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EXHIBIT A

STATE OF NEW YORK : COUNTY OF TOMPKINS
CITY COURT : CITY OF ITHACA

THE PEOPLE OF THE STATE OF NEW YORK

- vs -

ACCUSATORY
INSTRUMENT

Kevin G. Vanginderen DOB 10/23/61
Defendant

ACCUSATION

BE IT KNOWN THAT, by this Accusatory Instrument, Barbara Bourne
as the Complainant herein, accuses Kevin G. Vanginderen
the above named Defendant, with having committed the offense of
Burglary in the third Degree
in violation of the Section 140.20, Subdivision of the Penal Law
of the State of New York, a Class B Felony.

FACTS

On or about the 5th day of March 1983, the said defendant did, in the City of Ithaca, County
of Tompkins, New York,
did knowingly enter or remain unlawfully in a building, to wit: defendant entered at approx.
7:00AM room 312C Fermow Hall, Tower Road, Cornell University, City of Ithaca, N.Y., to commit
the crime of larceny therein by stealing books, with said office space belonging to Richard
J. Baker, with all action by defendant without authorization, are contrary to the provisions
of the Statute in case made and provided.

The above allegations of fact are made by the Complainant herein:

upon direct knowledge
XXXXX upon information and belief, with the sources of Complainant's information and the grounds for his
belief being investigation of case (Cornell) 83-422 and sworn confession of defendant.
WHEREFORE, Complainant prays that a warrant be issued for the arrest of the said defendant.

Barbara Bourne Barbara Bourne
Complainant

NOTICE
(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE
OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A
FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE
TO BE TRUE.

Affirmed under penalty of perjury this 5th day of March, 1983.
Sworn to before me this _____ day
of _____, 19____.

OR

Barbara Bourne
Complainant

Judge or Justice, Desk Officer or Superior, or
other authorized person.

Court

ADAMS. THEISEN & NASH

ATTORNEYS AND COUNSELORS AT LAW
301 THE CLINTON HOUSE
103 WEST SENECA STREET
ITHACA, NY 14850
607-272-3442

HENRY W. THEISEN
RALPH W. NASH
STEPHEN M. BOWMAN

ARMAND L. ADAMS
1911-1983

August 16, 1983

R. James Miller, Esq.
Ithaca City Prosecutor
120 East Clinton Street
Ithaca, New York 14850

Re: People v. Kevin G. Vanginderen

Dear Jim:

This letter will confirm arrangements to be made in City Court to resolve this matter. Kevin will plead on Monday, August 22, to petit larceny in full satisfaction of any charges relative to thefts at Cornell University. Upon his plea the People will agree to a sentence of a one year conditional discharge.

I have made arrangements to have an appropriate accusatory instrument drawn. As I noted in our telephone conversation, this matter was originally handled by the District Attorney's Office, but as it is being resolved by a misdemeanor in City Court, they would like you to handle the plea and sentence for them.

Thank you for your attention to this matter.

Yours very truly,

ADAMS, THEISEN & NASH


Ralph W. Nash

RWN/dh

cc: Robert C. Mulvey, Esq.
Assistant District Attorney

STATE OF NEW YORK : COUNTY OF TOMPKINS
CITY COURT : CITY OF ITHACA

THE PEOPLE OF THE STATE OF NEW YORK

- vs -

ACCUSATORY
INSTRUMENT

KEVIN G. VANGINDEREN DOB: 10-23-61
Defendant

ACCUSATION

BE IT KNOWN THAT, by this Accusatory Instrument, R. James Miller as the Complainant herein, accuses Kevin G. Vanginderen the above named Defendant, with having committed the offense of Petit Larceny.

in violation of the Section 155.25, Subdivision of the Penal Law of the State of New York, a Violation a Class A Misdemeanor a Class Felony.

FACTS

On or about the 5th day of March, 1983, the said defendant did, in the City of Ithaca, County of Tompkins, New York, did commit the crime of petit larceny by stealing books located at room 312C, Fennow Hall, Tower Road, Cornell University, located within the City of Ithaca, New York.

The above allegations of fact are made by the Complainant herein:
upon direct knowledge

XX upon information and belief, with the sources of Complainant's information and the grounds for his belief being investigation of case (Cornell) 83-422 and sworn confession of defendant.

WHEREFORE, Complainant prays that a warrant be issued for the arrest of the said defendant.

R. James Miller
R. James Miller Complainant

NOTICE
(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

Affirmed under penalty of perjury this 17th day of August, 1983.

Sworn to before me this _____ day of _____, 19

R. James Miller
R. James Miller
Complainant

OR

Judge or Justice, Desk Officer or Superior, or other authorized person.

Court

24-157
CITY COURT
OF
ITHACA

The People of the State of New York

- appear -

Karla Vargindaran

Defendant

Before James J. Miller, Jr.
Judge, City Court

Defendant arraigned August 22, 1961

Counsel Ralph Nash, Esq.

Bail 1000 Powed Remanded
to

The defendant immediately on being brought before the City Court Judge was informed as follows:

1. You are charged with

Petit Larceny

Sec. 152.21 Penal Law

which is a felony
misdemeanor
violation

2. The information was read

to the defendant and a copy furnished to him.

4. The defendant was informed that being found guilty or pleading guilty to such a charge could result in a sentence and fine of

5. You have the right to the aid of counsel or to have an attorney represent you in every stage of the proceedings. If you are financially unable to afford counsel and you want an attorney to represent you, the Court will assign counsel to you. You are entitled to an adjournment for a reasonable time in order to obtain counsel or to have one assigned and, on any condition commensurate with the nature of the charge, to obtain counsel in order to inform a relative or friend of your arrest.

Answer: Def. arr'd. with Ralph Nash, Esq. This charge filed with City Court in satisfaction of a charge of Burglary Third Degree. Copy of the chg. given to counsel. Waived arraignment. Plea of guilty entered to this charge as agreed upon by City Pros Miller and ADA, Frank Salthaus. Def. sentenced to 30 days. Dechg. - return all books that were

3. You are entitled to have a hearing

without jury

jury trial

6. If you are 16 years of age, but have not reached 18, you may be entitled to be treated as a Youthful Offender, and no such determination shall disqualify you from holding public office, public employment or as a forfeiture of right to receive any license granted by a public authority and you cannot be denominated as a criminal nor shall such determination be deemed a conviction.

EXHIBIT B

STATE OF NEW YORK
COUNTY COURT : COUNTY OF TOMPKINS

In the Matter of the Application of
Cornell University to Unseal Records
from the Proceeding Captioned:

2007 Misc. Cr. 667

"People of the State of New York
vs.
Kevin Vanginderen"

Defendant.

MEMORANDUM DECISION AND ORDER

Pursuant to CPL §160.50(1)(d), Cornell University seeks unsealing of criminal records previously sealed by this Court in 1983, relative to the above referred action against Kevin Vanginderen. Mr. Vanginderen has filed a civil action against Cornell (now pending in the United States District Court, Southern District of California), involving causes of action for invasion of privacy and libel. The claims involve a publication on the Internet of the Cornell Chronicle on March 17, 1983, which republishes an account of Defendant's arrest on a charge of burglary.

Defendant opposes the motion, claiming that the United States District Court has sole authority at this stage of the proceedings to order such "discovery".

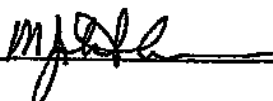
Pursuant to the provisions of CPL §160.50, this Court is authorized to unseal such records upon proper grounds. A civil action which places in issue the contents of the sealed records warrants unsealing of such records to a party in such action. Commercial Union Insurance Co. v. Jones, 216 AD2d 967 (4th Dept. 1995). There is no controlling authority that would require this Court to defer such a decision to any other state or federal court. These are New York sealed criminal records, governed specifically by the provisions of New York statutes.

Accordingly, the Court concludes that Cornell has provided sufficient grounds to grant the motion unsealing such records, held both by the Tompkins County District Attorney's Office, and the records held by the Cornell University Police, relative to the above-captioned criminal matter.

This Decision constitutes the Order of this Court, entered upon notice to all parties.

ENTER.

