and meaningful reflection upon the gravity of the contemplated assassination.

The clinical evidence which the defense presented relative to appellant's mental capacity in effect consists of the testimony of two psychologists, Schorr and Richardson, and two psychiatrists, Dr. Marcus and Dr. Diamond. The other four psychologists called by the defense (Seward, De Vos, Howard, and Crain) merely attempted to interpret and verify the findings of Schorr and Richardson and never observed or tested appellant. Their testimony is thus entitled to negligible weight.

People v. Bassett, supra, 69 Cal. 2d 122, 140-43.

Martin Schorr, a clinical psychologist, examined appellant at the county jail for several hours on November 25, 1968, and for most of the following day, administering several psychological tests including the Wechsler Adult Intelligence Scale, the Minnesota Multiphasic Personality Inventory (MMPI), the Thematic Apperception Test (TAT), the Bender Visual Motor Gestalt, and the Rorschach. (Rep. Tr. pp. 5540, 5547.) Mr. Schorr testified at length regarding his opinion, derived from the test results, of appellant's general mental and emotional makeup. But it was only

at the conclusion of the direct examination that he was asked whether "any such person as you have described, meaning Sirhan, [could] . . . have the mental capacity to maturely and meaningfully premeditate, deliberate and reflect upon the gravity of his contemplated act of a murder on June 5, 1968." (Rep. Tr. p. 5735.) Without revealing the basis or the reasoning process which led him to so conclude, Mr. Schorr testified simply, "As you state the question, I do not feel that this man can meaningfully and maturely premeditate." (Rep. Tr. p. 5736.) Schorr was then asked,

> "[U]sing the same assumptions that I put in the question before, could any such individual described by you as you have described him have the mental capacity to comprehend his duty to govern his actions in accord with the duty imposed by law, and thus have the mental capacity to act with malice? Malice aforethought?"

His reply was "The answer is again no." (Rep. Tr. p. 5738.)

However, the foregoing opinion was contradicted by Mr. Schorr himself, on cross-examination. Asked whether one of his written reports had not

stated "that a portion of the time Mr. Sirhan does have the ability to premeditate," Schorr testified, "I never said he couldn't premeditate," and "Yes, he can premeditate," "has the ability" and "also has the ability to harbor or have malice." Asked whether appellant also had the "ability to have a mature reflection upon conduct," Schorr replied, "No, not mature," defining "'mature' in a legal sense" as

> ". . . [w]here he by maturely reflecting upon what his acts are, I mean, or as I understand the legal term that he handles a situation in a responsible adult manner with full awareness of the situation and a full awareness of his relationship, in other words, he is completely responsible and responsive." (Rep. Tr. pp. 6330-31.)

Clearly, Mr. Schorr's testimony was not "'substantial' evidence, i.e., evidence that reasonably inspires confidence and is 'of solid value.'" People v. Bassett, supra, 69 Cal. 2d at 139. Schorr "correctly recite[d] by rote a certain ritual formula," but this does not "call a halt to our inquiry" in determing "the substantiality of the

proof which that testimony purported to represent." Id., 140-41. Schorr's testimony falls far short of the mark of substantiality when judged by "'the material from which his opinion is fashioned and the reasoning by which he progresses from his material to his conclusion.'" Id., 141. If indeed "'the opinion of an expert is no better than the reasons upon which it is based,'" id., 144, the value of Schorr's opinion is zero, for he advanced no reasons for his opinion on appellant's ability to premeditate. Likewise Schorr's opinion is impugned by the inaccuracy and improper technique in his testing (see the testimony of Mr. Ollinger, infra at 107-12.) The absurdity of some of Schorr's methods (e.g., scoring a dove as a symbol of violence on the Rorschach (Rep. Tr. pp. 6455-56)) is apparent even to the untrained layman. Equally ridiculous is Schorr's explanation of appellant's motive in assassinating Senator Kennedy: the killing of a father-substitute in order to regain "his most precious possession, his mother's love." (Rep. Tr. pp. 5850-51.) The same is true of Schorr's acceptance, "as a matter of truth," of facts supplied by appellant, and the basing of Schorr's opinion in part on what Schorr had

learned from the newspapers, Life Magazine, and television. (Rep. Tr. pp. 5848, 6180.) Schorr's opinion is also discredited by his having formed a bias as to appellant's condition ("[t]here can be no real basis for premeditation") even before having examined appellant for the first time (Rep. Tr. pp. 5928, 6175-76, 6185), and by his having plagiarized large portions of his final report from a sensationalistic book. (Rep. Tr. pp. 6188-89, 6196, 6254-56, 6259-62, 6265-68, 6271-74, 6282-83, 6292-95.)

Orville Richardson, the other psychologist who examined appellant, did so only between 11:00 a.m. and 2:00 p.m. of one day, administering a battery of tests similar to Schorr's. (Rep. Tr. pp. 6337, 6477.) Richardson described his approach to the Rorschach as "somewhat different than" Schorr's (Rep. Tr. pp. 6354, 6415, 6423) and admitted that the Rorschach responses which he himself received were incomplete because "I was excited and jumpy and wasn't functioning properly." (Rep. Tr. p. 6422.) The results obtained by Richardson on the Bender test were also different from Schorr's. (Rep. Tr. pp. 6379, 6383.) Some of the differences might be clinically significant in Richardson's view. (Rep. Tr. pp. 6474-76.)

He could not understand some of Schorr's scoring and reasoning. (Rep. Tr. pp. 6453-56, 6460, 6466.) He also found scoring errors in his own testing of appellant. (Rep. Tr. pp. 6446-48.) Richardson admitted that prior to examining appellant he began with an "assumption" that appellant was paranoid. (Rep. Tr. p. 6444.) He found significant appellant's test response admitting to "strange and peculiar thoughts," yet Richardson himself admitted to having such thoughts. (Rep. Tr. pp. 6558-59.)

As in the case of Mr. Schorr, the direct examination of Mr. Richardson left to the last two questions the inquiry whether appellant had "the mental capacity to maturely and meaningfully deliberate and reflect upon the gravity of his contemplated act" and to "comprehend his duty to govern his actions in accord with the duty imposed by law, and thus have the mental capacity to act with malice aforethought." Although his prior testimony was not directly related to either of these issues, Richardson mechanically uttered what the defense apparently considered to be the "magic in the particular words emphasized in Goedecke and Nicolaus," People v. Bassett, supra, 69 Cal. 2d at 140, casting

no light on the basis for his conclusion or the purported reasoning by which he arrived where he did. (Rep. Tr. pp. 6437-39.) As with regard to Mr. Schorr, respondent submits that this testimony did not constitute "substantial" evidence, "of solid value," indicative of diminished mental capacity on appellant's part. Id., 138-39.

