October 26, 2023

VIA EMAIL

The Honorable Gavin Newsom
Governor of the State of California
State Capitol
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Re: Kevin Cooper: Response to Special Counsel's Innocence Investigation

Dear Governor Newsom:

We respectfully submit our rebuttal report to the Special Counsel's January 13, 2023, report in this matter. As our Rebuttal Report explains in detail, we ask that Your Honor reject the Special Counsel's report and grant Kevin Cooper's commutation petition, or in the alternative, appoint a new special counsel to conduct an independent and innocence investigation into Mr. Cooper's capital murder conviction consistent with Your Honor's May 2021 Executive Order. Shockingly, as David Sapp, Esq., Your Honor's Legal Affairs Secretary has conceded Mr. Cooper remains on death row even though he was wrongfully convicted. Moreover, all of the credible evidence establishes that Mr. Cooper is actually innocent.

Respectfully submitted,

Orrick, Herrington & Sutcliffe LLP

Rene A. Kathawala

cc: Mr. Kevin Cooper
Mark R. McDonald, Esq.
David Sapp, Esq.
Cooper Supporters
Media

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I. INTRODUCTION

Governor Gavin Newsom issued Executive Order N-06-21 more than two years ago ordering an "***independent*** investigation" in connection with Kevin Cooper's claims of innocence (the "Executive Order" or the "Order") relating to the Ryen/Hughes crimes (the "Ryen/Hughes crimes"). The Executive Order appointed a Special Counsel to "conduct a ***full review*** of the trial and appellate records" regarding Mr. Cooper's case and "of the facts underlying the conviction." This "full review" was to encompass all the facts and evidence, including those that "[did] not appear in the trial and appellate records." The Executive Order stated that because the death penalty was to be imposed, the Governor would "need to be satisfied that ***all relevant evidence is carefully and fairly examined***." Emphasis added. The Special Counsel abjectly failed to comply with the Executive Order as follows: (1) Special Counsel failed to comply with the Order's mandate to conduct a full and independent investigation into Mr. Cooper's case and conviction; (2) Special Counsel failed to conduct the innocence investigation described in the Order; and (3) Special Counsel abdicated his responsibility to conduct a careful and fair review all facts and evidence as the Executive Order required.[1]

Special Counsel's unidentified, unsigned and undated Report that was not submitted on letterhead is filled with confirmation bias, transparently shoddy analyses, and conclusory statements that are unsupported by any reasoned analysis.[2] Incompetently, Special Counsel did not seek to uncover significant issues bearing on Mr. Cooper's innocence, including an improper police investigation, prosecutorial misconduct, and ineffective assistance of counsel. Nor did Special Counsel adequately consider the implications of compelling evidence of Mr. Cooper's innocence that had already been uncovered. Most conspicuously, and without offering any rational explanation for failing to do so, Special Counsel brazenly chose not to address Mr. Cooper's claims of racial bias even though there is staggering, detailed evidence that his death penalty conviction was a product of race discrimination, which is a hallmark of our death penalty system. The Special Counsel also declined to consider the findings of the racial bias in this case that were independently confirmed by the Inter-American Commission on Human Rights in its 2015 Final Report. When Mr. Cooper was

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[1] *See* Special Counsel's Report on Independent Investigation of Kevin Cooper's Claim of Innocence (Jan. 13, 2023) ("Report" or "SCR").

[2] It is glaring that the law firm's letterhead and the name and signature of its partner is absent from the Report, rendering the report anonymous as to its author and raising questions around this basic issue.

tried almost 40 years ago, law enforcement failed to pursue the multiple, concrete leads on all possible suspects in their investigation of the Ryen/Hughes crimes and instead utilized all their resources to pursue and convict a man who is innocent. Special Counsel tragically repeated this senseless and grave error.

Specifically, the San Bernardino County Sheriff's Department ("SBSD") issued a Criminal Bulletin on June 7, 1983, based on eyewitness statements, including by lone survivor Joshua Ryen ("Josh"), describing the suspected killers as three white men—perhaps one was "Mexican"—and the color of the shirts they wore and the car they were driving. No one reported seeing a Black man. However, when the SBSD became aware a Black man had escaped from a nearby prison, they immediately focused on him and abandoned following the other more credible leads. After leaving the prison, Mr. Cooper spent time in a vacant home near the crime scene not far from the prison. He left behind butts from cigarettes he rolled from prison tobacco, fingerprints throughout the home, and phone records of calls he made. Pressure to solve the horrific crime, combined with Mr. Cooper's race and prior record and his presence near the Ryen home, led to tunnel vision that dominated the sheriff's investigation and resulted in gross misconduct, including evidence destruction and tampering.[3] That myopic view also led investigators to completely ignore the witness statements and evidence that within days of the murders pointed to convicted murderer Eugene Leland Furrow ("Lee Furrow") as one of the killers.

Shockingly, Special Counsel did not investigate these leads that law enforcement had ignored decades earlier even though the Executive Order directed him to look into facts and evidence that

[3] The impact of this and other evidence on Mr. Cooper's case cannot be understated. One former juror in Mr. Cooper's 1984 trial echoed others in stating that "[h]ad I known at the time of our deliberations the information recently provided to me as set forth below in this declaration, or had there been just one more piece of evidence of Mr. Cooper's innocence during the trial, I would have recognized that there was reasonable doubt about Mr. Cooper's guilt, and I would have voted 'not guilty', as well as not voting for the death penalty." *See* Exhibit 1 (Declaration of Jetalyn Kahloah Doxey, Mar. 21, 2016, "Doxey Decl."). Jury foreman Frank Nugent, accompanied by two other jurors, said at a May 22, 2004, news conference that if the jury knew of the hairs in Jessica's hand, "we may never well have had a verdict against him." Hil Anderson, *Commentary: Built-in execution insecurity* (UPI) (May 24, 2004 3:25 PM), upi,com/Defense-News/2004/05/24/Commentary-Built-in-execution-insecurity/52511085426721/ (last visited June 13, 2023).

did not appear in the trial and appellate record. Mr. Cooper presented Special Counsel with numerous, detailed memos establishing that multiple other individuals committed the brutal murders. Instead, Special Counsel turned his back on finding the truth. Special Counsel failed to interview known witnesses who could and would corroborate that Mr. Cooper did not commit the murders, and that others, including Furrow, were guilty. These witnesses included, but were not limited to, Michael Darnell, who spent much of the day with Mr. Furrow on the day of the murders; Josh Ryen, the lone survivor; Jan Martinez, whom Lee Furrow implicated as an accomplice in the killings; Germaine Cooke (aka Jane Doe), a witness who said she saw the Ryen car in the afternoon of the day of the murders with three men inside: one of whom had long blond/light brown hair (as was the hair found in Jessica Ryen's clenched hand), and as described by witnesses in the Canyon Corral Bar who saw three men with blood on their clothes entering that establishment in the morning after the murders; and Lea Jo DeStefano and Elisa Renata Aráuz-DeStefano, the daughter and stepdaughter of Lee Furrow, respectively, who believe Mr. Cooper is innocent and that Furrow is "guilty of multiple murders who remains a threat to us and our mother." The daughters wrote a letter to Governor Newsom asking that he reopen Mr. Cooper's case "and allow justice to prevail."[4] An independent investigation cannot, without explanation, ignore evidence that points directly to Mr. Cooper's innocence and cavalierly not interview individuals with directly relevant information.

Throughout the Report, Special Counsel repeatedly points to evidence that was presented in prior court proceedings without independently analyzing whether the evidence is credible or justifies Mr. Cooper's conviction. Special Counsel places the burden on Mr. Cooper to disprove the prosecution's theory even though Mr. Cooper is powerless to do so given that his legal team lacks any subpoena power to obtain the law enforcement files that have been hidden from Mr. Cooper for 40 years. Incredibly, Special Counsel served a subpoena for documents on Mr. Cooper's counsel but did not subpoena any documents from law enforcement, which resisted the innocence investigation and has failed to cooperate as is essential for any innocence investigation to be credible. Special Counsel gives the prosecution's evidence a presumption of reliability without having conducted any independent investigation into those matters. Summarizing and relying on evidence that was presented at trial is the work of appellate courts. An independent innocence investigation, as the Executive Order states clearly, affirmatively seeks to determine whether there is any new evidence, not yet uncovered, that supports a person's claim of actual innocence. As set forth below, Special Counsel failed to undertake any independent effort and took no affirmative

[4] Letter from Leah DeStefano and Elisa Renata Aráuz-DeStefano to Gov. Gavin Newsom on the Kevin Cooper Case (Jan. 29, 2021).

steps to uncover new evidence or leads to new evidence that would or could support Mr. Cooper's claim of innocence. It is especially concerning that Special Counsel made no effort to investigate the reasons for the already-established instances of massive malfeasance, misconduct, and due process violations, including but not limited to, those relating to forensic evidence, which on its own demonstrates that the Report is incomplete and its conclusions are biased and unreliable.

