Defense to the Contempts and the State Bar Discipline. The problem is I am too emotional about it. I absolutely need counsel. Being falsely imprisoned because of a chilling effect’s draconian response to two challenges for cause and then proceeding to blow a discipline begun years and years later by the State Bar only happened because I could not see the Iceberg defense created for me. She iced me - dishonestly - and apparently my brain as well. In the end Slater listened to me for a while yesterday - I accidentally just called him on the phone He went through some hard times a few years ago and he now sounds wonderful. This was yesterday. It’s like a miracle that I called him. By accident. I am so injured by these grievously unconstitutional contempts and the things that have just snowballed from it ... its like I am a tort victim. It’s like being hit by a car four times by a furious assailant and only realizing years later

that there are traffic rules that prevent judges from mowing down attorneys who file challenges for cause. I believe the First Amendment Defense obliterates the Contempts and renders them unconstitutional per se and nullifies the State Bar discipline. But I am just too injured and too close to all of this to defend myself without counsel. An attorney with a First Amendment background who was not himself the victim would have made short work of the four contempts. A really good one simply showing up in Court when I was first defending myself in 2007 probably would have ended the matter the same day - or if not, had a lot of fun with it thereafter. I am looking at seven years of bad luck inflicted on myself by my own incapacity to see my own incapacity. As I think back on it I did have an attorney in 2007, who was provided by the court appointed indigent criminal defense program [PCC] but he was like me, a criminal lawyer with no First Amendment experience who has spent his entire life practicing in San Diego. And he was given to me basically to beg for mercy...which is what criminal defense attorneys often do and are expected to do. A First Amendment case in San Diego is very exotic. I doubt very much he had ever done one. He was a police officer before he became a lawyer. A really nice fellow with a law enforcement background (many years before) begging for mercy from this cold and icy judge. This is really bad because the contempt cases were so winnable the very beginning. I get choleric thinking about it. They were cooked up. Period.

I honestly believe in my heart that I have been a damn fool for not calling someone like Anthony Lewis while he was still alive in 2007, turning this case into a little tiny cause celebre & walking away without a scratch. It's like the Eugene O'Neill play. It's a tragedy. But it doesn't have to be my life or my license. The failures in doing the discipline such as they are...are part of the chilling effect. I am so upset with myself now...I'm numb with the pain of my own ignorance

... not misconduct...but ignorance. And I can't calm down without counsel unless I think or do something completely other than this. I'm not a fool. I'm a Mule that merely needs someone to grab and to hold the reins and lead me through this baffling emotional minefield of regret, resentment and blindness over my own self isolation from the legal community. Perhaps a scholar? He or she could have walked me through this whole thing unscathed with a bow tie!

ADDENDUM CONCERNING TYLER TORRES

Insofar as the Tyler Torres appeal case. The State Bar has sent me an inquiry [Case No. 14-O-0145] alleging I did not file an Opening Brief. This was in April 2014.

The Opening Brief was filed on September 3, 2013. It's a wonderful brief in my opinion. All this stuff about me not doing the work is crazy. I am including copies of the brief as an attachment. The client, Mr. Torres, received the brief and we talked on the phone a couple of times after it was filed. He was very happy. The brief shows very clearly that when I am defending someone other than myself, I think, I'm actually pretty good. The brief was "cancelled" by the Court of Appeal when I was suspended by the State Bar. Up until the day of that suspension I was doing excellent work all over the place.

There were things that happened. My Aunt's death [Her name was Ann C. Prindeville] for example was an enormously disorienting experience. It is almost too hard to talk about or write about. I felt like I was being lynched for dropping everything and trying to keep her alive. In late April I was told she was going to die the next day. I dropped everything went up to Long Beach stayed 8 days, went up again the following weekend. She lasted five or six weeks but I was being crushed by the courts for my sudden unexplained absence. Most everyone dropped all

the OAC's when they realized what I was doing. But not everybody. The effect was I did not get back up there (my car was not working during that time) and she died while I was picking a jury. Other people visited her and said goodbye. I went up there and didn't and wouldn't leave, couldn't leave and couldn't bear not to be there. Yet I did bear it but I forgot about a number of other things for some time after that. As I write this it is like it was yesterday. It was the only place in the world I wanted to be and I told her that over and over again from the bottom of my heart. And I lost her. The emotional impact of this kind of complicated other things. By going to her I got myself in trouble with some of the judges. But most were very understanding. I actually did a trial and did a pretty good job. She died while we were picking the jury. The man was convicted. He he has since been persuaded, with me out of the picture, to dismiss his appeal: which in my view is appalling. I would be on it in a minute if he would let me if I were not suspended. I don't understand the appeal dismissal at all. But I have not followed up on it because I am suspended. The co-defendant who was acquitted -first- at his trial (same time same place same crime) disappeared after his acquittal. I found him after my client's trial and he provided a wonderful exculpatory declaration for my client and showed up at the sentencing willing to testify. My client's trial judge refused the offer of the acquitted co-defendant's live testimony.

Not long after that the codefendant was arrested again at SDSU for wearing a stolen hat his girlfriend witnessed him buy out of a car one Friday night while they were walking along the street .(When his girlfriend tried to step in the cops started messing with her.) The key witness who was a acquitted was a very smart, good looking Nigerian immigrant with no record. He went to trial first and was acquitted in a burglary case at SDSU. He has no record. He is young

man who loves to go to SDSU and party there with the students. After he disappeared my client went to trial and he is not so bright and charming. He is sort of slow...and he has a record. Once I found the Nigerian kid he did everything he could to help my client...who is his friend. The case was set up beautifully for appeal. Now it's gone. They talked the dumb kid into just dropping the appeal. Why? Because I'm gone for now. And now the co-defendant who was acquitted is languishing in jail... on a ridiculous trumped up case. I talked to him and his girlfriend immediately after the second arrest. She's considerably older than him and white... And smart and articulate. Everything now falling apart for both of these kids. The Nigerian doesn't get his Public Defender - who is a really good trial lawyer - instead he has somebody else from the same office. So he's languishing. Meanwhile my client who was convicted is talked into abandoning his appeal... in my absence. With me around that would not have happened. The Nigerian's declaration is perfect and he is a terrific witness. It's slipping away. Two lives. I'm only able to see from a distance. Again, my hands are tied because of the discipline. And so it goes. Incidentally I grew up in Del Cerro, right across the freeway from SDSU. I love SDSU. I'm a scholar. I live in libraries. I did speech tournaments in High School there. It was unfortunate the Nigerian kid disappeared. His father had taken a girlfriend in and he had no place to stay after the acquittal on the first case and disappeared to East County. The Monday after the Friday my client was convicted he walked up to me in the Courthouse and asked when he would get to testify. We almost immediately did a beautiful declaration and he showed up for the sentencing. This is the way I practice criminal defense. Flat out hard work all the time and I develop a lot of relationships. This is all wasting away at the present time. cases because I am very familiar with the place and still go to their main library all the time.

My client who was convicted in the SDSU case is not smart, made a poor witness and got up pretty bad with some questionable conduct, not his but the other sides. It's hard for me. I'm trying to represent really people all over the place and now I'm seeing them get screwed by not being there to help them when they really, really want me to be there. Focusing on other people's problems I am very good at. Focusing on my own difficulties I seem to need somebody else to help me. I can't do both. My mind simply doesn't seem to work that way. I work furiously hard, run myself into the ground, make very little money and get into trouble by spending too much time and energy taking care of other people. I suppose you could call it competition but I don't think it is anymore. It's a vocation and I treat it as a sacred duty and wear myself out trying to help these poor people and sometimes trying to keep alive someone who I deeply deeply love, like my Aunt.. If I fall behind on the disciplines and get too emotional to think rationally about how to plot my way out of the problem, it seems to be pretty strong evidence I need counsel. I still think the State Bar is under the impression I lost Jennifer Joy due to some contempts and incompetence. None of that is true. The trial was almost perfect. The contempts have savaged my reputation and what I really did in that case.

By some mysterious coincidence I bumped into the so-called cause of all these contempts at Adams Ave Books in San Diego a day or two ago: Jennifer Joy. We hugged. I got her address and phone number. She seems to have put on a fair amount of weight which is a good sign. She has had an interesting life. Probably the best witness as a Defendant I have ever seen. A genius at jury selection. Marvelous counselor of deeply troubled children. The direct in her jury trial lasted most of a day and was the best I have ever done, that I can recall. The trial was a triumph for the most part, except for the contempts. And then the appeal blows up like the Hindenberg

with this fictional finding of IAC for failing to object when my client was manacled when I objected instantly and repeated. Even so the flaming hulk of my reputation falls libelously to the ground but doinf so earns a reversal of conviction for what was in fact the judge's mistake Informed of the problem every one I talk says "Hey you won!" "Don't say anything!" Especially with this judge (the one who contempered me) Don't say anything! Keep you mouth shut for once in your life!" [saith Plourd, Landon, Nichols... the Three Wise Men]. It's kind of like Alice in Wonderland. Everything is isn't and everything that isn't is. In Minnesota I think they call these things "Northerners." And in San Diego. Maybe now it's "Chill your hide in Oceanside" .

Let me repeat this a little less artistically. Because the contempts came out of the Jennifer Joy case.