As previously detailed, the two psychiatrists called by the defense took into account a wide variety of materials in arriving at their overall evaluations of appellant and spent a considerable amount of time in personal interviews with him.

Dr. Marcus was asked the same two indicated questions and responded that appellant lacked the requisite mental capacity. (Rep. Tr. p. 6666.) Asked to explain his reasoning, Dr. Marcus said only

> "Based on . . . his notebooks dating back at least May, probably earlier, and also other books that quite a bit predate that, in my opinion he was, as I said earlier, he was mentally disturbed and became increasingly more disturbed during the Spring of last year. That is also noted in the psychological tests and I feel that his

mental disturbance was relevant and directly related to his political views and his feelings about Robert Kennedy; I feel therefore that he could not meaningfully and maturely think and deliberate on his actions." (Rep. Tr. p. 6667.)

In response to further questions, Dr. Marcus added that in his

". . . opinion Sirhan thought that he was really more or less the saviour of society. He was going to reorganize or at least destroy the current political leaders of the country. In addition to that, . . . he decided what he thought was best for society and too based on that I don't feel he really was competent or capable of having malice within that technical sense." (Rep. Tr. p. 6668.)

Dr. Marcus admitted that the entry in appellant's notebook, indicating appellant's desire to kill his former employer, was inconsistent with Marcus' hypothesis. (Rep. Tr. pp. 6669-70.) Other inconsistencies in Marcus' testimony further impugned his conclusions. Marcus did not know whether appellant

had real amnesia or was malingering, thought it was a "toss-up," yet believed appellant's claim of amnesia even though it was "quite possible" that appellant was lying to him. (Rep. Tr. pp. 6784, 6788-90.) Marcus felt that appellant's "not looking for a job" was evidence of deterioration, yet going to work at the health food store "may or may not have anything to do with any sort of mental deterioration." Likewise, "reading in libraries subjects that interested him is evidence of deterioration." (Rep. Tr. pp. 6693-94.)

Almost laughable is the psychiatric significance which he drew from appellant's erratic behavior after having been administered alcohol by Dr. Marcus. (Rep. Tr. pp. 6811-13.) As Dr. Pollack observed, disagreeing very strongly with Marcus' conclusion that appellant's behavior during the alcohol test was definitely psychotic, appellant's actions were typical of the usual intoxicated person and were understandable in light of Marcus' having given appellant (a person of slight build) six ounces of gin within five minutes. (Rep. Tr. pp. 7690-91.)

In light of the previously cited authority, Dr. Marcus' opinion does not merit great weight, and

his testimony is hardly so persuasive as to compel the trier of fact to reject the non-clinical evidence of appellant's capacity for premeditation and deliberation. Dr. Marcus did not give the jury any insight into the reasoning process which hopefully he employed in arriving at his conclusions, although the contradictions and deficiencies in Dr. Marcus' methodology must have given the jurors an insight into the worth of his opinion.

If there indeed is "unequivocal" evidence of diminished capacity (App. Op. Br. p. 357), it must come from the testimony of the remaining defense psychiatrist, Dr. Diamond. Diamond's talismans of diminished capacity were self-hypnosis, bright lights, and mirrors. (Rep. Tr. pp. 6879-80, 6937-41, 6996-97.) His conclusion was again that appellant could not "maturely and meaningfully reflect upon the gravity of his contemplated act" or "comprehend his duties to govern his actions in accordance with the duties imposed by law." (Rep. Tr. p. 6881.) The "various sources" which Diamond used as the basis for his opinion were personal examinations of appellant (some under hypnosis), interviews with appellant's mother and brother, the reports of the defense

psychologists, the report of Dr. Marcus, certain medical reports which proved normal, transcripts of police interviews with appellant and of appellant's testimony, literature read by appellant, and Diamond's personal inspection of the Sirhan residence and the scene of the assassination. (Rep. Tr. pp. 6881-83.) When asked for the reasoning behind his opinion, Dr. Diamond gave a lengthy discourse on the elements of paranoid schizophrenia and on the indications of this mental disease which he found in appellant's background. (Rep. Tr. pp. 6883-6913.)

However, Dr. Diamond's lecture cast little if any light on why appellant's mental illness would preclude his being able to reflect maturely and meaningfully upon the gravity of assassinating a Presidential candidate or comprehend his duty not to commit such an act.

As has already been noted, "'. . . the opinion of an expert is no better than the reasons upon which it is based,'" and the "chief value of such an expert's testimony . . . lies 'in the explanation of the disease and its dynamics, that is, how it occurred, developed, and affected the mental and emotional processes of the defendant.'"

People v. Bassett, supra, 69 Cal. 2d 122, 144 (emphasis added).

Furthermore, whatever value there was in Dr. Diamond's conclusions is impaired by his deliberate refusal to consider, as pertinent, various factors which indisputably were entitled to some weight in the formulation of an opinion on the issue of appellant's mental capacity. For example, while presumptuously maintaining that "nobody else really had the proper whole story of Sirhan" until he examined him six months after the assassination (Rep. Tr. p. 7094), Dr. Diamond did not know until after the trial had commenced that appellant had told the garbage collector two months prior to the assassination that appellant was going to "kill that s. o. b." Senator Kennedy. (Rep. Tr. p. 7099.) Even more presumptuously, Dr. Diamond opined that the witness Alvin Clark, the garbage collector, was "incorrect" in his testimony, although Diamond did not "know anything about the witness except for the statement." Recognizing "that Sirhan was consciously selecting certain material to give to [Dr. Diamond] and consciously withholding other material, because he didn't trust [him]," Dr. Diamond testified, "I prefer to believe

Sirhan." (Rep. Tr. pp. 7099-7100.) Although Dr. Diamond admitted that appellant had lied to other persons and had given Diamond himself "the grossest kind of evasion and deception" with respect to some matters, Dr. Diamond thought he had a "fairly good idea" of when appellant is lying and what things he lies about. (Rep. Tr. pp. 7045, 7048, 7056, 7098.) Dr. Diamond believed appellant's statement that, when he went to the Ambassador Hotel two days prior to the assassination, he "loved" Senator Kennedy. (Rep. Tr. p. 7132.)