Compounding these errors, Special Counsel purports to buttress his conclusions with four expert reports. All of Special Counsel's experts fail to qualify as experts. None demonstrate that they have the appropriate qualifications, knowledge, skill, experience, training, or education in their purported field of expertise to render their opinions. Special Counsel's expert reports are so shabby that they even fail to provide the expert's qualifications and are unsigned and undated. Furthermore, all of them are biased in favor of the prosecution because they each had a personal and vested interest in reaching their results.

Special Counsel relies heavily on the DNA evidence to support his unjustified conclusions. However, that evidence is not reliable, credible and could never be used today to justify Mr. Cooper's conviction. Simply, there is no competent DNA evidence that connects Mr. Cooper to the Ryen/Hughes crimes. *See* Paula Mitchell Report. Worse, Special Counsel fails to even investigate the veracity of the DNA "evidence" that is narrated by one of his experts, Alan Keel.

Mr. Keel purports to opine on the reliability of physical evidence, DNA testing, and the "competence and truthfulness of San Bernardino County lab criminalist Dan Gregonis." Keel Rpt. at 3. *See* discussion *infra* Section II.B.1.a. This is not the first time Mr. Keel has offered opinions without providing the scientific basis. In 2013, a federal court in Illinois held that it "cannot conclude that Keel employed a reliable methodology in reaching his conclusion" (*id.*); similarly, in 1999, a court rejected the entirety of Mr. Keel's 27 days of testimony as head of the San Francisco Police Department crime lab on the grounds that he was biased and failed to employ scientifically acceptable principles in rendering his opinions; and, in 2020, the California Association of Criminalists ("CAC") investigated Mr. Keel and Mr. Blake, the latter who is also a criminalist who has long collaborated with Mr. Keel, for ethics violations in a Texas murder case in which attorneys seeking to exonerate an inmate serving two life sentences needed evidence Keel held in the lab, where he and Mr. Blake worked. Mr. Keel refused to turn over the evidence, calling it "work product," and only belatedly complied with the court order after a proposed contempt order was issued against him and he retained a lawyer. *Id.* Most recently, on June 5, 2023, Mr. Keel was named as a defendant in a federal civil rights lawsuit in Los Angeles in which an innocent woman spent nearly two decades in prison in a 2000 case in which Mr. Keel lied about his testing of blood

samples that were critical to the conviction and also destroyed bench notes, making peer review of his work impossible. *Id.* Thus, Special Counsel should not have relied on Mr. Keel's conclusions, that are, in essence, junk science.

Special Counsel also delegated the lion's share (or all) of the investigation to Mark Lillienfeld even though he is a biased former homicide detective with a checkered professional history and no demonstrated training or experience in conducting neutral, innocence investigations.

The 243-page Special Counsel Report simply was not the independent investigation into Mr. Cooper's innocence that the Executive Order mandated—leaving Mr. Cooper, once again, with justice denied. Mr. Cooper therefore respectfully submits that the Governor should reject Special Counsel's Report and grant his commutation petition. In the alternative, the Governor should order a new independent, innocence investigation staffed with a legal team with skill and experience in conducting post-conviction review of capital murder convictions, and with experienced investigators who will pursue all credible leads that may finally establish Mr. Cooper's innocence (or confirm his conviction).

II. SPECIAL COUNSEL DID NOT COMPLY WITH THE GOVERNOR'S EXECUTIVE ORDER TO CONDUCT A FULL AND INDEPENDENT INNOCENCE INVESTIGATION

Executive Order N-06-21 required Special Counsel to conduct an innocence investigation regarding Mr. Cooper's conviction. Specifically, the Order appointed Morrison & Foerster LLP to serve as "Special Counsel to the Board of Parole Hearings" to conduct an "independent investigation" in connection with Mr. Cooper's application for clemency and claims of innocence.[5] It required Special Counsel to conduct a comprehensive review of all facts and evidence regarding Mr. Cooper's innocence, including a full review of the trial and appellate records in this case and of all facts underlying the conviction; facts and evidence that were not in the trial and appellate records; and an evaluation of all available evidence, including recent DNA tests, Executive Order N-06-21 at 2. The Executive Order underscored the importance of this full factual review, explaining that "especially in cases where the government seeks to impose the ultimate punishment of death," the

[5] Mark R. McDonald, a partner based in the Los Angeles office of Morrison & Foerster, led the investigation. It is unclear to Mr. Cooper and his counsel how the firm and Mr. McDonald were selected as Special Counsel. In any event, Special Counsel is therefore referred to as "he" or "him" throughout this rebuttal report.

Governor must be "satisfied that all relevant evidence is carefully and fairly examined." *Id.* Moreover, the Executive Order required that the investigation be "independent." Further, the Executive Order did not require establishing who, in fact, committed the Ryen/Hughes crimes to support a finding of innocence. As established herein, Special Counsel failed to comply with the Executive Order in at least three critical ways.

A. Special Counsel Failed to Conduct a "Full Review" of All Available Facts and Evidence

Special Counsel failed to conduct a full review of all facts and evidence surrounding Mr. Cooper's conviction.

1. Special Counsel Failed to Collect All Documents in the Possession of the SBCDA and the SBSD Underlying Mr. Cooper's Conviction

The most egregious omission in Special Counsel's investigation and Special Counsel's Report was the failure to obtain records from the San Bernardino County District Attorney's Office ("SBCDA") and the SBSD (or any other source), as he should have, including all documents in their possession relating to Mr. Cooper's conviction. For nearly 40 years, Mr. Cooper has vainly sought the full law enforcement files relating to his case; these are necessary to comply with the Executive Order's mandate and are essential components of an innocence investigation.

In his February 2016 clemency petition, Mr. Cooper established that the SBCDA and the SBSD failed to turn over all documents in their possession, custody, and control. *See* Exhibit 2 (Appendix D to Mr. Cooper's Clemency Petition submitted Feb. 17, 2016, Discovery Requests for Examination of Physical Evidence). Special Counsel was well aware of this fact; not only did he have Mr. Cooper's clemency petition, but on multiple occasions throughout the investigation, Mr. Cooper told Special Counsel that the SBCDA and the SBSD had failed to provide all documents in their possession relating to Mr. Cooper's conviction to Mr. Cooper's legal team and, in turn, to Special Counsel and requested Special Counsel to obtain them.

Specifically, in November 2021, Special Counsel requested from the SBCDA "all materials in the possession of the [SBCDA] and [SBSD] that relate to the investigation and case against Mr. Cooper that *were not previously produced*." *See* Exhibit 3 (Letter from Special Counsel Re: Investigation into Kevin Cooper's Claim of Innocence, Nov. 22, 2021, (emphasis added)). Despite

Special Counsel's requests, no such records were ever produced. In fact, Special Counsel informed Mr. Cooper that he received only "discovery materials that were [already] produced to the Cooper defense team in connection with Mr. Cooper's 1984 trial." *Id.* (emphasis added).

To assist Special Counsel's investigation, in January 2022, a year prior to the issuance of his report, Mr. Cooper provided Special Counsel with a list of priority documents that Special Counsel should immediately request from the SBCDA and the SBSD relating to Mr. Cooper's conviction that were probative of his innocence, including documents relating to:

- The Pro-Keds shoes and shoeprints purportedly found at the scene of the Ryen/Hughes crimes;
- Articles of clothing related to the Ryen/Hughes crimes;
- Blood drop A-41 and Mr. Cooper's claims of evidence tampering;
- The cigarette butts the SBSD found in the course of its investigation;
- Luminol testing of the shower in the Lease house;
- SBSD personnel files for Daniel J. Gregonis, Craig Ogino, Hector O'Campo, David Stockwell, Tim Wilson, and Mike Stodelle;
- Joshua Ryen's initial description of suspects;
- SBSD's awareness of other suspects and their failure to investigate those suspects; and
- SBSD's misconduct and multiple *Brady* violations.

Cooper Priority Document Request.[6]

[6] Exhibit 4 (Mem. from Orrick, Herrington & Sutcliffe ("Cooper") to Independent Investigation Team, Morrison & Foerster ("Special Counsel") Regarding Priority Document Request List for Independent Investigation (Jan. 4, 2022) ("Cooper Priority Document Request").)

Each category of documents would have been in the possession, custody, and control of the SBCDA and the SBSD. More importantly, each category of documents is directly probative of the integrity of Mr. Cooper's conviction and his claims of innocence because they relate to facts, information, or evidence obtained during the pretrial investigation or presented at trial, as well as facts and evidence that have come to light in the decades since, including those related to severe misconduct by the SBCDA and the SBSD. Indeed, one of the most outrageous aspects of this case is that Mr. Cooper never received (and knows nothing about) any and all documents found on the Ryen property after the murders were committed. They certainly could and would have shed light on who might have wanted to harm them. The same is true for the phone records of the Ryens, as well as other phone records in the case (e.g., Lee Furrow's calls prior to and after the murders, including a call that Lee Furrow made to his estranged wife, Diana Roper, after the time of the murders). Thus, Special Counsel was undoubtedly required by the Executive Order to obtain and consider these documents, facts and information contained therein in order to conduct an independent, careful, and fair review of all relevant evidence. *See* Executive Order at 2.