The MOST IMPORTANT THING to remember about the Jennifer Joy case - that is the subject of the original major discipline [the four contempts] is that the Court of Appeal really made me look stupid by reversing the remnants (Joy was acquitted of a lot of it at trial) because I failed to object to the fact my client was chained in the courtroom in jail clothes before the jury. In fact, the manacling was done during a break when I was not even present. I objected three times in the Courtroom: the first time within one second of discovery. Everybody in the courtroom heard the indignant objections My 1st response was instantaneous! It was an exited utterance! I was handing the client her yellow legal pad. She held up her hands, chained. I blurted out looking at the judge "Why is my client manacled" Two juror's had just walked in unnoticed by me. I leveled the issue and the case with two more objections.

ALL THREE ARE GONE! I called the appellate lawyer when the Joy case was reversed because of my so-called incompetence of failing to object. I called over and over and over again and finally caught him on the phone. He did not do anything. I spoke to Chris Plourd, now a Judge, Gary Nichols - head of the Public Defender's Appellate Unit in San Diego, and Alex Landon. The advice was don't say anything and given my experience with the trial judge let sleeping contempters lie. So I was chilled out of that! too! It is probably a philosophical gulf that will never be bridged.. Free Speech at such a cost is more than irksome. It's disabling. I was talked into not being me. If I had not kept my mouth shut I don't believe the State Bar would have initiated the disciplines. The reason. I was perceived by the State Bar as speaking when I was not supposed to and clamming up when I had to make the proper objection. The real truth is the absolute exact opposite of that conclusion. I made the proper objections. The contemptts were retaliatory because of the two challenges for cause and total contrivances that were retaliation (or chilling effect devices) for the two CCP 170.1's I filed on the judge, both of which were struck. I got Iced by the judge and apparently unwittingly libled by the Court of Appeal Opinion. Because I was iced by the Judge. I told Chris Plourd, Alex Landon and Gary Nichols. All are very well known and respected counsel. I consider them friends and I have known them for decades. I took there advice and the State Bar, eventually after several years, pounced on me for a case that, in reality I won completely, years before - in front of a very tough judge who pounced on me when I criticized her. Nichols, who was the head of the Public Defenders Appellate unit, told me that the Judge was all but blanket challenged by his office the year I went to trial on Joy. I may have been her only trial. When I filed two CCP 170.1's - the second after she struck the first - she contemptted perhaps thinking I knew

of all the peremptories. I didn't. I filed the challenges for cause for the following reason.

A month before there was a hearing in front of a judge in a trial department. He ordered the DA to comply with specific discovery requests I made at that time. This was after a chambers conference. The case was continued a month for trial. The whole matter was given to a paralegal in the DA's office who spoke to me a lot but gave me absolutely nothing. Without going into detail I later discovered that what I wanted existed in spades and was available to the DA's Office probably in less than five minutes. My client had been hanging around with a guy with an extensive record somewhere else. She told me that he may have done some things to the victims but she had nothing to do with it and really did not know him. She knew he had a record but did not know where. It was in Riverside. I found that out when I was up there on a case and just looked him up in their index. Two years later. After the trial.

The DA could have given me that guy's record in minutes. He was in a police report I had in discovery on a case where my client was not arrested. They had all his ID and could have accessed the information probably in a matter of seconds. I never got it until I found it in Riverside years later.

On the day of trial I am sent out to Judge Kelety after using my peremptory challenge on another Judge. I had never met Judge Kelety or heard of her. I did not know she had been peremptoried by the defense bar a great deal ... on trials. I was sent out to renew make my continuance about the guy who's record turned out to be in Riverside. Denied. Once it was denied a gentleman introduced himself and told me he was the person who was really trying the case, not the DDA who had just argued against my continuance motion and who had

been handling my discovery requests - or not handling them. This new fellow handed me a bunch of police reports (which I did not have to sign for or pay for!). He did this in Judge Kelety's presence and after the continuance was denied. The Judge had a bemused look on her face. My renewal of a continuance motion was denied. I filed the first 170.1 after lunch. That was stricken the following morning. I filed the second challenge for cause, which I wrote the evening of the first day, right after Judge Kelety struck the first challenge for cause. We adjourned until the of the following day. That morning the second Challenge for Cause was stricken and Judge Kelety and she commenced contempting me, piling up four contempts rather quickly: making it unmistakably clear they were intended as chilling effects to dissuade any further challenges for cause.

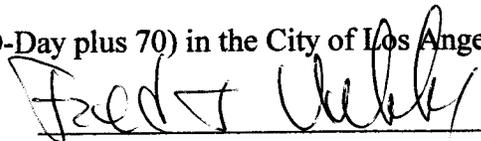
The discovery that was handed to me by the second surprise new DDA trial counsel was I believe of witnesses interviews with Home Depot employees who were involved in the illegal purchases made there with my client's girlfriend's credit card. I got these reports in the trial department from a surprise new trial counsel after the continuances were denied. The following was not in the reports. I elicited it from one of the cashier witnesses. The credit card my client used had been turned off by her girlfriend. My client was not told this. My client waited perhaps close to an hour while they checked into the credit card and confirmed that it was good. What they were really doing was turning the card on. The jury acquitted my client of all the home depot purchases, which were quite substantial. My client testified the purchases were to fix up the house the two women had been living in together as lovers. They were splitting up. These reports may or may not have been edited before they were given to me. Turning on the credit card made the arrest possible. If my

client had been told the card was off there would have been no crime. I got 9 days in jail for two challenges for cause and eventually discovering what the prosecution was up to. There was other stuff found in the parking lot that was used against my client: a car she borrowed, and some stuff found inside the card she supposedly stole. I believe my client was completely innocent. This parking lot evidence , which would have been the subject of a Penal Code 1538.5 motion to suppress if I had known the credit card had been turned on, came in and resulted, with the help of a very hostile “victim” friend of my client’s ex girlfriend, in Jennifer’s conviction of other crimes. After this coverup was discovered and after the conviction I of course made a motion for new trial arguing the Penal Code 1538.5 motion had not been possible until the defense discovered mid trial that the credit card had been turned on. This motion was denied. I basically broke the case despite the obvious deliberate cover up during the cross examination of the home depot cashier. The motion for new trial on this an other issues was of course denied. Judge Kelety put my client in jail for two years even though the DA, Probation and I all wanted probation. The prosecution got slaughtered on appeal in the filed briefs and intead of using those arguments the unbriefed argument that I failed to object to my client being manacled somehow just suddenly appeared out of nowhere and became the only reason for the reversal. As I have already said. I called the appellate lawyer over and over again. He refused to act. Plourd, Nichols and Landon, given the contempts and imprisonment for the challenges for cause, said keep your mouth shut Fred. Obviously she took the challenges for cause rather personally and perhaps you should...chill out.

I have often vigorously defended my clients and received lots of compliments from lots of judges for my zeal. This was one real bad occasion where that did not happen. I am currently homeless, sleeping comfortably in my van at night, and very poor. Declarant Note: This is being written in a motel on Lincoln across from LMU, where Ralph Slater and I were buddies and debaters along with a bunch of other lawyers to be under the direction of George Schell and Jay Busse. Several of us became lawyers. It seems to be easier to work near such fine familiar surroundings where I spent many happy days in the company of good friends and teachers who were also friends.

The discipline for the four contempts was initiated by the State Bar years later. By that time resurrecting all of this seemed, particularly given my financial circumstances, very difficult. But as time went by the manifest injustice began to eat away at me and I frankly became bitter over why I am being disciplined at all for crimes committed by other people if there were any at all. Jennifer Joy's case was a hard case. It was hard fought. I didn't run from the challenge and I proved more than up to it, despite the libels I have been required to bear and respond to despite my excellence and prescience as Jennifer's lawyer. She of course has nothing but great things to say about me. And when I hugged her the other day, we were complimenting each other. She seems to be doing well and I plan on following up on our meeting in the book store when I get back in San Diego.

Subscribed and sworn this 6th day June 2014 (D-Day plus 70) in the City of Los Angeles,
in the State of California.

A handwritten signature in black ink, appearing to read "Fred T. White", written over a horizontal line.

Fred T. Uebbing
State Bar No. 106890
Post Office Box 16468
San Diego CA 92101
(619) 379-2280

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

FREDRICK THOMAS UEBBING	)	Case Nos. 140-O-00968
No. 106890)	
	)	RESPONSE TO NOTICE OF
	)	DISCIPLINARY CHARGES
	)	AND DEFAULT NOTICE
A Member of the State Bar)	
_____	)	Addendum concerning Tyler Torres
		Case Number 14-0-01045
		[SEE PAGE 4, INFRA]

ATTACHMENTS

1. April 21, 2014 letter of State Bar of California
by Rose Ackerman concerning Tyler Torres matter
2. Opening Brief in People v. Tyler Torres
[Cancelled due to my suspension]
4th DCA Court of Appeal no D063150
2b 4th DCA Defiling Order
3. NOTICE OF ASSIGNMENT AND NOTICE OF INITIAL STATUS CONFERENCE
CASE NO 14-o-00968



THE STATE BAR
OF CALIFORNIA

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

OFFICE OF THE CHIEF TRIAL COUNSEL
ENFORCEMENT

Jayne Kim, Chief Trial Counsel

TELEPHONE: (213) 765-1000
FAX: (213) 765-1318
<http://www.calbar.ca.gov>

DIRECT DIAL: (213) 765-1098

April 21, 2014

PERSONAL AND CONFIDENTIAL

Fredrick Uebbing
Law Office of Fred T Uebbing
PO Box 16468
San Diego, CA 92176

Re: Case Number: 14-O-01045
Complainant: Tyler Torres

Dear Mr. Uebbing:

This letter is sent to you based upon information that you are not currently represented by counsel in this matter. If this is incorrect, please advise me within **five** days so that future communications may be directed to your counsel.