DATED: November 16, 2007




**M. JOHN SHERMAN
TOMPKINS COUNTY JUDGE**

INVESTIGATION REPORT

OTHER AGENCY

83-003451

CASE NO. 83-422

COMPLAINANT	1. C-1 COMPLAINT (LAST NAME) Parker FIRST Richard MIDDLE J. DOB 12/4/53		Grad					
	ADDRESS 134 Judd Falls Road COUNTY Tompkins PHONE 257-2696							
	EMPLOYER 312-C Fernow Hall ADDRESS 256-3191 OCCUPATION Grad Student							
	PLACE OF OCCURRENCE "SPECIFIC LOCATION" 312-C Fernow Hall (east)							
DATE	DATE REPORTED 3/5/83	DATE REPORTED Sgt.	TIME REPORTED 1400	DATE OCCURRED 3/4-3/5/83	DAY OCCURRED Fri-Sat	TIME OCCURRED 2400-7200		
	RECEIVED BY PO Bruene	HOW RECEIVED In Person	WEATHER <input type="checkbox"/> CLOUDY <input type="checkbox"/> CLEAR <input type="checkbox"/> RAIN <input type="checkbox"/> SNOW <input type="checkbox"/> ELECT					
T CHARACTER OF CASE Burglary								
2. TYPE OF Bldg. Academic								
M MODE OF ENTRY OR MANNER COMMITTED T-1 climbed over partition and removed P-1 & P-2								
O TOOL, WEAPON OR METHOD USED								
PROPERTY	3. CODE: STOLEN (S) USED IN CRIME (C) CRIM. MISCH. (M) RECOVERED (R) EVIDENCE (E) OTHER (O)						MONETARY VAL	
	NO.	CODE	QTY.	DESCRIPTION	S.B. - SERIAL NUMBER			
	P-1	S	1	Biometry 2nd ed. by Robert R Sokal & F. James Rohlf		31.95		
VEHICLE	4. V-1 <input type="checkbox"/> USED IN CRIME <input type="checkbox"/> ACC. NON-MV <input type="checkbox"/> CRIM. MISCH. <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> OTHER							
	DESCRIPTION - MAKE		YR. MFG.	REG. NO.	STATE			
	COLOR	BODY - MODEL	VIN - ID NO.	STOLEN MV - KEY IN IGNITION	YES	NO		
RECOVERED - RUNNING CONDITION							YES	NO
WEAPON	5. W-1 <input type="checkbox"/> USED IN CRIME <input type="checkbox"/> LAWFUL SURRENDER <input type="checkbox"/> UNLAWFUL POSS. <input type="checkbox"/> STOLEN <input type="checkbox"/> OTHER							
	MAKE - TYPE/MODEL		CAL.-GA.	OWNER OR REGISTRANT				
	SERIAL NO.		UNLOADED <input type="checkbox"/> LOADED <input type="checkbox"/>	ADDRESS				
	FINISH: BLUE <input type="checkbox"/> SILVER <input type="checkbox"/>		TOT. CAPACITY	PISTOL PERMIT NO. DATE ISSUED				
OTHER <input type="checkbox"/>		NO. FIRCD	COUNTY OF ISSUE					
UNEXPENDED RDS.								
DOCUMENT	6. D-1 TYPE DOCUMENT							
	NAME OF RECEIVER			REASON: <input type="checkbox"/> NO ACCT. <input type="checkbox"/> ACC. NO. <input type="checkbox"/> INSUFF. FUNDS <input type="checkbox"/> FORGOT.				
	NAME OF MAKER - I.D. OR ADDRESS GIVEN							
	BANK DRAWN ON - ADDRESS			IDENTIFIABLE: YES <input type="checkbox"/> NO <input type="checkbox"/>				
DOCUMENT AMOUNT			MONEY, PROPERTY OR SERVICE OBTAINED			DOC. NO.	PHOTO - SUSPECT: YES <input type="checkbox"/> NO <input type="checkbox"/>	
DAMAGE	7. DESCRIBE OR LIST PHYSICAL DAMAGE OR ANY OTHER LOSS							
	 COPY							
INSUR.	PROPERTY INSURED YES <input type="checkbox"/> NO <input type="checkbox"/>		NAME OF INSURER		AMT. INSURANCE	TOTAL VALUE		
						54.40		
DISPO	NO.	DATE	DISPOSITION					
WITNESS	10. WT-1 NAME (LAST, FIRST, MIDDLE) - ADDRESS			AGE	DOB			

MUST BE FILED
 DO NOT REMOVE

CODE: ASSAULT (A) HOMICIDE (H) SUICIDE (S) ATTEMPTED SUICIDE (AS)		(A) (H) (S) (AS)		NATURAL DEATH (ND) ACCIDENT VICTIM (AV) OTHER (O)								
VICTIM	11	S-1	CODE	NAME (LAST, FIRST, MIDDLE)	ADDRESS	SEX	AGE	DOB				
	NATURE OF INJURIES				HOSPITAL AND/OR PHYSICIAN							
	DATE OF DEATH		CORONER OR M. E.		AUTOPSY		PATHOLOGIST		KIN NOTIFIED			
					YES <input type="checkbox"/> NO <input type="checkbox"/>				YES <input type="checkbox"/> NO <input type="checkbox"/>			
	S-2	CODE	NAME (LAST, FIRST, MIDDLE)	ADDRESS	SEX	AGE	DOB					
	NATURE OF INJURIES				HOSPITAL AND/OR PHYSICIAN							
	DATE OF DEATH		CORONER OR M. E.		AUTOPSY		PATHOLOGIST		KIN NOTIFIED			
					YES <input type="checkbox"/> NO <input type="checkbox"/>				YES <input type="checkbox"/> NO <input type="checkbox"/>			
	S-3	CODE	NAME (LAST, FIRST, MIDDLE)	ADDRESS	SEX	AGE	DOB					
	NATURE OF INJURIES				HOSPITAL AND/OR PHYSICIAN							
	DATE OF DEATH		CORONER OR M. E.		AUTOPSY		PATHOLOGIST		KIN NOTIFIED			
					YES <input type="checkbox"/> NO <input type="checkbox"/>				YES <input type="checkbox"/> NO <input type="checkbox"/>			
TITLE	12	CODE: UNK. SUBJ. (U) PERPETRATOR (P) DEFENDANT (D) WANTED-WARRANT (W) CRIM. SUM. (S) ACCOMPLICE (A) OTHER (O)										
	T-1	CODE	NAME (LAST, FIRST, MIDDLE)	ADDRESS	ALIAS	SEX	AGE	DOB				
	T-2		Vanginderen, Kevin Gordon CU10 222410 A4LS			M	22	10.23.61				
	T-3		17 South Ave Ithaca NY					273-9597				
WANTED	13	TITLE NO.	RACE	HT.	WT.	HAIR	EYES	CRIME	SECTION	LAW		
	JUDGE - NAME, ADDRESS AND TITLE									COUNTY	DATE ISSUED	EXTRADITE
												YES <input type="checkbox"/> NO <input type="checkbox"/>
												LAW
NYSPIIN	14	NTSIS	NO.	FILE	DATE	STATION	NO.	DATE				
	INQUIRY		CANCEL									
	YES <input type="checkbox"/> NO <input type="checkbox"/>		YES <input type="checkbox"/> NO <input type="checkbox"/>									
	YES <input type="checkbox"/> NO <input type="checkbox"/>		YES <input type="checkbox"/> NO <input type="checkbox"/>									
16	PHOTOS TAKEN	BY WHOM				DUSTED FOR LATENT PRINTS		BY WHOM				
ID	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>					YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>						
17	OTHER AGENCY NOTIFIED		RESPONDED		IF "YES" NAME OF PERSON IN CHARGE - IF "NO" NAME OF PERSON NOTIFIED							
OA	NONE		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>									
18	IF INCIDENT OCCURRED WITHIN LICENSED S.L.A. PREMISES		OWNER'S NAME		BUSINESS NAME		LIC. NO.					
SLA												
NARRATIVE	19	<p>At approx 1400 hrs this date, while doing follow up work on CR # 83-421 (Burglary 312-F Fernow) this officer spoke with C-1. C-1 stated that upon his arrival to his office at approx noon this date he noticed the books on his shelf to be out of their normal order. Upon checking the shelf P-1 & P-2 were found to be missing. C-1 stated that he is positive the theft occurred sometime late Friday 3/4/83 to early Saturday 3/5/83 as he used P-1 on 3/4/83.</p> <p>All indications are that T-1 entered the office by climbing over the partition from the open hallway.</p>										
	20	1. Signature List from Triangle book shop (copy)										
ENC	SIGNATURE AND RANK		SHIFT	SHIELD NO.	APPROVED							
	Barbara Cousme		21	20	PA DO J				3/5/83			

EXHIBIT F, PAGE 6

CORNELL UNIVERSITY DEPARTMENT OF PUBLIC SAFETY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Criminal PAGE 3

CASE NO. 83-422
OTHER AGENCY 83-003451

1445 hrs 3/5/83

This officer spoke with Terry Hoover at Triangle Books to advise him of the stolen books. Mr. Hoover stated that both P-1 and P-2 were sold to him sometime before noon 3/5/83. Upon inspection of the books; the name Richard Baker was partially scratched out, establishing these books as P-1 & P-2.

Mr. Hoover further stated that the subject who sold the books was tall, approx 5'11" - 6 ft med. build with sandy colored hair. Mr. Hoover stated he felt he would recognize T-1 should he see him again. Mr. Hoover also provided this officer with a copy of the sign-in log used when books are sold to Triangle. The signature was not legible but the initials were obviously K. V. In the margin of the page was the ID # 222416. Mr. Hoover stated that T-1 had produced a college ID, but could not remember which school.

1530 hrs 3/5/83

This officer checked the computer printout under the letter V to attempt to match the ID number. The result was the above listed information on T-1.