When the SBCDA and the SBSD did not produce the requested documents, the Special Counsel failed to take steps to obtain them and instead turned to the Cooper team. Although Special Counsel had the authority to subpoena documents and records from the parties—he only subpoenaed documents from Mr. Cooper's team. If the SBCDA and the SBSD refused to produce relevant documents, Special Counsel could and should have compelled their production. Rather than subpoenaing the documents in possession of the SBCDA and the SBSD that had not been produced, especially the documents Mr. Cooper identified as critical to his case, Special Counsel simply opted not to seek those records and turned a blind eye to the strong possibility that they would have conclusively established Mr. Cooper's innocence. In so doing, Special Counsel failed to comply with the Executive Order's mandate that it collect and review all facts underlying Mr. Cooper's investigation—including, "facts and evidence that do not appear in the trial and appellate records." *See* Executive Order at 2.[7] As explained below, *see infra* Section II.A., this not

[7] Use of Executive Orders has strong precedent in the death penalty context generally. In one recent example, a committee of Oklahoma state legislators appointed the law firm of Reed Smith to conduct "an independent review of the entire case record and any additional information relevant to [Oklahoma death row inmate Richard] Glossip's case and conviction." The findings of the report that Reed Smith prepared "therefore extend[ed] well beyond the case's judicial record and raise serious concerns as to the integrity of Glossip's conviction." The Reed Smith team of "over 30 lawyers, three investigators and two paralegals devoted more than 3,000 hours to the independent

only violates the explicit direction of the Executive Order, but it is totally inconsistent with an innocence investigation in a case involving law enforcement misconduct such as occurred here. Special Counsel thus failed to carry out his most important obligations: to obtain and analyze documents regarding law enforcement's malfeasance that resulted in Mr. Cooper's wrongful conviction, wrongfulness that the Governor's chief legal officer has conceded.

2. Special Counsel Failed to Consider Material Facts and Circumstances That Impacted Mr. Cooper's Conviction

Special Counsel chose not to consider certain facts and circumstances surrounding Mr. Cooper's trial and conviction, including: (a) how the issues of race may have impacted the investigation, trial, conviction, and sentencing; (b) the impact of prosecutorial misconduct, destruction of evidence, and *Brady* violations on Mr. Cooper's conviction; and (c) the impact of ineffective assistance of counsel on Mr. Cooper's trial and conviction. SCR at 3. Just one example of ineffective assistance was the failure of Mr. Cooper's trial counsel to call Diana Roper as a witness, even though she provided law enforcement with the bloody coveralls that belonged to Lee Furrow, a prime suspect. She told a deputy sheriff that Furrow had worn them on the night of

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investigation on a pro bono basis. The team reviewed more than 12,000 documents totaling 146,168 pages and contacted 72 witnesses, including 38 civilians and members of law enforcement. Team members also interviewed seven jurors, two experts, and several members of the media who had knowledge of the case and conducted a 3.5-hour interview with Glossip at the Oklahoma State Penitentiary. As detailed in the report, Reed Smith obtained new documents pertaining to the case and spoke to witnesses never interviewed by police, prosecutors or Glossip's defense teams. The firm's team also pursued missing records and provided novel analysis to all evidence examined, both existing and newly discovered." In its report, Reed Smith identified all of the witnesses who the law firm interviewed and the documents reviewed and analyzed. *See Reed Smith investigation into Glossip Death Row Case Raises Grave Concerns*, Reed Smith (June 15, 2022), https://www.reedsmith.com/en/news/2022/06/reed-smith-investigation-into-glossip-death-row-case-raises-grave-concerns (last accessed May 9, 2023). This serious and comprehensive review of Mr. Glossip's claims of innocence stands in conspicuous contrast to Special Counsel's report that does not even identify what process Special Counsel followed, who was his client, and perhaps most importantly, what witnesses he interviewed and what documents he reviewed, and by implication who he failed to interview and what documents he did not obtain or review.

the Ryen/Hughes crimes, and she had asked to speak to the homicide detective. Nevertheless, law enforcement never had the coveralls tested and ultimately destroyed them. Because each of these circumstances relate to Mr. Cooper's conviction and are probative of his innocence, Special Counsel was required to consider them as part of his independent investigation. His failure to do so shows his disregard of his obligations under the Executive Order. Ignoring critical issues that warrant a detailed and thorough investigation into Mr. Cooper's claims of actual innocence can only be characterized as legal malpractice.[8]

a) Special Counsel Refused to Consider the Impact of Mr. Cooper's Race on His Conviction

California Governor Gavin Newsom has recognized that "California's capital punishment scheme is now, and always has been, infected by racism."[9] Race has—and continues—to affect what charges or penalty is sought, the conduct of those involved in the trial, and the jury's verdict.[10] Black defendants are wrongfully convicted at a much greater rate than their white counterparts; while Black people are only 13.6% of the U.S. population,[11] they make up 52.6% of known

[8] Special Counsel inexplicably cut short his investigator's interview of Kevin Cooper that lasted only approximately 90 minutes and refused to resume and complete that interview, thereby establishing a clear lack of transparency in the investigation by denying Mr. Cooper a voice and the opportunity to explain in detail his claims of actual innocence.

[9] *See* Brief of Hon. Gavin Newsom as Amici Curiae Supporting Defendant-Appellant McDaniel at 22, *People v. McDaniel*, No. S171393 (Cal. Oct. 26, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/10/10.26.20-Governor-Newsom-McDaniel-Amicus-Brief.pdf.

[10] Pet. for Clemency 16, 153-154 (Feb. 17, 2016) ("2016 Clemency Pet."); IACHR, Report No. 52/15, Case No. 12,831, Kevin Cooper, Merits, United States (Sept. 12, 2015) ("Cooper IACHR 2015 Merits Report"); Memo from Cooper to Special Counsel Regarding Kevin Cooper Innocence Investigation: Racial Bias (July 12, 2022) ("Memo Regarding Cooper Innocence Investigation: Racial Bias").

[11] U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/US/IPE120221 (last visited May 6, 2023).

exonerations.[12] Forty percent of defendants imprisoned for murder are Black,[13] compared to 55% of murder exonerations.[14] A study by The National Registry of Exonerations shows that Black individuals are seven times more likely to be wrongly convicted of murder than white people.[15] And where victims are white, Black defendants are much more likely to be wrongly convicted than white defendants, i.e., for homicides; the risk of a wrongful conviction in cases where the victim was white is nearly twice that of cases where the victim was Black.[16] Even when exonerations ultimately occur, on average, Black exonerees spend three more years in prison before they are exonerated than white exonerees.

Death penalty cases are notoriously rife with racial discrimination. The report "Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty," issued in September 2020 by the Death Penalty Information Center ("DPIC"), concluded that the "modern death penalty is the direct descendant of slavery, lynching, and Jim Crow segregation."[17] As Robert Dunham, DPIC's Executive Director and the report's editor, explains: "What is broken or intentionally discriminatory in the criminal legal system is visibly worse in death-penalty cases." *Id.* "While official misconduct was a significant factor in exonerations of white death-row survivors, present in 58% of those cases, it contributed to 79% of the wrongful convictions of Black death-row exonerees."[18] Here, there is overwhelming and undisputed evidence of official misconduct.

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[12] The Nat'l Registry of Exonerations, *Exonerations by Race/Ethnicity and Crime,* https://www.law.umich.edu/special/exoneration/Pages/ExonerationsRaceByCrime.aspx (last visited May 6, 2023).

[13] E. Ann Carson, *Prisoners in 2020 – Statistical Tables*, U.S. Dep't of Justice 13 Table 5, 30 (Dec. 2021), https://bjs.ojp.gov/content/pub/pdf/p20st.pdf.

[14] Samuel R. Gross, et al., *Race and Wrongful Convictions in the United States 2022* 4 (Sept. 2022), https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf.

[15] The Nat'l Registry of Exonerations, *Exonerations by Race/Ethnicity and Crime*, *supra* note 11.

[16] The Nat'l Registry of Exonerations, *Exonerations by Race/Ethnicity and Crime*, *supra* note 11.

[17] Ngozi Ndulue, *Enduring Injustice: the Persistence of Racial Discrimination in the U.S. Death Penalty*, Death Penalty Information Center (May 28, 2010), https://files.deathpenaltyinfo.org/documents/reports/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf.

[18] THE INNOCENCE EPIDEMIC, A DEATH PENALTY INFORMATION CENTER ANALYSIS OF 185 DEATH-ROW EXONERATIONS SHOWS MOST WRONGFUL CONVICTIONS ARE NOT MERELY

Given this stark reality, an investigation that required a "full review of . . . the facts underlying the conviction" necessarily must consider how official misconduct and race impacted the investigation into the Ryen/Hughes crimes, the prosecution of Mr. Cooper, and the ultimate conviction and sentencing. In fact, the many factors leading to Mr. Cooper's conviction and sentencing that were improperly influenced by Mr. Cooper's race are well documented.[19] The 2015 IACHR Merits Report, the 2016 Clemency Petition, and memos submitted by the Cooper team to the Special Counsel all identify race as a major issue that affected the investigation, decisions about the charges and/or penalty sought, the conduct of those involved in the trial, and the jury's verdict.[20] Thus, Special Counsel's decision not to consider the impermissible impact of race is an even more glaring, shocking omission.