On April 2, 2014, I wrote to you about this matter, but to date I have not received your written response or the documents requested. Enclosed is a copy of my previous letter. This is my last good faith effort to contact you to cooperate in this investigation.

Section 6068(i) of the Business and Professions Code states that it is the duty of an attorney/respondent to cooperate with and participate in any State Bar investigation. The State Bar may consider your failure to cooperate as a separate and additional violation of section 6068(i) if your written response and the documents requested are not received by **May 5, 2014**.

In addition, under Business and Professions Code section 6086.10, you may be subject to a cost assessment for the expenses incurred by the State Bar if this matter results in public discipline.

If you have any questions, please contact me at (213) 765-1098.

Very truly yours,

Rose Ackerman
Investigator

/RA

Enclosure

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,
v.
TYLER TORRES,
Defendant and Appellant.
D063150
San Diego County No. SCD238344

~~Court of Appeal Fourth District~~
FILED
JAN 23 2014
Kevin J. Lane, Clerk
DEPUTY

THE COURT:

Attorney Steven J. Carroll is appointed as counsel for appellant. The court strikes the September 3, 2013, opening brief filed by appellant's former counsel and grants new counsel 40 days to file a new opening brief. The respondent's brief will be due 30 days after the filing the opening brief.

McCONNELL

Presiding Justice

cc: All Parties

<p>STATE BAR COURT OF CALIFORNIA</p> <p>HEARING DEPARTMENT</p> <p>845 S. Figueroa St., Los Angeles, CA 90017-2515</p>	<p>FOR CLERK'S USE ONLY:</p> <p>FILED</p> <p>APR 25 2014</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In the Matter of:</p> <p>FREDRICK THOMAS UEBBING,</p> <p>Member No.: 106890</p> <p>A Member of the State Bar.</p>	<p>Case No(s): 14-O-00968</p> <p>NOTICE OF ASSIGNMENT AND NOTICE OF INITIAL STATUS CONFERENCE</p>

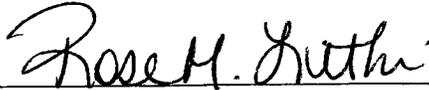
TO ALL PARTIES AND COUNSEL IN THE ABOVE ENTITLED MATTER:

PLEASE TAKE NOTICE that the above-entitled matter has been assigned to the Honorable Donald F. Miles. All pleadings filed with the State Bar Court in this matter must be specifically addressed to the assigned judge's case administrator: Rose M. Luthi, telephone number (213) 765-1429.

PLEASE TAKE FURTHER NOTICE that an initial status conference has been set to take place on May 27, 2014 at 10:00 a.m. at the State Bar Court, 845 S. Figueroa St., Los Angeles, CA 90017-2515. Unless otherwise ordered, **all parties and their counsel must appear in-person** at the initial status conference. All court dates are firm and failure to appear may result in appropriate sanctions, including entry of your default.

These proceedings are governed by the Rules of Procedure of the State Bar of California and the Rules of Practice of the State Bar Court. The rules set forth important rights and obligations of the parties, including time to file answers (Rules Proc. of State Bar, rule 5.43 [within 20 days of service of initiating document]), time to request discovery (Rules Proc. of State Bar, rule 5.65 [within 10 days of service of answer]), and eligibility for the Alternative Discipline Program (Rules Proc. of State Bar, rule 5.380 et seq.). The rules are available online at www.statebarcourt.ca.gov. If you do not have access to the Internet, please contact Administrative Services at (213) 765-1121 to obtain a copy of the rules.

Dated: April 25, 2014



 Rose M. Luthi
 Case Administrator
 State Bar Court

Proof of Service

I Fred T. Uebbing declare under penalty to perjury

I am a citizen of the United States and a resident of the State of California.

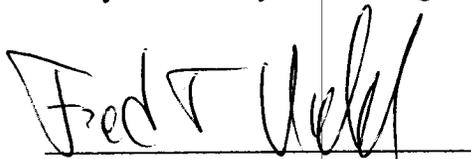
I currently reside in San Diego County. I am not a party to this action. My mailing address is Post Office Box 16468 San Diego, CA 92176.

On June 6, 2014 I personally delivered a copy of the document to which this proof of service is attached: to wit RESPONSE TO DISCIPLINARY CHARGES AND DEFAULT NOTICE and ADDENDUM CONCERNING TYLER TORRES CASE NUMBER 14-O-01045
Complainant Tyler Torres

to the STATE BAR OF CALIFORNIA at 845 Figueroa St. Los Angeles, CA 90017-2515
and a copy of the same document to

the OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT
also at 845 South Figueroa Stree, Los Angeles, CA 90017

Subscribed and sworn this 6th day of June 2014 in the City and County of San Diego,
State of California.

A handwritten signature in black ink, appearing to read "Fred T. Uebbing", is written over a horizontal line. The signature is cursive and somewhat stylized.

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

TYLER TORRES,

Defendant and Appellant.

Court of Appeal
No. D063150

Superior Court
No. SCD238344

~~Court of Appeal Fourth District~~
FILED
SEP 10 2013
Kevin J. Lane, Clerk
CANCELLED
DEPUTY

APPELLANT'S OPENING BRIEF

Appeal from the Judgement of the
Superior Court of the State of California for the
County of San Diego
(Honorable Joan P. Weber, Judge)

Fred T. Uebbing
Attorney at Law
State Bar #106890
P.O. Box 16468
San Diego, CA 92101
(619) 379-2280

Attorney for Defendant
and Appellant

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

TYLER TORRES,

Defendant and Appellant.

**Court of Appeal
No. D063150**

**Superior Court
No. SCD238344**

APPELLANT'S OPENING BRIEF

**Appeal from the Judgement of the
Superior Court of the State of California for the
County of San Diego
(Honorable Joan P. Weber, Judge)**

**Fred T. Uebbing
Attorney at Law
State Bar #106890
P.O. Box 16468
San Diego, CA 92101
(619) 379-2280**

**Attorney for Defendant
and Appellant**

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT - DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

TYLER TORRES,

Defendant and Appellant.

**Court of Appeal
No. D063150**

**Superior Court
No. SCD238344**

APPELLANT'S OPENING BRIEF

**Appeal from the Judgement of the
Superior Court of the State of California for the
County of San Diego
(Honorable Joan P. Weber, Judge)**

**on
December 14, 2012**

STATEMENT OF APPEALABILITY

This appeal is from a final judgement of conviction after a felony jury trial and sentence to state prison that was imposed because of four felony convictions suffered by the defendant at said trial. California Penal Code section 1237 provides the requisite statutory authority. See, e.g. **Abney v. United States (1977) 431 U.S 651, 656 [52 L.Ed.2d 651, 657-658, 97 S.Ct. 2034; & People v. Vargas (App. 4 Dist. 1993) 13 Cal.App.4th 1653, 1659.**

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**TO THE HONORABLE PRESIDING JUSTICE, JUDITH D. McCONNELL, AND
TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA:**

STATEMENT OF THE CASE

On or about December 15, 2011 the Appellant, Tyler Torres, was arrested in San Diego County and on January 9, 2012 he was arraigned on four felonies and a misdemeanor before the Hon. David M. Szumowski [Dept. 12: 2nd Floor, 220 West Broadway, San Diego Central Criminal Court. [CT 1-4] The Accused pled not guilty and was appointed the Public Defender. His Honor granted a media request. [CT 198]. This was unsurprising as Mr. Torres had already been all but murdered in the press and they were there in force. Even so, Mr. Torres remained out on his previously posted bond of \$100,000. Six weeks later [Feb. 21, 2012] Mr. Torres appeared in Dept. 30 for a Readiness. [CT 200]. Retained Counsel, David Shapiro, stepped in. Judge Dwayne Moring continued that day's Readiness to March 26, 2012. On March 16, 2012 Mr. Shapiro was busy with his client in Dept. 11 on a Pitchess/Wheeler Discovery Motion before Judge Melinda Lasater, who had before her Mr. Shapiro's work [CT 7-44] & the City Attorney's

response [CT 45-59]. Judge Lasater denied the motion [CT 202], apparently on the pleadings. Back before Judge Moring [Dept. 30] on March 26, 2012 the case was confirmed for prelim but Shapiro did get an order for release of the “victims” (docket lingo) medical records. [CT 204]. On April 11, 2012 the Hon. Robert F. O’Neill (“Molded by his childhood in the Alaskan frontier, a first career as a police officer and some extraordinary life challenges.” - See L.A. Daily Journal, July 17, 2009 - Judicial Profile) presided over and conducted a lengthy preliminary hearing, 164 pages, in Mr. Torres case. There were six SDPD victims and/or witnesses and a private security guard: all of whom were called by the prosecution. Judge O’Neill bound over on all the charges plus all allegations in the Complaint [CT1-3; 207]. On April 25, 2012 Mr. Torres’ Arraignment on the Information was put over [CT 208] and then on May 9, 2012, Defense Counsel David Shapiro got off the case [\$?] and the Public Defender was reappointed [CT 209] with DPD Mary Joe Barr appearing for the P.D. On May 11, 2012 Mr. Torres appeared with DPD Lei-Chala Wilson as his attorney [CT 210]. On July 23, 2012 “M. Barr” is listed, but as retained counsel [CT 211] and Mr. Torres’ trial is confirmed for 8-16-12. On that date DPD Lei-Chala Wilson was now back. The case, with somebody from the PD’s office as counsel for Mr. Torres, was pushed out to 9-17-2012 for trial.

