

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1979

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No. 79-289

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PRUNYARD SHOPPING CENTER and FRED SAHADI,  
*Appellants,*

v.

MICHAEL ROBINS, et al., *Appellees.*

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**On Appeal From the Supreme Court  
of the State of California**

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**CHRONOLOGICAL LIST OF RELEVANT FILINGS**

<i>Date</i>	<i>Filing</i>
4/7/76	Complaint for Preliminary Injunction
5/5/76	Answer to Complaint
6/16/76	Trial of Action
9/14/76	Findings of Fact and Conclusions of Law
9/14/76	Judgment Entered
9/30/76	Notice of Appeal to the District Court of Appeal of the State of California, First Appellate District
12/1/76	Clerk's Transcript on Appeal from the Judgment of the Superior Court of the State of California
5/19/77	Motion to Augment Record on Appeal from the Judgment of the Superior Court of the State of California
6/14/77	Order Granting Motion to Augment Record on Appeal
9/23/77	Supplemental Clerk's Transcript on Appeal from the Judgment of the Superior Court of the State of California
1/3/78	Opinion of Court of Appeal of the State of California in and for the First Appellate District
2/9/78	Petition for Hearing in the Supreme Court of the State of California
3/30/78	Order Granting Hearing in the Supreme Court of the State of California

<i>Date</i>	<i>Filing</i>
3/30/79	Opinion of the Supreme Court of the State of California Reversing Judgment of the Superior Court and Dissenting Opinion
3/30/79	Order Reversing Superior Court
4/16/79	Respondents' Petition for Rehearing
4/24/79	Respondents' Petition to Stay Issuance of Remittitur
5/7/79	Appellants' Answer to Petition to Stay Issuance of Remittitur
5/23/79	Order Denying Rehearing
5/23/79	Order Denying Stay of Remittitur
5/29/79	Notice of Appeal to the Supreme Court of the United States
5/29/79	Appellants' Application for Stay of Mandate of the Supreme Court of the State of California
6/4/79	Appellees' Response and Opposition to Application for Stay of Mandate of the Supreme Court of the State of California
6/12/79	Order Denying Stay of Mandate
8/21/79	Appellants' Jurisdictional Statement
10/23/79	Appellees' Motion to Dismiss
10/26/79	Appellants' Responses to Appellees' Motion to Dismiss
11/13/79	Order Postponing Consideration of the Question of Jurisdiction Until the Hearing on the Merits

The following findings, opinions, orders and notices appear in the appendix to the Jurisdictional Statement and have been omitted from this appendix:

Findings of Fact, Conclusions of Law and Judgment of the Superior Court, dated September 1976 .....	A-1
Opinion of the Court of Appeal, entered January 1978 .....	B-1
Opinion of the Supreme Court of the State of California, dated March 30, 1979 .....	C-1
Order of the Supreme Court of the State of California Denying Rehearing, filed May 23, 1979 ..	D-1
Notice of Appeal to the Supreme Court of the United States, filed May 30, 1979 .....	E-1

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

No. 349363

MICHAEL ROBINS, a minor, by his guardian ad litem, DAVID ROBINS, IRA DAVID MARCUS, a minor, by his guardian ad litem, FRED WERNER MARCUS, and ROBERTA BELL-KLIGLER, *Plaintiffs*,

v.

PRUNYARD SHOPPING CENTER, and FRED SAHADI, individually and doing business as THE TOWERS VENTURE, and DOES I through V, inclusive, *Defendants*.

**COMPLAINT FOR PRELIMINARY INJUNCTION AND  
PERMANENT INJUNCTION**

Filed April 7, 1976

Plaintiffs, MICHAEL ROBINS, by and through his guardian ad litem, DAVID ROBINS, IRA DAVID MARCUS, by and through his guardian ad litem, FRED WERNER MARCUS, and ROBERTA BELL-KLIGLER, complain of defendants, and each of them, and for cause of action allege:

I

That heretofore the above entitled Court duly appointed DAVID ROBINS guardian ad litem for Plaintiff, MICHAEL ROBINS, and said DAVID ROBINS therefore brings this action as such guardian ad litem.

II

That heretofore the above entitled Court duly appointed FRED WERNER MARCUS guardian ad litem for plaintiff IRA DAVID MARCUS, and said FRED WERNER MARCUS therefore brings this action as such guardian ad litem.

## III

Plaintiffs are and at all times herein mentioned were students and a teacher of the 1976 confirmation class at Temple Emanu-El in San Jose, California.

## IV

Plaintiffs were engaged in a project of the confirmation class to circulate petitions to condemn a resolution passed by the United Nations, and to condemn Syria's policy of not allowing Jews to leave the country.

## V

The Plaintiffs do not know the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein pursuant to the Code of Civil Procedure § 474 as Doe I through Doe V inclusive, and Plaintiffs will amend this Complaint to show their true names and capacities when the same have been ascertained.

## VI

Defendant FRED SAHADI, and DOES I through V, inclusive, are the owners, operators, and agents thereof of the Pruneyard shopping center in Campbell, California, doing business as the "Towers Venture".

## VII

At all times herein mentioned, each Defendant was the agent, servant and employee of each of the remaining Defendants, and was acting in the scope of his employment as such agent, servant and employee.

## VIII

On or about November 16, 1975, and continuing to the present time, Defendants, and each of them, wrongfully and

unlawfully ejected the Plaintiffs from the premises of Defendants' shopping center while Plaintiffs were peacefully circulating the above-referenced petition.

### IX

As a proximate result of said wrongful conduct of Defendants, and each of them, and of the conditions wrongfully created thereby as aforesaid, Plaintiffs' First Amendment rights to peacefully collect signatures on petitions without obstructing the operation of the shopping center have been infringed.

### X

Plaintiffs have subsequently been refused permission by the Defendants' manager of the shopping center to engage in peaceful, non-obstructive First Amendment activities on the premises of the shopping center, and Plaintiffs were told that they would be ejected if they were to engage in such activities on the premises in the future. Unless and until Defendants' said threatened wrongful conduct is forthwith enjoined by this Court, Plaintiffs will continue to suffer said detriments and injuries and infringement of their rights.

### XI

Defendants' said wrongful conduct unless and until the same is forthwith is enjoined and restrained by order of this Court, will cause great and irreparable injury to Plaintiffs in that they have no adequate alternative means to circulate this petition in the City of San Jose or the surrounding area; that the most effective way for Plaintiffs to express their views and reach substantial numbers of people is at Defendants' shopping center.



## XII

Plaintiffs have no adequate remedy at law for said injuries in that they cannot be adequately compensated in damages for the loss of their Constitutional rights.

WHEREFORE, Plaintiffs pray judgment against the Defendants, and each of them, as follows:

1) For a preliminary injunction, and a permanent injunction, both enjoining Defendants and each of them and their agents, servants, and employees, and all persons acting under, in concert with, or for them:

(a) From denying Plaintiffs the right to exercise their First Amendment Rights by preventing them from coming upon Defendants' premises for the purpose of setting up non-obstructive card tables and circulating petitions in a peaceful manner.

(b) From ejecting Plaintiffs when exercising their constitutional rights on Defendants' premises.

2) For costs of suit; and,

3) For such other and further relief as to the Court seems just.

DATED: April 6, 1976

MORGAN, BEAUZAY, HAMMER,  
EZGAR, BLEDSOE & RUCKA

BY: /s/ PHILIP L. HAMMER  
Philip L. Hammer

BY: /s/ ANN M. RAVEL  
Ann M. Ravel

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

No. 349363

MICHAEL ROBINS, a minor, by his guardian ad litem,  
DAVID ROBINS, et al., *Plaintiffs*,

v.

PRUNEYARD SHOPPING CENTER and FRED SAHADI, individually  
and doing business as THE TOWERS VENTURE, et al,  
*Defendants*.

**ANSWER TO COMPLAINT**

Filed May 7, 1976

COMES NOW defendant FRED SAHADI, doing business as PRUNEYARD SHOPPING CENTER, and in answer to the complaint on file herein, admits, denies and alleges as follows:

I

Commencing with the word "and" on Page 2, Line 15, through the word "country" on Page 2, Line 16, of Paragraph IV, answering defendant has no information or belief sufficient to enable him to respond to the allegations therein, and basing his denial on that ground, denies generally and specifically the allegations therein contained.

II

Answering Paragraph VI, answering defendant admits that FRED SAHADI is an owner of THE PRUNEYARD. Answering defendant specifically denies that THE PRUNEYARD does business as "The TOWERS VENTURE". Except as above set forth, answering defendant denies generally and specifically the allegations therein.

III

Answering Paragraphs VII and VIII, answering defendant denies generally and specifically the allegations therein contained.

IV

Answering Paragraph IX, answering defendant denies depriving plaintiffs of any First Amendment rights, and based on this denial, denies generally and specifically the allegations therein contained.

V

Answering Paragraphs X, answering defendant admits that THE PRUNEYARD refused permission to plaintiffs to circulate petitions or leaflets, and other than as admitted, answering defendant denies generally and specifically the allegations therein contained.

VI

Answering Paragraph XI, answering defendant denies generally and specifically the allegations therein contained and affirmatively alleges that plaintiffs have many adequate alternatives means to circulate the petition in the City of San Jose and the surrounding areas, and based on his information and belief, affirmatively alleges that in fact said petition was widely circulated and signed in said areas.