Special Counsel failed to look at the multiple ways that race impacted Mr. Cooper's conviction. First, race played a critical role in SBSD's initial investigation of the Ryen/Hughes crimes. *See* discussion *supra* Section II.A.2.a. When the Ryen/Hughes crimes were first discovered, the sole surviving victim, eight-year-old Josh Ryen, told clinical social worker Don Gamundoy at the hospital that the killers were three white men, an interview that Special Counsel's expert, Mitchell L. Eisen, entirely ignored in his report. As SBSD Deputy Dale Sharp testified at trial (99 RT 6010-12, 6016-17), while still in the hospital, Josh informed the detective that three white men in the house attacked his family, and that earlier in the day three "Mexican" men drove up in a Chevy Impala and talked to his father in the driveway as the family was leaving for a barbecue. The next day, Josh told Deputy O'Campo that one attacker was "Mexican." At trial, Josh reversed himself and stated that he saw one "dark shadow." Between June 5, 1983, and the beginning of the trial in October 1984, Josh never said that he saw a Black man, or that a Black man killed his family. To the contrary, when he saw Cooper's photo on television while in the hospital (on June 15, 1983), he turned to Deputy Luis Simo with whom he was playing a card game and said, "that's not the guy that did it." 101 RT at 6401-6404. On June 7, 1983, the SBSD published a Criminal Bulletin consistent with

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ACCIDENTAL, at p. 4, Death Penalty Information Project (Feb. 18, 2021), available at https://dpic-cdn.org/production/documents/pdf/The-Innocence-Epidemic.pdf?dm=1683576587 (last viewed Oct. 19, 2023).

[19] 2016 Clemency Pet., *supra* note 9, at 16, 153-154; Cooper IACHR 2015 Merits Report, *supra* at 27; Memo Regarding Cooper Innocence Investigation: Racial Bias, *supra* note 9.

[20] 2016 Clemency Pet., *supra* note 9, at 16, 153-154; Cooper IACHR 2015 Merits Report, *supra* at 27; Memo Regarding Cooper Innocence Investigation: Racial Bias, *supra* note 9.

Josh's description of the suspects as white or Mexican.[21] However, once a Black man was identified as having been in a nearby vacant house around the time of the murders, Mr. Cooper became the sole target of the SBSD's investigation despite Josh Ryen's description of three white or Hispanic assailants. As a result of Mr. Cooper's race, law enforcement exhibited tunnel vision and focused on a Black man, whose race played into their bias and the fears of the local community. In so doing, the SBSD abandoned credible leads to the true suspects overlooking and, in some instances, *destroying* exonerating evidence.[22] Special Counsel failed to acknowledge this reality and failed to conduct a full review and investigation into these significant issues.

Second, the trial record establishes that the prosecution targeted Mr. Cooper because he is Black when it questioned prospective Black jurors and exercised peremptory challenges to Black jurors in violation of the *Batson* rule. Pursuant to *Batson*, counsel cannot base a peremptory challenge on a potential juror's race, gender, or ethnic origin. *Batson v. Kentucky*, 476 U.S. 79, 80 (1986) ("[T]he Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant."). At the time of Mr. Cooper's trial, there were strong anti-Black sentiments in San Bernardino County. Crowds outside the courthouse hanged a stuffed-animal monkey in effigy and waved signs with racial epithets such as "Hang the Nigger"—an obvious reference to Mr. Cooper. *See* 12 RT 241:18-242:5, Trial Exs. V-40 – V-44 (Testimony of Luis Blanco).[23] As a result, Mr. Cooper's then-counsel moved for a mistrial. Although the trial court denied the motion, *see People v. Cooper*, 53 Cal. 3d 771, 835 (1991), these events establish that racial prejudice was virulent in San Bernardino at the time of Mr. Cooper's trial and Special Counsel was required to consider how race infected law enforcement's actions.

Racial prejudice in San Bernardino County has been the basis for overturning convictions—making Special Counsel's failure to consider it in this case even more egregious. Consider the case of Dennis Mayfield, a Black man who was tried and convicted of the murder of a Rialto police officer in 1986. In June 2020, a federal judge in Los Angeles vacated Mr. Mayfield's conviction and death sentence after determining that the prosecutor had discriminated against prospective Black jurors by engaging in inappropriate lines of questioning and by dismissing some "in a purposefully

[21] SBSD Criminal Bulletin, No. 16 dated June 7, 1983.
[22] *People v. Cooper*, CR 72787, 102 RT 6545-55; Cooper IACHR Merits Report (Sept. 12, 2015) at 27.
[23] Reporter's Transcripts of Cooper's 1984-1985 trial ("RT").

discriminatory manner."[24] Just as in Dennis Mayfield's case, the prosecution impermissibly limited the composition of the jury to include only two Black jurors.[25]

Third, Mr. Cooper did not fit the racial profile of the murderers that Josh Ryen identified as three white or "Mexican" men. Evidence that there were multiple killers and that none of them was Black include:

1. Josh Ryen's identification of three white or Hispanic men as the attackers. On multiple occasions, Josh referred to the assailants in the plural, saying "they . . . chased us around the house," that Josh had "[t]ried to fight 'em' off," "[t]hey came and hit me," and "[t]hey snuck up behind me and hit me." 101 RT 6357-60, 6364, 6368. Josh maintained that there were three attackers until later interviews, which were influenced by San Bernardino officials.[26] Dr. Hoyle heard Josh refer to the assailants in the plural "at least six times." 34 RT

[24] *Mayfield v. Broomfield*, No. CV 97-3742 FMO, 2020 U.S. Dist. LEXIS 112667 (C.D. Cal. June 26, 2020).

[25] Jetalyn Kahloah Doxey and William T. Woods were the two Black jurors; Cooper's trial counsel, Mr. Negus, remarked at trial on October 15, 1984: "The *Wheeler* case says that if one wishes to object to the prosecution kicking off minority groups during the peremptory challenges, that one should let them know as early as possible so that they can keep a record of the reasons why they do it. Based on the fact that the prosecution made seven challenges for cause during the Witherspoon [case,] of which four were of racial or ethnic minorities, I wish to put them all on notice that I will be making *Wheeler* objections to their kicking off racial minorities and so that they should keep a list of their reasons. At the present time there is [sic] 14 Blacks, 16 Chicanos, and one Filipino on the 119-person panel, so the odds are we should have at least some minority members on the jury if they are not kicked in a discriminatory fashion." The court responded "fair enough. I'm certain that it occurred to counsel and that they will have good and sufficient cause before they excuse any jurors." 82 RT 1822-23. When potential juror William Mitchell, a Black man and an outspoken opponent of the death penalty, was excused, Mr. Negus objected that "[e]verybody that Mr. Kochis is challenging seems to be either women or Black and we're going to end up with an[] all-white jury." The court responded "No. We have cleared several Black people so far." Mr. Negus responded: "Not very many. Kicked off half of that." The court overruled Mr. Negus' objections remarking: ". . . it appears appropriate and necessary that we do excuse him so we can get a unified jury to act in both phases." 78 RT 851:4-23.

[26] *See* discussion *supra* section IV.F.

2171:7-11. When asked by Deputy District Attorney Kochis, "Did Joshua at any time describe actually seeing three Mexican adults inside his house attacking his family?", Dr. Hoyle contradicted his knowledge obtained earlier and said "No."[27] 34 RT 2192:6-8. Also, eight months later, when asked by defense attorney David Negus: "[D]id Josh ever directly state that he had seen three Mexicans in the house during the attack?", Dr. Hoyle stated, "No, he never did." 101 RT 6371:17-19.

It is important to note that both Mr. Cooper's expert and Special Counsel's expert concur that Josh Ryen's description of the attackers closest in time to the murders are the most probative and reliable. Special Counsel failed to even consider this in his analysis whether Mr. Cooper is actually innocent.

2. Sightings of the station wagon by witnesses around the time of the murder. Four witnesses saw one to four white men in the Ryen station wagon after the murders occurred.[28]

3. On June 7, 1983, two days after the crime was discovered, the SBSD issued a statewide Criminal Bulletin stating the suspects were three white or Mexican males, one wearing a blue short-sleeved shirt, one wearing a white T-shirt, and one wearing a red long-sleeved shirt.

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[27] Dr. Hoyle explains that Josh may not have said "Mexicans," but he inferred that and wrote it into his report parenthetically. 34 RT 2185-2189. Dr. Hoyle explained that Mexicans were on his mind because Josh said three Mexicans approached his house earlier in the day of the murders.