Dr. Diamond did not view appellant's visit to the shooting range on the day of the assassination as "indicative of some kind of premeditation and deliberation"; appellant was merely exercising one of his "chief emotional outlets." (Rep. Tr. pp. 7109, 7112.) In Dr. Diamond's view, appellant did not "consciously plan" to be in the "physical situation" in which the assassination occurred; it was just "chance, circumstances, and a succession of unrelated events." (Rep. Tr. p. 6996.)

Dr. Diamond's bias is rather evident, particularly in his admission that he had tried his "very best to get . . . through" to appellant "that

the legal strategy of the defense is that there was no premeditation or deliberation." (Rep. Tr. p. 7108.) Perhaps the most fitting epitaph to his testimony was formulated by Diamond himself, when he testified with respect to his own "psychiatric findings" in this case: "They are absurd, preposterous, unlikely and incredible." (Rep. Tr. pp. 6998-99.)

Respondent concurs in Dr. Diamond's evaluation of his own conclusions and submits that his testimony did not constitute substantial evidence of diminished capacity on appellant's part.

The only sense in which the psychiatric and psychological evidence presented by the defense was "unequivocal" (App. Op. Br. p. 357) was in the uniform lack of substantial proof of appellant's mental incapacity in the testimony of any of the indicated witnesses. The testimony of each of the defense psychiatrists and psychologists was characterized by self-contradiction, improper exclusion, inclusion, or evaluation of material, and faulty reasoning in addition to being inconsistent in significant respects among the various defense clinicians.[18/]

18/ As Chief Deputy District Attorney Compton pointed out to the jury in his closing argument, defense

Although the foregoing is a sufficient refutation of appellant's claim of substantial evidence of diminished mental capacity, respondent wishes to note the existence of affirmative evidence of appellant's capacity for premeditation and deliberation. In his testimony on rebuttal (set forth at length at 112-28, infra) Dr. Pollack clearly expressed his opinion that appellant possessed the requisite mental capacity. Most significantly he, among all the psychiatrists and psychologists, was the only one to set forth a substantial basis for his conclusions, as indicated below.

It was Dr. Pollack's opinion that appellant

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counsel too rejected a major portion of the clinical evidence introduced by the defense:

> "Mr. Cooper told you . . . that that is one of the necessary ingredients in the crime of second degree murder -- malice -- and all of the seven have told you that he had no malice; yet Mr. Cooper stands here in front of you and says, 'Find him guilty of second degree murder.'
>
> "So apparently he has rejected the psychiatrists and the psychologists, just as we reject them." (Rep. Tr. p. 8712.)

In view of the dubious nature of the clinical evidence in the present case, it would be, as Mr. Compton characterized it, "a frightening thing for the administration of criminal justice in this State if the decision of the magnitude of this case turned on whether or not [appellant] saw clowns playing pattycake or whether they were kicking each other in the shins when he is shown some ink blot." (Rep. Tr. p. 8765; cf. Rep. Tr. p. 6459.)

had capacity to harbor the requisite intent to select an act and carry it out, and that therefore his action in shooting Senator Kennedy was purposeful and not accidental. The assassination was not an "impulsive explosion"; there was no substantial impairment of appellant's freedom of choice. Appellant's mental capacity was not substantially decreased when he shot the Senator. Appellant had capacity to harbor malice aforethought, to form maturely and meaningfully an intent to kill his victim, to premeditate, and to reflect upon the gravity of the contemplated act. (Rep. Tr. pp. 7619, 7621-23, 7665-67, 7671-72.)

In arriving at this conclusion Dr. Pollack took into account the following psychological functions of appellant:

> ". . . Consciousness, state of awareness, alertness, the capacity for attention, the ability to perceive, to develop percepts, to make meaningful associations out of what the individual senses, the person's ability to have foresight, the ability to look forward . . . , abilities to recall, as well; the ability to understand . . . and . . . .

". . . evaluation of the freedom of choice."
(Rep. Tr. pp. 7643-44.)

Among the reasons for Dr. Pollack's conclusion that appellant did not suffer from diminished mental capacity or psychotic mental illness were appellant's lack of any impairment in consciousness, reasoning, alertness, memory, or associations prior to the date of the assassination, the fact that appellant asked and answered certain questions both immediately prior to and subsequent to the assassination, the adequate planning undertaken by appellant, the testimony of witnesses to the effect that appellant's emotions did not appear very disturbed at the time of the assassination, the particular motives which impelled appellant's act, and Dr. Pollack's opinion that appellant's writings were not indicative of psychosis. (Rep. Tr. pp. 7668, 7670-71, 7681-87.)

Respondent submits that three cases decided by this Court subsequent to Bassett, but not cited by appellant on the issue of diminished mental capacity, further refute his contention that the evidence relating to appellant's mental capacity compels reduction of the offense to second-degree murder or manslaughter.

In re Kemp, 1 Cal. 3d 190, 194-96;

People v. Coogler, 71 Cal. 2d 153, 161-68;

People v. Risenhoover, 70 Cal. 2d 39, 46-49, 51-53, cert. denied, 396 U.S. 857.

Significantly the Court reached the conclusion in Coogler that the evidence of first-degree murder was sufficient despite the fact "that the prosecution produced no expert witnesses of its own to contradict the defense testimony that defendant suffered from a disassociation reaction." Id., 166.

Like the crime in Coogler, the present offense, involving as it does an act of assassination designed to further appellant's political goals, "'was not a bizarre crime whose very character pointed to dissolution of the accused's deliberative faculties.'" Id., 167. Compare the parricide, matricide, and infanticide of Wolff, Goedecke, Nicolaus, and Bassett. Contrasting People v. Ford, 65 Cal. 2d 41, cert. denied, 385 U.S. 1018, the Court in Coogler further noted the lack of evidence suggesting that the "defendant behaved in an abnormal or irrational manner during the actual commission of the crimes," and the same is true here.

People v. Coogler, supra at 167.