VII

Answering Paragraph XII, answering defendant denies that plaintiffs have been deprived of any constitutional rights, and based on this denial, denies generally and specifically the allegations therein contained.

WHEREFORE, answering defendant prays judgment as follows:

1. That plaintiffs take nothing by way of their complaint on file herein.
2. For costs of suit incurred herein.

3. For such other and further relief as to the Court seems just and proper.

Dated: May 5, 1976.

**RUFFO, FERRARI & McNEIL**  
A Professional Corporation

By: /s/ **THOMAS P. O'DONNELL**  
**Thomas P. O'Donnell**  
**Bradford C. O'Brien**  
Attorneys for Defendant  
**FRED SAHADI, doing business**  
as **PRUNYARD SHOPPING**  
**CENTER**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

No. 349363

MICHAEL ROBINS, a minor, by his guardian ad litem,  
DAVID ROBINS, et al, *Plaintiffs*,

v.

PRUNEYARD SHOPPING CENTER and FRED SAHADI, individually  
and doing business as THE TOWERS VENTURE, et al.,  
*Defendants*.

**DECLARATION OF KEVIN SALMON**

Filed April 23, 1976

I, KEVIN SALMON, hereby declare as follows:

1. I am a resident of Santa Clara County.
2. I am the Manager of THE PRUNEYARD, located at the intersection of Bascom and Campbell Avenues in Campbell, California.
3. THE PRUNEYARD is entirely located on private property. Not including the Towers Office Buildings, it consists of approximately 21± acres of land, five of which are devoted to parking area and 16 of which are occupied by covered walkways, plazas, sidewalks and buildings containing more than 65 specialty shops, 10 restaurants and a cinema with three separate theater areas. Since THE PRUNEYARD was constructed, it has been devoted solely to commercial use. Members of the public are invited to visit THE PRUNEYARD for the purpose of patronizing the commercial establishments located therein. No activity is permitted on the premises occupied by THE PRUNEYARD complex which does not further the commercial purposes of the complex and/or contribute to an atmosphere conducive to bringing supplier and consumer together.

4. The design of the Center, the landscaping, the availability of specialty shops, entertainments and restaurants have all been planned, laid out and selected by the Center to create a controlled, quiet and unharried atmosphere where consumers may come to shop and enjoy themselves (see the brochure attached hereto as Exhibit A).

5. THE PRUNEYARD is intended to present a unique and entertaining shopping environment that does not have the noise or distractions of the ordinary public business district. To preserve this environment, the management of THE PRUNEYARD allows on the premises only such activities as will benefit the commercial well-being of the Center and its tenants, together with the safety and comfort of shoppers and invitees. I attribute the complex's singular success to the maintenance of this unique environment.

6. It is the policy of THE PRUNEYARD not to permit any visitor or tenant to engage in any solicitations, the circulation of petitions for any cause, the making of speeches in support of any cause, the gathering of signatures, the distribution of political, religious, or other kinds of literature which are not directly related to the commercial purposes of THE PRUNEYARD. This policy is and has been enforced strictly and on a non-discriminatory basis in order to preserve the environment of THE PRUNEYARD and to prevent it from becoming like a public forum or an ordinary downtown business district.

7. THE PRUNEYARD does not attempt to prevent any of the activities described in Paragraph 6 above from occurring on the public sidewalks and streets adjoining the Center, and in fact such activities have from time to time occurred there without interference and THE PRUNEYARD has from time to time advised people of their rights to do so.

8. The Center employes its own security forces to keep order and security in the Center.

9. THE PRUNEYARD is not a regional center, but instead is a medium sized specialty center located one block from downtown Campbell, one block from a public park, very close to the Campbell Civic Center and Public Library.

10. The area surrounding THE PRUNEYARD contains numerous traditional public shopping districts and public buildings located on public streets, such as the Willow Glen shopping district in San Jose, the Town of Los Gatos, the Regional Post Office Headquarters and the Department of Employment Office.

The Greater San Jose Area is filled with numerous public buildings, stadia, shopping districts, parks, theaters, museums, post offices, schools, colleges and universities upon and at which the activities described in Paragraph 6 above are allowed and/or encouraged.

11. THE PRUNEYARD is clearly separated from all public streets by curbing and landscaping. The entrances to the Center are all posted and signed with specially made non-public signing clearly different than state, county or city signs. The parking lots of the Center are treated as private property by the local police pursuant to State law (see for example, PC § 602).

12. All upkeep and repairs of all common areas, such as driveway, walkways, plazas, etc., are paid for by private rather than public funds.

I declare under penalty of perjury that the foregoing is true and correct, and if called upon as a witness, I could testify competently thereto.

Executed at San Jose, California, this 23 day of April, 1976.

/s/ KEVIN SALMON  
Kevin Salmon

**EXCERPTS FROM REPORTER'S TRANSCRIPT OF  
PROCEEDINGS IN THE SUPERIOR COURT  
OF THE STATE OF CALIFORNIA**

**PROCEEDINGS**

10:30 a.m.

[2] **THE COURT:** The matter of Robins, et al., versus Pruneyard Shopping Center.

This is a Complaint for an injunction seeking to enjoin the defendants from denying access to persons seeking to exercise their First Amendment rights by way of partition.

The Court has discussed the case as far as its broad outline with counsel in chambers and we are ready to proceed.

**MR. HAMMER:** Make our appearances?

**THE COURT:** Yes.

**MS. RAVEL:** Ann Miller Ravel appearing for the plaintiff.

**MR. HAMMER:** Philip Hammer also for the plaintiff.

**MR. O'DONNELL:** Thomas O'Donnell appearing for the defendant.

Your Honor, I think we have a few matters of agreement that it might be appropriate to mention to the Court at this time.

**THE COURT:** Yes?

**MR. O'DONNELL:** I believe the parties agree that the Pruneyard Shopping Center, which is the site of this question, is indeed privately owned; it is located in the city of Campbell.

I believe we agree that Mrs. Ravel's clients did in fact go there on the dates alleged, did attempt to obtain [3] signature on petitions, and I'm not sure, perhaps hand out pamphlets.



Were they also doing that?

Ms. RAVEL: I believe so.

MR. O'DONNELL: Okay. That they were advised by representatives of the Pruneyard that this conduct was not allowed at the Pruneyard, and that they would have to cease that activity, and in fact, then did cease the activity and leave the premises.

I don't know if counsel is prepared to stipulate or not: It is our contention, and I think there is no factual dispute, that the petitions being circulated in the First Amendment activities were unrelated to the Center activity; is that also correct?

Ms. RAVEL: We're willing to stipulate to that.

MR. O'DONNELL: And no permission had in fact been given to the plaintiffs to distribute or seek petitioners.

Ms. RAVEL: That's correct.

MR. O'DONNELL: I think that states where we agree.

Ms. RAVEL: We also agree that there are some shopping centers in the San Jose area that do permit the exercise of First Amendment rights, and there are some that do not permit it.

THE COURT: Excuse me a moment. I am not sure I got all of your last point. That is, that the petitions [4] which were sought to be circulated and the literature which was sought to be circulated was unrelated to the Pruneyard activity?

MR. O'DONNELL: Shopping Center Activity. We're here simply making a distinction that rests on the labor cases where the courts have said if you picket a store that is located on the premises and therefore the picketing is related to the business, you can do so. It is not the plaintiffs' contention that this type of First Amendment activ-

ity that they were doing was related to the activities of the Center.

**THE COURT:** Wasn't there another function mentioned?

**MR. O'DONNELL:** Yes, the last one she reminded me of, we took a survey of some of the centers located in the area, and I think for the record I might state what we have agreed to. I think the Court is familiar with most, if not all, the centers.

We determined whether some of these centers allowed the handing out of pamphlets and signing of petitions, and we have agreed that the Almaden Fashion Plaza, Valley Fair, and Mayfield Mall, and Westgate, all do allow this type of activity.

On the other hand, Stanford Shopping Center, because of a Palo Alto City Ordinance against it, does not; Stevens Creek Plaza, they generally would not allow; San Antonio, Oakridge, and Town and Country, all do not.

[5] Anything else?

**MS. RAVEL:** Well, there are other shopping centers.

**THE COURT:** Stanford Shopping Center?

**MR. O'DONNELL:** Stevens Creek Plaza.

**THE COURT:** San Antonio—

**MR. O'DONNELL:** Oakridge and Town and Country.

**THE COURT:** Town and Country San Jose?

**MR. O'DONNELL:** I believe Town and Country—I get confused.

**THE COURT:** There is a Town and Country-Palo Alto and Town and Country-San Jose.

MR. O'DONNELL: Yes. I got confused whether it's Santa Clara or San Jose, but it's across the street from Valley Fair.

MS. RAVEL: We also agree there are other shopping centers that we did a study of, and some permit and some do not permit it. This is not an exhaustive list, and some of the shopping centers that do allow it have various restrictions.

MR. O'DONNELL: I think—again I don't know—I would think it would be appropriate at this time as far as an opening statement is concerned, I would want to make one, and I assume Ann will make hers.

THE COURT: You want to make opening statement?

MS. RAVEL: Yes, Your Honor.

THE COURT: All right. Excuse me a moment.

[6] (Interruption.)

THE COURT: All right. Now, before opening statements, let's be sure the Court understands what you stipulated.