**MASTER FILE
DO NOT REMOVE**

Barbara J. Bourne
Investigating Officer

A. R. J. Lewis
Supervisor

Date of Investigation 3/5/83

Date of Approval 3/5/83

EXHIBIT F, PAGE 7

End #1

CR # 83-422

- 22 - x Matt Heyland
- 25 - x Tony Somarod
- 17 - x Beth Linton
- 2 - x John Higgins
- 12.50 x Barton Godwin
- 2 - ~~Mr.~~
- 13 - x Lark Horn
- 26 - x John B. Hall
- 12 - x Miller Sweeney
- 20 - x Todd Herr
- 0902 19 - x Andrew L. Cannon
- 22 - x Paul Hamilt
- 14 - x A. Kazak
- 4.50 Gerald Meyer
- 2 00 x Cefia Mann
- 1.50 x 2m Sab
- 22416 28 - ~~x Kent Vanzant~~
- 08124 43 - x Janith Starnade
- 19 - x Kevin Bergano

MASTER FILE
DO NOT REMOVE

EXHIBIT F
DO NOT REMOVE

MARILYN J. TRIVENTI
 Bergenfield, NJ
 Camping, Student Government
 Pre-Vet

GLENN M. TROOST
 Staten Island, NY
 Animals, Dancing
 Pre-Law

GILBERT T.Y. TSO
 Foster City, CA
 Debating, Math
 Engineering, Economics

PHILIP W. TSUNG
 Norwood, NJ
 Baseball, Chess
 Chemistry



PENNY J. TUCKER
 Skaneateles, NY
 Animals, Soccer
 Pre-Vet

GLENN E. TUCKMAN
 Norwalk, CT
 Music, Swimming
 Hotel Administration

DEBORAH A. TUOHEY
 N. Syracuse, NY
 Animals, Horseback Riding
 Science

KEITH P. TURKEL
 Scarsdale, NY
 Basketball, Soccer
 Pre-Law



STEPHEN R. TURNBULL
 Palo Alto, CA
 Camping, Publications
 Engineering

JOHN J. TURNER
 Port Washington, NY
 Animals, Running
 Biological Sciences

SUSAN H. TYLER
 La Jolla, CA
 Hiking, Student Government
 Engineering

STEVEN W. TYNDALL
 Boca Raton, FL
 Music, People
 Science



RANDI S. URBAN
 N. Woodmere, NY
 People, Publications
 Business

OWEN URBAY
 West New York, NJ
 Basketball, Scuba Diving
 Pre-Med

DAWN C. YADNEY
 Avon, NY
 Photography, Publications
 Consumer Economics

JEFFREY L. VALLET
 Endwell, NY
 Golf, Science
 Pre-Vet



DAVID M. VANBUREN
 Atlanta, GA
 Football, Travel
 Hotel

GREGORY D. VANDUYNE
 Savannah, NY
 Basketball, Chess
 Pre-Med

KEVIN G. VANGINDEREN
 Carmel, NY
 Animals, Baseball
 Pre-Med

GERRIT VAN LOON
 Claverack, NY
 Skiing, Frisbee
 Pre-Med



CATHERINE VARDAKIS
 Elmiro, NY
 Dancing, Languages
 Business

SUSHEELA D. VASAN
 New Canaan, CT
 Dancing, Gymnastics
 Engineering

CAROLEEN L. VAUGHAN
 Elmiro, NY
 Dancing, Drama
 Humanities

JOHN A. VAUGHAN
 Edmond, OK
 Camping, Football
 Engineering



CORNELL UNIVERSITY DEPARTMENT OF PUBLIC SAFETY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 6

1640 hrs 3/5/83

This officer returned to Triangle Books and again spoke with Mr. Terry Hoover. This officer showed Mr. Hoover the enclosed 1979 picture of T-1. Mr. Hoover stated that although the hair is not the same, the facial features match. Mr. Hoover further stated he is certain that T-1 is the same subject who sold P-1 & P-2 to him earlier this date.

CASE NO. 83-422
OTHER AGENCY 83-003451

**MASTER FILE
DO NOT REMOVE**

Barbara J. Bourne
Investigating Officer

PO

Date of Investigation 3/5/83

L. R. Jones
Supervisor

Date of Approval 3/6/83

1/76-SM

EXHIBIT F, PAGE 10

CORNELL UNIVERSITY DEPARTMENT OF PUBLIC SAFETY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 7

0730 hrs. 3/6/83

A check was made of the location file for additional thefts from Fernow Hall. The following cases were found:

83-303, 83-306, 83-311, 83-333, 83-339, and 83-368.

Prior to 83-303 there were no reported thefts from 1981-1983.

83-306, investigated by PO Wittner includes a receipt for the sale of four books to the Campus Store. This receipt shows an ID # of 22416.

(Note: T-1's ID number is 222416). PO Wittner indicated in his narrative that the clerk had not written down the full six digits of the subject's ID number. Further, the receipt shows an illegible signature of a subject with the initials K.V. A comparison was made of T-1's signature with that from the Campus Store receipt. While not identical the similarities, particularly in the formation of the K and the V, would indicate that both were made by the same individual.

The books recovered at the Campus Store in conjunction with 83-306 resulted in cases 83-333, 83-339 and 83-368, all previously undetected thefts.

The theft reported in 83-303 occurred within the same time frame as 83-306 and its related cases.

The theft in 83-311 occurred on or about 2/3/83 from room 306 Fernow; the site of several of the other related thefts.

It should be noted that all of the thefts from Fernow during this period have been from normally unsecured rooms and offices easily accessible other than through their doors. Note: the 312 office complex can be easily accessed by climbing over the partitions between offices. Three of the thefts

Barbara Bourne PO Date of Investigation 3/6/83
(Investigating Officer)
AG Sims Date of Approval 3/6/83
Supervisor

1/76-5M

EXHIBIT F, PAGE 11

EXHIBIT B,
Page 15

CASE NO. 83-422
OTHER AGENCY 83-003451

MASTER FILE
DO NOT REMOVE

CASE NO. 83-422
OTHER AGENCY 83-003451

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 8

have occurred in this complex (83-303, 83-421, and 83-422).

It is the opinion of this officer that all eight cases are related due to similarities of time span, type of items taken and general method of the thefts.

1130 hrs. 3/6/83

PO Wittner contacted via telephone. PO Wittner stated that at the time of the incidents in 83-306 the clerk at the Campus Store stated he could positively identify the subject who sold him the books should he see him again.

**MASTER FILE
DO NOT REMOVE**

Barbara J. Baur PO
Investigating Officer

Date of Investigation 3/6/83

A. R. J. Lima
Supervisor

Date of Approval 3/6/83

EXHIBIT F, PAGE 12

Voluntary Statement

STATE OF NEW YORK

COUNTY OF Tompkins

CITY, TOWN, or VILLAGE OF Ithaca

Date 3/7/83 Time 9:30 AM Place TRIANGLE BOOK SHOP

I, TERRY HOOVER, am 40 years of age, born on JAN 6, 43

my address is 38 SALU DR TRUMANSBURG, NY

my occupation is ASS'T MGR, and degree of education is BS

I have been duly warned by BJ Bourne, who has identified himself as Patrol Officer

that I do not have to make any statement at all, and that any statement I make may be used in evidence against me in a court of law, and that I have the right to talk to a lawyer for advice before making this statement. Without fear of threat of physical harm upon me or another person, I freely volunteer the following statement to the aforesaid person.

^{PH} On Sat, March 5TH, a ^{PH} man came to Triangle Book Shop to sell books. The books were walt, "Life of Birds", School "Beometry", and Davis "Quant Models for Mgt." I bought the books and paid \$28⁰⁰ for them. I also ask for the sellers ID and made a note of the ID number beside his signature on one buy-back sheet. He was a moderately tall man with dark hair. Later, after the book were reported stolen I was shown a picture by Cornell Safety from the freshman registry of the suspect. I was sure that it was the same man from whom I bought the above books.^{PH}

**MASTER FILE
DO NOT REMOVE**

I have read this statement consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Subscribed and sworn before me this _____ day of _____, 19__

Affirmed under penalty of perjury this 7TH day of MARCH, 19 83

Signed by Terry Hoover

Title: _____

Page 1 of 1 page(s)

Witness: Barbara Bourne

Witness: _____

CASE NO. 83-422
OTHER AGENCY 83-003451

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 9

0715 3/8/83

The results of this investigation to this point show that T-1

MASTER FILE
DO NOT DESTROY

Kevin G. Vanginderen dob 10/23/61 (A)
603 Winston Ct. Apt. #3
Ithaca, NY
Ag & LS '83
CUID 222416

RIC

is in some way involved with the following cases:

- 83-303 - Burglary from 312 C Fernow tape deck and calculator on or about 2/10-2/12/83
- 83-306 - Petit larceny from 207 Fernow 2 text books on or about 2/11/83
- 83-311 - Petit larceny from 306 Fernow 1 text book believed to have been taken on 2/2 or 2/3/83.
- 83-333 - Petit larceny from 306 Fernow 1 text book unknown date recovered in conjunction with 83-306
- 83-339 - Petit larceny from 306 Fernow 2 text books unknown date recovered in conjunction with 83-306
- 83-368 - Petit larceny from 119 Fernow 1 text book on or about 2/10/83 recovered in conjunction with 83-306

Barbara J. Bourne Investigating Officer Date of Investigation 3/8/83
Barton R. Seymour, Jr. Supervisor Date of Approval 3/8/83

1/76-5M

CASE NO. 83-422
OTHER AGENCY _____

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 10

- 83-421 - Burglary room 312-F Fernow
1 stereo tape player/recorder on or about 3/5/83.
- 83-422 - Burglary room 312-C Fernow
2 text books on or about 3/5/83
- 83-426 - Burglary room 312-B Fernow
4 text books on or about 3/5/83
- 83-446 - Pet. Larceny - room 308-Fernow
1 textbook sometime during last 2 weeks. /ju

MASTER FILE
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Barbara J. Baum PO Date of Investigation 3/8/83
Investigating Officer
Bert R. Ingersoll, St Date of Approval 3/8/83
Supervisor

1/76-5M

EXHIBIT F, PAGE 15

CASE NO. 83-422
OTHER AGENCY _____

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 11

0730 3/8/83

This officer and PO Wittner responded to 17 South Ave and spoke with the House President. The House President stated that T-1 resided at 603 Winston Court.

0800

This officer and PO Wittner responded to the Winston Court Apt. Office at 103 Salem Dr. Mr. Lucente advised us that T-1 resided in Apt. 3 of bldg. 603.

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0820

This officer and PO Wittner arrived at 603 Winston Ct. Apt. 3 to speak with T-1.

0825

T-1 was advised of his rights by PO Wittner and agreed to come to Barton Hall for further questioning.