Deputy District Attorney James P. Romo, in contrast, appears to have made all court appearances for the District Attorney. Office. He was there vigorously representing “The People” on January 9, 2012 [CT 198], February 21, 2012 [CT 200], March 26, 2012 [CT 204], April 11, 2012 [CT 207], April 25, 2012 [CT 208], May 9, 2012 [CT 209], May 11, 2012 [CT 210], July 23, 2012 [CT 211], August 16, 2012 [CT 212], September 17, 2012 [CT 213], September

18. 2012 [CT 216], September 19, 2012 [CT 219], September 20, 2012 [CT 222], September 24, 2012 [CT 224], September 25, 2012 [CT 227], September 26, 2012 [CT 229], November 2, 2012 [CT 237], December 14, 2012 [CT 238]. It is true DDA James Romo (as he is not a Deputy City Attorney) was not present (at least officially) to beat back Attorney David Shapiro's early and energetic Pitchess Motion on Mr. Torres' behalf on March 16, 2012 [CT 202]. It was nevertheless speedily denied by Judge Melinda J. Lasater, apparently without any in camera hearing. It is perhaps worth noting, that on May 9, 2012, when Mr. Shapiro, after his brief cameo, gives the case back to the Public Defender, it is DPD Mary Jo Barr who takes it back. DPD Barr is at least occasionally Mr. Torres attorney. Attorney David Shapiro also sadly lacked DDA James Romo's durable consistency. In addition to being counsel only briefly, on the day he got off Mr. Torres case, Shapiro does not even show up. His stand in on May 9, 2012 was one Alexander H. Fuqua (Bar 2011 - exact last name pronunciation unknown - who is listed as working (interestingly enough) not for Mr. Shapiro but out of the office of Attorney Kerry L. Armstrong. It is fairly certain that when Mr. Torres appeared on May 9, 2012 to have it made official that he had no idea who his attorney was now going to be, he was escorted to this state of ignorance by an attorney he did not know and likely had never previously met. .

Mr. Romo. incidently, is in this case to say the least a very skilled advocate. Mr. Tyler Torres reaction to his Felliniesque ("fantastical or surreal") assortment of on and off talking heads showing up and getting off, appearing cameo or perhaps not, is not immediately apparent from the record. At the time of his sentencing his tale of confusion and woe, suffered it seems in stoic silence for many months, sort of burst out into the open. By then it was too, too late..

To return in detail again to the chronology of the case: on May 9, 2012 at 1:30 p.m. before the Honorable Timothy Walsh in Criminal Presiding (Dept. 11) "Defense Counsel for a Day" [Alexander Fuqua] "...moves to relieve Mr. Shapiro. Motion is granted. Mr. Shapiro is relieved. M. Barr is present and accepts the appointment." [CT 209].

It is certainly arguable that DPD Barr was merely a conduit. It is also arguable that Mr. Torres really did not have a lawyer for a few months except in name only: or perhaps generically. On May 11, 2013, for example - again before the Hon. Judge Walsh in Dept 11 - (with Mr. Romo present and prosecuting for the seventh uninterrupted time in a row) Deputy Public Defender Lei-Chala Wilson presented her doubtless very busy self as Mr. Torres new court-appointed lawyer. [CT 210]

Fast forward to the next court appearance: July 23, 2013, however, and Mary Joe Barr is back at the helm as "retained" (sic) counsel.[CT 2011] Yet on August 16, 2013, about a month before trial, DPD Lei-Chala Wilson is back.[CT 212] at least for that day. Then, on September 17, 2013 Mr. Torres, with his now and then counsel Lei-Chala Wilson in attendance, is sent out to trial by Judge Timothy Walsh to Department 51. There he meets the Hon. Joan P. Weber: his trial judge. There the significance of beating the foregoing successive representations into one's brain becomes (for this appeal at least) quickly apparent.

The First Thing that Tyler Torres does in the trial department [Dept 51] before Judge Joan Weber was to make a Marsden motion [People v. Marsden (1970) 2 Cal.3d 118] challenging the competency and/or effectiveness of his court-appointed attorney's representation. Judge Weber denies the Marsden motion. [CT 214] and Mr. Torres proceeds to jury trial forthwith.

Jury selection commences in earnest at 2:33 p.m. on September 17, 2002. The trial concludes for the day at 4:26 p.m. Jury selection recommences the next day [9/18/12] at 9:22 a.m. and twenty minutes later [9:42 a.m.] “twelve individuals are sworn to try the case” At 10:10 a.m. one of the sworn jurors is excused from service. By 10:28 a.m. the excused juror [#8] is replaced with a fresh face: swiftly selected as Juror #8. Shortly thereafter “Two individuals are sworn to serve as alternate jurors.” [CT 216]. At 11:02 a.m. Deputy District Attorney Romo gives his Opening Statement. AT 11:25 a.m. Deputy Public Defender Wilson RESERVES her opening statement on behalf of the Defendant. [CT 217]. Then the Prosecution immediately begins to call numerous witnesses in support of Deputy District Attorney Romo’s case against Mr. Torres. They are: Hikmat Daoud, Mina Habibian, Byron Buckley, Donald Meeks, SDPD, Roger Kunesh, all on September 18, 2012 [CT 217-218]. On September 19, 2012: Frances Minton, SDPD, Daniel Neifer, SDPD, [C.T. 219] and then Derrick Young, SDPD, Pierre Rivet, Derrick Young, SDPD (again), Patrick Vinson, SDPD, Lloyd Sentinella, SDPD, Nicholas Minx, SDPD all testify - after whom, at 4:00 p.m. on the same September 19, 2012: “The People rest.” [CT 220]. Immediately thereafter, apparently also at c.4:00 p.m on 9/19/2012 “Deputy Public Defender Wilson makes a PC1118.1 motion as to Count Three. Argument heard. The motion is Denied.” At 4:09 p.m “Court and counsel go over jury instructions.” [CT 220]. Verdict forms and possible lesser included offenses are discussed from 4:30 p.m. to 4:33 p.m after which court is adjourned until the next day. [CT 221].

On September 20, 2012 at 9:00 a.m. the People reopen briefly to “provide Court and defense counsel with the revised jury instruction packet.” That apparently takes five minutes. [CT 222].

At 9:05 a.m. Deputy Public Defender Wilson commences her Opening Statement on behalf of Tyler Torres and no more than five minutes later at 9:10 a.m. “Witness, Tyler Torres, is sworn and examined on behalf of the defendant.” [CT 222]. How long Mr. Torres testified on his own behalf is not clear from the court clerk’s minutes. He begins at 9:10 a.m. Court recesses at 10:29 a.m. to give everyone a break. Back at 10:46 a.m. the minutes read as follows:

“Counsel as noted above, the defendant, and all jurors are present. Court is in session. Witness TYLER TORRES, previously sworn, resumes the stand is further cross-examined on behalf of the People.” [CT 222] At 11:52 a.m. Mr. Torres is thanked and excused as a witness.”

Volume 4 of the Reporter’s Transcript for September 20, 2012 has Mr. Torres direct examination by Deputy Public Defender Lei-Chala Wilson beginning at 9:10 a.m on page 364 at line 23 and ending at page 400 at line 15. Initial Cross-examination by Deputy District Attorney Romo begins at page 400 at line 18 and goes to page 462 and line 9. Ms. Wilson’s redirect is from page 462 at line 12 to page 474 at line 8. DDA Romo’s recross-examination is from page 474 at line 13 to line 477 at line 22. That is where it stops. Mr. Torres is the only defense witness called in the entire case. The trial adjourns at the half day mark after Mr. Torres testimony on September 20, 2012 until September 24, 2012. [CT 222-223]

On September 24, 2012 the prosecution lets loose with a flood of additional evidence “in rebuttal.” The Trial Court Judge reads and grants the “People’s Motion to Admit Rebuttal Evidence: Redacted Jail Telephone conversation Between Inmate Tyler Torres and Unidentified Male.” This new development takes some time, apparently a bit over an hour.[CT 224]

At 10:11 a.m. Prosecutor Romo calls witness Steven Woodrow, SDPD and he testifies until

10:31 p.m. Immediately thereafter witness Patrick Vinson, SDPD, previously sworn, is recalled and testifies until 10:42 a.m. Immediately thereafter witness Timothy Peterson, SDPD is sworn and examined on half of the people and testifies until 11:09 a.m. Immediately thereafter witness Robert Dean is sworn and examined and the CD Jail Call from Tyler Torres December 17, 2011 is about to be played and a transcript is provided to the clerk and filed with the court. [CT 224-225]... except...The People discover there are technical difficulties with their surprise rebuttal evidence: the recorded jail call. The Court grants the People's request for an early lunch so the "technical difficulties" can be fixed by the prosecution. At 1:35 p.m on September 24, 2012 the People finally get their act together and Robert Dean retakes the stand and Court's Exhibit 27, the secret recording, is played for the jury (9 minutes) and direct examination resumes for another 9 minutes. [CT 225]. At 1:44 p.m the People rest.

The defense responds by calling a police officer, Brian Goldberg, SDPD for about 5-6 minutes. Then Mr. Torres take for direct and possibly some cross-examination at 1:51 p.m. after which he is excused at 2:24 p.m. on 9/24/2012 [CT 225].

The Court instructs the jury for a bit over a half hour [CT 225-226] and DDA Romo speaks for about an hour or so [his closing argument] until the close of the day.[CT 226] The following day, September 25, 2012, Mr. Romo resumes and finishes his closing argument in about 39 minutes for a total closing time of approximately 100 minutes over two days. [CT 225-226] Deputy Public Defender then talks to the jury rather succinctly for maybe a half hour. [CT 227] and Romo finishes with another 20 plus minutes or so rebuttal. [CT 227]. In short, Prosecutor Romo talks about four times as long in his closing arguments [spread over two

days] as does Mr. Torres “Marsdened” Deputy Public Defender. Prosecutor Romo calls 16 witnesses, some more than once. Mr. Torres, the accused himself, who has to be in Court, was the only witness his counsel is able to get to Court on Mr. Torres behalf.