First, that the Pruneyard Shopping Center is a privately owned center located in the city of Campbell;

Second, that the plaintiffs went to the Pruneyard seeking signatures on petitions and seeking to hand out pamphlets;

That upon arrival at the Center the plaintiffs were advised by the owners of the Center that they were not allowed to engage in these activities at the Center; that they must cease and desist in what they were doing;

That they did stop and left the Center as requested;

That the petitions which the plaintiffs were seeking to circulate and the literature which they were seeking to circulate was unrelated to the activity of the Pruneyard or any of its businesses;

That a survey has been done of the centers in the Santa Clara Valley, and the survey indicates that Almaden, Valley Fair, Mayfield Mall and Westgate allow such activity;

Stanford Shopping Center, Stevens Creek Plaza, San Antonio Shopping Center, Oakridge, Town and Country, do not allow such activity;

That Stanford does not allow it because of local ordinance, apparently;

That in addition, there has been further survey of [7] other centers by the plaintiffs and this survey showed that some allowed and some did not allow, and some of those that did allow allowed with certain restrictions.

\* \* \* \* \*

[11] **Ira David Marcus,**

called as a witness on behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

**THE CLERK:** State your full name, please, and spell your last name.

**THE WITNESS:** My name is Ira David Marcus, M-a-r-c-u-s.

**DIRECT EXAMINATION**

**By Ms. RAVEL:**

**Q.** Are you one of the plaintiffs in this case, Mr. Marcus?

**A.** Yes, I am.

**Q.** Could you give us your age?

**A.** 16.

**Q.** Do you recall what you did on November 16, 1975?

**A.** Yes, some other students and my confirmation classes, and one of our teachers and I went to—we were going to try to get signatures on a petition for Syrian Jews, and for a U.N. resolution, and to protest that resolution, so we decided the best place we could go, the easiest, would be [12] the Pruneyard Shopping Center.

Q. So you went to the Pruneyard Shopping Center that day?

A. Yes.

Q. Do you remember what day it was?

A. It was a Saturday.

Q. Are you a student?

A. Yes.

Q. Is the only day that you have to do this kind of activity a Saturday or Sunday?

A. Yes.

Q. What were you going to do with the petition which you—after you had circulated them?

A. Send them to various people. One was to President Ford; there's a couple to President Ford, and congressmen and such like that, and one was to get telegrams, too.

Q. How many people were in the group that went with you to the Pruneyard?

A. Myself, four other students and a teacher.

Q. What was your reason for selecting the Pruneyard?

A. We thought that's where we could reach the most amount of people.

Q. Did you have any self-imposed rules before you went to the shopping center?

A. We went—

MR. O'DONNELL: Well, I would object to that as not being relevant. There is no contention, and we don't make it, that this gentleman or any with him caused any disturbance.

[13] THE COURT: That apparently is not an issue. Was that the point you were getting at with the self-imposed rules?

MS. RAVEL: Yes, but we would like to make it clear to the Court that the plaintiffs were extremely orderly and their intention was to be orderly and to follow any rules. Although they're not claiming that they caused any disturbance, we want the Court to be aware that our clients

intended to follow any regulations that may have been imposed.

THE COURT: I see. Perhaps they are willing to stipulate that the question of orderliness or disorderliness is not an issue in the matter.

MR. O'DONNELL: It's not an issue. Certainly their intention is not. They could have intended anything, but we could only judge by their signs. As far as we were concerned, they are orderly.

THE COURT: I agree that I don't think their undisclosed intent—it is what happened when they got there. If there were anything that would be at issue which would count, so perhaps we can move into something else. Most of these issues have been agreed to so far, haven't they?

MR. O'DONNELL: I believe so.

MS. RAVEL: Yes, but we wanted to make it clear exactly what did happen.

THE COURT: Sure. All right, go ahead.

[14] MS. RAVEL: For the record. Thank you.

Q. (By Ms. Ravel) Mr. Marcus, what was your reason for not going to downtown San Jose?

MR. O'DONNELL: Your Honor, again I'm going to object to that as not being relevant. Why he didn't go to downtown San Jose I don't see the relevancy.

THE COURT: Objection overruled. You may answer.

Q. (By Ms. Ravel) Answer the question, please.

A. We didn't think we could reach enough people in downtown San Jose. Downtown San Jose is a-flocking these days, so we thought it wasn't—first of all it was a lot farther away, and it wasn't so far away but it was not worth going there and wasting our time where there's hardly any people to get signature.

Q. What was your reason for not going to Willow Glen?

A. Same reason. We couldn't reach enough people there.

Q. And the same reason that you didn't go to Campbell?

A. Yes.

Q. When you arrived at the Pruneyard, what did you do?

A. Well, we set up a table and like an amphitheater they have, and we had a couple of petitions there, and I don't remember passing out anything. We might have; I don't remember if we did. I don't think so, and we sent two people around to different parts of the shopping center just to ask people if they would like to sign, and then we had two people standing in front of our table and we had somebody [15] sitting down there.

Q. Were you able to distribute any petitions and get signatures while you were there?

A. Yes, people were bringing open-handedly; they were signing.

Q. How long was it before you were told to leave?

A. I would say between five and ten minutes.

Q. Okay. Did you attempt to collect any signatures after you were told to leave on the streets that surrounded the shopping center or the sidewalk?

A. No. We didn't go to the sidewalks. It was really—it's hard to get—still in the sidewalks there's really not a heck of a lot of people in front of that place, you know. People go there in their cars and leave, and also we didn't—we have three people on the sidewalk. The sidewalk gets clogged and people don't want to be shoved around, so they feel uneasy about signing because they're kind of standing in the way. It's not a nice place to get signatures. It just doesn't work out.

MS. RAVEL: I have nothing further.

THE COURT: Cross-examination?

MR. O'DONNELL: Thank you, Your Honor.

## CROSS-EXAMINATION

BY MR. O'DONNELL:

Q. Mr. Marcus, how old are you?

A. 16.

Q. Have you done this type of activity before?

[16] A. Yes.

Q. Where have you?

A. Not recently, but I have before.

Q. In the past when you have done it, where have you gone?

A. We went to the Payless-Albertson's Shopping Center on Prospect Road. That was many years ago.

Q. Were you allowed to hand out your pamphlets or seek your signatures at that time?

A. Yes. Yes, we were. It was first Cub Scout thing, and we were allowed to stay out in front of there, but it was an important matter and we didn't reach very many people.

Q. Were you told prior to going into the Pruneyard that you had permission to go there?

A. Yes, we were under—we thought we did have permission. One of our teachers said we did; she was mistaken, I guess.

Q. She in fact told you she called the police department to determine if she could go into Campbell and Pruneyard and hand out petitions?

A. I don't know if she called the police; I don't think she did. My understanding was that she had talked to the manager of the Pruneyard and okayed it with him—her—him.

Q. After you left the Pruneyard, did you try to obtain signatures at any subsequent time or place?

A. Yes, we went to the Westgate Shopping Center. We went inside the mall and as soon as we got there we got kicked out of there, too.

[17] Q. Did you go to any place before or after the Pruneyard that was not a shopping center?

A. No.



Q. Were you a part of a larger drive in attempting to get the signatures within your Temple?

A. Yes.

Q. And did your Temple get a number of signatures?

A. I'm not sure what the final outcome was. We did okay ourselves. People were out at the airport, too.

Q. You say you did okay; what do you mean?

A. I mean considering that wherever we went we didn't stay long enough for the time that we did spend in one place, we did fairly well by collecting signatures. We got a page or so, but the time we were allowed we did as best we could in the time allowed. Put it that way.

Q. I lost you. Were you asked to leave a number of places?

A. We were inside the Westgate Mall. Besides Pruneyard, the only place we were asked to leave was inside Westgate Mall itself. After we got kicked out of there we went in front of the mall and there we got some signatures—not very many.

Q. Do you know how many people frequent downtown San Jose on a given day?

A. When I see it, there's not very many. I can't give you an exact figure.

Q. Did you ever try to hand out petitions or pamphlets in downtown San Jose?

A. No, I haven't.

Q. Have you ever gone to the main post office in San Jose and set up a booth or a stand to hand out petitions?  
[18] A. No.

Q. Have you ever gone to a public event, a basketball game, football game, something like that, to hand out petitions?

A. No.

Q. Did you, when you were asked to leave Westgate and Pruneyard, attempt to go to a public place and have your petitions signed?

A. There's other groups of us doing that, and so we didn't.

Q. Did the Temple in fact gain thousands of signatures?

A. I don't know what the original outcome was, what the outcome was.

Q. Now, you say it was your opinion that it was most convenient for you to go to the Pruneyard?

A. Yes.

Q. And what was the basis of that convenience?

Let me rephrase it: Where do you live in relation to the Pruneyard?

A. Well, I live fairly close, but the point was not where you live but where we were assembling, and that's pretty convenient to the Temple.

Q. You assembled at your Temple?

A. Yes.

Q. The Temple is in San Jose?

A. Yes.

Q. And then you drove out to Campbell?

A. Yes.

Q. You say you don't think Willow Glen would have been as effective a place to hand out pamphlets; is that correct?

A. Yes.

[19] Q. Do you know how many people frequent Willow Glen on a Saturday?

A. Not the exact number, no.

Q. Do you know—what do you base your opinion that it wouldn't be effective to put up a table on a public street in Willow Glen to obtain signatures?

A. Because I've seen that area and compared the Pruneyard, from my observations, not as many people frequent Willow Glen as the Pruneyard.