0835

T-1 was interviewed by PO Wittner (refer to page 15) in the presence of this officer.

0850

T-1 orally admitted to several thefts of books, a calculator, and two tape decks from both Fernow and Bradfield. T-1 was again given his rights by this officer.

Barbara Bourne PO
Barton R. Ingersoll Lt.
Investigating Officer
Supervisor

Date of Investigation 3/8/83

Date of Approval 3/8/83

EXHIBIT F, PAGE 16

CASE NO. 83-422
OTHER AGENCY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 12

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0900

T-1 signed a Waiver of Rights form.
T-1 then prepared a written statement confessing to the crimes.

0930

District Attorney Bucko notified at this time.

0950

This officer, PO Wittner and T-1 returned to his residence to pick up items T-1 stated he had obtained in other burglaries and had kept. T-1 signed a consent to Search Form.

Found in T-1's bed room were the following

- 1) TI 55 Calculator serial # 38906699 #83-240
- 2) Sanyo Tape recorder (cassette) #83-241
- 3) JVC stereo cassette player/recorder #83-236
serial # 17631022

1000

Upon return to Barton Hall the above listed items were tagged as evidence (tag #s 83-236, 83-240, 83-241) and a receipt given to T-1.

1020

T-1 was fingerprinted and photographed by PO Wittner.

1035

T-1 interviewed by Lt. Bice; refer to encl. #6 for details

Barbara J. Bourne PO
Investigating Officer
Barton R. Angerson, Lt.
Supervisor

Date of Investigation 3/8/83

Date of Approval 3/8/83

EXHIBIT F, PAGE 17

CASE NO. 83-422
OTHER AGENCY _____

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 13
1145

1200
V.P. Gurowitz advised of this case by Capt. Murphy.

T-1 was transported to City Court for arraignment before Judge Ward. T-1 was released in his own recognizance to appear at a Preliminary Hearing in City Court on March 18, 1983.

T-1 remained with Ithaca Police Dept. Detectives for further processing.

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1420

This officer and PO Wittner responded to 312-C Fernow Hall and spoke with C-1. C-1 stated that he had at no time authorized T-1 to remove any items from his office. C-1 was shown the items obtained at T-1's residence for possible identification. C-1 identified the calculator and the Sanyo tape deck as those that were taken from his office on or about 2/10/83. (Refer CR 83-303) Enclosed is a signed statement to this effect from T-1.

1500

During the course of the interviews with T-1, T-1 repeatedly confessed to taking text books from room 411 Bradford Hall during the course of the past year.

Barbara J. Baum PO Date of Investigation 3/8/83
Investigating Officer
Zitron H. Ingersoll Lt. Date of Approval 3/8/83
Supervisor

EXHIBIT F, PAGE 18

CORNELL UNIVERSITY DEPARTMENT OF PUBLIC SAFETY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 14

CASE NO. 83-422
OTHER AGENCY _____

This confession establishes T-1 as the perpetrator of the following cases.

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- 82-1670 - Petit larceny from 411 Bradford
3 text books unknown date
- 82-1685 - Petit larceny 411 Bradford
1 textbook on or about
10/28 - 11/15/82.
- 82-1686 - Petit larceny 411 Bradford
3 text books on or about
11/11 - 11/18/82
- 82-856 - Burglary 411 Bradford
4 text books, 1 hand lens
1 dissecting kit sometime
during May 1982.
- 82-868 - Petit larceny 411 Bradford
7 text books, unknown date
reported 6/4/82.

1530

Dean Drinkwater notified of this case by
Lt. Boice

Recovery Value

Barbara J. Boun PO Date of Investigation 3/8/83
Investigating Officer
Burtin R. Ingersoll Lt. Date of Approval 3/8/83
Supervisor

1/76-SM

EXHIBIT F, PAGE 19

CORNELL UNIVERSITY DEPARTMENT OF PUBLIC SAFETY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 15

CASE NO. 83-422
OTHER AGENCY _____

~~0835~~ hrs, 3-8-83, the defendant was interviewed by this officer about the books he sold over the past several weeks. He stated that he saw a list of books for sale in the laundry with a telephone number on it several weeks ago and that he called the number and arranged a meeting at Unis library with a hispanic male, bought books then resold them. He then said that he remembered the number on Friday and called again, met with the subject and bought the books in CR# 83-422, took them to triangle and sold them on Saturday.

This officer then asked the defendant how it was possible that he bought the books on Friday when C-1 stated that they were taken sometime late Friday night or Saturday morning. The defendant then admitted that he took the books from Fernow hall that he did not buy them. He said "I went into the rooms and took the books, stereo, calculator and tape deck. I am a poor student and sold the books to get money." He was then asked about other thefts from Fernow hall and he stated that he took the books. He was then asked about the book thefts from Bradfield Hall for the period from 6-2-82 to 11-15-82. He said that he took the books. When asked how he gained access to the building he said that he had worked in the Lab (room 411) and was given a key to the building and the room, that when he quit no one asked him for the keys back. He was then asked how he got into Fernow Hall. He said that by using his key to the outside door to Bradfield and going into the basement that there is a tunnel that goes to Fernow and that the only door there has a crash bar on it. Once inside Fernow he went to the rooms and took the books.

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Date of Investigation 3-8-83
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Date of Approval 3-8-83

Wayne L. Wiltrous
Investigating Officer
Barton L. Ingersoll
Supervisor

1/76-5M

CASE NO. 83-422
OTHER AGENCY _____

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 16

The two Yale keys numbered BJ-1 and 6FX were taken as evidence and assigned evidence tags 83-237. When asked why he took the books he stated again that he was just a poor student and that he took them to have money to live on and he took the stereo, tape deck and calculator for his own use. He wanted to know what took us so long to catch him, that he expected to be caught a year ago, and since he did not he continued by taking things from Fernow Hall.

**MASTER FILE
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Wayne L. Wilner Investigating Officer Date of Investigation 3-8-83
Barton R. Ingersoll Supervisor Date of Approval 3-8-83

1/76-5M

EXHIBIT F, PAGE 21

CASE NO. 83-422
OTHER AGENCY

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary PAGE 17

The following enclosures are continued from page #1.

- #5. Voluntary statement from C-1
- #6. Interview of defend. by Lt. Boice
- #7. Advice of Rights form
- #8. consent to search form
- #9. Oral Admissions form
- 10. written Admissions forms.
- 11. Accusatory Instrument.
- 12. Affidavit of service form

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Closed refer to Ct.
TOTAL CASE SENT TO I.P.D
4/8/83 (B)

Barbara J. Baum PD Investigating Officer Date of Investigation 3/8/83
Barton R. Drysdale Jr. Supervisor Date of Approval 3/8/83

1/76-5M

EXHIBIT F, PAGE 22

SUPPLEMENTARY INVESTIGATION REPORT

OFFENSE Burglary

PAGE 18

CASE NO. 83-428
OTHER AGENCY _____

1335 hrs, 3-9-83, Dawson Deanna K, 308 Fernow Hall reported that the text book, *Natures + Properties of Soils*, had been taken out of 308. CR # 83-446. This book has not been recovered.

0930 hrs, 3-10-83, this officer spoke with Hollenbeck, Lorraine A., Secretary, Plant Breeding, 252 Emerson Hall. Ms. Hollenbeck is in charge of key issue for Plant Breeding. Ms Hollenbeck said that the defendant was hired by Plant Breeding on 10-2-81 and worked until 10-13-81. She said she could not be sure, but the records show that the defendant was terminated because of illness and she thought he was the one with mononucleosis. She also said that the defendant was issue the keys and that the department never asked for them back.

It is believed that the defendant was the perpetrator of the following thefts.

Bradfield Hall

- 82-856
- 82-868
- 82-1670
- 82-1685
- 82-1686

Fernow Hall

- 83-303
- 83-366
- 83-311
- 83-333
- 83-339
- 83-368
- 83-421
- 83-422
- 83-426
- 83-446

**MAILED
DO NOT REMOVE**

In his statement to Lt. Boice ENC#6, page 4 of this report he admitted to burglarizing Bradfield Hall 3 or 4 times and Fernow Hall 3 times.

Wayne L. Wittner
Investigating Officer
[Signature]
Supervisor

Date of Investigation 3-11-83

Date of Approval 3-11-83

ENC #3

STATE OF NEW YORK
 COUNTY OF Tompkins
 CITY, TOWN, or VILLAGE OF Ithaca
 Date 3/7/83 Time 7:30 AM Place TRIANGLE BOOK SHOP
 I, TERRY HOOPER, am 40 years of age, born on JAN 6, 43
 my address is 38 SAGE DR TRUMANSBURG NY
 my occupation is ASS'T MGR, and degree of education is BS
 I have been duly warned by PJ Bourne, who has identified himself as Police Officer

that I do not have to make any statement at all, and that any statement I make may be used in evidence against me in a court of law, and that I have the right to talk to a lawyer for advice before making this statement. Without fear of threat of physical harm upon me or another person, I freely volunteer the following statement to the aforesaid person.