For September 25, 2012 at 10:40 a.m. the Clerks Minutes read [at CT 227] as follows:
(Inter alia)

The bailiff is sworn to take custody of the jury, and the CONTESTED CASE IS SUBMITTED. ...The defendant indicates he would like to be present for any jury notes.

Amazingly, the jury deliberated not only for the remainder of the day until 4:30 p.m. but into the early afternoon of the following day, reaching the inevitable verdict of conviction around 1:53 p.m. on 9/26/12: when “The bailiff notifies the Court that the jury has reached a verdict. The clerk notifies counsel to return to court forthwith.” Mr. Torres went down on everything. [CT 230-236]

Tyler Torres’ sentencing was put over from the conviction date of 9/26/12 to 11/02/12 [CT 231] and then again continued on 11/02/12. On that date Tyler Torres renewed his earlier Marsden motion and the motion was again denied by Judge Weber. The sentencing was again put over, this time until December 14, 2012 at 1:30 p.m. in Dept. 51. [CT 237] Despite is repeated efforts to replace her, Mr. Torres remained being represented by his trial counsel, Deputy Public Defender Lei-Chala Wilson.

On the sentencing date the twice Marsdened defense counsel was present as her client received a sentence of 9 years, 4 months on the four felonies and credit for time served on the misdemeanor. [CT 238-239]. On December 18, 2002 Mr. Torres filed a timely Notice of Appeal from the Judgement of the Superior Court [Hon. Joan Weber] entered on 12/4/12.

STATEMENT OF FACTS

The Appellant, Tyler Torres, is currently in state prison serving a sentence of 9 years and 4 months as a result of his conviction in this case. His sentence was imposed by Judge Joan P. Weber on December 14, 2012 at a sentencing hearing where Judge Weber was presented with a very unusual and contradictory presentation on Mr. Torres behalf. Apparently, acting on his own, Mr. Torres had finally been able to assemble, albeit only after he was convicted, a team of experts who deal pretty exclusively with veterans and who were prepared to say that he had P.T.S.D. [Post Traumatic Stress Syndrome]. The position being advanced by Mr. Torres' people was that the crimes in this case, in their extensive experience with veterans with PTSD, were a product in significant part of Mr. Torres mental illness, to wit: PTSD. As a result of his illness, in their expert opinion as specialists working with many veterans on just this issue, both Mr. Torres and society at large would be a lot better off in the short run and in the long run if he obtained treatment in a facility that actually stood some chance of understanding what he was suffering from and how help him get past it. Mr. Torres' criminal record was slight until the case before the court. He did not have an extensive history of criminality. Quite the contrary. Late onset of symptoms of mental illness in veterans is quite common. People who are going for years living law abiding lives suddenly become different people, violent people. Mr. Torres history, far from being a continuous stream of anti-social acts, was quite the opposite. His was a classic case of PTSD that was directly traceable to his military service. Before he was in the military his record was comparatively insignificant and much, much less serious than the case before the Court. The presenter before the Court on Mr. Torres

behalf was one Adrienne Bracciale. "I'm the Equal Justice Works AmeriCorp legal fellow from Veterans Treatment Court" who stated:

Your Honor, the Veterans Treatment Court had a staff meeting about Mr. Torres' case. I - - I spoke with him at great length, had a video conference to George Bailey. The recommendation is based on the purpose of the Veterans Treatment Court, on Mr. Torres' exemplary military record, and the fact that he is suffering from PTSD from combat. [RT vol. 7, p. 852, lines 8-10, lines 20-26].

Judge Joan Weber was a bit incredulous to say the least and responds by saying this"

Did you read the psychological evaluation submitted by Ms. Wilson where a mental professional disagreed with that diagnosis? [RT vol 7, p852, line 28 to p853, lines 1-2]

To which Ms. Bracciale replies as follows:

I did. But there's also a diagnosis from the VA, and he is service connected for PTSD. [RT vol 7, p853, lines 3-5]

Judge Weber quickly rejoins:

I've got a conflict, though, where I have different mental health professionals. And, actually, the report submitted by the doctor, by Ms. Wilson, is a doctor I'm very familiar with who does an extensive amount of evaluations for the court; and in his opinion, this was not PTSD. [RT vol. 7, p853, lines 7-12]

Ms. Bracciale:

In his opinion, it - it also was a, um - he does have mental health problems that are related to military service, which - even if there is disagreement that he's diagnosed with PTSD, that does fall under Penal Code 1170.9, a mental health problem that stems from military service.

Because of that, he's been accepted at New Directions. I don't know if you would want to see the brochure, but it's a residential rehab facility that is specifically for veterans with - - with mental health problems for military service. New Directions had accepted Mr. Torres. As - - as you are aware, Pathway - - he was at Pathway home before then. [RT vol. 7, p853 lines 13-25]

He would be - - if the Court grants Mr. Torres probation, he would be transported directly to New Directions, and New Directions would make sure that he could

get to court in - - Veteran's Treatment Court for regular review hearings. That, in Phase 1, would be every two weeks. [RT vol 7 p853 lines 13-28; p854 lines 1-3]

The Court: "Okay." [RT vol 7 p854 line 4]

Ms. Bracciale:

And I can assure you that if his - - if he completes residential rehab before the year in Veterans Treatment Court is up, he would still be heavily monitored by treatment providers from the VA, the Vet Center. Um, he would be in treatment for alcohol abuse and PTSD.

And I would just encourage the Court to consider the - - successes of Veterans Treatment court and of collaborative courts in general that Mr. - -
[RT vol 7 p854 lines 5-14]

Judge Weber:

I'm very familiar with collaborative courts, and I've sent I don't know how many defendants over the years. I have never sent a defendant in a case this serious involving multiple police officers, two of them with great bodily injury, one of them was probably career ending.

I'm kind of surprised that your program - - you know, for non-violent offenses, drug-related or a petty - - thefts or a myriad of crimes, I think that program is absolutely wonderful. For a very serious violent crime like this on repeated occasions, do you really think he is suitable for such a program?
[RT vol 7 p854 lines 22-28]

Ms. Bracciale:

I really do. And he's - - based on a number of factors. One is that after the incident he voluntarily checked himself into residential rehab, and that in itself speaks to his ability to comply with terms of probation; that he's committed to treatment. The San Diego Veteran's Court is relatively new, but we have had cases involving violence.
[RT vol 7 p855 lines 1-9]

Judge Weber:

Including multiple counts with multiple great bodily injury allegations against law enforcement officers?
[RT vol 7 p855 lines 9-11]

Ms. Bracciale:

No. Not yet. Um, but there are Veterans Courts in the country that have. There was a New York Times article about a Veterans Treatment Court in Michigan that accepted an applicant who was facing a life sentence for – for attempted murder of a police officer.

And, you know, I'll just add that the vast reduction in recidivism that has been shown by Veterans Treatment Court is - - weighs on the factor of public safety in granting Mr. Torres probation.

[RT vol 7 p855 lines 12-21]

The Court: "Okay." [RT vol 7 p855 line 22]

Ms. Bracciale:

And if you have any questions about Veterans Court, I'd be happy to answer them.
[RT vol 7 p855 lines 23-24]

The Court:

I don't think I do. I - - think I've asked everything I have. Thank you very much.
[RT vol 7 p855 lines 25-26]

Ms. Bracciale:

Okay. Thank you for your time, Your Honor.
[RT vol 7 p855 lines 27-28]

At the conclusion of the colloquy between Judge Weber and Ms. Bracciale, Mr. Torres produced for his sentencing defense a long time friend of his, Mr. Kevin Gilley. Judging from how Kevin Gilley speaks to Judge Weber at the sentencing he would have been a heck of a good defense witness at Mr. Torres' trial. Particularly on the question of whether Mr. Torres was very likely impaired by PTSD on the night he was arrested when the police came to his apartment. Having known Tyler Torres for many, many years Kevin Gilley is a great defense witness, except for the fact he was never called, until after Mr. Torres stood convicted and asked him to come to his sentencing and speak on his behalf to Judge Joan Weber.

Mr. Gilley:

“I’ve known Tyler Torres for 11 years now. And, um, over that time - - I knew him before he, um, went to Iraq and his demeanor and the way he was and the way he interacted with people. And when he came back, something, something changed. He wasn’t - - he wasn’t the same happy-go-lucky guy. He wasn’t as relaxed as he normally was. A lot of things seem to - - things he used to be able to shrug off, Your Honor, he just wasn’t able to.

He’s struggled with his PTSD between work and college. I mean, he was working a full-time job and taking full-time college classes. And, um, even - - even working now before the incident happened I believe that he hasn’t focused on it enough, his PTSD and the issues that he’s - - that has - - that have been bothering him since he’s came back from Iraq. And I believe that with him going to Veterans Court now, that - - without the influences of work and life and everything else and wholeheartedly focusing primarily on getting better and figuring out and fixing what’s broken or what is causing his issues, I think that, uh, that he can overcome it.