Q. You say you've seen the area and from your observations do you know anything about the total hours spent in both locations?

A. No.

Q. Do you know anything about the total foot traffic in both locations on any given day?

A. No, not in numbers, no.

Q. And the last time you gave out petitions was some years before this particular incident?

A. Yes, but others in our group had given them out more recently.

Q. And they're the ones who told you it was ineffective to go into Willow Glen?

A. Yes.

Q. And did they also tell you it was ineffective to go to Los Gatos?

A. I don't think we brought up Los Gatos; I don't remember.

Q. How about Saratoga?

A. People were saying there wasn't enough people in Saratoga.

[20] Q. Do I understand that the only thing you were doing, because there was some confusion in my mind to start with. I thought you might have been handing out pamphlets. You were not handing out pamphlets?

A. No. We might have—I wasn't—the group that I was with was not handing out pamphlets. There might have been a couple that went astray handing them out, but the couple I was with were only collecting signatures. That's it.

Q. Now, there is a sidewalk on the exterior of the Pruneyard, is there not?

A. Yes, there is.

Q. And you did not go out to the sidewalk to attempt to contact people coming into the Pruneyard?

A. That's correct.

Q. Did one of the security officers at the Pruneyard tell you that you could do that?

A. Yes, he did.

Q. Suggested you move out there and continue with what you were doing?

A. Yes.

Q. You didn't try it?

A. It would have been ineffective we felt.

Q. You didn't try it, though; is that correct?

A. No, we didn't try it.

MR. O'DONNELL: I have nothing further.

REDIRECT EXAMINATION

BY MS. RAVEL:

Q. Mr. Marcus, do you feel that the Temple has a number of such issues that come up in your confirmation class, or in [21] the Temple generally, that would require you or that you would be interested in passing out petitions about?

A. Yes.

MR. O'DONNELL: I object to that question as unintelligible, and secondly, what he feels I don't believe is relevant.

MS. RAVEL: I will rephrase the question.

THE COURT: All right, the question is withdrawn.

Q. (By Ms. Ravel) Is the Temple regularly interested in political decisions that affect Jewish people?

A. Yes.

MR. O'DONNELL: Your Honor, I object to that. I don't know if the witness is qualified to tell us the opinions of the Temple, nor do I think that's relevant to the matter before the Court.

MS. RAVEL: I didn't put it in terms of the feeling of the Temple. He is a member, and he is aware of what the activities of the Temple are.

THE COURT: Objection overruled. You may answer.

A. Yes, the Temple is interested.

Q. (By Ms. Ravel) Do you believe that there will be occasions in the future that will arise where you will want to have petitions signed by people concerning these issues?

MR. O'DONNELL: Your Honor, that calls for speculation. I object. Also, it's not relevant.

THE COURT: Well, you may answer. Objection [22] overruled.

THE WITNESS: Can you repeat the question one more time?

Q. (By Ms. Ravel) Do you believe that in the future you will be interested in passing out petitions on political issues?

A. Yes, definitely.

Q. Would you be interested in passing out petitions in the future on the issues that you passed out petitions that day at the Pruneyard?

A. Yes.

MS. RAVEL: I have nothing further.

THE COURT: Further questions?

MR. O'DONNELL: Yes.

RECROSS EXAMINATION

BY MR. O'DONNELL:

Q. I understand that one of the petitions that you sought to have signed concerned itself with the Zionist resolution?

A. Yes.

Q. Is that still a live issue?

A. What do you consider a live issue?

Q. I'm asking you, do you consider it a live issue?

A. Yes.

Q. What do you mean by "a live issue"?

A. I mean that the resolution is still there, and that they haven't—they still consider Zionism racism. They haven't changed that, what they said before, and so until that's changed, we won't be happy.

[23] Q. Now, this took place last fall, did it not?

A. Right.

Q. When was the last time you went out on Zionism resolution?

A. We haven't gone out since then.

Q. When do you plan on going out next?

A. When we find where we can go. I guess we can get people. Again there is also other classes that I think might be interested in going out.

Q. My question is when did you plan on going out again?

A. As soon as I find out where and when we can get enough people. I can't give you an exact date.

Q. You understand that you can go to public places and seek petitions?

A. Yes, if we want to waste our time on small crowds.

Q. Do I understand you only want to go where you have massive numbers of people so it's very easy to collect petitions?

A. That's correct.

Q. In the fall did you go to any of the Stanford football games?

A. No—oh, to collect petitions?

Q. Yes.

A. No.

Q. How about the San Jose State games?

A. No.

Q. Just shopping centers?

A. That's correct, and airport, I think a group went out to an airport.

Q. How did you do at the airport?

A. I don't know. I think they might have got kicked out of [24] there, too. I didn't talk to too many people that went there.

Q. Do you have any idea of the number of people who go to the San Jose Airport in a year?

A. No.

MR. O'DONNELL: I have nothing further.

MS. RAVEL: That's all.

THE COURT: Further questions?

REDIRECT EXAMINATION

BY Ms. RAVEL:

Q. Mr. Marcus, do you know when the football season is over.

A. No, I don't know the exact day.

Q. Do you sometime in the fall—

A. Yes. Let's see. I think before New Year's.

MR. O'DONNELL: Sometimes it's never over.

THE WITNESS: Well, the final games take part before New Year's, but the home games are well before that.

Ms. RAVEL: Thank you.

MR. O'DONNELL: Nothing further.

THE COURT: All right. Thank you. You may step down.

• \* \* \* \* \*

Clifford O. Lawler

[29] BY Ms. RAVEL:

Q. Mr. Lawler, I show you this document entitled "A Comparative Study of Population Growth Characteristics versus Spending Patterns for Metropolitan San Jose for Years 1950-1975"; do you recognize this document (handing exhibit to the witness)?

A. Yes, ma'am.

Q. Did you prepare this document?

A. Yes, ma'am.

[30] Q. Did you prepare this document?

A. Yes, ma'am.

Ms. RAVEL: I'd like this marked for identification.

THE COURT: It may be marked for identification as Plaintiffs' next in order.

THE CLERK: Marked Plaintiffs' 2 for identification.

(Whereupon, the above-mentioned document, being a Study of Spending Patterns, was marked Plaintiffs' Exhibit Number 2 for identification.)

Q. (By Ms. Ravel) Mr. Lawler, could you please tell me what sources you relied upon in your preparation of this document?

A. Yes. Information from the U.S. Bureau of Census, which I receive from the Santa Clara County Planning Commission, and from the San Jose City Planning Department, and also from the San Jose Mercury News Marketing Department and, of course, definitional material from other text books regarding government sources, Urban Institute, and so on.

Q. Those are all of the sources that you consulted in your preparation?

A. Yes.

Q. Would you explain by what method you reached your conclusions?

A. Well, the research study of this type which I call a descriptive study is very important to define the universe, and in this case the universe, as has been mentioned before here, is known as the Standard Metropolitan Statistical Area of San Jose, which does [31] include all of Santa Clara County by government definition. That is the universe; that's the population that we're talking about, so with that in mind, the idea was to find out where the people live now, where they have lived in years gone by, and what the ever-widening, ever-changing pattern of where people live, and my study encompasses the years 1950 through 1974, really. They call it '75 information, but it's 25 years.

Also, along with that, very important to find out where people spend their money, and I'm sure you realize that in studies involving consumer behavior, consumer attitudes, if they—they will spend time, significant amounts of their time where they get their one-spend needs satisfied, that was the purpose of drawing these two pieces of—major pieces of information together.

Q. Your Section 1 of your study is entitled "Comparisons of Growth Characteristics in Metropolitan San Jose and Where People Live". Could you please give me an



analysis of what is contained in Section 1 and what your conclusions are?

A. Yes. We simply show in Section 1 that over the years 1950 to 1975 population shows a fourfold increase from 291,000 to 1,169,000. Over 71 percent of this was by immigration, people coming from outside the area, and a lot of them from outside of the state. The remaining percentage, 28, 29 percent, was by virtue of marriage and of the indigenous local population.

[32] Q. I'm sorry to interrupt you—

A. Yes?

Q. Does your report in Section 1 show shifting population patterns in the county?

A. Yes. That was going to be my next point. That over that period of time it has shifted dramatically from what is described in one very important appendix, showing the downtown central district definition given by the San Jose Mercury News as a central district, which over the period of 1960 to 1970 has reduced 4.7 percent, whereas all of the other areas in the county which, if you don't mind, it's called SMSA. That is the standard metropolitan area we're talking about, is a plus 67 percent in all other areas.

One area particularly, 1883 percent. Several of them 300 and over 300 percent, over 200 percent, so on and so forth, combined average being 67 percent.

MS. RAVEL: Your Honor, I don't know if you'd like to follow along his testimony?

THE COURT: Do you have an extra copy?

MS. RAVEL: No, but—

THE COURT: Well, you go ahead. Is this document going to be offered in evidence and objected to, and where are we?

MS. RAVEL: Yes.

MR. O'DONNELL: I think perhaps we could save a lot of time. I am going to object to the testimony, and I think

Ann and I simply—we both looked at this and we know [33] what he is going to testify to, as not being relevant. As I understand his testimony, his testimony will be that downtown San Jose no longer as a marketing center is very viable, that he will show that of over \$3 billion of sales, something like 510 million of those dollars are in 45 shopping centers, and we don't really argue with that.

I think that is probably self-evident. We're not really quite sure how that's relevant, what they're saying, only on that basis do we object to his testimony.