^{7th} One Sat March 5th I went to Triangle Book Shop to buy books. The I saw with me a Subject "Acimetry" and Davis "Quant Models of Profit". I bought the books and paid \$3.50 for them. I also saw of the other ID card is a photo of the ID number. I saw signature on one of the books about. He was a moderately tall man with dark hair. Later after the book was inspected taken I was shown a picture by Council 5thly of the person signifying of the suspect, I was told that it was the same man whom I bought the above books.^{7th}

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I have read this statement consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Subscribed and sworn before me this _____ day of _____, 19____

Affirmed under penalty of perjury this 7th day of MARCH, 19 83

Signed by Terry Hooper

Page 1 of 1 page(s)

Witness: Barbara Bourne

Witness:

DO NOT REMOVE FILE

STATE OF NEW YORK
COUNTY OF TOMPKINS
CITY, TOWN OR VILLAGE OF ITHACA
Date 3/8/83 Time 9:10 AM Place Barton Hall
I, Kevin G. Vanginderen, am 21 years of age, born on 10/23/61
my address is 603-3 Winston Court Apartments
my occupation is Student, and degree of education is college senior
I have been duly warned by Barbara J. Bourne, who has identified himself as Patrol Officer

that I do not have to make any statement at all, and that any statement I make may be used in evidence against me in a court of law, and that I have the right to talk to a lawyer for advice before making this statement. Without fear of threat of physical harm upon me or another person, I freely volunteer the following statement to the aforesaid person.

I, Kevin G. Vanginderen, admit to taking a few books, a calculator, and two small cassette decks from Fernow Hall. I will return the calculator and tape decks for I still possess them. I also admit entering a lab at Bradfield Hall for the purpose of taking a few textbooks. All of these textbooks were sold to the Campus Store and Triangle Book Store for cash. This cash allowed me to survive in poor times for I am an extremely poor college student deeply in debt with little other options.

OFFICER WITTNER: You stated that you took books from Bradfield Hall. How did you gain entrance to Bradfield and the labs?

VANGINDEREN: I had a key for the building and lab given to me when I had a lab job there two years ago and nobody asked for its return.

WITTNER: The only things you took out of Bradfield were the books?

VANGINDEREN: From that one lab.

WITTNER: You didn't take anything else?

VANGINDEREN: Not in Bradfield.

WITTNER: How did you gain entrance into Fernow Hall?

VANGINDEREN: A tunnel leading from the basement of Bradfield Hall to Fernow which is unlocked. I gained entrance through it.

WITTNER: The rooms you took the books from in Fernow -- were the rooms locked?

VANGINDEREN: No. The rooms I went into on the main corridor were unlocked. The ones at the ends of the corridor had spaces above the doors, which I

I have read this statement consisting of 2 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Subscribed and sworn before me this _____ day of _____, 19____

Affirmed under penalty of perjury this 8th day of March, 1983

Signed by Kevin Vanginderen

Title: _____

Page 1 of 2 page(s)

Witness: H. W. G. Bruce

Witness: _____

STATE OF NEW YORK
 COUNTY OF TOMPKINS
 CITY, TOWN, OR VILLAGE OF ITHACA
 Date 3/8/83 Time 9:10 AM Place Boston
 I, Kevin G. Vanginderen am 21 years of age, born on 10/23/61
 my address is 603-3 Winston Court Apartments
 my occupation is Student, and degree of education is college senior
 I have been duly warned by Barbara J. Bourne, who has identified
 himself as Patrol Officer

MAILED FILE
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that I do not have to make any statement at all, and that any statement I make may be used in evidence against me in a court of law, and that I have the right to talk to a lawyer for advice before making this statement. Without fear of threat of physical harm upon me or another person, I freely volunteer the following statement to the aforesaid person.

jumped.

WITTNER: All the books you took last year and this year were sold to Campus Store and Triangle Book Store.

VANGINDEREN: Yes.

WITTNER: Not to a private individuals

VANGINDEREN: No.

I have read this statement consisting of 2 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Subscribed and sworn before me
 this _____ day of _____, 19____

Affirmed under penalty of perjury
 this 5th day of March, 1983

Signed by Kevin Vanginderen

Title: _____

Page 2 of 1 page(s)

Witness: H. W. Bourne

Witness: _____

Voluntary Statement

MAILED FILE
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STATE OF NEW YORK
COUNTY OF Tompkins
CITY, TOWN, or VILLAGE OF Ithaca
Date 3-8-83 Time 1420 Place Fernow Hall
I, Richard J. Baker, am 29 years of age, born on 12/4/53
my address is 134 Judd Falls Rd., Ithaca, NY
my occupation is Graduate Student, and degree of education is grad. student
I have been duly warned by Wayne L. Wittner, who has identified himself as Cornell Patrol Officer

that I do not have to make any statement at all, and that any statement I make may be used in evidence against me in a court of law, and that I have the right to talk to a lawyer for advice before making this statement. Without fear of threat of physical harm upon me or another person, I freely volunteer the following statement to the aforesaid person.

RJB On 3/10/83, I was in my office working. RJB On that day, I used my TI-55 calculator and a Sanyo cassette tape deck I had borrowed. When I returned to my office on 3/13/83, both were missing. I reported the theft to Cornell Public Safety on 3/14/83. On 3/15/83, I again worked in my office. On 3/25/83, I returned to my office and found two books: Life of Birds, Wells and Biometry, Stokely Rolf missing. I immediately reported these thefts to Public Safety. RJB
RJB At no time during this period had I given permission to anyone to borrow any of this material. RJB
RJB At ~2:20 pm, Officers Bousne & Wittner brought in my tape player and calculator. I positively identified these as mine. RJB

I have read this statement consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Subscribed and sworn before me this _____ day of _____, 19____

Affirmed under penalty of perjury this 8 day of March, 1983

Signed by Richard J. Baker

Page 1 of 1 page(s)

Witness: Wayne L. Wittner

Witness: Barbara Bousne

Title: _____

Voluntary Statement

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STATE OF NEW YORK
COUNTY OF Tompkins
CITY, TOWN, or VILLAGE OF Ithaca
Date 3-6-83 Time 1420 Place Fernow Hall
I, Richard J Baker, am 29 years of age, born on 12/4/53
my address is 134 Judd Falls Rd., Ithaca, NY
my occupation is Graduate Student, and degree of education is grad. student
I have been duly warned by Wayne L. Wittner, who has identified himself as Cornell Patrol Officer.

that I do not have to make any statement at all, and that any statement I make may be used in evidence against me in a court of law, and that I have the right to talk to a lawyer for advice before making this statement. Without fear of threat of physical harm upon me or another person, I freely volunteer the following statement to the aforesaid person.

RJB On 2/10/83, I was in my office working. RJB On that day, I used my TI-55 calculator and a Sanyo cassette tape deck I had borrowed. When I returned to my office on 2/13/83, both were missing. I reported the theft to Cornell Public Safety on 2/14/83. On 2/24/83, I again worked in my office. On 3/06/83, I returned to my office and found two books: Life of Birds, Wetly and Bionetry, Skole Rolf missing. I immediately reported these thefts to Public Safety. RJB
RJB At no time during this period had I given permission to anyone to borrow any of this material. RJB
RJB At ~2:20pm, Officers Bourne & Wittner brought in my tape player and calculator. I positively identified these as mine. RJB

I have read this statement consisting of 1 page(s) and the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Subscribed and sworn before me
this _____ day of _____, 19__

Affirmed under penalty of perjury
this 8 day of March, 1983

Signed by Richard J Baker

Page 1 of 1 page(s)

Title: _____

Witness: Wayne L. Wittner

Witness: Barbara Bourne

E N

Interview of Kevin G. Vanginderen by Lt. William Boice, Public Safety, recorded by Joëlle Munson, Public Safety, took place in the Major Investigations Office at 1035 hours, March 8, 1983. Lt. Boice began by having Vanginderen read his previous brief statement, which Vanginderen approved as correct and signed. Lt. Boice then began the following line of questioning: (B - Boice; V-Vanginderen)

- B - Please state the facts in your own words.
- V - About two years ago, I had a lab job at Bradfield Hall, which gave me a key to the building and Room 411. I noticed while I was working there that there were a lot of students that had books from courses they were no longer taking. I took some of these books and sold them to Campus Store and Triangle Book Store for \$10. I am only getting poorer as a college student. I have a job also but when I ran out of cash, I would go to the lab and take a few books. I would only get \$15 or \$20 for them at a time. I went to Bradfield a couple of times the last semester and a couple of times this year, only when I needed the cash. Last semester, they changed the lock to one of the labs. I noticed the tunnel to Fernow this semester and the door was unlocked as well as the rooms. It was the same as in Bradfield, with lots of books that people didn't need. I took a few of them. In one office, there was a calculator on a desk and cassette recorder; and in another room, there was a cassette deck. They were the only things besides books that I took.
- B - What were the dates of your employment at Bradfield Hall?
- V - Approximately October to December 1981 -- the first semester of my junior year.
- B - You were employed on the fourth floor?
- V - Yes, 411, I think.
- B - When approximately did you find yourself in a position where you started stealing?
- V - The next semester. I was amazed that no one asked for the key and I had noticed the books.
- B - You did not commit any thefts in 1981?
- V - No, only second semester.
- B - Approximately when did you start?
- V - It doesn't stick out.
- B - I have one case here from June 1982 (CR82-856).
- V - All the books may not have been discovered for a long time. I was not here over the summer. All the books were scientific.
- B - This case occurred in May. Do you remember names and titles -- Principles of Plant Breeding and Plant Pathology?
- V - They were all plant or scientific books -- all from labs or science offices.
- B - Case 82-868 -- 8 books in Bradfield Hall, Room 411?
- V - Yes