All the non-clinical evidence in the present case lends further support to the conclusion that

appellant had the capacity to harbor malice aforethought and to deliberate and reflect maturely and meaningfully upon the gravity of the political assassination which he contemplated: his purchase of the murder weapon almost six months prior to the assassination, his statements of intention to the garbage collector and in his notebooks, his political motivation, his stalking of Senator Kennedy--closely following his whereabouts in Oregon and Washington, his trips to the shooting range and visit to the Ambassador Hotel two days prior to the assassination, and his conduct (and non-intoxicated condition) immediately prior to, during, and subsequent to the assassination itself.[19/]

It also bears mention that appellant concedes that the jury "was instructed correctly under the Conley decision (C.T. 283-91)." (App. Op. Br. p. 409.) Significantly the instructions on mental

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19/ Contrary to appellant (App. Op. Br. p. 389), respondent does not find supportive of the claim of diminished capacity appellant's "game playing" while the police attempted to interrogate him, his kicking a cup of coffee out of the hands of one officer, and his caution in drinking any beverage offered him by the police. Appellant's ability to identify an absent officer by the officer's badge number, 3949, and his play on words with Sergeant Jordan's name at a time when Jordan was attempting to ascertain appellant's name and place of origin, are instead indicative of a highly rational and sober individual. (Rep. Tr. pp. 5951, 6104, 6108-09.)

capacity were not only correct statements of the law but were given, with only a couple of minor exceptions, at the request of the defense. People v. Nye, 63 Cal. 2d 166, 173. They allowed the jury to consider as possibilities first-degree murder, second-degree murder, manslaughter, and total acquital by reason of unconsciousness. (Cl. Tr. pp. 275-93; Rep. Tr. pp. 8795-8805.) Appellant had the defense of diminished capacity, arising from mental disease, intoxication, or any other cause such as organic defect, presented to the jury in numerous instructions, and the jury had ample evidence upon which to reject such a defense. Thus totally inapposite are the cases cited by appellant in which reversible error is premised upon a defense having been improperly withheld from the jury's consideration by the trial court's giving, or failing to give, a particular instruction. (App. Op. Br. pp. 406-10.)

Cf. People v. Castillo, 70 Cal. 2d 264, 270;
People v. Conley, 64 Cal. 2d 310, 319-20;
People v. Henderson, 60 Cal. 2d 482, 490-91.
See also People v. Goodridge, 70 Cal. 2d 824, 837;
People v. Fain, 70 Cal. 2d 588, 599-600.

Respondent submits that there was clearly sufficient substantial evidence to establish appellant's capacity to commit murder with malice aforethought, and in particular to establish appellant's capacity to premeditate and deliberate first-degree murder maturely and meaningfully with reflection upon the consequences of the assassination which appellant had contemplated for months.

III

THE SEARCH OF APPELLANT'S BEDROOM AND THE SEIZURE OF TRASH FROM THE AREA BEHIND THE SIRHAN RESIDENCE WERE LAWFUL

Appellant contends that the guarantee against unreasonable searches and seizures contained in the Fourth and Fourteenth Amendments to the federal Constitution, and article I, section 19 of the California Constitution was violated (1) by the search of his bedroom, which recovered the notebooks, portions of which were received in evidence over his objection (Rep. Tr. pp. 4356-58), and (2) by the seizure of the envelope bearing appellant's handwriting and the return address of the Argonaut Insurance Company, which envelope was also received in evidence over his objection (Rep. Tr. pp. 4354-56,

4359, 4397-4401). (App. Op. Br. pp. 426, 457.) The contents of the notebooks are in part set forth at pages 26-28, 50-54, infra, and the handwriting from the envelope at pages 25-26, infra.

A. Appellant Is Precluded From Challenging the Propriety of the Trial Court's Rulings, Admitting in Evidence the Notebooks and the Envelope Recovered From the Trash, by the Fact That All but Five Sheets of the Notebooks Were Put in Evidence by the Defense and the Entire Notebooks as Well as the Envelope Were Used by the Defense as Proof of Diminished Mental Capacity

Prior to reaching the merits of appellant's present claim of error, respondent disputes the right of appellant to urge as error the admission in evidence of the notebooks and the envelope recovered from the trash area, as the products of allegedly unlawful searches and seizures.

Only five sheets of the notebooks (Exhs. 71-15, 71-35, 71-39, 71-47, & 72-125) were put in evidence by the prosecution (Rep. Tr. p. 4363); the remaining pages, comprising the vast majority of the notebooks, were put in evidence by the defense. (Rep. Tr. pp. 4955, 5095, 5191.) Significantly some of these pages offered by the defense were substantially more damaging than those portions offered by the

prosecution, from the standpoint of showing appellant's praise of communism and hatred toward this country, stated in occasionally profane terms, and appellant's expression of willingness to resort to political assassination. (Rep. Tr. pp. 4987-91, 4994-95, 5009-11, 5018; Exhs. 71-19 through 25, 71-34, 71-39.) One of the pages offered by the defense, containing the following language, had been kept out of evidence on objection of the defense when the prosecution had sought to have it admitted (Rep. Tr. pp. 3608-10, 4365-69):

> "I advocate the overthrow of the current president of the fucken United States of America. I have no absolute plans yet, but soon will compose some. . . . I firmly support the communist cause and its people -- wether [sic] Russian, Chineese [sic], Albanian, Hungarian or whoever--Workers of the world unite, you have nothing to loose [sic] but your chains, and a world to win." (Exh. 72-123 & 124 (emphasis in original); Rep. Tr. pp. 5095-96.)

This is not a situation where appellant could

properly claim that the conduct of the search, or the prosecution's introduction in evidence of five sheets of the seized notebooks, somehow compelled him to offer the remaining, even more damaging, portions of the notebooks.

See People v. Quicke, 71 Cal. 2d 502, 518; Symons v. Klinger, 372 F.2d 47, 49 (9th Cir. 1967), cert. denied, 386 U.S. 1040.[20/]

It is well settled that on appeal objection may not be made by a defendant to the admission of evidence introduced by the defendant, People v. Feldkamp, 51 Cal. 2d 237, 241, or admitted pursuant to his stipulation.

People v. Foster, 67 Cal. 2d 604, 606.

The defense's decision to offer in evidence the remaining portions of the notebooks, if compelled by anything, was compelled by the defense's own decision to offer evidence of diminished mental capacity. Thus the defense psychiatrists examined the entire contents of the notebooks prior to trial and based

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20/ See also Lockridge v. Superior Court, 3 Cal. 3d 166, 170, cert. denied, ___ U.S. ___, 39 U.S.L.W. 3455; People v. Tiffith, 12 Cal. App. 3d 1129, 1136; People v. Wright, 273 Cal. App. 2d 325, 338-40; People v. Green, 236 Cal. App. 2d 1, 25-26, cert. denied, 390 U.S. 971.

their testimony, regarding appellant's asserted lack of ability to premeditate, on what they took to be appellant's mental condition as reflected by the notebook entries and the writing on the envelope recovered from the trash area. It cannot be doubted that even had the prosecution not put in evidence the five notebook sheets and the envelope, defense counsel would have offered in evidence the entire notebooks and the envelope, and argued strenuously to the jury, as they ultimately did, that this evidence established appellant's lack of the requisite mental capacity.