THE COURT: All right, the objection is overruled.

Now, can we speed the matter up by putting the report in rather than go through the oral testimony?

MR. O'DONNELL: If we just perhaps asked a few questions about his conclusions and ask the conclusions, then the whole report can go in.

THE COURT: Why don't you just ask him about his conclusions and he can cross-examine him on them.

MS. RAVEL: Fine.

Q. (By Ms. Ravel) Mr. Lawler, could you please tell the Court what your conclusions were in Section 2, which is entitled "Spending Patterns, Metropolitan San Jose"?

A. Yes. Conclusions to Section 2 include these four statements:

"A phenomena of the rapid growth of major shopping centers, both in terms of dollars and in percent of sales, shown by Appendix, shows that the entrepreneurs of [34] Metropolitan San Jose are dedicated in some measure to the newer marketing concept, 'We are in a business to serve a market; we are not in business to sell a product.'" Total consumer orientation. They are going to serve people where people live and where they are willing to go.

"It is the writer's belief that businessmen have found that people" which we call "spending units" here, "are

willing to shop and to spend a significant amount of their time in shopping centers, or synonymous with trading area where they live, providing that their wants and needs can be satisfied."

"The analysis provided in this report shows the overwhelming percentages of people in Metropolitan San Jose live outside the central district. It also shows they spend the largest portion of their incomes outside the central district. The availability of goods and services in any comparison shows the largest share of people are thus likely to spend the most significant amount of their time in the suburban areas where their wants and needs are satisfied."

So, to sum up, "The shopping center complexes provide the location, the availability of goods and services, and thus the satisfaction of consumer wants and needs."

Q. Mr. Lawler, could you please tell me the differences between the downtown area in terms of sales and the shopping centers?

A. The last figures that we have been able to get are [35] dated 1972. The reason we don't have later figures—

MR. O'DONNELL: Excuse me. I will have no objection to the report going in if that will help at all.

THE COURT: Maybe that will save a lot of time.

All right, the report is ordered admitted as Plaintiffs' Exhibit 2 in evidence.

(Whereupon, Plaintiffs' Exhibit Number 2, previously marked for identification, was received in evidence.)

THE COURT: Any other questions of the witness?

MS. RAVEL: No, Your Honor.

THE COURT: All right, you may cross-examine.

## CROSS-EXAMINATION

BY MR. O'DONNELL:

Q. I just want to establish a few things with you, sir.

You were previously deposed; I'm just wondering if we can determine in fairly short order what your area of expertise is, and what your study concerned and what it didn't concern. I believe that you have previously stated that you were asked a—let me show you your deposition. I believe your expertise here is unrelated to where people are most disposed to sign petitions? You're not offering any testimony on where somebody would be better situated to want to sign a petition; is that correct?

A. That's correct.

Q. You make no statement as to whether or not a person [36] would be more amenable to signing a petition in an airport versus a shopping center, do you?

A. In my deposition you asked me the same question.

Q. No, I'm not asking about your deposition; I'm asking about your field of expertise. Do you consider yourself an expert—

A. I do not.

Q. All right.

A. I do not.

Q. Your area of expertise insofar as you're concerned here today is determining where dollars are spent by consumers in commercial ventures; that's part of what you're to do; is that correct?

A. That's one-half of it.

Q. What is the other half?

A. Of where they live and what has been happening over a period of 25 years to this whole area.

Q. Now, I think your study disclosed—I'm not testing your memory.

A. That's all right.

Q. That in the Santa Clara County area there were over \$3 billion in commercial sales in a given year?

A. If that year was three years ago, it's better than 5 billion now.

Q. Going back to what your report said, and I guess that was three years ago?

A. Yes.

Q. I think you also stated that of that 3 billion plus total, something in excess of 500 million were obtained from the 45 most significant shopping centers?

A. Yes (nodding head).

[37] Q. You'll have to answer audibly for the Reporter.

A. Yes. That's correct.

Q. Then approximately \$2½ billion this would be spread out over different types of commercial ventures; is that right?

A. Yes, sir.

Q. I believe—let me ask you this: Is it also fair to say—

THE COURT: Excuse me, 3 billion in retail sales?

THE WITNESS: Yes, sir.

Q. (By Mr. O'Donnell) Would it be fair to say that if a person goes to a shopping center, as far as your work indicates, that same person may go to another center within the same day?

A. If they have a need to.

Q. So people will move on occasion from center to center?

A. Shopping center to shopping center. You might qualify that by defining shopping centers, and specifically Pruneridge—Pruneyard Towers.

Q. Well, as I understand your definition of Pruneyard, that's a specialty shopping center?

A. Yes, but it takes upon itself the same definition as a regional as far as number of cars, number of dollars—excuse me, number of people available in that trading area.

Q. Do you have any idea how many people shop at the Pruneyard on any given day?

A. No, sir, I don't. I know what their trading area is.

Q. Trading area when you talk about centers, defined as [38] regional and specialties—

A. Yes.

Q. —simply means, does it not, the size of the area in which people would be expected to be in the marketing area; that is, they might drive 50 miles to come to a regional, whereas the neighborhood they might drive very short distance?

A. True. That's true.

MR. O'DONNELL: I have nothing further.

THE COURT: Further questions?

MS. RAVEL: Yes.

#### REDIRECT EXAMINATION

BY MS. RAVEL:

Q. Mr. Lawler, you also made a study of other areas in the San Jose area where people might be likely to congregate?

A. Yes, I did.

Q. Was that a study of the parks in the San Jose area?

A. It included looking at the 18 regional parks within the county. I have a document here.

Q. And what were your conclusions regarding that study?

MR. O'DONNELL: Your Honor, if he has a document there, I have no objection to that going in.

THE COURT: All right. Do you have a report on that?

MS. RAVEL: I have (indicating).

THE COURT: All right, it may be admitted as Plaintiffs' next in order in evidence.

THE CLERK: Plaintiffs' 3 in evidence.

[39] (Whereupon, the above-mentioned document, being a Comparative Statement of Parks and Recreation Department Estimated Park Attendants, was marked Plaintiffs' Exhibit Number 3, and received in evidence.)

MS. RAVEL: Your Honor, I would still like to ask Mr. Lawler what his conclusions were from—resulting from this study.

MR. O'DONNELL: Your Honor, pardon me. I don't understand the question. We have a list with statistics on it and she asked him what his conclusions were.

MS. RAVEL: He's an expert; he has made a study; he can have a conclusion based on the study.

MR. O'DONNELL: I think we'd have to have some foundation. The question to me is unintelligible: "You have a list of numbers, and state what your conclusion is." I really don't even know what general area we're talking about. I can't very well protect the answer.

THE COURT: Well, the question is "What conclusions if any—what opinions if any do you draw from this?"

MS. RAVEL: That's right. I was going to lay a foundation.

MR. O'DONNELL: Well, again I object to that. Their witness has been qualified dealing with shopping in stores. Now I understand we have testimony showing how many people go to parks, and he's going to draw a conclusion from that. He's not been qualified as an expert on that [40] ground.

MS. RAVEL: I would ask him to draw a conclusion based on the number of people that go to parks versus the number of people that he knows go to shopping centers.

THE COURT: What kind of conclusion are you seeking?

MS. RAVEL: Seeking comparisons, whether he can make such comparison.

THE COURT: "Can you compare the numbers?" Is that what you are asking?

MS. RAVEL: Right.

MR. O'DONNELL: If we have numbers in evidence, which I think we do, and we added them all up, and we showed a million people, and here we have a number, and say it shows 500 thousand people, I still don't know if this gentleman—sounds to me almost like a statistical or mathematical comparison which I don't think you need an expert for. I think an expert is to guide the Court, who has some expertise more than a layman. If we're putting one member over another, I don't believe that's proper testimony for an expert. That's not what she wants. I'm sorry, I still don't understand.

THE COURT: Of course, it is outside the scope of redirect, I guess, isn't it?

MR. O'DONNELL: I haven't made that objection. I just don't understand.

THE COURT: All right, objection overruled. You may answer.

[41] You may put a question.

Is there a question before the witness?

MR. O'DONNELL: We have the question; I'm objecting to that question on several grounds, one of which it is not intelligible; second of which is she's calling for a question from a witness who has not been qualified, anything to do with parks.



The third thing is that she's asking the questions for which an expert is not necessary, and this man is no more an expert than I am in comparing two figures.

THE COURT: Well, I guess the question you are getting at is whether from these figures——

MS. RAVEL: He has drawn——

THE COURT: He can draw or has any conclusions.

MS. RAVEL: What was my previous question? That was merely an explanation.

MR. O'DONNELL: This is a conclusion, anything to do with his field of expertise, which is where people are shopping today and what does a park have to do with where people are shopping today?

THE COURT: I understand that objection.

MS. RAVEL: I believe Your Honor has already ruled on that question, and furthermore, it is an issue.

THE COURT: Well, why don't you put your question. Re-state the question, then we will be sure we understand where we are.

[42] Q. (By Ms. Ravel) Mr. Lawler, based on the study which you made of parks in the Greater San Jose Area, and on the study that you made regarding the marketing areas in San Jose, have you made any conclusions?

A. Yes, ma'am, I have.

MR. O'DONNELL: Now, Your Honor, are you going to allow that?

THE COURT: Well, now, she withdrew her last question.

MR. O'DONNELL: Could I hear the question?

THE COURT: You want it read?