[28] A few witnesses reported slightly varying statements of seeing from one to four men speeding in the Ryen car or one resembling it speeding down the road from the Ryen home soon after the killings. 102 RT 6590-91, Testimony of D. Leonard; 102 RT 6600-01, Testimony of P. Leonard; 103 RT 6801-03, Testimony of L. Edwards, 103 RT 6800, 102 RT 6587-92, 6595. Another witness saw three white men in the Ryens' station wagon in the afternoon the day of the murders when they nearly collided with the car she was driving. She recalled that she and her passenger felt they were acting strangely and wrote down the license plate number. Shortly afterward, she learned from a television report that the plate number she had recorded belonged to the Ryen station wagon. She wrote a letter addressed to the "Chino Police" reporting this sighting and the license plate number, but her letter was apparently ignored by authorities; it never came up in the investigation and was never turned over to the defense. Declaration of Jane Doe dated Aug. 18, 2015 ("J. Doe Decl.").

4. Two bloody shirts were discovered near the Canyon Corral Bar after the crime. These two shirts that were discarded near the crime scene point to multiple killers. An orange towel found near one of the shirts had a DNA profile that was not from any victims or Mr. Cooper. These shirts match the description in the statewide bulletin, further supporting the description of the attackers being three men.[29] Carelessly or suspiciously, as detailed below, law enforcement lost and/or destroyed the blue shirt, as happened with other evidence.

5. Three men matching the description, two with blood on their shirts, were spotted in the Canyon Corral Bar after the murders, another clear indication of multiple murderers.[30]

The facts above specifically provide the number and race of the murderers, none of which is a Black man. Instead of launching a criminal investigation for the three white or Mexican killers, the investigation focused exclusively on Mr. Cooper, a Black man. Nevertheless, Special Counsel refused to investigate how racism infected Mr. Cooper's prosecution and thus the determination of his innocence or guilt. And, setting aside how race infected this malfeasance, Special Counsel failed to address this mountain of evidence that establishes Mr. Cooper's innocence. This omission is particularly shocking in light of the racism during the investigation which included law enforcement's destruction of evidence, including but not limited to, the crime scene, as well as coveralls and the blue shirt that were worn by the potential murderers.[31] *See supra* Section II.A.2.

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[29] The bloodstained tan, medium size, Fruit of the Loom T-shirt with a front pocket, and an orange bath towel were recovered from Peyton Road, not far from the Ryen house and the Canyon Corral Bar. *Cooper v. Brown*, 565 F.3d 581, 585, 628 (9th Cir. 2009); 31 RT 1790-91, Testimony of S. Field; the existence of two bloody shirts discarded near the crime scene points to multiple killers, which strongly supports Mr. Cooper's innocence. *Cooper*, 565 F.3d at 627-29.

[30] Exhibit 1, Doxey Decl.

[31] Mr. Cooper's counsel provided Special Counsel with a detailed memo, dated December 6, 2021, of eyewitness testimony corroborating police reports and court and interview transcripts that reveals evidence to support the theory regarding the two other men who were with Furrow on the day of the murders driving in a green Chevy with black pinstripes and a torn vinyl roof and that the car was seen by several witnesses during the week before the killings and through the day and night of June 4, 1983, including Josh telling Deputy Sharp the car that came to his house was a Chevy Impala. *See* Exhibit 5 (Mem. to Special Counsel Re: Sightings of a Green Chevy, Nov. 22, 2021).

b) Special Counsel Failed to Consider Police and Prosecutorial Misconduct Leading to Mr. Cooper's Wrongful Conviction

The Supreme Court of the United States has defined prosecutorial misconduct as "overstepp[ing] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense." *Berger v. United States*, 295 U.S. 78 (1935). Similarly, the National Registry of Exonerations defines official misconduct as "[p]olice, prosecutors, or other government officials [who] significantly abused their authority or the judicial process in a manner that contributed to the exoneree's conviction."[32] Police misconduct is a leading cause of wrongful convictions in the United States, with police and officials committing misconduct in 59 % of exonerated cases since 1989.[33] In fact, police and official misconduct are even more prevalent in homicide cases—with police and official misconduct accounting as a contributing factor in 73 % of homicide exonerations.[34] Recent examples of exonerations where police and official misconduct was a contributing factor include:

- In 2021, David Morris' convictions were vacated 16 years and three months after he was convicted of two counts of first-degree murder. The Baltimore City District Attorney's Office Conviction Integrity Program ("CIP") investigated and concluded that a suspect other than Morris had been identified and investigated before Morris' trial, but this was not disclosed to his defense attorneys, nor was the fact that the arresting officer had a previous misconduct finding.[35]

Special Counsel seemingly failed to consider this memo at all and to investigate the details in the memo.

[32] The Nat'l Registry of Exonerations, *Glossary*, https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx (last visited May 6, 2023).

[33] The Nat'l Registry of Exonerations, *% Exonerations by Contributing Factor*, https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx (last visited May 6, 2023).

[34] The Nat'l Registry of Exonerations, *% Exonerations by Contributing Factor*, *supra* note 31.

[35] Chris Boyett, *Prosecutors drop murder charges as Maryland man is exonerated after nearly 17 years in prison*, CNN.com (Nov. 4, 2021, 2:32 AM), https://www.cnn.com/2021/11/04/us/david-morris-exonerated-maryland-prison/index.html; The Nat'l Registry of Exonerations, *David Morris*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6066 (last visited May 6, 2023).

- In 2022, Milton Jones' convictions of second-degree murder, two counts of armed robbery, and unlawful use of a weapon were vacated after the court found that the eyewitnesses' descriptions were inconsistent and changed over time, police subjected the witnesses to multiple suggestive identification procedures, including a police-led group discussion and a highly suggestive in-court identification process, and that two of the identifications were cross-racial. The trial prosecutor's failure to disclose information that would have aided Jones' pretrial investigation and defense was also "deeply troubling" to the court.[36]

Mr. Cooper asked Special Counsel to investigate SBSD's and SBCDA's misconduct, including a review of all *undisclosed* police reports and the full law enforcement file.[37] Mr. Cooper argued that an investigation into SBSD's and SBCDA's misconduct would show, among other things, that the SBSD and the SBCDA neglected to investigate leads that would have established Mr. Cooper's innocence as well as destroyed evidence that would have inculpated other suspects, including Lee Furrow, and significant wrongdoing relating to forensic testing. *See* discussion *supra* Section III. Despite Mr. Cooper's request, Special Counsel decided not to investigate Mr. Cooper's allegations of law enforcement or prosecutorial misconduct except insofar as the allegation was relevant to his claim of innocence. *See* SCR at 3. Given the devastating impact police and prosecutorial misconduct can have on convictions and the Executive Order's mandate that Special Counsel consider *all* facts underlying Mr. Cooper's conviction, *see* Executive Order N-06-21 at 2, Special Counsel's failure to consider SBSD's and SBCDA's misconduct is egregious and undoubtedly inconsistent with the Executive Order. Also, without thoroughly investigating the government's misconduct, it is impossible to evaluate what effect it had on the validity of the conviction. This allowed Special Counsel to parrot the trial and appellate courts without seriously evaluating Mr. Cooper's claims of actual innocence. It also allowed Special Counsel to avoid deciding whether, consistent with all the evidence, Mr. Cooper was wrongfully convicted—a conclusion that Mr. Sapp, the Governor's Legal Affairs Secretary, has since reached.

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[36] Boston College Law School Magazine, *Court Vacates Conviction of Innocence Program Client*, https://lawmagazine.bc.edu/2022/11/court-vacates-conviction-of-innocence-program-client/ (Nov. 22, 2022); The Nat'l Registry of Exonerations, *David Morris*, *supra* note 33.

[37] Memo to Special Counsel dated Oct. 27, 2021 Regarding Essential Documents related to alternative suspects and relevant Timeline of Case ("Mem. to Special Counsel re Essential Documents dated Oct. 27, 2021").

Had Special Counsel investigated SBSD's and SBCDA's misconduct, it would have determined it was, at a minimum, a contributing factor in Mr. Cooper's conviction and thus supports a finding of Mr. Cooper's actual innocence.

First, when the Ryen/Hughes crimes occurred in San Bernardino, they were among the most notorious crimes in the state's history and the Sheriff's Department was under intense pressure to solve them.[38] As in the Harlem Park Three,[39] wherein three Black men were recently exonerated after a public records request uncovered police reports containing witness statements implicating a different person as the killer, Mr. Cooper's case included the only surviving eyewitness, Josh Ryen, changing his story that three white men were responsible for the murders to shifting his story that Mr. Cooper may have been responsible. Mitchell L. Eisen, Ph.D., Report, undated ("Eisen Rpt.").