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EXHIBIT F, PAGE 29

INTERVIEW OF KEVIN G. VANGINDEREN -- March 8, 1983

Page 2

- B - List of books -- Breeding Field Crops, Soils and Soil Fertility, Mycogenetics, Statistics, Plant Pathology, Biochemistry, Toxins in Plant Disease, and Plant Breeding II.
- V - Sounds it.
- B - Case 82-1670 -- 411 Bradfield Hall -- three textbooks -- Property of Soil, Plant Structure and Function, and Plant Breeding -- November 1982?
- V - Sounds it.
- B - Case 82-1685 -- 411 Bradfield Hall -- November 1982 -- textbook -- Plant Mineral Nutrition?
- V - If they're from 411 ... don't know exact titles.
- B - Case 82-1682 -- three textbooks?
- V - (Nodded yes)
- B - Case 83-303 -- occurred February 10-12 -- Unlawful entry into Room 312C Fernow Hall in which a calculator, TI-55, and a Sanyo tape deck recorder were taken. Were you responsible for these?
- V - Yes, they have them. (*officers*)
- B - These are the two items that were recovered in your room?
- V - (Nodded yes) In the next room, there was another cassette deck.
- B - Case 83-306 -- 207 Fernow Hall -- occurred February 11, 1983 -- two textbooks?
- V - Yes
- B - Case 83-311 -- February 2 and 3 -- Room 306 Fernow -- Textbook -- Aquatic Chemistry?
- V - Not offhand; what room?
- B - 306
- V - I imagine.
- B - Case 83-333 - 306 Fernow -- Approximately middle of February?
- V - If the room is the same, they're probably just different discoveries of the same theft.
- B - One textbook -- Biological Science?
- V - (Nodded yes)
- B - Case 83-421 -- March 3-5 -- 312F Fernow -- JCV stereo cassette player recorder taken on a Burglary where the subject climbed over a partition. Are you responsible for this?
- V - Yes. It was the last theft at 2 AM Saturday.
- B - Case 83-422 - 312E Fernow -- March 4 and 5 -- Burglary -- theft of two textbooks -- Biometry and The Life of Birds. Do you remember these two?
- V - Sounds familiar.

EXHIBIT F, PAGE 30

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INTERVIEW OF KEVIN G. VANGINDEREN -- March 8, 1983 Page 3

- B - They were the two you sold to Triangle Book Store.
- V - (Nodded yes)
- B - Case 83-426 -- 312B Fernow Hall -- March 5 -- Burglary -- four textbooks stolen -- Resource Economics; Applied Theory of Price; The Way of Chung Tzu; Leisure -- The Basis of Culture. Are you familiar with this case?
- V - Sounds familiar.
- B - Where are these books now?
- V - I have two paperbacks still. The others were sold to Campus Store and Triangle Book Store, I believe.
- B - Have you stolen from any other building besides Bradfield and Fernow?
- V - I only stole from buildings that I had access to. I'm not a nervy person. I only stole at night with a key. I didn't break down doors. The rooms were obviously open and vulnerable.
- B - Do you know anything about the theft of a dollar bill changer at the Multi-Cat?
- V - No
- B - Do you know anything about tampering with an element analyzer on the 8th floor of Bradfield Hall?
- V - Know nothing about it.
- B - How about miscellaneous things like the theft of soda pop on the 8th floor of Bradfield Hall?
- V - I was never on the 8th floor.
- B - Your residence is 603 Winston Court, Apartment 3. No problems up there?
- V - (Shook head no) I only took books that I figured people didn't need.
- B - Can you explain to me why?
- V - I currently owe the university approximately \$1,000, a fraternity \$700, and living expenses are high. I foresee myself graduating in debt. The job at Lynah's not enough -- I could go hungry. I have \$5 in my pocket now from the last books I sold. My bank account is empty. I feel remorse and yet I would not have eaten otherwise. A strange remorse -- I would not be at college. Tuition is up -- financial aid is down. I'm a graduating senior -- though not in an honest fashion.
- B - Are you involved in any other activities?
- V - No
- B - Is your roommate involved?
- V - No. Obviously, I took things that were there for the taking. I didn't break in. My friends are not like that.

EXHIBIT F, PAGE 31

INTERVIEW OF KEVIN G. VANGINDEREN -- March 8, 1983

Page 4

- B - How many times do you think you burglarized offices?
- V - Bradfield -- three or four times -- maybe a little more. Fernow -- three times.
- B - Each time you entered Bradfield, did you use your key?
- V - Yes
- B - Was this after you were terminated from your job?
- V - I was never officially terminated. I had a lab job with a loose schedule -- I came in when I wanted. I didn't come in any more because I didn't get along with my boss. I figured that they would have taken my key back -- they never asked for it.
- B - You entered Fernow via the tunnel:
- V - (Nodded yes) The unlocked door.
- B - You entered offices by climbing over the doors?
- V - No, open doors. I only climbed over two doors.
- B - Which cases were those?
- V - The tape decks and the calculator.

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EXHIBIT F, PAGE 32

ENC # 1 83-112

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

**MASTER FILE
DO NOT REMOVE**

PLACE Boston Hall
DATE 3/8/83
TIME 0900

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Travis Vangard

Witness Barbara J. Bourne

Witness Wayne A. Wilton

Time 0900

EXHIBIT F, PAGE 33

CONSTITUTIONAL RIGHTS

CONSENT TO SEARCH

The right of the people to be secure in their papers, houses, persons and effects, against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. (Fourth Amendment to the Constitution of the United States.)

I, Kevin G. Vanginderen, having been informed of my Constitutional Rights not to have a search made of the premises hereinafter mentioned without a search warrant and of my right to refuse to consent to such a search, hereby authorize Wayne Wittner and Barbara Bourne, Officers of the Cornell University Safety Division to conduct a complete search of my residence located at 603 Winston Ct. Apts. Apt #5. These officers are authorized by me to take from my residence any letters, papers, materials or other property which would be considered contraband.

This written permission is being given by me to the above named officers voluntarily and without threats or promises of any kind, to commence at 0950 on 3-8-83 and to conclude by 0952 on 3-8-83.

**MASTER FILE
DO NOT REMOVE**

Kevin Vanginderen
Signature

Wayne Wittner
Witness

Barbara Bourne
Witness

**MASTER FILE
DO NOT REMOVE**

NOTICE OF INTENT TO USE ADMISSIONS
SCHEDULE A

ORAL ADMISSIONS

Date: 3-8-83

Time: 0900 hrs.

Place: Barton Hall

Made To: Wayne L. Witter

Substance of Admissions: "I went into the rooms and took the books, ~~and~~ stereo, calculator, and tape deck. I am a poor student and sold the books to get money"

Date:

Time:

Place:

Made To:

Substance of Admissions:

Date:

Time:

Place:

Made To:

Substance of Admissions:

STRICT ATTORNEY
ONPKINS COUNTY
CA. NEW YORK 14850

EXHIBIT F, PAGE 35

NOTICE OF INTENT TO USE ADMISSIONS
SCHEDULE B

WRITTEN ADMISSIONS
(Including Preliminary Oral Admissions)

Date: 3/8/83 Time: 0910
Place: Barton Hall
Made To: Barbara J. Bourne
Copy attached as Exhibit encl. #4 CR 83-422

Date: _____ Time: _____
Place: _____
Made To: _____
Copy attached as Exhibit _____

MASTER FILE
DO NOT REMOVE

Date: _____ Time: _____
Place: _____
Made To: _____
Copy attached as Exhibit _____

Date: _____ Time: _____
Place: _____
Made To: _____
Copy attached as Exhibit _____

STRICT ATTORNEY
TOMPKINS COUNTY
CA, NEW YORK 14850

EXHIBIT F, PAGE 36

THE PEOPLE OF THE STATE OF NEW YORK

- vs -

ACCUSATORY INSTRUMENT

Kevin G. Vanginderen DOB 10/23/61
Defendant

**MRS. FILE
DO NOT REMOVE**

ACCUSATION

BE IT KNOWN THAT, by this Accusatory Instrument, Barbara Bourne
as the Complainant herein, accuses Kevin G. Vanginderen
the above named Defendant, with having committed the offense of
Burglary in the third Degree
in violation of the Section 140.20, Subdivision of the Penal Law
of the State of New York, ~~ViolationXXXXXXXXXXXXXXXXXXXX~~ a Class D Felony.

FACTS

On or about the 5th day of March 1983, the said defendant did, in the City of Ithaca, County of Tompkins, New York, did knowingly enter or remain unlawfully in a building, to wit: defendant entered at approx. 2:00AM room 312C Fernow Hall, Tower Road, Cornell University, City of Ithaca, N.Y., to commit the crime of larceny therein by stealing books, with said office space belonging to Richard J. Baker, with all action by defendant without authorization, are contrary to the provisions of the Statute in case made and provided.

The above allegations of fact are made by the Complainant herein:

upon direct knowledge
XXXXX upon information and belief, with the sources of Complainant's information and the grounds for his belief being investigation of case (Cornell) 83-422 and sworn confession of defendant.
WHEREFORE, Complainant prays that a warrant be issued for the arrest of the said defendant.

Barbara Bourne
Complainant

NOTICE
(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

Affirmed under penalty of perjury this 8th day of March, 1983.

Sworn to before me this day of 19

OR

Barbara Bourne
Complainant

Judge or Justice, Desk Officer or Superior, or her authorized person.

EXHIBIT F, PAGE 37

Court

EXHIBIT C

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN VANGINDEREN,

v.

CORNELL UNIVERSITY,

Plaintiff,

Defendant.

CASE NO. 07cv2045 BTM(JMA)
**ORDER GRANTING SPECIAL
MOTION TO STRIKE**

Defendant Cornell University ("Cornell") has brought a Special Motion to Strike Plaintiff's Complaint pursuant to Cal. Civ. Proc. Code § 425.16. For the reasons discussed below, Cornell's motion is **GRANTED**.