I believe - - I mean, he’s served three months in - - in jail already. His - - career that he did have is - - within the military community as a - - government service, which is what he had before he joined, is already gone. He - - there’s no possible way that he could ever do that again. And I - - I just think that it would be, uh, a opportunity to receive this type of treatment. I mean, we all see veterans on the street, “Veteran,” you know, a sign. Who knows what led him up to that point? I know what he did was wrong, and I’m not taking anything about - - from - - what he did. But I just think that he deserves the opportunity to - - show that he can overcome this, Your Honor.” [RT vol 7 p857 lines 11-28 p858 lines 1-19]

After his friend spoke, Tyler Torres gave a sorrow filled speech that also reeks of sincerity and regret and the curse of PTSD.

Tyler Torres:

“Trial was my chance to be heard. My frustration has been fed not only through police’s ever-changing interpretation of events and truth, but my self reflection of my conduct and reaction to both nights addressed..” [RT vol 7 p858 lines 12-16]

Judge Weber: “If you’re unable to read it, sir, I’d be happy to read it and consider it, if - - if that’s your preference.” [RT vol 7 p858 lines 17-19]

Tyler Torres: “I’ll get it.” [RT vol 7 p858 line 20]

Tyler Torres: “I am ashamed of my behavior that has not been in accordance with my standards I have set for myself and my Navy - - is my Navy core values - - [RT vol 7 p858 lines 21-22]

The Reporter: “I’m sorry?” [RT vol 7 p858 line 24]

Tyler Torres: “My standards that I have set for myself and my Navy core values of honor, courage and commitment. I want the Court to know that I did not react out of hate, and I do not take pride in my behavior. And my reaction to the officers was composed of fear and feeling unsafe in my home. I have given a sincere apology to Sergeant Vinson, and I am ashamed of being involved in a conflict with my own countrymen.” [RT vol 7 p858 lines 25-28; p859 lines 1-5]

Tyler Torres: “ This court has labled me a menace to society. However, I continue to serve my county in local communities since being discharged from the Navy honorably in 2006. I have worked with troubled youth - - County Office of Education. I have also served the local

community by helping unemployed veterans find jobs, apply for unemployment insurance benefits with Employment Development Department. At the time of the incidents I continued to serve my county again working as a civilian for the Department of the Navy at Naval Base 32nd Street. Throughout this time, I was a full-time student completing a bachelor's of science in business from California State University Channel Islands and a master's degree of science in accounting from National University. [RT vol 7 p859 lines 6-21]

Tyler Torres:

"I have been cursed with this demon known as post traumatic stress disorder which has evolved from a fear of dying to a fear of living. Endless cycles of depression encourage numbing cycles of alcohol use and isolation from society." [RT vol 7 p859 lines 22-26]

Tyler Torres:

"Recently, sporadic seiz- -- [RT vol 7 p859 line 27]

THE REPORTER: "I'm sorry, sir. Slower, please" [RT vol 7 p859 line 28; p.860 line 1]

Tyler Torres:

"-sporadic seizures have been eating me from inside out as I have struggled to heal. I have hit rock bottom and have been tired of being scared and angry. I have sought treatment for my PTSD and alcoholism in the past, and I will continue to seek them in the future."

Tyler Torres:

I'm committed to my goals of healing, redemption, and forgiveness. And I want to thank you, thank everybody here for supporting me, and my cousin Nate for helping me find the path to heal." [RT vol 7 p860 lines 2-11]

At Mr. Torres' jury trial no defense was ever raised, no attempt was ever made to raise a defense connected to the Post Traumatic Stress Disorder that Mr. Torres apparently has definitively been suffering from for many years. Mr. Torres mentions it twice, however. On September 20, 2012 during redirect examination by his attorney, not in response to a question however, Mr. Torres blurts out "I - - have post-traumatic stress - - " and the prosecutor, DDA Romo apparently immediately interrupts what Mr. Torres is saying with "Your Honor, I'm going to object." Judge Weber states: "Overruled. Answer will stand" [See RT vol 4 p465 line 28 & p466 lines 1 & 2]. On September 24, 2012 Mr. Torres was recalled as a witness by his own attorney for a few moments a few pages of questions. He is asked by DPD Wilson what he meant when he said "they fired me up dog" in a jail phone conversation with a friend (that had been secretly recorded by the jail after his arrest):

Deputy Public Defender Wilson: "What did you mean by the statement "They fired me up"?"

Tyler Torres: "When they came into my home and came into my house, I felt I had to defend myself. With Post-Traumatic Stress Disorder, I'm going to defend myself. And it's hard for me to unwind from something like that." [See RT volume 5, p579 lines 13-19]

As previously mentioned, a " Marsden motion" [People v. Marsden (1970) 2 Cal.3d 118, 123] motion was made, personally as is the custom, by Mr. Torres in the trial court dept (Hon. Joan P. Weber - Dept 51) It was denied within 15-16 minutes after first entry to the trial department on September 17, 2012. Immediately thereafter Judge Weber apparently tried to settle the case "The Court discusses the possible plea agreement with the defendant." [CT 214]. This effort was unsuccessful and the case went to trial with the defendant apparently too poor to obtain

more attentive private counsel. At least that is what Mr. Torres says at the "Sealed Marsden Hearing" ["SMH#2"] Reporter's Transcript of Proceedings [for September 17, 2012 pp 1-24] that is part of the record on appeal in this case. At page 1 Mr. Torres states: "I actually hired me a lawyer. ...I could no longer afford him, and my case was assigned to the Public Defender's Office. ...I was assigned Ms. Wilson as my counsel." According to Judge Weber that was "In May of 2012." Then Mr. Torres seems to say that from May 2012 to August 20th 2012 "I never spoke to my lawyer. I tried several attempts. I have phone records of attempts I made to contact her office. I sent numerous emails with no reply from Ms. Wilson. It was clear on the day - - the only time I had a conversation was maybe two or three minutes in the hallway as we were walking in Court." "Ever?" asks Judge Weber to Mr. Torres. "Ever. Before the 17th of August, Your Honor." the Defendant replies. [See SMH#2 p.1 lines 13-27 and p. 2 lines 1-7].

As that was a month before the then present date of September 17, 2012 Judge Weber alertly tracks what happened after that. Judge Weber: "Okay. And what about since the 17th?" [of August 2012] The Defendant: " Since the 17th, Your Honor, I, on the 17th, I met with her in her office and spent two hours discussing the case. I told her I wanted to establish a client counsel relationship and that, you know, I need faith in my lawyer and in representing me in Court."

M.r Torres continues: "We made arrangement for me to - - after talking with her in her office for two hours, we made arrangement for me to type up my official statement of what happened on the night of December 15th, which I did. And we also discussed evidence that I would like to bring to the Court for trial if it's going to trial. And I was under the understanding that she would review the case further and, if she had any questions, she would give me a call.

And - - and I - - was under the understanding that she would review the case further and, if she had any questions, she would give me a call. And - - and I - - was under the understanding that she would review the information for a week, give me a call the following Friday to follow up with me and build that relationship as client-counsel so I had faith in her - - in her representation” [See SMH#2 p2 lines 8-26]

Mr. Torres continues: “That week came around. The next week, on a Friday, I submitted all the information she requested on my official statements to her by Email, and she said: I will give you a call that Friday. That Friday came and she never - - she never called. And I left several messages on - - on her - - her voice - -her voice mail with no reply. I tried contacting her supervisor with no reply. That went on for about two weeks.” [See SMH#2 p2 lines 27-28 & p 3 lines 1-7] ...Mr. Torres continues to tell Judge Weber his concerns...

“I went as far as to contacting County Supervisors, State Congressman and Federal Congress - - Federal Congress members regarding my case to try to get help contacting my lawyer. I thought we were establishing a relationship about the evidence in my case.” [See SMH#2 p3 lines 1-12].

Judge Weber asks Mr. Torres: “Are you saying she never has gotten back to you since then?” and the Defendant replies: “ No, Your Honor. I have - - I made an attempt - - before I called the congress woman and state counsel member, I contacted - - I contacted her on the phone, and she says: “Oh, I’m going to give you a call tomorrow.” Tomorrow came and she never contacted me.” “I gave her office a call about 3:30. She picked up the phone and said: “Let me - - I was going to email - - call you back in 45 minutes. Forty-five minutes came and went, and at that point, I just - - you know, I just lost faith in her ability to represent me. On the meeting of the 17th, Your Honor, it was clear that she hadn’t reviewed all the case evidence and all the charges

against me.” [See SMH#2 p3 lines 13-28].

Judge Weber then asks the Defendant: “What do you mean “clear that she hadn’t reviewed” it? She didn’t - - (at which point Mr. Torres interrupts) “She was - - she was mentioning that I sucker punched a female officer. If you read the pretrial testimony and the evidence of the case, it’s the male officer that said that he got sucker punched in the pretrial.”

(Mr. Torres continues:) “And so her facts have been – have been confused and she didn’t have all the evidence of the case read or she didn’t, you know, completely review the file because she’s saying yeah, when you punched the female - - or you sucker punched the female officer.”

[See SMH#2 p4 lines 1-12].

Coming back after the interruption, Judge Weber queries: “Okay. So let me ask my question again, Sir. Has she called you back and attempted to talk with you about the case since this August 17 meeting?” Mr. Torres replies; “No, Your Honor.” The Court: “Has she never” (sic?)