Second, Mr. Cooper informed Special Counsel of the numerous instances in which the prosecution failed to disclose material exculpatory information. It is axiomatic that the prosecution must disclose exculpatory evidence and material that is potentially favorable to the accused if it is known to the prosecutor, police investigators, or other government agents. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that the "suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment");[40] *see also Strickler v. Greene*, 527 U.S. 263, 280-81 (1999); *United States v. Bagley*, 473 U.S. 667, 682 (1985) (materiality is the reasonable probability that the result would have been different); *United States v.*

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[38] *Cooper*, 53 Cal. 3d at 809; Erin Moriarty, *Kevin Cooper case: Was the wrong man convicted in the 1983 Chino Hills massacre?*, CBSNews.com (Feb. 22, 2019, 12:56 PM), https://www.cbsnews.com/news/kevin-cooper-chino-hills-massacre-can-dna-tests-prove-wrong-man-was-convicted-in-quadruple-slaying/ ("Police were under pressure to find the killer, and the community was terrified.").

[39] The Nat'l Registry of Exonerations, *Alfred Chestnut*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5641 (last updated Oct. 27, 2021). Alfred Chestnut, Ransom Watkins, and Andrew Stewart, also known as the Harlem Park Three, were recently exonerated—after nearly four decades in prison—when a public records request uncovered police reports with witness statements implicating a different person as the shooter. Three witnesses had pointed to one shooter committing the murder, but the fourth witness' identification was the sole foundation connecting the three defendants to the crime, and there was an unexplained shift in the investigation from one perpetrator to three.

[40] *Brady*, 373 U.S. at 87.

Olsen, 737 F.3d 625, 631 (9th Cir. 2013) (Kozinski, A., dissenting) ("*Brady* violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend."). The prosecution committed no fewer than eight *Brady* violations in the instant case, including:

1. Failure to disclose to the defense the existence of bloody coveralls that suspect Lee Furrow wore on the night of the murders which were given to the SBSD and were not preserved, tested (to our knowledge), or turned over to the defense;[41]

2. Failure to disclose to the defense that a blue short-sleeved shirt with blood on it was found near the crime scene, was not tested (to our knowledge), and is now missing;[42]

3. Failure to disclose to the defense that witnesses told the SBSD that three white suspects with blood on their clothing were seen in the Canyon Corral Bar the night of the murders;[43]

4. Failure to disclose to the defense that Midge Carroll, the warden at California Institution for Men, provided information to the SBSD that the shoes that purportedly left shoeprints at the crime scene were not special "prison issue" shoes but were in fact generally available at retail stores;[44]

5. Failure to disclose to the defense that an SBSD officer, Kenneth Shreckengost, approved the destruction of the bloody coveralls notwithstanding SBSD Deputy Fred Eckley's false testimony that he destroyed the bloody coveralls on his own without approval from his superiors;[45]

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[41] 102 RT 6550-54, Testimony of F. Eckley; SBSD Disposition Rpt. Regarding The Bloody Coveralls dated Dec. 1, 1983.

[42] *Cooper v. Brown*, No. 04-cv-656H, 2005 U.S. Dist. LEXIS 46232, at *270 (S.D. Cal. 2005); Aug. 26, 2004, HRT 140-48, 154-55, 161, 165, 187, 201-03. "HRT" refers to the habeas corpus proceedings before Judge Huff in 2004 and 2005; SBSD Log Regarding Blue Shirt dated June 6, 1983 (ER 3703).

[43] *Cooper*, 565 F.3d 581, 590-91 (9th Cir. 2009) (W. Fletcher, dissenting).

[44] 106 RT 7749-52; *Cooper*, 565 F.3d 581, 620-25 (9th Cir. 2009) (Fletcher, W., dissenting).

[45] SBSD Disposition Rpt. Regarding Bloody Coveralls, *supra* note 39; 102 RT 6550-54.

6. Failure to permit Mr. Cooper's trial counsel and defense team to inspect and analyze the crime scene because the district attorney ordered the dismantling of the Ryen bedroom the day after the discovery of the murders and placed the blood-splattered walls, doors, and furnishings in a poorly air-conditioned warehouse, where the blood evidence was destroyed in 120-degree heat;

7. Failure to allow any forensic efforts to determine locations, direction of flow, and trajectory of blood spatter because police allowed blood-spattered evidence samples taken from different collection points to be mixed together;[46]

8. Failure to disclose the SBSD interview with a witness who came forward in 1983 to report he had sharpened a number of knives and hatchets of Lee Furrow just prior to the murders, and he suspected that the weapons he sharpened may have been used to kill the Ryens/Hughes.

Special Counsel does not explain why he did not consider these *Brady* violations in determining if Mr. Cooper is innocent. "In fact, in the vast majority of exonerations[,] it is the case that the prosecution, law enforcement personnel, or both possessed undisclosed evidence which would tend to prove the innocence of a particular defendant."[47] "While wrongful convictions are actually more likely in capital cases," even a conservative view "produces staggering estimates of the number of wrongfully convicted."[48] Notably, defendants are routinely afforded a new trial with just one Brady violation—the eight here necessarily dictate that Mr. Cooper be released and either be retried or fully pardoned and exonerated. *See Brady v. Maryland*, 373 U.S. 87 (1963) (when the government withholds evidence from the defense, a new trial is warranted where, as here, the evidence is favorable to the accused because it is exculpatory, the evidence's suppression is willful and had the evidence been disclosed the result would be different).

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[46] 36 RT 2387-90; 40 RT 2895-96; 66 RT 5927; Gregonis Lab notes A-3 J-9, sheet stamped 04683; Vol. 56, 4886-87; Vol. 93, 4404-05.

[47] Brian Gregory, *Brady is the Problem: Wrongful Convictions and the Case for 'Open File' Criminal Discovery*, 46 U.S.F. L. REV. 819, 820 (2012).

[48] *Id.*

It is thus incontrovertible that Special Counsel's failure to consider these *Brady* violations and the impact on Mr. Cooper's conviction does not comply with the Executive Order's mandate for a full investigation regarding Mr. Cooper's conviction and whether he may be innocent.

c) Special Counsel Failed to Consider Mr. Cooper's Claim of Ineffective Assistance of Counsel

As with claims relating to race, Special Counsel decided not to consider Mr. Cooper's claim of ineffective assistance of counsel. Determining whether defense counsel's actions may have contributed to the conviction of an innocent man is a requirement of an innocence investigation.

Counsel's representation of a client can be so deficient that it is ineffective, depriving a defendant of due process. *See Strickland v. Washington*, 466 U.S. 668, 685-86 (1984) (recognizing fundamental entitlement to fair trial and reliable result). Counsel renders unconstitutionally ineffective assistance where "counsel's representation falls below an objective standard of reasonableness," and there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *See id.* at 688, 694. Here, Mr. Cooper's trial counsel rendered ineffective assistance to Mr. Cooper on numerous occasions leading up to and throughout his 1984-85 trial.

Mr. Negus' decision not to enlist additional attorneys and staff to help defend Mr. Cooper undeniably led to critical mistakes. The need for second counsel was revealed at the time by Mr. Negus' statements to the court during trial that he was working an unsustainable "60 to 80 hours a week," *see, e.g.*, 72 RT 6513-8, and could not conduct more than four court days per week of trial. The court advised him that "A wise man knows when to delegate, Dave. You maybe ought to get some help." 72 RT 6513-8. Unfortunately, trial counsel was adamant that obtaining help would be "a disservice to Mr. Cooper." 72 RT 6513-9; Ex. 107 (Declaration of David Negus dated Oct. 21, 1996). It is obvious that trial counsel was physically exhausted and unable to competently represent Mr. Cooper. *See* 89 RT 3539; 10 RT 174, 58 RT 5107, 62 RT 5551, 72 RT 6513-2 to 13-9.

Second, trial counsel rendered ineffective assistance during the guilt phase when he failed to present direct evidence of other possible killers—specifically evidence about Lee Furrow—and thus the jury never heard this highly plausible alternative to the prosecution's case.[49] Counsel's failure to

[49] Declaration of Michael Adelson dated Oct. 16, 2013, ¶ 8.

present evidence that pointed to other perpetrators fell below the objective standard of reasonableness and resulted in severe prejudice to Mr. Cooper.

Special Counsel decided not to consider whether the outcome of Mr. Cooper's trial might have been different under different circumstances—including if he had different counsel or trial resources, if he had been able to present, or had presented, different evidence at trial, or if pretrial or trial rulings had been different, or whether Cooper's trial was unfair in any way. SCR at 3. However, it is impossible to review all facts and circumstances regarding Mr. Cooper's conviction without considering whether Mr. Cooper received effective assistance of counsel. By not considering Mr. Cooper's claim of ineffective assistance of counsel, Special Counsel failed to carefully and fairly consider *all* facts and circumstances surrounding Mr. Cooper's conviction, as the Executive Order required.[50]

B. Special Counsel Failed to Conduct an "Independent" Review

The Executive Order required Special Counsel to conduct an *independent investigation*. Executive Order at 2. In order to be objective, fair, unbiased, and based solely on the facts, an independent investigation requires qualified and unbiased experts, investigators with no prior relationship to the issues or the involved parties, and no preconceived notions about the claims or the accused. An independent investigation must not reflect a tunnel vision. It also must investigate any plausible theory and therefore interview all relevant witnesses, and obtain, review, and analyze all documents that may possibly bear on innocence, including those outside the formal court record.