I. FACTUAL BACKGROUND

A. Judicial Proceedings before the Ithaca City Court

On March 8, 1983, Plaintiff Kevin Vanginderen ("Plaintiff") was charged in Ithaca City Court with third degree burglary, a felony. The Accusatory Instrument alleged:

On or about the 5th day of March 1983, the said defendant did, in the City of Ithaca, County of Tompkins, New York . . . did knowingly enter or remain unlawfully in a building, to wit: defendant entered at approx. 2:00 AM room 312C Fernow Hall, Tower Road, Cornell University, City of Ithaca, N.Y., to committ [sic] the crime of larceny therein by stealing books, with said office space belonging to Richard J. Baker, with all actios [sic] by defendant without authorization, are contrary to the provisions of the Statute in case made and provided.

(Def.'s Request for Judicial Notice, Ex. A.)

On August 17, 1983, Plaintiff was charged with petit larceny, a misdemeanor, based

1 on the same events. (Id.) This charge was filed “in satisfaction” of the prior charge of
2 burglary in the third degree. (Id.) Plaintiff entered a plea of guilty to the petit larceny charge.
3 (Id.)

4 Cornell’s counsel initially believed that the City Court’s records of the criminal
5 proceedings against Plaintiff were sealed. However, on October 15, 2007, Valerie Dorn,
6 Associate University Counsel at Cornell, received a telephone call from the City Court Clerk’s
7 Office informing her that the records were not sealed and were available for pickup. (Dorn
8 Decl. ¶ 5.) Ms. Dorn obtained the records on October 16, 2007. (Id.)

9
10 **B. Judicial Proceedings Before the County Court of Tompkins**

11 On October 15, 2007, the City Court Clerk informed Ms. Dorn that the County Court
12 of Tompkins County (“County Court”) possessed sealed records relating to criminal charges
13 against Plaintiff. (Dorn Decl. ¶ 6.) Cornell’s counsel applied to the County Court to unseal
14 the records of the criminal proceedings against Plaintiff. In an order issued after Cornell filed
15 its moving papers in this case, the County Court concluded that Cornell had provided
16 sufficient grounds to grant the motion to unseal records of the County Court, the Tompkins
17 County District Attorney’s Office, and the Cornell University Police. (Supp. Request for
18 Judicial Notice, Ex. E.) Cornell obtained the unsealed records, which are attached as Exhibit
19 F to the Supplemental Request for Judicial Notice.

20 These records show that Cornell police became interested in Plaintiff as a result of
21 their investigation of a theft of two books from Fernow Hall that took place between March
22 4 and March 5, 1983. The stolen books were located at Triangle Books (“Triangle”), a local
23 bookstore which bought used books. (Ex. F at 7.) A log kept by Triangle showed that
24 someone with the initials “K.V.” and the Student I.D. # 222416 sold the stolen books to
25 Triangle on March 5, 1983. (Id.) This information led the Cornell police to Plaintiff. (Id.)

26 Further investigation led Cornell police to believe that Plaintiff was also the perpetrator
27 of nine additional thefts in Fernow Hall and five unsolved thefts in Bradfield Hall. (Ex. F at
28 23.) A search of Plaintiff’s bedroom resulted in the discovery of a TI 51 calculator, Sanyo

1 tape recorder, and a JVC stereo cassette player/recorder, all of which were stolen from
2 Fernow Hall. (Ex. F at 17.)

3 Plaintiff was interviewed and admitted that he had a key to Bradfield Hall and that he
4 took books from Room 411 and sold them for cash. (Ex. F at 29.) He admitted to the five
5 unsolved thefts in Bradfield Hall. (Ex. F at 29-30.) Plaintiff explained that he discovered a
6 tunnel between Bradfield Hall to Fernow Hall and admitted that he took a calculator, cassette
7 deck, cassette recorder, and various books from Fernow Hall. (Id.) When asked about
8 specific books that were stolen from Fernow Hall, Plaintiff either conceded that he had taken
9 them, indicated that the books sounded “familiar,” or that he “imagine[d]” he took them. (Ex.
10 F at 30.)

11 On June 7, 1983, a Tompkins County Grand Jury returned an indictment charging
12 Plaintiff with two counts of burglary in the second degree. (Ex. F at 69.) On August 1, 1983,
13 the County Court granted Plaintiff’s motion to dismiss the indictment as defective (for
14 mistakenly charging burglary in the second degree instead of the proper charge of burglary
15 in the third degree). (Ex. F at 90, 92-93.) The People were given permission to refile. (Id.)
16 However, Plaintiff agreed to plead guilty to a misdemeanor in City Court upon the condition
17 that the People not refile felony charges in County Court and agree to recommend a penalty
18 no harsher than probation. (Ex. F at 91.)

19 As indicated above, on August 17, 1983, Plaintiff was charged with petit larceny, a
20 misdemeanor, in City Court. (Ex. A at 7.) On August 22, 1983, Plaintiff entered a plea of
21 guilty to the petit larceny charge. (Ex. A at 8.) On March 5, 1985, the County Court issued
22 an order sealing official records regarding the second degree burglary charges in the County
23 Court proceedings. (Ex. F at 95.) The order was sent to the Cornell police and the District
24 Attorney. (Ex. F. at 94.) The records of the misdemeanor in City Court were not sealed.

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27 **C. Cornell Chronicle**

28 On March 17, 1983, the Cornell Chronicle, a weekly University publication, included

1 the following paragraph on page 6 (as part of the “Blotter Barton” column):

2 Department of Public Safety officials have charged Kevin G. Vanginderen of
3 603 Winston Court Apartments with third degree burglary in connection with
4 10 incidents of petit larceny and five burglaries on campus over a period of a
5 year. Safety reported recovering some \$474 worth of stolen goods from him.

6 (Def.’s Request for Judicial Notice, Ex. B.)

7 Paper copies of all issues of the Cornell Chronicle are maintained in the Cornell
8 University Library (“CUL”) and are accessible to library patrons who are physically present
9 on campus. (Kenney Decl. ¶ 4.) The Cornell Chronicle has also been microfilmed and is
10 available to anyone who has access to a library that participates in the interlibrary loan
11 system. (Id.) CUL has engaged in multiple long-term projects to digitize information
12 resources in its collection. (Id. at ¶ 3.) Many of these digital materials are stored in CUL’s
13 institutional repository, known as eCommons. (Id.) The Cornell Chronicle is one of the
14 resources that is being digitized. (Id. at ¶ 4.) Digitized copies of the Cornell Chronicle are
15 accessible to anyone who has computer access to CUL’s eCommons. (Id.)

16 According to Plaintiff, until September 2, 2007, he had not been aware of the March
17 17, 1983 Cornell Chronicle article about himself. (Vanginderen Decl. ¶ 8.) He first learned
18 about the article when he ran a “Google” search on himself and the “Google” results included
19 an excerpt from and a link to the digitized version of the article. (Id. at ¶ 9.) Plaintiff
20 requested that Cornell remove the references to himself from the digitized version of the
21 March 17, 1983 Cornell Chronicle. Cornell refused Plaintiff’s request.

22 **D. Plaintiff’s Complaint**

23 On October 1, 2007, Plaintiff filed his Complaint in state court. Plaintiff asserted
24 claims of libel and public disclosure of private facts. On October 29, 2007, Cornell removed
25 the action to this Court.

26 **II. LAW GOVERNING ANTI-SLAPP MOTIONS**

27 California Code of Civil Procedure § 425.16, California’s anti-SLAPP (anti-Strategic
28 Lawsuit Against Public Participation) statute, was enacted “to allow early dismissal of

1 meritless first amendment cases aimed at chilling expression through costly, time-consuming
2 litigation.” Metabolife Int’l, Inc. v. Wornick, 264 F.3d 832, 839 (9th Cir. 2001). See also
3 Wilcox v. Superior Court of Los Angeles County, 27 Cal. App. 4th 809, 823 (9th Cir. 1994)
4 (explaining that section 425.16 was intended to provide a “fast and inexpensive unmasking
5 and dismissal of SLAPPs”). The anti-SLAPP statute provides:

6 A cause of action against a person arising from any act of that person in
7 furtherance of the person’s right of petition or free speech under the United
8 States or California Constitution in connection with a public issue shall be
subject to a special motion to strike, unless the court determines that the
plaintiff has established that the plaintiff will prevail on the claim.

9 Cal. Civ. Proc. Code § 425.16(b)(1).

10 As used in the anti-SLAPP statute, the term “act in furtherance of a person’s right of
11 petition or free speech under the United States or California Constitution in connection with
12 a public issue” includes the following:

13 (1) any written or oral statement or writing made before a legislative, executive,
14 or judicial proceeding, or any other official proceeding authorized by law; (2)
15 any written or oral statement or writing made in connection with an issue under
16 consideration or review by a legislative, executive, or judicial body, or any other
17 official proceeding authorized by law; (3) any written or oral statement or
writing made in a place open to the public or a public forum in connection with
an issue of public interest; (4) or any other conduct in furtherance of the
exercise of the constitutional right of petition or the constitutional right of free
speech in connection with a public issue or an issue of public interest.

18 Cal. Civ. Proc. Code § 425.16(e).

19 The defendant bringing the motion to strike bears the initial burden of showing that
20 the challenged causes of action arise from an act or acts in furtherance of the defendant’s
21 right of petition or free speech. Zamos v. Stroud, 32 Cal. 4th 958, 965 (2004). Once that
22 burden is met, the burden shifts to the plaintiff to establish the probability that plaintiff will
23 prevail on the claim. Id. To satisfy this prong, the plaintiff “must demonstrate that the
24 complaint is both legally sufficient and supported by a sufficient prima facie showing of facts
25 to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” Jarrow
26 Formulas, Inc. v. LaMarche, 31 Cal. 4th 728, 741 (2003) (citation omitted).