Mr. Torres: “No, Your Honor. She sent me an email last Friday with the evidence of the - my next door neighbor who said he witnessed the events go down through the peep hole. She sent me that last Friday, and that is the only - - the only correspondence I’ve received from her”

The Court: “ And you got not calls from her - - “ The Defendant: “Yes. I’m sorry, Your Honor. I did. I got a five-minute phone conversation with her. She called me up, and during that phone conversation, it was mostly - - you know she sounded distraught. [see SMH#2 p4 lines 13-27]

Mr. Torres continues with his history and Judge Weber asks him some questions:

“The day I called the Congress - - the City – not the Congressman, but Board of County Supervisor, I actually got a response from her for about five minutes. And just in that conversation: Hey, I have to many - - too many cases. You’re not the only case I have. I’m working on this

Hell's Angel Case." "And you know - - and I had to break that conversation. I said well, how far have you gone to retain the evidence or review the case as we discussed? And - -"

The Court interrupts: "What suggestions did you have for things that she needed to do to help you defend the case?" [See SMH#2 p4 line 28; p5 lines 1-10]

To which Mr. Torres replies: "Well, Your Honor, there's certain accusations made against me, and there's several facts that have happened. And that's another one of my concerns for the case. On December 15th, you know, of course all the officers came to my house, but there was an official statement made by Lieutenant Goldberg from Norther Division, and you know, that was one of the pieces of evidence that I wanted to bring. Lieutenant Goldberg, you know, announced to San Diego and, you know, the rest of the world that on that night on December 15th that I threw my dog at officers, and I wanted her to subpoena that. There's another accusation made against Officer Meeks - ... He said he talked to both Officers directly and both officers informed him that I threw my dog at officers and then proceeded to just attacking officers." [See SMH#2 p5 lines 11-24; p6 lines 1-3]

Mr. Torres is still concerned about his dog and quite upset:

"I was notified by my prior attorney before Ms. Wilson that there was a possibility that Officer Meeks made an attempt to adopt my puppy after that night, and you know, I asked her to look into that for me. And the only reason I asked her to look into that, I think it shows lack of professional judgement if the officers there that night was trying - -

Judge Weber asks: "What happened to your dog?" To which the Defendant replies: "I still have my dog, Your Honor. I don't have him physically in my custody. I relinquished custody to my

cousin, who's taking care of him now and providing a good home for him."

Judge Weber follows up: "Okay. And you thought that one of the officers wanted to adopt the dog or something?" The Defendant: "My -- Ms. Davis-Shapiro (sic! Mr. David Shapiro!), my former counsel, stated to me during the pretrial that one of the officers attempted to adopt my dog" Judge Weber: "How would that happen? How would they attempt to adopt - -"

Mr. Torres: "I guess go down to the pound." Weber, J. : "Oh, the dog was at The Pound.?"

Mr. Torres: "Yes, Your Honor." "When I was arrested, you know, of course they came into my apartment and took my dog to animal protection down there in" - - The Court: "Okay"

Torres: "...at the Mission Valley." The Court: "Okay." The Defendant: "So it was my understanding - - it's not my understanding. You know, my previous lawyer said that one of the officers attempted to adopt my dog. And I wanted her to look into that. I said that kind of sounds like a lack of professional judgement, becoming personally involved in the case."

The Court: "Okay. Okay. Anything else?" [See SMH#2 p6 lines 6-28 and p7 lines 1-13].

Tyler Torres: "I have emails and phone records. There's documents from the apartment complex containing noise complaints from my above neighbor who made the call complaint that night on noise complaint. She made different noise complaints, never of a radio noise or anything like but of my puppy - - puppy whining. She made complaints to the - -

COURT: "What would be the relevancy of prior complaints?"

DEFENDANT: "Just the history of, You Know, complaints from The Neighbor."

Mr. Torres: "It probably wouldn't come into evidence, though, either way, so it wouldn't - if anything it would hurt you."

Mr. Torres: "But there's my eviction notice, Your Honor, and that eviction notice contained

the Accusation I threw my dog at Officers. I was Evicted from the apartment complex based on the Accusation I threw my dog at officers and then just started attacking officers. The Court: "So they have moved to evict you based on this incident" Torres: "Yes, Your Honor."

THE COURT: "Okay. And you're living in a different apartment complex now?"

TYLER TORRES: "No, Your Honor. I'm actually currently in a Program, a PTSD Program, called Pathway Home in Yountville, California. That's North of Napa. ..." "I'm not living here in San Diego, here."

The Court: "So you're staying in a hotel or something?"

Mr. Torres: "Yes, Your Honor." [See SMH#2 p8 lines 6-28]

Judge Weber then turns to Mr. Torres counsel, Deputy Public Defender Lei-Chala Wilson who explains her efforts to settle the case, the fact Mr. Torres lives somewhere else than in San Diego, that he has many concerns notwithstanding ... "And I think the biggest problem is Mr. Torres wants to run the case. ..." "And that's when I told him that the only - - you have two rights. You have a right to decide whether not to go to trial. You have the right to decide whether or not you're going to testify. Everything else is up to me. A lot of the problem is what he wants me to do. A lot of it's not relevant." [See SMH#2 pp 9-10].

The rest of the Marsden hearing veers off into a fairly sophisticated discussion between two jury trial veterans, Judge Weber and Deputy Public Defender Lei-Chala Wilson. The Accused's PTSD is never discussed at all. The possibility of mental defenses, despite his rather interesting approach to things during the Marsden hearing, is never discussed, even though Mr. Torres is living in a mental health treatment facility by his own report: "I'm actually currently in a Program, A PTSD Program, called Pathway Home in Yountville, California. That's North of

Napa.” [See SMH#2 p8 lines 13-5]. Judge Weber doubtless has her job on her mind. Trial judge. Judge Weber doesn't know Mr. Torres from the man in the moon. Judge Weber may have missed entirely the significance of Mr. Torres revelation that he was in treatment for PTSD, because she asks “So you're staying in a hotel or something?” To which Mr. Torres responds: “Yes, Your Honor.” [See SMH#2 p8 lines 19-20]. If he is living in a hotel or something there is no reason to go into Mr. Torres mental health issues or what efforts that may have been gone into by his counsel in preparing him for the forthcoming life changing experience in Department 51. True, the fact that Mr. Torres has PTSD does pop out of this mouth a couple of times during the trial. But no one takes much notice. The DDA objects to but Judge Weber lets the answer stand. See RT vol 4 p465 line 28 and p466 lines 1&2 and see RT vol 5, p579 lines 13-19 (previously mentioned at page 17, supra, in the Statement of Facts.)

SUMMARY OF THE CASE SO FAR

Mental illness carries with it for many people a stigma. Certainly, when someone is accused or branded as having a possible mental illness the life changing consequences that come with it can be very upsetting. If the allegations are published and they are false the accused may find himself stripped of any presumption that he can even answer the allegations, short of suing for libel or defamation, unless or until the stigma is somehow discredited or dropped. Perhaps, even though Tyler Torres was facing many years in prison, both his Public Defender and the trial judge preferred to ignore the signs and send Mr. Torres into his jury trial stripped of such a heavy cloud hanging over his life, his self-esteem, and his prospects for living a normal life. Instead, his mental PTSD was sort of pushed under the rug, so to speak. Even his

sorrowful confessions to the jury and the public during his highly publicized jury trial in this case were turned away from as if they were some sort of can of worms that no one cared to delve into in any depth. It simply made more sense, so late in the game, to proceed with the assumption that the trial of Tyler Torres was about whether he was a good man or a bad man. The possibility that he was a sick man, even after his curious behavior in the Marsden hearing, was sealed away and kept a secret. The prosecution of course probably preferred it that way. In an adversary system such as ours, the role of the People is to prove that the defendant did something bad. Mr. Torres was painted as a very bad man indeed by Deputy District Attorney James Romo. He worked for quite a long time and very hard to create that bad man image and drive it home to the world. In chambers during his Marsden hearing Tyler Torres told both the Judge and his Deputy Public Defender that he had PTSD. No one took the time or trouble to do anything but cast his possible mental defenses aside. So they were never looked into and never used to help him survive the onslaught of witnesses, many of them police officers, at his trial. This is a tragedy that is all too often repeated. Perhaps it is because we have an adversary system and it is a legal system and the time had come to go to trial. That was the first priority, it seems, for everyone except Tyler Torres. He seemed more worried about who was taking home his dog. The Marsden hearing was a cry for help. The cry for help was ignored. Many years ago, in the mid- 1980's this attorney advanced a novel defense in San Diego that no one in San Diego seemed even to have heard of. He called it the Battered Women's Syndrome. His first, a black woman name Brenda Martin, was accused of committing a robbery. With a couple of psychologists and a wise and understanding judge (Napoleon Jones) Ms. Martin

was spared a second trial after the jury hung in her favor.

The second client was a woman named Lisa Quan, who was found with her boyfriend in what was proclaimed in the press to be the largest meth lab ever uncovered in the East County. Ms. Quan was severed from her co defendant, Paul Manning Walker based upon reports from a psychologists hired by the defense. Walker was convicted and received a sentence of 11 years in state prison. The trial judge was a very wise and experienced jurist, William Kennedy. The prosecutor in the case was DDA Evan Miller. After Walker's conviction, based upon what I was able to show Mr. Miller, my client was allowed to pled to a felony Health and Safety Code violation: 11378. She received probation from Judge Wayne Peterson in criminal presiding. She did not go to trial. She did not go to jail. A year later her charge was reduced to a misdemeanor H&S 11377. That was later dismissed in its entirety and Lisa Quan's only criminal record disappeared forever. Not long after that the prosecutor's started doing an about face, so to speak, and began to defend the Lisa Quan's of this world and prosecute the people who hurt them. Tyler Torres may be nothing more than a blast from the past waiting to break out of a mental straight jacket not only his own.