Special Counsel failed to comply with this essential requirement. Instead, Special Counsel's investigation failed to consider critical paths that could potentially lead to a finding of innocence, including but not limited to, law enforcement targeting Mr. Cooper based on his race despite ample evidence that three white men committed the Ryen/Hughes crimes. Indeed, Mr. Cooper believes that without any substantial basis, law enforcement failed to pursue the more likely possibility that

[50] *See, e.g.*, *Mann v. Ryan*, 774 F.3d 1203 (9th Cir. 2014) (Counsel's performance in preparing to present mitigating evidence at defendant's death penalty trial was constitutionally deficient and required granting a writ and setting aside the sentence. Counsel did not interview any witnesses or attempt to obtain any school, prison, or medical records prior to investigating the defendant's background. This was not a matter of a lawyer exercising strategic decision-making. This was complete inattention to any preparation.).

multiple people committed the murders. Special Counsel exhibited the same tunnel vision that law enforcement exhibited 40 years earlier and failed to explore avenues that could have resulted in a finding that Mr. Cooper was innocent. Furthermore, Special Counsel also used unqualified and biased experts to support his conclusions. This led to Special Counsel's finding that Mr. Cooper was guilty without him critically examining the myriad issues that pointed to suspects other than Mr. Cooper. Special Counsel therefore failed to conduct the independent, impartial analysis that Governor Newsom ordered.

1. Special Counsel's Experts Provided Opinions Without Appropriate Qualifications

It is axiomatic that experts must demonstrate that they have expertise regarding the specific subject on which they testify. *See* Cal. Evid. Code § 720 ("A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates."); *see also Daubert v. Merrell Dow Pharms., Inc.* (*Daubert II*), 43 F.3d 1311 (9th Cir. 1995). Each of Special Counsel's experts—Messrs. Keel, Delhauer, Lillienfeld, and Dr. Eisen—fail to qualify as experts as none demonstrates that they have the appropriate qualifications, knowledge, skill, experience, training, or education in their purported field of expertise to render an opinion. Indeed, Special Counsel's expert reports are conspicuously deficient because they fail to offer the expert's qualifications, even in the basic form of a Curriculum Vitae and are also unsigned and undated. That is far from the high evidentiary burden Special Counsel would be required to satisfy if these expert reports were proffered in a court of law.

a) Mr. Keel Is Not Qualified to Opine on Genetic Testing and DNA

Mr. Keel opines on the reliability of physical evidence, DNA testing, and the "competence and truthfulness of SBC lab criminalist Dan Gregonis." Keel Rpt. at 3. Mr. Keel's opinions fail to satisfy standards for reliability and cannot be used in support of a careful and fair examination of the relevant facts. Mr. Keel fails to include a reference section, without which it is impossible to know on what research and information Mr. Keel relies, much less to determine whether that information in fact supports his opinions. *See* Keel Rpt., *passim*. Indeed, throughout most key sections, as Mr. Cooper's experts, Bicka Barlow and Marc Taylor,[51] point out, Mr. Keel "cites to *no* scientific

[51] Ms. Barlow received her J.D. degree from the University of San Francisco, School of Law, and an M.S. degree from Cornell University in Genetics and Development. Since the early 1990s, Ms. Barlow has focused her time on criminal cases involving DNA evidence. Mr. Taylor is

literature to support" his opinions. *See* Report of Bicka Barlow and Marc Taylor ("Barlow Rpt.") at 13. Moreover, Mr. Keel fails to provide any scientific basis for his opinions and instead his conclusions are "completely unsupported by the breadth of scientific research in the area of forensic DNA." *Id.*

This is not the first time Mr. Keel has offered opinions without providing any scientific basis. *See, e.g.*, *Cage v. City of Chi.*, 979 F. Supp. 2d 787, 831 (N.D. Ill. 2013) ("The Court cannot conclude that Keel employed a reliable methodology in reaching his conclusion."). The *Cage* Court explicitly held that "Keel did not 'consider [ ] enough information to make the proffered opinion reliable.'" *Id.* at 832 (bracket in original). Similarly, in 1999, a court rejected the entirety of Mr. Keel's 27 days of testimony on the grounds that he was biased and failed to employ scientifically acceptable principles in rendering his opinions. *Bokin*, SCN: 168461, slip op. at 15. Thus, Special Counsel had no basis on which to rely on Mr. Keel's conclusions, yet he placed great faith in Mr. Keel's report that can only be characterized as junk science.

b) Mr. Delhauer Is Not Qualified to Opine on DNA

Like Mr. Keel, Mr. Delhauer's opinion fails to satisfy standards of reliability and cannot be used to support a careful and fair examination of the relevant facts. Special Counsel relied on Mr. Delhauer as a "crime reconstruction expert," whose role is to provide opinions, *inter alia*, regarding alcohol, specific wounds suffered by the victims, and the ability of victims to defend themselves while under attack. Delhauer Rpt. at 1. While Mr. Delhauer may have spent his career as a law enforcement officer, he does not have the training, skill, or experience to offer opinions in areas such as medicine and forensic science as he does in this report. Mr. Delhauer does not have a medical or nursing degree nor is he a toxicologist or clinician:

> Mr. Delhauer is not a medical doctor, not a scientist, and certainly not a forensic scientist. He has no formal medical or scientific education, training or experience. He is a former sheriff's deputy that holds a Bachelors of Arts in Liberal Studies; and he has received some short course training from law enforcement instructors on a variety of forensic subjects. While a useful background for

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President and owner of Technical Associates, Inc., a private forensic science consultation and testing laboratory. He previously served as a research scientist at the Los Angeles Department of Chief Medical Examiner Coroner.

> enhancing investigative practice and evidence collection / scene processing responsibilities — this is not to be confused with the practice of scientific evidence interpretation or scientific crime reconstruction.

Brent E. Turvey, Ph.D.,[52] Crime Scene Analysis, Assessment of Rpt. of Paul Delhauer dated Apr. 6, 2023 ("Turvey Rpt.") at 6. In fact, in 2014, Mr. Delhauer was specifically precluded from offering an opinion on DNA evidence and other forensic science given his lack of experience and training. *See N.G. v. County of Los Angeles*, No. 2:13-cv-08312-SVW (FFMx) (C.D. Cal. Aug. 15, 2014) (excluding "Delhauer's opinions regarding: (1) ballistics, (2) DNA evidence, (3) biomechanics, (4) Gutierrez's possible drug use or a correlation between Gutierrez's alleged behavior and drug use, (5) the consistency of Gutierrez's alleged attempt to take Swanson's gun with gang teachings or methods, and (6) the design and operation of holsters or retention holsters.").

Further, Mr. Delhauer's opinion also fails to satisfy established standards of reliability. The legal standard determining reliability of an expert's opinion includes: (1) whether the expert's theory or method is generally accepted in the scientific community; (2) whether the expert's methodology can be or has been tested; (3) the error rate of the technique; and (4) whether the method has been subjected to peer review and publication. *Daubert II*, 43 F.3d at 1316 (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593-94 (1993)). Mr. Delhauer cannot and does not satisfy a single factor.

First, Mr. Delhauer's report is unreliable given that it is unsigned, undated, and lacks a reference section. Failing to include a reference section "is unacceptable in the context of a scientific examination, as it allows the author to proceed with a display of confidence regarding unconfirmed experience-based opinions that the literature would prohibit, or at the very least would fail to support." Turvey Rpt. at 9.

Second, Mr. Delhauer does not disclose the specific tests or methods upon which his opinions are purportedly based. Instead, Mr. Delhauer relies on conclusory assertions about his own experience working in law enforcement—using anecdotes as the basis for his findings rather than a defined methodology and scientific practice. *See* Turvey Rpt. at 5. Instead, Mr. Delhauer's

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[52] Mr. Cooper's expert, Dr. Turvey, is a court-qualified Forensic Scientists, Crime Scene Analyst, Crime Reconstructionist, Forensic Criminologist, and Criminal Profiler. For the last 25 years he has worked for law enforcement agencies, attorney clients, and private entities providing consultations, forensic assessments, and expert testimony.

report is a confusing mixture of conclusions "wander[ing] between crime reconstruction narratives and criminal profiling narratives." Turvey Rpt. at 9. Because Mr. Delhauer does not specify the methodology upon which he relies, it is impossible to determine whether his methods have been tested and are scientifically sound. Mr. Delhauer did not provide an outline of his methodology because he has no "clearly defined methodology, with related standards of practice necessitating specific areas of examination, examiner education, and examiner training." Turvey Rpt. at 10.