MR. O'DONNELL: Yes.

THE COURT: All right, you may read it back.

(The question was read by the Reporter.)

MR. O'DONNELL: Your Honor, I would like the previous objection, plus the lack of foundation. I still think everyone is totally unprepared to know what she's even driving at.

THE COURT: Well, objection overruled, and the question may be answered yes or no.

A. Yes, I have.

Q. (By Ms. Ravel) And what are those conclusions?

MR. O'DONNELL: Same objection.

THE COURT: Objection overruled. You may answer.

A. A look at the composite figures for the years 1974-75 for the 18 regional parks, when broken down by month and [43] divided by the 18 regional parks, shows a total of 35,705 people per location per park per year, and a look at the same period 1975 of the 15 largest shopping centers shows that 685,000 people have attended, specifically Pruneyard 181,000 in that same period of time, so my conclusion is that the people again go where their wants and needs are satisfied, spend significant amounts of time and perform the greater share of their activities in areas.

MS. RAVEL: Thank you. I have nothing further.

THE COURT: Any further questions?

MR. O'DONNELL: Yes.

RECROSS EXAMINATION

BY MR. O'DONNELL:

Q. Does this study indicate how long the average time is spent at these parks?

A. No, it does not.

Q. Does it indicate how long the average time is spent at the Pruneyard?

A. No, it does not, but we have information on that regarding special shopping.

Q. My question was specifically——

A. Okay.

Q. You relied on information in preparing your report, I assume, such as the 1974-75 shopping center guide put out by the San Jose Mercury News?

A. Yes.

Q. You also, I assume, relied on information such as the Statistical Summary of the San Jose Metropolitan Area '75 (indicating)?

[44] A. Yes. Is that the county or the city?

Q. This is the one put out by San Jose Chamber of Commerce, just the Bay Area comparisons, college enrollments, that type of thing (handing document to the witness).

A. This is not my document?

Q. No. I'm not suggesting that is your document, sir; I'm saying you have relied on the same type——

A. Same type of information; right.

Q. Did you attempt to discover what the volume of passengers going through the San Jose Airport in any given year is?

A. No. I examined the question and did not for a specific reason.

Q. You did not then attempt to find out how many people went through the San Jose Airport in a given year?

A. I examined the question. Should I or should I not, and did not for a specific reason.

Q. And what about the colleges? Did you attempt to determine how many people are located at your local colleges within Santa Clara County?

A. I have a fair idea. I did not do it for purposes of this study.

Q. Did you attempt to determine of the numbers you have given us of people going to the Pruneyard in a given 30-day period, how many of those people were repeats?

A. None of the figures I gave you here were repeats. The figures I gave you were just for one or more times.

[45] Q. That's what I mean.

A. In the last 30 days—oh, pardon me. My mistake. Some of these could have been repeats.

Q. How many could be repeats?

A. One or more times, it doesn't say, because the further analysis was two or more times, three or more times, four or more times, so I just take this to be one or more.

Q. Is the same true of your study with the parks?

A. Most certainly. There are many people who, as you know, talking to head rangers, recognize the same families go back every Sunday.

Q. I take it there are some same people who go back to the Pruneyard time after time, too?

A. There could be.

MR. O'DONNELL: I have nothing further.

#### REDIRECT EXAMINATION

BY MS. RAVEL:

Q. Mr. Lawler, what was your reason for not attempting to determine figures for attendance at San Jose Airport?

A. Yes, like yourselves having traveled airlines quite a bit, when I go to the airport I'm in and out fast, and people don't congregate there for quest mode; they're there to get in and out. Their minds are on other things. They're going; they have bags in their hands, and they're always late.

MS. RAVEL: Thank you.

[46] RECROSS EXAMINATION

BY MR. O'DONNELL:

Q. This quest mode, what does that mean?

A. Yes. I used that term maybe rather loosely, but it's people who aren't in a frame of mind to be looking at a

shopping center. They're certainly looking; they're questing.

Q. "Questing" means looking?

A. Yes. Looking, searching, you know, that doesn't hold true for football games, either.

Q. And I take it you are an expert of when people are most disposed to sign petitions?

A. No, sir. I have no comment on that.

Q. How much experience have you had in attempting to get signatures on a petition?

A. I have never engaged in getting names on petitions. I have been very busy in over 20 years locally in San Jose March of Dimes and United Fund, and building a YMCA, and all of that, so I have been very involved in community activity and have had good support in every direction.

\* \* \* \* \*

[49] THE COURT: All right it is stipulated that there was a refusal to permit with reasonable or other regulation that it was a total refusal of any right to petition or distribute.

MR. HAMMER: Yes, that plaintiffs offered to subject themselves to any sort of regulations that the [50] Pruneyard may want to impose as far as time or manner.

THE COURT: And it was refused.

MR. O'DONNELL: With the exception we always told them they could sit on the parameter, the sidewalk, public sidewalk.

THE COURT: That is within the Pruneyard?

MR. O'DONNELL: We said they absolutely could not get inside the Pruneyard.

THE COURT: All right, so stipulated.

\* \* \* \* \*

[52] **Kevin Monroe Salmon.**

called as a witness on behalf of the Defendants, being first duly sworn, was examined and testified as follows:

**THE CLERK:** State your full name and spell your last name, please.

**THE WITNESS:** Kevin Monroe Salmon, S-a-l-m-o-n.

**DIRECT EXAMINATION**

**BY MR. O'DONNELL:**

**Q.** And your address?

**A.** 1742 Fabian Drive, San Jose.

**Q.** And Mr. Salmon, you are the manager of the Pruneyard Shopping Center?

**A.** Manager of operations, yes.

**Q.** I believe you submitted a declaration in this matter in which you describe the physical layout of the Pruneyard; could you describe for us the location of the sidewalks with relation to the Center?

**THE COURT:** You are talking about public sidewalks as opposed to sidewalk areas that are under cover within the Pruneyard?

**MR. O'DONNELL:** Yes, we would refer to those as mall areas, and I'm referring to the——

**THE COURT:** Where are the public sidewalks?

**THE WITNESS:** Public sidewalks on the Pruneyard Shopping Center are on Bascom and Campbell areas, those two sides.

[53] **THE COURT:** Yes, the Court is familiar with those. I thought perhaps there were sidewalks elsewhere.

**MR. O'DONNELL:** No, there's just a——

THE COURT: Public sidewalks going along the front and down the side of the street where the stop light is?

MR. O'DONNELL: Yes, and there are curb cuts for ingress and egress located around the perimeter of the Center, keeping in mind the Center backs up to the freeway, so no entrance there, and on one side is adjoining private property, so we have an L-shaped access to public streets.

Q. (By Mr. O'Donnell) Now, referring to that L-shape, there are curb cuts allowing ingress and egress, are there not?

A. Curb cuts being driveways, yes.

Q. Yes, and adjoining those curb cuts and in fact going across the driveways there are public sidewalks, are there not?

A. Yes.

Q. And on the—in the Pruneyard, do you have your own security force?

A. Yes, we do. We contract a security force.

Q. And this security force is in no way related to the Campbell Police Department?

A. They are not. Independent.

MR. O'DONNELL: Nothing further.

THE COURT: Any questions?

MS. RAVEL: Yes.

[54] CROSS-EXAMINATION

BY MS. RAVEL:

Q. Mr. Salmon, do most people approach the Pruneyard Shopping Center on foot or by automobile?

A. By automobile.

THE COURT: Excuse me a moment.

(Interruption.)

Q. (By Ms. Ravel) Would you say there is a large or a small amount of foot traffic on the sidewalks surrounding the shopping center?

A. I would say a small amount.

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**A COMPARATIVE STUDY OF POPULATION GROWTH  
CHARACTERISTICS, VERSUS SPENDING PATTERNS FOR  
METROPOLITAN SAN JOSE FOR THE YEARS 1950-1975**

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May 30, 1976**

**Abstract**

This study of growth characteristics and spending patterns for Metropolitan San Jose for the years 1950-1975 shows dramatic increases in both categories.

The ever-growing and ever-widening circle of population dispersion from the "hub of San Jose" shows that the overwhelming majority of people live outside the San Jose Central District.

The analysis provided in this report also shows the population spends the largest portion of their incomes outside the central district. The availability of *goods and services* in any comparison shows the largest share of people are thus likely to spend the most significant amount of their time in the suburban areas *where their wants and needs are satisfied*.

The shopping center complexes provide the location, the opportunity, the availability of goods and services, and thus the satisfaction of consumer wants and needs.

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### **INTRODUCTION**

This study in social research was performed to survey the demographic aspects of the Standard Metropolitan Statistical Area, SMSA, known as Metropolitan San Jose. This SMSA, by the U. S. Bureau of Census definition, encompasses the Santa Clara County.<sup>1</sup>

The following aspects were of particular interest:

- 1.) Growth characteristics of Metropolitan San Jose over time.
- 2.) Where people live.
- 3.) Where people spend their money.
- 4.) Where people spend a significant portion of their time.
- 5.) How much people spend (\$) in a variety of areas within Metropolitan San Jose.

### **METHODOLOGY**

The form of research design known as Descriptive Research using the case study approach is applied in this report.

A variety of sources were investigated and researched to answer the questions of particular interest posed in the introduction. Some of the source information is included in the Appendix to this report.