See People v. Davaney, 7 Cal. App. 3d 736, 745-47 (the defendant's testimony, which rendered harmless the improper admission of a confession, was held not to have been impelled by the confession but rather by the defendant's desire to establish his defense of diminished mental capacity.)

Respondent submits that for the foregoing reasons appellant is precluded from challenging the propriety of the trial court's ruling admitting in evidence the notebooks and the envelope.

B. The Search of Appellant's Bedroom and the Seizure of His Notebooks, Without a Search Warrant, Was Proper in Light of the Pressing Emergency to Ascertain the Existence of a Possible Conspiracy, Appellant's Concealment of His Identity and Refusal to Discuss the Shooting Giving Rise to a Reasonable Apprehension of the Imminent Assassination of Other High Government Officials

The circumstances underlying the authorities' decision to search the Sirhan residence are fully set forth at pages 20-22, 29-35, infra, and only those facts having an immediate bearing on the applicability of the "emergency circumstances" doctrine will be repeated here.

When the decision to search was made on the morning of June 5, 1968 (subsequent to the shooting but prior to the death of Senator Kennedy), appellant had not yet identified himself to the police or given them his address or any identifying information. (Rep. Tr. pp. 115-16.) He carried no identification papers on his person at the time of his arrest. (Rep. Tr. pp. 3522-23.) Appellant's identity remained unknown from the time he was taken into custody at approximately 12:15 a.m. until officers of the Los Angeles Police Department arrived at the Pasadena Police Station at approximately 9:30 that morning "to interview a person [who]

possibly could name the identity of the person who shot Senator Kennedy." At that time they had a conversation with Adel Sirhan. (Rep. Tr. pp. 54-56, 59, 90-91, 94-95.) Adel had gone to the police station shortly after he and his brother Munir had seen appellant's picture in the newspaper in conjunction with the shooting of Senator Kennedy. (Rep. Tr. pp. 103-04.) Adel, like appellant, must have appeared to be a foreigner, and Adel stated that his father was in a foreign country. (Rep. Tr. p. 92.) Adel communicated to the police his belief that appellant was involved in the shooting of Senator Kennedy and told them that appellant resided at the Sirhan residence located at 696 East Howard in Pasadena. (Rep. Tr. p. 60.)

Without obtaining a search warrant, the officers proceeded to the Sirhan residence, arriving there at approximately 10:30 a.m. Their purpose in going there was "[t]o determine whether or not there was anyone else involved" in the shooting and also "to determine whether or not there were any other things that would be relative to the crime." (Rep. Tr. pp. 4273-75.) They "were looking for leads or other possible suspects" and "were interested

in evidence of possible conspiracy in that there might be other people that were not yet in custody." (Rep. Tr. pp. 75-77, 4313.)

It has long been recognized that "[t]here are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with." Johnson v. United States, 333 U.S. 10, 14-15. In McDonald v. United States, 335 U.S. 451, 454-56, the United States Supreme Court recognized that "compelling reasons," a "grave emergency," or "the exigencies of the situation" may justify the search of a residence without a warrant. Relying on the foregoing language in McDonald, the court in Warden v. Hayden, 387 U.S. 294, 298-300, sustained the search of an entire two-story house and cellar by officers who were in pursuit of a suspected armed felon who had entered the house several minutes before they arrived.

See also Vale v. Louisiana, 399 U.S. 30, 34-35; Chimel v. California, 395 U.S. 752, 761; United States v. Jeffers, 342 U.S. 48, 51-52.

Chief Justice Burger, when sitting on the

United States Court of Appeals, stated the principle succinctly:

> "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. . . ." Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963), cert. denied, 375 U.S. 860.

This Court relied on the McDonald case in sustaining the search in People v. Gilbert, 63 Cal. 2d 690, vacated on other grounds, 388 U.S. 263, stating that a "search without a warrant is reasonable when it is . . . justified by a pressing emergency." Id., 706. There the "officers identified Gilbert and found out where he lived less than two hours after the robbery." Id. Entering without a warrant "in fresh pursuit to search for a suspect and make an arrest," the officers found the apartment unoccupied but noticed, among other items, a notebook on a coffee table with a drawing of the bank that had been robbed as well as an envelope from a photography studio containing a photograph of the defendant Gilbert. The photograph was

later shown to bank employees for identification. Id., 706-07.

This Court held that the "exigent circumstances" justified the search and seizure, and that "[w]hile the officers were looking through the apartment for their suspect they could properly examine suspicious objects in plain sight. [Citation.] Moreover, they could properly look through the apartment for anything that could be used to identify the suspects or to expedite the pursuit."[21/]

People v. Gilbert, supra at 707.

Similarly in People v. Smith, 63 Cal. 2d 779, cert. denied, 388 U.S. 913, this Court upheld the officers' search of a residence in pursuit of a dangerous suspect, "for the suspect or for any evidence of the suspect's having been there and gone." The Court held that having ascertained that the suspect was absent, the police were not "required at that point to abandon their search for [him] or his true identity. . . . While in the house, it was

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21/ The United States Supreme Court found that "the facts do not appear with sufficient clarity to enable us to decide" the applicability of the "so-called 'hot pursuit' and 'exigent circumstances' exceptions" to the warrant requirement. Gilbert v. California, 388 U.S. 263, 269.

not unreasonable for the officers to look about them for evidence that would identify the suspect . . . or that would enable them to pick up his trail." Id., 797-98.

See also People v. Terry, 70 Cal. 2d 410, 424, cert. denied, 399 U.S. 911;

Tompkins v. Superior Court, 59 Cal. 2d 65, 69.

Analogous are the cases in which the emergency circumstances doctrine is invoked to justify a search or entry motivated by a police officer's exercise of his duty to protect life or render emergency aid to a victim.

