

# Local

Comment • Obituaries

## Fairchild seeks change of venue in S.J. pollution suit

By Susan Yoachim  
Staff Writer

In an unusual move, Fairchild Camera and Instrument Corp. has asked that lawsuits over the contamination of a South San Jose well be tried outside Santa Clara County because of excessive pretrial publicity.

Although such requests are not unusual in criminal cases, they "very, very seldom" occur in civil lawsuits, according to Santa Clara County Court Executive John Kazubowski.

"That's a criminal remedy, not a civil remedy," Kazubowski said.

Earlier this month, Fairchild filed a petition with the Judicial Council of California asking that three lawsuits filed against the company in Santa Clara County be coordinated with a fourth lawsuit that Fairchild has filed in San Diego County.

Fairchild argued in its petition that, "because the nature and extent of pretrial publicity in Santa Clara County has obviated the possibility of empaneling an impartial . . . panel, the ends of justice will be met only if the coordinated actions are tried in another county."

To support its contention, Fairchild also filed a stack of newspaper articles an inch

thick and a sworn statement from KCBS radio station news director Charles Scraphin that the well pollution was "a news story of significant public interest to which KCBS devoted significant coverage."

The publicity began in January 1982 with reports that hazardous chemicals had leaked from a Fairchild storage tank and polluted a nearby public well.

More than 266 South San Jose residents subsequently sued Fairchild, charging that the well contamination had caused birth defects and other health problems. The water company that owns the well also sued Fairchild, claiming the pollution had damaged its property. Fairchild, in turn,

sued the tank manufacturers and installers, but filed its suit in San Diego County.

Fairchild general counsel Nelson Stone said requests to move trials because of publicity are "fairly common where the publicity has been uncommon."

In its court petition, Fairchild used a prominent criminal case, the murder case against William Archie Fain, to illustrate why it thinks civil cases against it should be moved outside Santa Clara County.

Fairchild said the Supreme Court ordered Fain's penalty hearing moved out of the county because his brief escape from county jail before the hearing "provoked a waive (sic) of alarm and concern through-

out the community." The court ruled Fain should be judged by "an impartial trier of fact, rather than by jurors who have been personally subjected to the fears and other emotions aroused" by the escape.

Fairchild contended that in the lawsuit pending against the company, "the high level of concern which the publicity has created within Santa Clara County requires that the coordinated action be tried in another county."

The request to move the cases is not expected to be heard for six or seven weeks, another Fairchild attorney said.