27 When determining whether the defendant has met his initial burden of demonstrating
28 that the challenged causes of action arise from protected conduct, courts necessarily look

1 to the allegations in the operative complaint. Brill Media Co., LLC v. TCW Group, Inc., 132
2 Cal. App. 4th 324 (2005). Courts may also examine affidavits in making this assessment.
3 Id. In contrast, in determining the probability of the plaintiff prevailing on the claim, courts
4 look to the evidence that will be presented at trial and require that the evidence be
5 admissible. Church of Scientology v. Wollersheim, 42 Cal. App. 4th 628, 654 (1996). The
6 applicable standard for determining whether the plaintiff has met his burden is the same as
7 for a motion for summary judgment. Colt v. Freedom Communications, Inc., 109 Cal. App.
8 4th 1551, 1557 (2003).

9
10 **III. DISCUSSION**

11
12 **A. Applicability of anti-SLAPP Statute**

13 The first question that must be addressed is whether Plaintiff's claims fall within the
14 scope of the anti-SLAPP statute. For the reasons discussed below, the Court finds that
15 Plaintiff's claims are subject to a special motion to strike.

16 As mentioned above, the anti-SLAPP statute covers any "act in furtherance of a
17 person's right of petition or free speech under the United States or California Constitution in
18 connection with a public issue," including any "conduct in furtherance of the exercise of the
19 constitutional right of petition or the constitutional right of free speech in connection with a
20 public issue or an issue of public interest." Cal. Civ. Proc. Code § 425.16(b), (e)(4). A
21 statement or conduct is "in connection with a public issue or an issue of public interest" if "the
22 statement or conduct concerns a topic of widespread public interest and contributes in some
23 manner to a public discussion of the topic." Hall v. Time Warner, Inc., 153 Cal. App. 4th
24 1337, 1347 (2007). The "public interest" requirement must be "construed broadly," to
25 encourage continued participation in matters of public significance. Cal. Civ. Proc. Code §
26 425.16(a). See also Gilbert v. Sykes, 147 Cal. App. 4th 13, 23 (2007).

27 Here, the article in the Cornell Chronicle, in both its original and digitized versions,
28 concerns an issue of public interest – reporting of a criminal charge that was and is part of

1 the Ithaca City Court's public records. Although Plaintiff contends that the records of the
2 criminal proceedings in City Court were sealed, the evidence submitted by Cornell indicates
3 otherwise. Specifically, the County Court's order regarding the sealing of records was not
4 sent to the City Court, the City Court Clerk informed counsel for Cornell that its records were
5 not sealed, and Cornell was able to obtain the records, which were then submitted to the
6 Court in connection with the motion.¹

7 Case law establishes that the truthful reporting of information in a public record is
8 protected by the First Amendment. In Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975),
9 the Supreme Court explained:

10 By placing the information in the public domain on official court records, the
11 State must be presumed to have concluded that the public interest was thereby
12 being served. *Public records by their very nature are of interest to those*
13 *concerned with the administration of government, and a public benefit is*
14 *performed by the reporting of the true contents of the records by the media.*
15 The freedom of the press to publish that information appears to us to be of
critical importance to our type of government in which the citizenry is the final
judge of the proper conduct of public business. In preserving that form of
government the First and Fourteenth Amendments command nothing less than
that *the States may not impose sanctions on the publication of truthful*
information contained in official court records open to public inspection.

16 Id. at 495. Thus, the truthful reporting of information in public official records regarding
17 criminal proceedings against an individual are protected by the First Amendment regardless
18 of whether the reporting is concurrent with the criminal proceedings or years later. Gates v.
19 Discovery Communications, Inc., 34 Cal. 4th 679, 693 (2004) (“[T]he high court has never
20 suggested, in Cox or in any subsequent case, that the fact the public record of a criminal
21 proceeding may have come into existence years previously affects the absolute right of the
22 press to report its contents.”)

23 The Cornell Chronicle article reported information regarding the charge of third-degree
24

25 ¹ Plaintiff objects to the Court's consideration of the City Court records, County Court
26 records, and records of the Cornell Police and County District Attorney. Plaintiff contends
27 that the records are not properly authenticated. Plaintiff's objection is overruled. Cornell has
28 submitted declarations that the records submitted to the Court are the true and correct copies
of the records obtained from the City Court and the records that were unsealed pursuant to
the County Court's November 16, 2007 order. (Dorn Decl. ¶ 5; Roth Decl. ¶ 6.) Cornell has
made a sufficient showing that the documents are what Cornell claims them to be, and the
Court takes judicial notice of them pursuant to Fed. R. Civ. P. 201.

1 burglary brought in the County Court. The County Court's records were not then sealed and
2 were public. Although the article also reported facts that were not part of the court's records
3 – i.e., information regarding the seizure of items from Plaintiff's home and Plaintiff's
4 suspected involvement in a total of ten petit larcenies and five burglaries – these facts relate
5 to the circumstances of the charge and, therefore, also concern a matter of public interest.

6 Accordingly, Plaintiff's Complaint is subject to a special motion to strike under the anti-
7 SLAPP statute.

8
9 **B. Probability of Prevailing on the Merits**

10 Because Cornell has met its initial burden of demonstrating that the challenged
11 causes of action arise from protected conduct, the burden shifts to Plaintiff to establish the
12 probability that he will prevail on his claims. The Court concludes that Plaintiff has failed to
13 satisfy his burden.

14 Truth is an absolute defense to any libel action. Campanelli v. The Regents of the
15 University of California, 44 Cal. App. 4th 572, 581-82 (1996). However, in order to qualify
16 for the defense, "the defendant need not prove the literal truth of the allegedly libelous
17 accusation, so long as the imputation is substantially true so as to justify the 'gist or sting' of
18 the remark." Id. (quoting Emde v. San Joaquin County Central Labor Council, 23 Cal. 2d
19 146, 160 (1943)). Libel law "overlooks minor inaccuracies and concentrates on the
20 substantial truth." Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 516 (1991).²

21 Here, the Cornell Chronicle article was substantially true. The challenged language
22 of the article is as follows:

23 Department of Public Safety officials have charged Kevin G. Vanginderen of
24 603 Winston Court Apartments with third degree burglary in connection with
25 10 incidents of petit larceny and five burglaries on campus over a period of a
26 year.

27 ² There is no need to engage in a choice-of-law analysis because New York law
28 governing libel is substantially the same as California law. See Matovcik v. Times Beacon
Record Newspapers, 849 N.Y.S.2d 75, 78 (2007) (explaining that even if a publication is not
literally true in all respects, the defense of truth applies as long as the publication is
"substantially true.").

1 Plaintiff was charged with third-degree burglary, and the charge arose out of an investigation
2 that linked Plaintiff with a total of ten incidents of petit larceny and five burglaries on campus.
3 Thus, the charge had a connection to the ten incidents of petit larceny and five burglaries.
4 The use of the vague phrase “in connection with” was somewhat confusing and may have
5 led some readers to believe that Plaintiff was charged with all fifteen incidents. However, the
6 article did not state that Plaintiff was charged with all of the crimes. Although the article may
7 have been poorly written, the “gist” or sting” of the article was true. Therefore, Plaintiff
8 cannot prevail on his libel claim.

9 Plaintiff also fails to establish the probability that he will prevail on his claim for public
10 disclosure of private facts. Under California law, the elements of the tort of public disclosure
11 of private facts are (1) public disclosure (2) of a private fact (3) which would be offensive and
12 objectionable to the reasonable person and (4) which is not of legitimate public concern.
13 Taus v. Loftus, 40 Cal. 4th 683, 801 (2007).³ With respect to the fourth element, “lack of
14 newsworthiness is an element of the ‘private facts’ tort, making newsworthiness a complete
15 bar to common law liability.” As discussed in Section III.A., supra, the article reported on a
16 matter of public interest. Therefore, Plaintiff’s claim for public disclosure of private facts fails
17 on the merits.

18 In conclusion, Cornell’s special motion to strike is granted in its entirety. Cornell’s
19 evidentiary objections are denied as moot because the Court’s conclusions would be the
20 same whether the objections were overruled or sustained. The Court does not reach the
21 issue of whether Cornell republished the article when Cornell digitized it and made it
22 accessible on the internet. As the prevailing party on the motion to strike, Cornell is entitled
23 to reasonable attorney’s fees and costs. Cal. Civ. Proc. Code § 425.16(c). The amount of
24 the attorney’s fees shall be determined upon motion by Cornell. Costs may be sought in the
25 manner provided by Civ.L.R. 54.1 after the entry of judgment.

26
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28 ³ New York law does not recognize a common-law right of privacy. See Messenger
ex rel. Messenger v. Gruner & Jahr Printing and Pub., 94 N.Y.2d 436, 441 (2000).

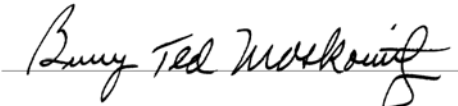
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IV. CONCLUSION

For the reasons discussed above, Cornell's Special Motion to Strike is **GRANTED**. The Complaint is **DISMISSED WITH PREJUDICE**. The Clerk shall enter judgment accordingly. Any motion for attorney's fees must be brought within 30 days of this order.

IT IS SO ORDERED.

DATED: June 3, 2008


Honorable Barry Ted Moskowitz
United States District Judge