See People v. Roberts, 47 Cal. 2d 374, 377-80 (entry of officers in response to moaning sounds);

People v. Superior Court, 6 Cal. App. 3d 379, 381-83 (pursuit of injured bomber who was believed to possess another, unexploded bomb);

People v. Neth, 5 Cal. App. 3d 883, 887-88 (officers summoned to aid person in need of immediate medical attention because of overdose of LSD);

People v. Robinson, 269 Cal. App. 2d 789, 791-92 (search of premises from which shots

had been fired, injuring an infant);

Romero v. Superior Court, 266 Cal. App. 2d 714, 718-19 (search for further explosives at scene of explosion "for the protection of the inhabitants . . . and also the nearby property owners");

People v. Clark, 262 Cal. App. 2d 471, 475-77 (probability that a woman within the searched apartment was the unwilling victim of a criminal act);

People v. Roman, 256 Cal. App. 2d 656, 659 (entry of officer in child-beating investigation upon observing victim unconscious on floor);

People v. Bauer, 241 Cal. App. 2d 632, 646-47 (necessity to attempt to render medical assistance to victim who might still be alive);

People v. Gomez, 229 Cal. App. 2d 781, 782-83 (search of pockets of unconscious, convulsive motorist in attempt to identify him for purpose of obtaining medical assistance);

People v. Gonzales, 182 Cal. App. 2d 276, 279

(similar search of wounded motorist in state of shock).

See also Schmerber v. California, 384 U.S. 757, 770-71 (taking a blood sample from intoxicated motorist);

People v. Maxwell, 275 Cal. App. 2d Supp. 1026, 1029 (governmental interest in immediate inspection for fish would be frustrated by delay).

Similarly in People v. Modesto, 62 Cal. 2d 436, this Court upheld the admission of certain statements made by the defendant "at a time when the officers were concerned primarily with the possibility of saving Connie's life. The paramount interest in saving her life, if possible, clearly justified the officers in not impeding their rescue efforts by informing defendant of his rights." Id., 446.

See also People v. Miller, 71 Cal. 2d 459, 481-82;

People v. Jacobson, supra, 63 Cal. 2d 319, 328.

Referring to the "doctrine of necessity," this Court gave renewed recognition to these principles in the recent case of Horack v. Superior Court, 3 Cal. 3d 720, 725, quoting with approval the following

language from the Roberts decision: "'[n]ecessity often justifies an action which would otherwise constitute a trespass, as where the act is prompted by the motive of preserving life or property and reasonably appears to the actor to be necessary for that purpose.'"

A compelling justification for the doctrine was expressed in People v. Superior Court, supra, where the Court of Appeal noted:

> "One way of testing the reasonableness of the search is to ask ourselves what the situation would have looked like had another bomb exploded, killing a number of people and perhaps Pulliam himself, while officers were explaining the matter to a magistrate . . ."
>
> Id., 6 Cal. App. 3d at 382.
>
> See also People v. Johnson, 15 Cal. App. 3d 936, 939-41.

Similarly in the case at bar the police officers were legitimately concerned with immediately ascertaining whether co-conspirators in the shooting of Senator Kennedy were at large, and if so, whether the attack on Senator Kennedy was but the first round in a plot to assassinate a number of Presidential

candidates or other high government officials. The refusal of appellant, an apparent foreigner, to discuss his identity, his country of origin, or the shooting, his carrying of no identification, and his engaging in evasive verbal fencing with his interrogators, were facts supportive of the police's concern that other assassinations might be imminent.

It is not difficult to envisage what would have been the effect on the nation and its government of two or three more assassinations at that time. The "gravity of the offense" was a factor that the officers could properly take into account.

> Brinegar v. United States, 338 U.S. 160, 183 (Jackson, J., dissenting), quoted with approval in People v. Schader, 62 Cal. 2d 716, 724.
>
> See also People v. Smith, supra, 63 Cal. 2d 779, 797;
>
> People v. Johnson, supra, 15 Cal. App. 3d 936, 941.

In anticipation of the likelihood that appellant will deprecate the exigencies confronting the authorities at the time of the search, conducted some ten hours after the shooting, respondent

emphasizes the fact (of which this Court may take judicial notice under Evidence Code sections 451(f), 459) that only two months previously Reverend Martin Luther King, Jr., had been assassinated, and less than five years previously, the victim's brother, President John F. Kennedy. Moreover, the timing of the shooting must have had significance to the authorities, coming as it did only minutes after the announcement of Senator Kennedy's victory in the strongly contested California primary election which placed him in top contention for the Democratic nomination for President of the United States.

It was eminently reasonable for the officers to view as serious the possible threat of a conspiracy to assassinate a number of high government officials, and to view the notebooks as a possible lead to other conspirators. To paraphrase the court's opinion in People v. Superior Court, supra, 6 Cal. App. 3d 379, "One way of testing the reasonableness of the search is to ask ourselves what the situation would have looked like had another [assassination occurred] . . . , while officers were explaining the matter to a magistrate." Id., 382.

Respondent submits that the present case

comes within the principles set forth in the aforementioned cases upholding warrantless searches conducted under immediate need to protect or preserve life or in pursuit of dangerous suspects.

As recently held by the United States Supreme Court,

> "When judged in accordance with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act,' Brinegar v. United States, 338 U.S. 160, 175 (1949), the . . . search was reasonable and valid under the Fourth Amendment." Hill v. California, ___ U.S. ___, ___, 39 U.S.L.W. 4402, 4405 (April 5, 1971).

In part appellant's contention relating to the search of the Sirhan residence is also couched in terms of an asserted violation of the Fifth and Fourteenth Amendments' proscription against compulsory self-incrimination.[22/] (App. Op. Br. pp. 446-48.)

Respondent submits that there is no merit

22/ Contrary to the defendant in Hill v. California, supra, ___ U.S. ___, ___, 39 U.S.L.W. 4402, 4405 (April 5, 1971), where the United States

in appellant's apparent claim that the nature of the seized property as papers somehow accords them a preferential status as items immune from search and seizure.

It has long been settled that:

> "There is no special sanctity in papers, as distinguished from other forms of property, to render them immune from search and seizure, if only they fall within the scope of the principles of the cases in which other property may be seized . . . ."
>
> Gouled v. United States, 255 U.S. 298, 309. See also Abel v. United States, 362 U.S. 217, 238-40.

Since the rejection in Warden v. Hayden, supra, 387 U.S. 294, 300-01, 307-08, of the "mere evidence" rule, documentary evidence has not been accorded any

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Supreme Court refused to consider the question, appellant appears to have specifically raised this issue below. (Cl. Tr. pp. 416-26.) The Fifth Amendment aspects of appellant's contention are considered here, rather than under the subargument dealing with the consentual justification for the search, because it must be assumed that if Adel Sirhan could effectively waive appellant's Fourth Amendment rights, he could also waive appellant's Fifth Amendment rights.

greater protection against invasion of privacy than other forms of evidence.

