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October 23, 1979

The Honorable John L. Cole
Presiding Judge
Appellate Department
Los Angeles Superior Court
111 North Hill Street
Los Angeles, California 90012

Re: People v. Jay Ripley
Superior Court No. CR A 16440

Dear Judge Cole:

On July 13, 1978, the Appellate Department issued an order staying further consideration of the above entitled appeal pending finality of decision by the Supreme Court in Pryor v. Municipal Court, LA 30901 and Anders on Habeas Corpus, Crim. 20198. The Supreme Court has extended time for considering possible modifications to those opinions until the week of November 6, 1979. Therefore, those decisions should be final sometime after the week of November 6, 1979.

I have been in communication with Mr. Randy Schrader, Supervisor of the Appellate Section of the Los Angeles City Attorney's Office, regarding the Ripley case. We both agreed that I should write to you concerning the Ripley case and advise you of our proposal regarding this appeal.

In the Pryor opinion, at Footnote 14, the Supreme Court indicated that Mr. Pryor lacked standing to challenge the sex registration law in that he had not yet been convicted and was not presently subject to registration. In the Anders case the Supreme Court effectively dodged the issue of sex registration and did not discuss the matter at all. As a result, those cases will be of little or no help to this court in resolving the constitutional issues presented in the Ripley case.

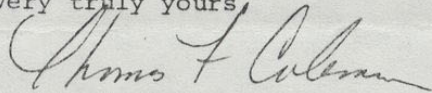
Randy Schrader and I both agree that it might be wise and helpful if I filed a petition for a writ of habeas corpus in the Ripley case in the Appellate Department to be joined with the appeal. This would allow the court an opportunity to appoint a special referee to take

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evidence and testimony concerning the sex registration law and how it is used by the Attorney General and by police agencies, especially in reference to disorderly conduct offenders. While the court is bound by the facts in the record on appeal (and that record contains no evidence concerning the usefulness or lack of usefulness of sex registration with respect to disorderly conduct defendants, primarily because the trial judge refused to conduct a hearing) it would be possible for the court to look to additional evidence and testimony in the habeus corpus action, if one were filed. One of the reasons the Supreme Court might have refused to consider the issue in the Anders case is that there was no record made in the courts below and the Anders action was filed in the Supreme Court raising the sex registration issue for the first time. Therefore, both the City Attorney's office and I feel that it might be helpful to this court and to higher appellate courts in this state to create an appropriate evidentiary record for constitutional review of the sex registration law. The Ripley case may be an appropriate vehicle to do that, although not in its present appellate form.

Randy Schrader and I are schedule to meet with George Eskin, the head of the Criminal Divison of the City Attorney's office, on December 4, 1979, to discuss in more detail the possiblity of filing a habeus corpus action. We would appreciate your delaying any further consideration of the appeal in Ripley until such time as we conclude that meeting. We would then notify you by mail of our proposal regarding the possible habeus corpus action. Obviously, if the court wishes to proceed with the appeal without waiting for the result of that meeting we would comply with the court's request.

Very truly yours,



Thomas F. Coleman

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cc: Los Angeles City Attorney's Office

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AUG 20 1980

JOHN J. CORCORAN, County Clerk

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BY E. WALLIN, DEPUTY

APPELLATE DEPARTMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

9	PEOPLE OF THE STATE OF CALIFORNIA,) Superior Court No. CR A 16440
10	Plaintiff and Respondent) Municipal Court of the
11	vs.) Los Angeles Judicial District
12	JAY RIPLEY,) No. 725286
13	Defendant and Appellant) OPINION AND JUDGMENT

15 Appeal by defendant from judgment and order of the Municipal Court,
16 Richard G. Kolostian, Temporary Judge.

17 Judgment affirmed. Order reversed. Case remanded with instruction
18 For Appellant - Thomas F. Coleman

19 For Respondent - Burt Pines, City Attorney
 Jack L. Brown, Deputy City Attorney
 Acting Supervisor, Appellate Section
 By Peter W. Mason, Deputy City Attorney

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22 Briefing of this case was stayed by our order of July 13, 1979,
23 pending the California Supreme Court's decision of Pryor v. Municip
24 Court (1979) 25 Cal.3d 238. Now, following the rendering of the
25 Pryor decision, which we do not believe dispositive of the instant
26 case, we proceed to decide this matter.

27 We note at the outset that the defendant does not challenge
28 his conviction. We mention also that the defendant has requested

1 that we take judicial notice of certain material. We decline to
2 do so for the reason that the disposition we make of this appeal
3 will enable the defendant to present to the trial judge all
4 evidence considered by him to be supportive of his contentions.

5 Subsequent to entry of a nolo contendere plea to violation of
6 Penal Code section 647 subdivision (a) but prior to imposition of
7 sentence and requisite order to register as an habitual sex offender
8 under Penal Code section 290,^{1/} defendant requested the court to
9 hold a hearing on the constitutional validity of section 290 as
10 applied to section 647 subdivision (a) misdemeanants. He
11 indicated that he wished to attack the constitutionality of the
12 statute on due process, equal protection and cruel and unusual
13 punishment grounds.

14 The trial judge refused to consider or rule on these issues.
15 The judge indicated that the proper forum for hearing of constitu-
16 tional defenses is the legislature or Supreme Court, and that
17 "as much as [he] might agree with some of [defense counsel's]
18 suggestions, [he was] bound by the law as it is now . . . , until
19 [he was] ordered by a higher court."

20 Because no hearing was held on these defenses, the record on
21 appeal is barren of factual findings essential to determination of
22 defendant's contextual constitutional contentions. "Due process
23 requires that a party sought to be affected by a proceeding shall
24 have the right to raise such issues or set up any defense which he
25 may have in the cause . . . A hearing which does not give the right
26 to interpose reasonable and legitimate defenses cannot constitute
27 due process of law . . ." 16A Am.Jur. 2d section 843.

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1. All references to code sections are to the Penal Code unless otherwise indicated.

1 The judge's denial of a hearing at which evidence could be
2 received and argument heard regarding the constitutional validity
3 of section 290 as applied to defendant's particular case was error.
4 These issues are best considered in a factual context which should
5 be presented in the trial court. People v. Mills (1978) 81 Cal.
6 App.3d. 171. Defendant's request for a hearing was timely, because
7 the question of section 290's constitutional validity is premature
8 if raised by a defendant who has not yet been found guilty of an
9 offense which triggers the section 290 operation. Pryor v.
10 Municipal Court (1979) 25 Cal.3d 238, 257 Fn.14. Refusal by the
11 trial court to consider the defense based upon constitutional
12 grounds was error. (See People v. Kiihoa (1960) 53 Cal.2d 748,
13 753; People v. Sarazzawski (1945) 27 Cal.2d 7, 11; Witkin,
14 California Criminal Procedure page 733 et seq.)

15 Absent a factual record to assist this court in evaluating
16 defendant's contentions regarding the invalidity of the statute,
17 this court is unable to comment intelligently on their merit,
18 beyond stating that these contentions are at least deserving of
19 airing and consideration. (See People v. Mills, supra, at 179,
20 Fn.1 and 180.) In this case failure to consider the issues was
21 not only prejudicial, because defendant has no other defenses, but
22 it was a denial of due process.

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The judgment of conviction is affirmed. The order to register under section 290 is reversed. The case is remanded for an evidentiary hearing on the constitutional validity of section 290.

Waney
Presiding Judge

We concur. Saeto
Judge

Faines
Judge