ARGUMENT

INEFFECTIVE ASSISTANCE OF COUNSEL REQUIRES THAT THE CONVICTION OF TYLER TORRES BE SET ASIDE

With all due Respect:

It is overwhelmingly apparent that Tyler Torres' PTSD was on the table in this case long before trial. It may just be that his Public Defender was very, very busy and Mr. Torres was a pest who was more concerned with his dog, whether the policeman had taken his dog, whether the facts of the fight were being misrepresented and whether anyone, since he was broke, was going to spend the time to defend him the way he saw fit. That was not his province. The proper and appropriate role of a defendant was to listen to his lawyer. Particularly an accused who shows up after being out of sight and out of mind (redux?); he's off living faraway in a PTSD Program called Pathway Home in Yountville, California. (That's North of Napa) .. "So you're staying in a hotel or something?" asks the Judge at the Marsden Hearing.

Listening to Mr. Torres prattle on about his concerns in chambers seems to simultaneously convince both the Judge in this case and Tyler Torres' Public Defender that Mr. Torres was not mentally equipped to understand the Mysterious Science of the Law. In truth, it probably should be left to the Professionals. Mr. Torres' very, very experienced Deputy Public Defender easily won the judge over to her side. All was right with the legal world. What was wrong in this case was what was wrong or right about Mr. Torres actions. His thought processes seemed to have been dismissed out of hand as irrelevant and not a little squirrely (or is it

squirrelly?). Perhaps he was still a little shell shocked or something. Not too surprising given what he was going through, albeit. Defendants are a sorry lot. Very few volunteer. Nevertheless. Mr. Torres had to go to trial and he wasn't stark raving mad. At least now. No more beating about the bush. Court houses are a busy world and the clock is always running on speed. Indeed, alacrity, efficiency, professionalism are necessary and useful tools of the trade. Marsden hearings oftentimes may be an uphill battle. Isn't it sort of like a frightened and angry mouse trying to convince a couple of Kool Cats that "we need to spend more time on my case." And so it goes. Wasn't it a watchmaker who said "he who hesitates is lost?" Maybe not. In the land where The Calendar is King there are probably a lot of people saying that. As for Defendants! First they act precipitously. Then they all afraid of the precipice.

Go Figure. Some years back there was a judge who had a shiny metal plaque on the door he entered through to get into his courtroom. His name was Mack. Whether he was fond of the Threepenny Opera is unknown. On the plaque was engraved, however, perhaps as a Brechtian Cue, two words: "It's Showtime!" When the jury sent him a note (as this attorney discovered after a trial) he sometimes simply answered it himself by writing back. "Reread the Instructions." (and perhaps parenthetically) Get into the Mysterious Science of he Law!

Notwithstanding all the foregoing, the Craziest part of this case is the Notion, which is obviously Nuts! was that Mr. Torres was competently represented at his trial.

The Case of People v. Ibarra (November 14, 1963) 60 Cal.2d 460: an opinion by Justice Traynor crystalized what some commentators have described as "the sham or farce rule" or

The Reducing of the Trial to a Farce or a Sham. To justify relief on the ground of ineffective assistance of counsel “an extreme case must be disclosed,” and it must appear that counsel’s lack of diligence or incompetence reduced the trial to a “farce or a sham”. 60 Cal.2d 464.

Ibarra is a much more generous standard than that which presently governs in California. Yet is hard to see how missing the broad side of the barn could have been any more apparent than in Mr. Torres case. Reading the Marsden hearing transcript. Listening to Mr. Torres prattle on about his dog. Then he breaks down at trial, in his confessional unaware he is perhaps inadvertently saving himself by revealing he has PTSD [even then beign sushed up or ignored by Defense Counsel, Prosecutor and the Court. Given the fact that PTSD is the proverbial elephant in the living room: and Mr. Torres is a very big man. Putting the two together should have been easy for his defense attorney. “He’s a crazy veteran with PTSD who was suddenly back in battle and out popped the Genie of War!” War is Hell! He’s still bedeviled, then the cops get into it and BANG! It’s Baghdad Time! We train our soldiers to be machines of war but we still haven’t quite figured how to get rid of the toggle switch in their brains when they come back from serving their country in terrible terrible times abroad.” Go figure! It’s War Time!

An arguably less deferential standard is the reigning rule articulated in *People v. Pope* (1979) 23 Cal.3d 412 that states, in a Bird opinion, that neither State nor Federal Constitutional standards are satisfied by the farce or sham standard. The attorney who passes muster (ironically in a military PTSD case here) must be reasonably competent, diligent and conscientious. The defendant who feels he was neglected (Torres really was)

must show that trial counsel failed to act in a manner to be expected of reasonably competent attorney's acting as diligent advocates and that counsel's omissions resulted in the withdrawal of a potentially meritorious defense. See 23 Cal. 3d at 425. The term withdrawal presupposes that the defense is either obvious - as is was here: Like the Queen Mary! or it would have been looked into and checked out by a reasonably competent lawyer. Torres was in Iraq. He's had PTSD for years. He's awash with clues. All you have to do is tale to him and take the blinders off and wax (or plugs) out of one's ears. The man is innocent in one sense very obviously. He did not really understand the dynamite defense he had in PTSD. Instead he probably felt guilty and stigmatized - not too mention just plain bad and out of sorts a lot - because of it. PTSD is not fun and sometimes it is Hell on Wheels. It is like being a leper but trying not to become a social leper as a consequence. The man kept to himself, drank, played loud music, adores his dog as his very best friend. He's a veteran from Iraq still doing efficient, button down sort of things for a living. When you talk to him you know immediately that this is contents under pressure. If you have been around awhile and you take any kind of look at this case at all it SCREAMS PTSD! PTSD is the pot a gold defense in this case. It's a winner. Even if he goes down a bit every-thing is mitigated. If you can shrink him and put on his friends and buddies and really work the thing up the policeman, even the cops will forgive him. It is heartbreaking when a man, a really good man, suffers so badly at the hands of the courts. Part of it was the Press and their desire to attract readers and viewers. The Marsden hearing does not read like the defendant is an animal abuser. It reads more like a slightly modified version of a chapter out of Old Yeller. Or Lassie. Or Butch. Instead the poor guy gets butchered

and trial and is reduced to confessing spontaneously before everyone can conspire to shut him up that he has PTSD. Rene Girard's Scapegoat is participating a ritual cleansing of evil for the good of the rest of us. Order is restored. Respect for law and nice little doggie story to make the whole thing roll out the door like it has fins! The State needs cases like this. Those of us who are not over identifying with our patriotic role as good citizens might consider the irony of how domestic patriotism and civic virtue treat out disabled warriors who come back having brushed up against things that we don't know about, have not seen, never experience unless terrible tragedy strikes our lives and even then it may be very small indeed to a nasty insurgency in a City and Country that are not only hellish politically. The place is hot as hell. Torres had a story to tell but it's a dogface story, not a dog story. And that story is very, very compelling and it was never even looked into by the busy time sharers in the Superior Court. If it seems like this writ was written in PTSD ease consider the source. Three decades of criminal defense entitles an ounce or two of empathy. The people who looked at this man did so with the cold, cool collected (air conditioned) eye of a court house gang. Mr. Torres is a stranger to their world. He is grist for their mill. He is also an innocent man caught in a living hell because he did not die in Iraq. He made it back.

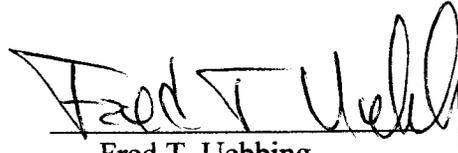
CONCLUSION

For the reasons set forth above, this court should reverse the conviction of Tyler Torres on the grounds of ineffectiveness of counsel and return to him his presumption of innocence until it is not possible to believe that this was not all a terrible mistake. That will likely never happen and if the case is properly presented on another no one will be very disappointed.

CERTIFICATE OF WORD COUNT COMPUTATION

The text of this brief consists of c. ^{25,000}~~42,000~~ words counted manually by
the undersigned.

Dated September 3, 2013

A handwritten signature in black ink, appearing to read "Fred T. Uebbing". The signature is written in a cursive style with a horizontal line underneath the name.

Fred T. Uebbing
Attorney for Appellant

PROOF OF SERVICE

PEOPLE v. TYLER TORRES - CASE NO. D063610

I, Fred T. Uebbing, declare under penalty of perjury:

1. I am a citizen of the United States and a resident of the State of California and I currently reside in the County of San Diego. I am not a party to this action. My mailing address is Post Office Box 16468 - San Diego, California 92176

2. I represent Tyler Torres as retained counsel in Case D063510

3. On September 3, 2013 I personally mailed the

APPELLANT'S OPENING BRIEF

to Opposing Counsel by placing a copy of the Appellant's Opening Brief in an envelope, sealing the envelope and placing on the envelope enough postage so that when the envelope is placed in the United States Mail it would be as certain as I could be that it would reach its destination which was and is:

Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

Hon Joan Weber
San Diego Superior
Court 220 W.
Broadway
San Diego, CA 92101

4. September 3, 2013 I also personally mailed a copy of the aforementioned same

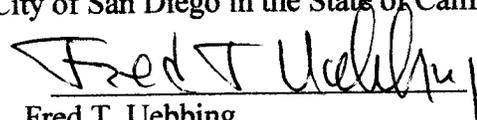
APPELLANT'S OPENING BRIEF

to TYLER TORRES, my client, by placing a copy of the Appellant's Opening Brief in an envelope, sealing the envelope and placing on the envelope enough postage so that when the envelope is placed in the United States Mail it would be as certain as I could be that it would reach its destination which was and is:

Tyler Torres - CDC # AN1018
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4783

Subscribed and sworn under penalty of perjury in the City of San Diego in the State of California
this 3rd day of September 2013 by the Declarant.


Fred T. Uebbing