The information includes data from the following sources:

- 1.) U. S. Bureau of Census
- 2.) Santa Clara County Planning Department
- 3.) San Jose City Advanced Planning Department
- 4.) The San Jose Mercury and News Marketing Department

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<sup>1</sup> see Definition of Terms, Appendix A-1.

- 5.) California, State Board of Equalization
- 6.) BASIC MARKETING: Concepts, Decisions & Strategy, *Cundiff & Still*, Second Edition, Prentice-Hall, (1971).
- 7.) Residential Permit Survey, City of San Jose, 1970-1974 (July 1975)

*Note:* The writer of this report will be pleased to furnish any information referred to, but not appearing in this report.

Various groups of data and statistics were gathered. An analysis was made to verify that a correlation did exist among the various sources, and among the various groups of data. Where any non-correlation exists, it will be noted in the body of this report.

The analysis which follows covers, mainly, summarized statistics from the grouped data. Annotation is supplied to referenced material. Appendix A—Definition of Terms.—is provided for a quick reference of some terms which may not be in every day usage by some who may read this report.

Conclusions are drawn at the end of each major section of this report.

#### **LIMITATIONS OF THE STUDY**

Time is always the enemy of providing completely adequate work, especially when one can become immersed in gathering and analyzing in detail interesting data. The tendency is to get lost in detail and lose perspective. However with the availability of current source information, such as appears in this report, it is hoped the particular questions pertaining to this study have been answered.

Some assumptions have been made to relate data to each other. As for example, some data is compiled and made

available only every five years, while other data is available on a yearly basis. The comparisons have been cross-checked to, in the writer's opinion, a satisfactory confidence level. Examples of each kind of this data are included in the appendix.

Much larger issues and questions may be raised by other investigations and research of data available in this report. However, an attempt is made to relate to only the basic areas of particular interest. Every effort was made to make the information herein contained as complete, current and dependable as possible.

## **SECTION I**

### **Comparisons of Growth Characteristics in Metropolitan San Jose and Where People Live.**

As one of the nations fastest growing metropolitan areas, the SMSA known as Metropolitan San Jose (Santa Clara County) has undergone dramatic changes during the past twenty-five years.

During the years 1950-1975, the population shows a four-fold increase, from 291,000 to 1,169,006 persons. Over 71 percent of the increase occurred by immigration, while the remaining approximately 29 percent occurred by natural increase (marriages, births of the indigenous population), see Appendix B-1, 2, 3, 4.

In fact, by 1973 Santa Clara County surpassed the population of each of 16 states in the U. S. (see Appendix B-5).

An examination of the influx of persons shows they have been settling in an ever-growing, ever-widening circle from what was known in prior years as the "hub of San Jose"; the central core, the downtown area. The 19 planning areas of the North County account for 97% of the population (see Appendix B-3).

The question now arises; “*Where* have people been settling over the years in the ever-growing, ever-widening circle?” Let us examine some of the statistics.

*Planning Areas—San Jose, and Santa Clara County.*

Mr. John Berg, Planner, San Jose Advanced Planning Department, and Mr. Tanner, Planner, Santa Clara County Planning Department, both define a planning area as “an arbitrary area following geographical boundaries (ie; creeks, major roads, or, natural lines of demarcation)”.

*Census Tract—San Jose, and Santa Clara County.*

The above two named planners also agree that, over time, the definition of a Census Tract has held to be “a contiguous area in which from 2500 to 8,000 persons reside.”

During a national census (every 10 years) *Census Tracts* may be realigned as populations grow or decline, while *Planning Areas*, generally, stay constant.

To keep data consistent, the figures in the chart “Population and Housing, April, 1960” (see Appendix B-7, 8, 9, 10) can be equated with selected data from PROFILE 70, Social Planning Council, City of San Jose. The 1960 figures on chart B-7 have been broken off at Census Tract A020 to agree with the realigned 1970 census tract data which changed designation of planning area and census tract areas. The realignment appears in PROFILE 70 noted above.

Note: The above change can be seen by reference to the 1970 census tract map (see Appendix B-11).

The purpose of the above discussion is to keep various groups of data constant for the following comparison:

Planning Area	1960	1970	% Change
San Jose-Central	86,266	82,226	- 4.7
A. Willow Glen	65,794	77,476	+ 18
So. San Jose	17,467	30,280	+ 73
B. Evergreen	15,688	50,851	+ 223
C. Alum Rock	36,379	51,114	+ 40
D. Berryessa	3,135	11,561	+ 268
E. Milpitas	6,968	34,580	+ 396
F. Alviso	5,190	6,506	+ 25
G. Agnew	15,159	18,822	+ 24
H. Santa Clara	65,884	83,266	+ 26
I. Campbell	41,891	89,107	+ 113
J. Los Gatos	27,628	47,955	+ 74
K. Saratoga	15,329	27,501	+ 79
L. Cupertino/Monte Vista	43,028	92,333	+ 115
M. Sunnyvale	41,073	70,024	+ 70
N. Mt. View/Los Altos	56,704	77,174	+ 36
O. Palo Alto	61,446	67,875	+ 10
P. Los Altos Hills	6,993	11,374	+ 63
Q. Lexington	2,763	2,829	+ 02
R. Almaden	2,734	21,349	+ 681
S. Edenvale	2,233	44,299	+ 1,883
TOTAL—North County	619,752	1,034,190	+ 67%

Note 1: + .5 per cent has been rounded up.  
- .5 per cent has been dropped.

Note 2: Inaccuracies in tract figures tend to cancel each other out when aggregated to larger areas.

In an up-date comparison for Santa Clara County, for the years 1950-1970, the Santa Clara County Planning



Department provided the following data from U. S. Census of Population and Housing:

	<i>Total Population</i>			
	<u>1950</u>	<u>1960</u>	<u>1966</u>	<u>1970</u>
Total County	290,547	642,315	919,653	1,065,313

	<i>Percentage Change—Total Population</i>			
	<u>1950</u>	<u>1960</u>	<u>1966</u>	<u>1970</u>
Total County	121.1	65.9	43.2	15.8

	<i>Total Dwelling Units</i>			
	<u>1950</u>	<u>1960</u>	<u>1966</u>	<u>1970</u>
Total County	91,670	199,922	288,462	336,873

One other analysis may be made before conclusions are drawn for this section. In a comparison of distribution of residential buildings authorized in the City of San Jose Statistical Areas for the five year period 1970-1974, the central statistical area contributed only between a low of 3.8% to a possible high of 13.7% in any of those years (see Appendix B-12, 13, 14, 15, 16, 17).

#### **Conclusions—Section I**

In a summing up of Section I, the following reasonable conclusions can be drawn:

- 1.) The Metropolitan San Jose (SMSA) has shown a dramatic increase.
- 2.) As the area has grown, it is the outlying space from the San Jose Central District which has made the most significant increases. These increases appear in city suburban areas, and in county planning areas.

- 3.) The San Jose Central District showed a decline in population of 4.7% from 1960-1970, while the total SMSA showed a 67% increase.
- 4.) The San Jose Central District contributed the smallest share (in percent) to residential building for the years 1960-1970.
- 5.) Therefore, it is reasonable to conclude that the greatest percentage of people live outside the San Jose Central District trading area, and it is also reasonable to conclude that they perform the greater share of their activities outside the central district.

## SECTION II

### Spending Patterns—Metropolitan San Jose (SMSA)

The prior section has shown the growth of the San Jose Metropolitan Area. It has also shown that the greatest percentage of people live outside the Central San Jose District trading area. Trading area is synonymous in this report with spending area.

This section will show where people spend their money, and coincidentally, where they spend a significant share of their time.

The major source of information used in this section is the Shopping Center Guide for Metropolitan San Jose (SMSA), published by the San Jose Mercury and News Marketing Department (1974-1975 edition), a copy of which is available.

The SMSA market profile shows the following demographics:

There were approximately 368,000 households <sup>2</sup> in Santa Clara County in 1973. Effective buying income <sup>3</sup> per house-

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<sup>2</sup> see Appendix A—Definition of Terms.

<sup>3</sup> see Appendix A—Definition of Terms.

hold was \$15,948. This generates a total of \$5.868 billion that was available to spend in the various trading areas/spending areas of Metropolitan San Jose.

Total retail sales in 1973 were \$3.113 billion. This figure represents 53% of the effective buying income of the available households.

The \$3.113 billion in retail sales was spent in the total retail establishments in Metropolitan San Jose (SMSA). The SMSA map in Appendix C-1 shows the location of shopping center complexes. The shopping centers are comprised of Regional, Specialty, Community, and Neighborhood complexes. Definitions of these appear in Appendix A-4, 5, 6, 7, under Definition of Terms.

Not appearing on the map, but located within the same SMSA are, of course, many other large and small single functioning retail establishments.

By comparing this map (Appendix C-1) with the 1970 Census Tract map for the same area (Appendix B-11), it can be seen that the major shopping complexes have been placed *where people live*. The shopping centers supply what appears to be the greatest share of *goods and services* that households require to maintain their particular standard of living.

Catagories noted for the types of goods and services include the following:

*Goods*

1. Automotive
2. Apparel
3. Appliances
4. Department stores
5. Food (supermarkets, gourmet, bakery)
6. Gifts
7. Jewelry
8. Music

9. Restaurants
10. Sporting goods
11. Toys
12. Variety Stores

*Services*

1. Banks
2. Barbers, Beauty Shops
3. Entertainment (theatres, arenas)
4. Savings and Loan
5. Finance and Investments
6. Photography
7. Travel

Note: This list is not inclusive.