See also People v. Thayer, 63 Cal. 2d 635, cert. denied, 384 U.S. 908.

As was held in this Court's unanimous opinion in Thayer,

> "Finally, it should be noted that there are some opinions that construe Gouled v. United States to protect privacy by preserving private papers, such as a personal diary, from any seizure. [Citing cases.] This construction is contrary to the opinion of the court in Gouled . . . ." Id., 642-43.

See also People v. Hill, 69 Cal. 2d 550, 552, aff'd, ___ U.S. ___, 39 U.S.L.W. 4402 (April 5, 1971);

People v. Tiffith, supra, 12 Cal. App. 3d 1129, 1136-37, quoting Stroud v. United States, 251 U.S. 15, 21-22.

Respondent submits that appellant's notebooks were properly received in evidence in view of the exigencies confronting the police on the morning of June 5, 1968.

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C. Appellant's Brother, Adel, the Oldest Male Member of the Sirhan Household, Gave a Valid Consent to the Search of the House, Including Appellant's Bedroom

As previously noted, the circumstances underlying the authorities' decision to search the Sirhan residence are fully set forth at pages 20-22, 29-35, infra, and only those facts having an immediate bearing on the validity of the consent to the search given by Adel Sirhan will be repeated here.

Adel went to the Pasadena Police Station shortly after he and his brother Munir had seen appellant's picture in the newspaper in conjunction with the shooting of Senator Kennedy. (Rep. Tr. pp. 103-04.) At that time the authorities were totally unaware of appellant's identity. (Rep. Tr. pp. 94-95, 115-16.)

When the Los Angeles police officers arrived at the Pasadena station, they identified themselves to Adel, who gave his name and agreed to speak to the officers after being advised of his constitutional right to counsel and to remain silent, and after waiving these rights. Adel was informed that "he didn't have to cooperate with us or speak with us in any manner" and that "he was not under arrest."

(Rep. Tr. pp. 57-58, 91-92, 107-08.)

Adel informed the officers that he was the oldest of the brothers living at the Sirhan residence at 696 East Howard in Pasadena, that his mother and two younger brother, appellant and Munir, were part of the household, and that his father was in a foreign country. Adel "probably" told the officers his age. (Rep. Tr. pp. 59-60, 64, 92, 4314.) His age was 29 years. (Rep. Tr. p. 114.) Appellant's age was 24, and Munir's 21. (Rep. Tr. pp. 120, 4664.)

When asked whether the officers "could search the home," Adel replied that "as far as he was concerned [the officers] could, however it was his mother's house." The officers then asked Adel whether "he would call his mother for permission and he indicated he would prefer that [they] did not talk to his mother at that time;" she was at work, and "he did not want [the officers] to alarm her with what had happened because she did not yet know about it." Adel never said that he had no right to give the police permission to enter the house.[23/] (Rep. Tr. pp. 61, 80, 93.)

23/ At the pretrial hearing Adel testified in accord with the above-described testimony of the police officers. He admitted having been advised of his constitutional rights and telling the officers,

One of the officers, Sergeant Brandt, was advised by telephone, by Lieutenant Hughes of Rampart Detectives, that the Sirhan residence should be searched in the event Adel had given his consent. (Rep. Tr. pp. 61-62.) Although Munir denied this at the pretrial hearing, he too (Munir) had given his consent that morning at the police station to a search of the Sirhan residence after having been advised of his constitutional right to counsel and to remain silent, and after waiving these rights. Munir was also informed "that he was not under arrest." (Rep. Tr. pp. 62, 98-100, 119-25, 130-31.)

The Sirhan residence consisted of three bedrooms, a living room, a den, and a dining room. Mrs. Sirhan owned the house and had a deed to it. (Rep. Tr. p. 112.) Adel was a part owner of the property until August of 1963, when he and his mother

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"'I have nothing to hide, but the house isn't mine, I do not own the house.'" Adel had told the officers that his mother owned the house, that she knew nothing about the matter, and that he did not "want her disturbed" at work. Adel told the officers "I had no objection" to the house being searched and that "'It is okay with me,'" and he said nothing further on the subject. (Rep. Tr. pp. 105-09.) Mrs. Sirhan testified at the hearing that she had never given Adel or anyone else permission to search any room of the house. (Rep. Tr. p. 113.)

joined in deeding the property to Mrs. Sirhan as sole owner. (Rep. Tr. p. 127.) Appellant did not pay room or board. (Rep. Tr. p. 2456.)

Adel admitted the officers to the house upon arriving with them at approximately 10:30 a.m. (Rep. Tr. p. 4273.) No one else was home at the time. (Rep. Tr. pp. 87, 4309.) He unlocked the door and let the officers in. (Rep. Tr. pp. 62-63.) The officers did not have a search warrant and had not made an attempt to secure the consent of appellant to enter and search. (Rep. Tr. pp. 4274-75.) Adel gave them permission to search appellant's bedroom. (Rep. Tr. pp. 4313-14.) He showed them where it was located, at the rear of the residence. Sergeant Brandt then searched the bedroom in the presence of the other officers and Adel. (Rep. Tr. pp. 64, 75, 4273, 4278, 4309.)

At the time he conducted the search, Sergeant Brandt believed that Adel was a person authorized to consent to a search of the Sirhan residence. (Rep. Tr. pp. 75-76.)

This Court has long recognized "the rule that a search is not unreasonable if made with the consent of a cooccupant of the premises who, by virtue of his relationship or other factors, the officers

reasonably and in good faith believe has authority to consent to their entry. [Citing cases.]" (Emphasis added.)

People v. Smith, supra, 63 Cal. 2d 779, 799.

See also People v. McGrew, 1 Cal. 3d 404, 412-13, cert. denied, 398 U.S. 909;

People v. Hill, supra, 69 Cal. 2d 550, 554, aff'd, ___ U.S. ___, 39 U.S.L.W. 4402 (April 5, 1971).

It has always been the case that "'[t]he recurring questions of the reasonableness of searches' depend upon 'the facts and circumstances--the total atmosphere of the case.'"

Chimel v. California, supra, 395 U.S. 752, 765;

United States v. Rabinowitz, 339 U.S. 56, 63, 66.

Thus in Hill v. California, supra, ___ U.S. ___, 39 U.S.L.W. 4402 (April 5, 1971), the United States Supreme Court upheld a search of the defendant's apartment incident to the arrest of a man whom the arresting officers mistakenly took to be the defendant. The Court held,

"They were quite wrong as it turned out,

and subjective good-faith belief would not in itself justify either the arrest or the subsequent search. But sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment and on the record before us the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time." Id., ___ U.S. at ___, 39 U.S.L.W. at 4404.

