

The Second Scenario: The Pautler Case

On June 8, 1998, Chief Deputy District Attorney Mark Pautler arrived at a gruesome crime scene where three women had been murdered by blows to the head with a wood splitting maul. The killer, William Neal, had abducted and killed the women at an apartment over a three-day period. A fourth woman, J.D.Y., had been abducted and witnessed one of the murders while tied spread-eagled to a bed. Neal later raped her.

At a second apartment, Neal held J.D.Y. and two other people hostage for over thirty hours. During this time, he dictated details of his crime into a recorder. He abandoned the apartment and the hostages with instructions for J.D.Y. and the others to contact the police and page him when the police arrived.

When D.A. Pautler arrived at the second apartment, the sheriff had already paged Neal who called the apartment on a cell phone. The sheriff and Neal began a 3 ½ hour recorded conversation during which the sheriff encouraged Neal to surrender himself. His cell phone location could not be determined. Neal made it clear that he would not surrender without legal representation. He requested a former attorney of his, Daniel Plattner, but then requested a public defender.

D.A. Pautler called Mr. Plattner's office number but believed he had left the practice of law and got a recording stating the telephone number was no longer in service. The sheriff told Neal that he would get a public defender. No attempt was made to do so. Instead, Pautler offered to impersonate a public defender and did so with the acquiescence of law enforcement, calling himself "Mark Palmer." Neal and Pautler (as "Palmer") engaged in a recorded conversation reviewing Neal's demands, including that "his lawyer" be present when he surrendered. Neal believed Pautler to be a public defender and peacefully surrendered to the police. When he surrendered, he was told by law enforcement that "his lawyer" was present. The ruse was not subsequently revealed to Neal. It was discovered two weeks later when Neal's real public defender reviewed the tape recordings.

Neal was convicted of the murders and received the death penalty. Pautler was charged by the Attorney Regulation Counsel with violating Rule 8.4 (engaging in conduct involving dishonesty, fraud or misrepresentation) and Rule 4.3 (dealing with a person who is not represented by counsel) of the Colorado Rules of Professional Conduct (the Rules).

Pautler raised defenses of justification, imminent public harm exception, duress and choice of evils. He testified during his hearing that given the same circumstances, he would not act differently apart from informing Neal's defense counsel of the ruse earlier.

Pautler was found to have violated the Rules and was sanctioned with three months suspension, with a stay granted during twelve months probation. He had to retake the MPRE, take 20 CLE hours of ethics and have a supervisor present whenever he engaged in any activity implicating Rule 4.3.