The 1974-1975 Shopping Center Guide (accompanied by the map in Appendix C-1 shows 126 shopping centers offering the above goods and services. A summation of the 1973 retail sales for the top 45 shopping centers (including Regional, Specialty and Community) were \$544,257,000.

None of the top 45 shopping centers (or in fact, any of the 126 centers listed) appear in what is known as the San Jose Central Business District (trading area).

The Central Business District is shown as the red cross-hatched area on the map (see Appendix C-1). The definition was supplied by the San Jose Mercury and News. Sales for this area, I am told, are not being kept current because of its deteriorating condition. However, the last available retail sales figures (1972) for this district was \$86,831,000. This figure represents but 4.67% of the total retail sales of \$1,857,659,000 for same year (1972).

The above figures are consistent with what appeared in Section I of this report on *where people live* in Metropolitan San Jose. The conclusion there was that the San Jose Central District experienced no growth in the years 1960-1970.

In other words, a very small portion of people live in the central district, and a very small portion of the total effective buying income is spent there, when compared to Metropolitan San Jose as a whole.

A latest survey for the San Jose Mercury and News by Beldon Associates (dated October 1974-July 1975) showed that in a 30 day period, adults making one or more shopping trips to the 15 largest shopping centers in the Metropolitan San Jose SMSA totaled *685,000 out of 788,000 adults living within the area.* (see Appendix C-3) = 86.9%. Taxable retail sales of these selected shopping centers for 1974 totaled \$455,112,996 or an average of \$37,926,083 per month.

When divided by the 685,000 adult shoppers, this shows an average of \$55.36 spent per shopping trip; not an insignificant amount.

A further analysis was made of selected goods and services (not including the normal convenience and shopping goods) of the 126 shopping centers to see what is available. The following summary is provided:

<u>total shopping units selected</u>	<u>food &amp; drug</u>	<u>restaurants</u>	<u>fin. inst. (banks, S/L)</u>	<u>theatres</u>
3024	338	234	130	24

To make an equal comparison, the writer of this report spent several hours driving *every* street of the defined areas of the San Jose Central Business District shown on the map (see Appendix C-1).

A summary tally, as sighted, appears here.

<u>total shopping units</u>	<u>food &amp; drug</u>	<u>restaurants</u>	<u>fin. inst. (banks, S/L)</u>	<u>theatres</u>
1600	26	32	24	5

The above analysis was made to ascertain at least what is available for persons to visit, congregate, and to spend significant portions of their time. It appears clearly to the writer of this report that the suburban shopping center complexes provide this availability.

#### Conclusions—Section II

In a summing up of Section II, the following reasonable conclusions can be drawn:

- 1.) A phenomena of the rapid growth of major shopping centers both in terms of dollars and in percent of sales (see Appendix C-2), shows that the entrepreneurs of Metropolitan San Jose are dedicated in some measure to the newer marketing concept, to wit; "we are in business to serve a market, we are not in business to sell a product." (ie; a consumer orientation).
- 2.) It is the writer's belief that business men have found that people (spending units) are willing to shop, and to spend a significant amount of their time in shopping centers (trading areas) *where they live*, providing that their wants and needs can be satisfied.
- 3.) The analysis provided in this report shows the overwhelming percentages of people in Metropolitan San Jose live outside the central district. It also shows they spend the largest portion of their incomes outside the central district. The availability of goods and services in any comparison shows the largest share of people are thus likely to spend the most significant amount of their time in the suburban areas *where their wants and needs are satisfied*.
- 4.) The shopping center complexes provide the location, the availability of goods and services, and thus the satisfaction of consumer wants and needs.

**Appendix A—Definition of Terms**

- 1.) *SMSA*—A Standard Metropolitan Statistical Area is a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more, or “twin cities” with a combined population of at least 50,000. The population living in SMSA’s is designated as the metropolitan population. This population is subdivided as “inside central city or cities” and “outside central city or cities.”

*Source:* Bureau of the Budget publication, Standard Metropolitan Statistical Areas: 1967, U. S. Government Printing Office, Washington, D. C. 20402.

- 2.) *Household*—The U. S. Bureau of Census defines a household as consisting of “all persons who occupy a housing unit.”

*Source:* Bureau of the Census, Current Populations Reports, Series P-20, No. 166, August 24, 1967.

- 3.) *Effective Buying Income*—This term is used as synonymous with Disposable Personal Income. Purchasing power is essential for the conversion of consumer wants and desires into market demand, and income is the chief source of purchasing power for most people. Total Disposable Income is “what people have left over, to spend or save after paying their taxes.”

*Source:* BASIC MARKETING: Concepts, Decisions & Strategy, Cundiff & Still, Second Edition, Prentice-Hall, (1971).

- 4.) *Regional Shopping Center*—Provides goods and services in full depth and variety, usually with at least one major department store as the principal tenant and one or two supermarkets; gross area exceeds 400,000 square feet, with parking facilities provided for 1,000 or more automobiles; serves a primary trading area ranging from 300,000 to 1,000,000 people. Regional

Centers are usually set up to serve upwards of 100,000 people living within a radius of five or more miles. Such centers closely resemble downtown shopping districts.

- 5.) *Specialty Shopping Center*—A shopping center with no leading tenant but with a large number of retail specialty stores (50 or more). This type of center requires a trade area as broad as that of a regional shopping center. It may or may not have a supermarket as a tenant.
- 6.) *Community Shopping Center*—Provides a wide variety of goods and services in both hard and soft lines, in addition to convenience goods and services. The principal tenant will usually be a junior department or large variety store. The gross area usually ranges from 100,000 to 300,000 square feet with parking facilities provided for at least 400 automobiles; serves a trading area population ranging from 100,000 to 300,000 people.
- 7.) *Neighborhood Shopping Center*—Provides goods and services in limited depth and variety to satisfy daily living requirements. The principal tenant is a supermarket; the gross area ranges from 30,000 to 100,000 square feet, with parking facilities provided for 50 to 400 automobiles; serves a trading area population ranging from 5,000 to 40,000.

*Source:* Shopping Center Guide for Metropolitan San Jose (SMSA), published by the San Jose Mercury and news Marketing Department (1974-1975 edition).

*Also:* Urban Land Institute, Technical Bulletin No. 30, Washington, D. C., May 1957.



**Appendix C-3**

**SHOPPING CENTER SHOPPERS**

*Adults Shopping One or More Times in The Last 30 Days*

Shopping Centers	Number			Percent		
	1973	1974	1975	1973	1974	1975
Eastridge	324,000	328,000	300,000	45%	43%	38%
Valley Fair	245,000	281,000	241,000	34	37	31
Westgate	202,000	214,000	190,000	28	28	24
The PruneYard	**	190,000	181,000	**	25	23
Mayfield Mall	134,000	161,000	153,000	19	21	19
Town & Country Village—San Jose	**	169,000	143,000	**	22	18
San Antonio	113,000	136,000	132,000	16	18	17
Almaden Fashion Plaza	132,000	128,000	126,000	18	17	16
Stevens Creek Plaza	106,000	130,000	116,000	15	17	15
Stanford	116,000	120,000	111,000	16	16	14

Oakridge Mall	**	94,000	**	88,000	**	12	11
Town & Country Village---Palo Alto	**	66,000	**	68,000	**	9	9
Town & Country Village---Sunnyvale	**	60,000	**	73,000	**	8	9
Sunnyvale Plaza	54,000	59,000	8	51,000*	8	8	6*
Capitol Square	46,000*	46,000*	6*	48,000*	6*	6*	6*
<u>Total Shoppers</u>	<u>621,000</u>	<u>729,000</u>	<u>86</u>	<u>685,000</u>	<u>86</u>	<u>96</u>	<u>87</u>
<u>Total Adults in Santa Clara County</u>	<u>720,000</u>	<u>760,000</u>		<u>788,000</u>			

Note:  $\frac{685,000}{788,000} = 86.9\%$

IN THE  
SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. No. 23812

MICHAEL ROBINS ET AL., *Paintiffs and Appellants,*

*vs.*

PRUNEYARD SHOPPING CENTER ET AL.,  
*Defendants and Respondents.*

Appeal  
County Santa Clara  
Superior Court No. 349363

**JUDGEMENT**

*The above-entitled cause having been heretofore fully argued, and submitted, IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the Judgment of the Superior Court of the County of Santa Clara in the above-entitled cause, rejecting Appellants' request that Pruneyard be enjoined from denying access to circulate the petition is reversed. Appellants shall recover their costs on appeal.*

*I, G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 30th day of March, 1979.*

*WITNESS my hand and the seal of the Court, this 24th day of May, 1979.*

G. E. BISHEL  
*Clerk*

*By: /s/* G. E. SCHNEIDER  
G. E. Schneider  
*Deputy*

SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, D. C. 20543

November 13, 1979

William C. Kelly, Jr., Esq.  
Latham, Watkins & Hills  
1333 New Hampshire Avenue  
Washington, DC 20036

RE: PruneYard Shopping Center and Fred Sahadi  
v. Michael Robins, et al.  
No. 79-289

Dear Mr. Kelly:

The Court today entered the following order in the above-entitled case:

Further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. Mr. Justice Marshall took no part in the consideration or decision of this appeal.

Very truly yours,

/s/ MICHAEL RODAK, JR.  
Michael Rodak, Jr., Clerk