Relying on Brinegar v. United States, supra, 338 U.S. 160, 175, the Court upheld the arrest and search as reasonable and valid "[w]hen judged in accordance with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" Id., ___ U.S. at ___, 39 U.S.L.W. at 4405.

The issue at hand is thus whether the trial court properly concluded that the officers who searched the Sirhan residence obtained a valid consent from Adel Sirhan, and if not, whether they reasonably and in good faith believed that Adel had authority under the circumstances to consent to the search in question.

Twice, at the hearing on the motion to

suppress pursuant to Penal Code section 1538.5 and again at the trial, the trial court, after

> ". . . reviewing all the evidence and the arguments and the briefs, was of the opinion that the officers had authority from the one whom they conscientiously and reasonably believed to be the one who could grant the authority.
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> "Therefore . . . there was consent." (Rep. Tr. p. 4358; see also Rep. Tr. pp. 136-37.)

The resolution of conflicting evidence, presented at a hearing on motion to suppress evidence involving the issue of consent to search, lies with the superior court and will not be disturbed where there is substantial evidence supporting the finding of that court. People v. West, 3 Cal. 3d 595, 602. The same is true with respect to the determination of the issue of consent by the court at the time of trial; this Court will not substitute its judgment for that of the trial court, which heard and observed the witnesses who testified on this question. People v. Carrillo, 64 Cal. 2d 387, 390-91, cert. denied, 385 U.S. 1013.

The propriety of the trial court's ruling is supported by recent case law, and, as will be shown, the cases cited by appellant are all readily distinguishable.

In its recent decision in Frazier v. Cupp, 394 U.S. 731, 740, the United States Supreme Court recognized the constitutional validity of a consent given by one joint possessor of a duffel bag to a search of the bag, including that portion allegedly occupied by the property of the defendant. Similarly this Court in People v. Gorg, 45 Cal. 2d 776, upheld the consent to a search of a room occupied by the defendant, a boarder, given by the home owner, who

> ". . . believed that he had at least joint control over [defendant's] quarters and the right to enter them . . . and authorize a search thereof. Under these circumstances the officers were justified in concluding that [the home owner] had the authority over his home that he purported to have . . . ." Id., 783.

See also People v. Caritativo, 46 Cal. 2d 68, 73, cert. denied, 351 U.S. 972 (same); People v. Pranke, 12 Cal. App. 3d 935, 942-45

(upholding the validity of a consent given by a person in whose custody the defendant had entrusted his personal property).

Tompkins v. Superior Court, supra, 59 Cal. 2d 65, cited by appellant, merely held that

> ". . . one joint occupant who is away from the premises may not authorize police officers to enter and search the premises over the objection of another joint occupant who is present at the time, at least where as in this case, no prior warning is given, no emergency exists, and the officer fails even to disclose his purpose to the occupant who is present or to inform him that he has the consent of the absent occupant to enter. . . ." Id., 69.

Similarly distinguishable is People v. Cruz, 61 Cal. 2d 861, where instead of seeking consent from the defendant, who was present, to search certain suitcases, the officers searched through various items, including the defendant's suitcase, which they knew neither belonged to, nor had been entrusted to, the custody of a tenant of the apartment from whom a purported consent had been obtained. Id., 866-67.

The case of People v. Egan, 250 Cal. App. 2d 433, cited by appellant, lends support to respondent's position. Although holding that the defendant's stepfather could not give consent to the search of a "kit bag" to which he had no possessory right or control, the court made it clear that the stepfather could consent to "a search of any depository owned and controlled by him as part of the household furniture and furnishings." Id., 436. The court noted that the defendant paid "[n]o rent or other remuneration . . . for his occupancy."[24/] Id., 434.

24/ The other cases cited by appellant are similarly distinguishable. In People v. Murillo, 241 Cal. App. 2d 173, the court upheld the right of the defendant's mistress, an informer, to consent to a search of their jointly occupied apartment but not to a search of the defendant's attache' case. People v. Fry, 271 Cal. App. 2d 350, which respondent submits is at variance with decisions of this Court and the Courts of Appeal, nevertheless is distinguishable in that there the officers had knowledge that the defendant's wife, whose consent was solicited, had been explicitly instructed by the defendant not to consent. Id., 357. Cf. In re Lessard, 62 Cal. 2d 497, 504-05, upholding a wife's consent to the search of a home in the absence of her husband; People v. Linke, 265 Cal. App. 2d 297, 315-16, and People v. Brown, 238 Cal. App. 2d 924, 926-27 (overruled on another point in People v. Doherty, 67 Cal. 2d 9, 15), both upholding a wife's consent to a search of a home over the objection of the husband.

Stoner v. California, 376 U.S. 483, held that "the rights protected by the Fourth Amendment are not to be eroded by strained applications of the

In Vandenberg v. Superior Court, 8 Cal. App. 3d 1048, the court upheld the search of a bedroom occupied jointly by the 19-year-old defendant and his father, despite the request of the defendant,

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law of agency or by unrealistic doctrines of 'apparent authority'" (emphasis added), id., 488, in that case the contention that the night clerk of a hotel had implied authority from a guest to consent to the search of the guest's room. At the same time the court implied that a reasonable basis for an officer's conclusion of apparent authority would validate a search conducted in reliance thereon. Id., 489. With respect to a landlord's right of entry, see also Chapman v. United States, 365 U.S. 610, 616-18, but compare People v. Superior Court, 3 Cal. App. 3d 648, 653-60; People v. Rightnour, 243 Cal. App. 2d 663, 668.

In People v. Stage, 7 Cal. App. 3d 681, 683, the court recognized that the consent given by the registered owner of a vehicle for a search of the vehicle was not a consent to search a jacket known by the officer to belong to one of the other occupants. This is obviously quite a different matter from the search of a room and its furnishings in which a defendant such as appellant has no possessory interest.

The dictum in Reeves v. Warden, Maryland Penitentiary, 346 F.2d 915, 925 (4th Cir. 1965), that only the defendant, a guest in his sister's house, could consent to a search of the room set aside for his use, is clearly erroneous. Respondent does not dispute the court's holding that the defendant's mother, also a guest in the house, lacked authority to give a valid consent to a search of the house, id., 924-25, but it is submitted that the sister could properly have given consent to a search of the room in question.

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