Third, while Mr. Delhauer refers generally to a number of theories and methodologies, he does not include any information about the error rate of the techniques used, any type of standards and controls, or whether the techniques and theories are accepted in the scientific community. In light of this, it is indisputable that Mr. Delhauer's report is methodologically flawed, negligent, and should be entirely disregarded. Mr. Delhauer's report cannot be used to support a careful and fair examination of the relevant facts. Turvey Rpt. at 11.

c) Mr. Lillienfeld Is Not Qualified to Opine on Furrow's Potential Guilt

Mr. Lillienfeld opines at length on Mr. Cooper's theory that Furrow was the likely murderer; however, Mr. Lillienfeld provides only cursory details about his background and purported qualifications to give this opinion. He does not provide a resume or any background on his education. *See* Lillienfeld Rpt., *passim*. In addition to the lack of qualifications, Mr. Lillienfeld's conclusions are unreliable because they are unsupported and without factual references. For example, Mr. Lillienfeld concludes that "[a] thorough investigation of [Lee] Furrow's past criminal history showed conduct that was contrary to that exhibited by the killer of Ryen-Hughes." Lillienfeld Rpt. at 3. Mr. Lillienfeld provides absolutely no support for this statement, while in fact, at the time of the Ryen/Hughes crimes, Lee Furrow had been recently paroled after serving a sentence for the brutal strangulation of an underage girl. Contrary to Mr. Lillienfeld's statement, Lee Furrow's vicious conduct in the Kitts murder is very similar to that exhibited by the Ryen-Hughes killers.

In addition to Mr. Furrow, Mr. Lillienfeld states in his unsigned, undated report that he interviewed several other crucial witnesses in Mr. Cooper's case: Karee Kellison, Nikki Sue Giberson, James D. Cameron, James H. Cameron, and Owen Handy. Lillienfeld Rpt. at 2. Given the Governor's order for an independent investigation and given the stakes—Mr. Cooper's decades-long effort to prove his innocence—it is simply unconscionable that the interviews with these important witnesses were not documented, nor were they apparently witnessed by anyone other than Mr. Lillienfeld himself. There is no reasonable explanation for failing to provide the notes or

other documentation for those interviews. Rather, the lack of transparency strongly suggests that these interviews were not conducted using cognitive interview techniques, which are especially important when questioning witnesses about events that occurred long ago. Expert Report of Paula Mitchell ("Mitchell Rpt.") at 17.[53] Special Counsel also fails to discuss what Mr. Lillienfeld may have done with the notes from these interviews, and who, if anyone, attended these interviews other than Mr. Lillienfeld himself. *Id.*

d) Dr. Eisen Is Not Qualified to Give an Opinion on DNA Evidence

Dr. Eisen was tasked with evaluating the "reliability of the eyewitness evidence in this case." *See* Eisen Rpt. at 1. However, Dr. Eisen rejects the importance of eyewitness identification stating, "I do not see this as an eyewitness case at all. Rather, in my opinion, this is clearly a case based on DNA." *See* Eisen Rpt. at 6. However, Dr. Eisen has absolutely no qualifications to comment on the significance of the DNA evidence. It appears that Dr. Eisen abandoned his role as an eyewitness expert because the original evidence of the only surviving eyewitness, Josh Ryen, shows that Mr. Cooper was not one of the attackers. Dr. Eisen admits Josh's eyewitness evidence was credible and consistent. Furthermore, it is highly improper for an expert, such as Dr. Eisen, to review the conclusions of other experts before conducting his own work since it can improperly influence his own conclusions.

Finally, like Special Counsel's other experts, Dr. Eisen does not provide his qualifications in his report. He provides only limited detail on his background—omitting a resume, his education, and what (if any) relevant training he received. Even a cursory review of Dr. Eisen's background reflects that he is not a DNA expert. *See* Eisen Rpt., *passim*. Reliance on this report reveals that Special Counsel sought to justify Mr. Cooper's conviction at any cost.

[53] Ms. Mitchell, who served as a pro bono expert for Mr. Cooper, is a distinguished appellate attorney and the Legal Director of the Project for the Innocent at Loyola Law School. Since 2015, Ms. Mitchell has investigated more than 50 serious felony cases for individuals seeking to prove their innocence and is an expert on the procedures and substance of conducting innocence investigations.

2. Special Counsel's Hired "Experts" Are Not Independent and Impartial

a) Alan Keel

i. Keel Is Not Impartial

Alan Keel is biased in favor of the prosecution. Mr. Keel's job was to impartially analyze the lab work and testimony of Dan Gregonis[54] and the defense assertion that Gregonis falsified his test results on A-41. Keel Rpt. at 4, SCR 127. However, Mr. Keel has extensive professional and personal connections to Gregonis and other key figures in this case. Mr. Keel has known and associated with Mr. Gregonis spanning more than three decades in their work as criminalists. In 1988, they were among nine officers of CAC listed in the July newsletter. They are both still members of CAC. Mr. Keel has a clear conflict of interest and is impermissibly biased in favor of his longtime colleague, Mr. Gregonis. At the very least, Mr. Keel should have disclosed his relationship with Mr. Gregonis so that it could be taken into account when considering the reliability and impact of Mr. Keel's opinions. If he were committed to conducting an independent investigation, Special Counsel would not have retained Mr. Keel given his relationship to Mr. Gregonis and others.

Mr. Keel is also connected to serologist Edmund Blake. In 1983, Mr. Cooper's attorney, David Negus, hired Mr. Blake as a serology expert to observe Gregonis's pretrial testing. Blake's firm, Forensic Science Associates, shared the same office address in Richmond, California, as the Serological Research Institute, founded by Brian Wraxall, with whom Blake co-authored several published scientific reports.[55] Wraxall was an expert witness for the prosecution in the *Cooper* case. Keel was hired by Blake in 1999 and worked with him for more than 10 years.

On October 17, 1984, after Blake found a mistake in Gregonis's testing of A-41, Gregonis met with Wraxall to do further testing. (57 RT 4947, Gregonis testimony). Mr. Keel's biography in the Special Counsel's report reveals that between 1999 and 2011, he worked with Dr. Blake in private practice, Keel Rpt. at 2, and fails to mention Keel was hired after resigning from the San

[54] Daniel Gregonis is the SBSD criminalist who testified during Mr. Cooper's trial.

[55] Edward T. Blake, Resume (https://miamiherald.typepad.com/files/blakes-resume.pdf (last visited June 15, 2023)).

Francisco Crime Lab in disgrace.[56] In the *Cooper* case, Blake first worked for Mr. Cooper's defense, but later came to believe that Mr. Cooper was guilty and stated this publicly.[57]

Special Counsel should not have retained Mr. Keel because of this clear conflict of interest. At the very least, Mr. Keel should have disclosed his relationships with Gregonis and Blake so that they could be considered in determining whether bias influenced Mr. Keel's findings in his report.

Given that Mr. Keel worked with Mr. Blake for more than a decade, he certainly has a vested interest in upholding Mr. Blake's finding and those of his colleague, Mr. Wraxall. Were Mr. Keel to raise questions about Mr. Blake's work, it would necessarily raise questions about Mr. Keel's own work. In other words, it would disrupt the status quo and would call into question years of collaboration between Mr. Keel and Mr. Blake; it would also bring scrutiny to the dozens of investigations Mr. Keel has conducted in Mr. Blake's lab.

Mr. Keel's bias is evident throughout his report. An egregious example is Mr. Keel's summary dismissal of Mr. Cooper's claim that Mr. Gregonis's procedure in testing A-41 was improper and biased the test results. Rather than engage in a meaningful analysis, Mr. Keel states in just one sentence that Mr. Cooper's allegation "has no scientific merit." Keel Rpt. at 6. Waiving off this significant issue that bears directly on Mr. Cooper's innocence is a stark example of Special Counsel's failure to critically evaluate evidence that might lead to a finding of Mr. Cooper's innocence.

Additionally, Mr. Keel's report is problematic because it finds in favor of the prosecution's theories and creates pro-prosecution explanations that are not supported by facts or reports. For example, shortly after the discovery of the murders, SBSD criminalists conducted luminol testing on various surfaces of the Lease house to look for evidence of blood. 87 RT 3078:28-3082:13. The prosecution used evidence of a positive reaction on the walls of the shower against Mr. Cooper at trial, 87 RT 3080; however, this testing was incomplete. The SBSD failed to conduct the secondary

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[56] Mr. Keel's own website states in 1999 he "joined Forensic Science Associates in Richmond, CA where [he] worked for 11 years with Dr. Ed Blake." *See* Alan Keel, https://www.alankeelforensicdna.com/ (last visited June 3, 2023).

[57] Debra J. Saunders, *Kevin Cooper is guilty*, SF Gate (June 26, 2005), https://www.sfgate.com/opinion/saunders/article/Kevin-Cooper-is-guilty-2659817.php (last visited June 3, 2023).

test to determine whether the source of this reaction was actually blood and not just bleach, a substance often found in showers. *Cooper*, 565 F.3d at 594. The prosecution knew that a former resident of the Lease house, Kathy Bilbia, had cleaned this shower with bleach only days before Mr. Cooper's escape. 86 RT 2706:17-2707:24. Unless a second test was conducted, it is impossible to distinguish whether the positive luminol reaction was evidence of blood or merely bleach exposure. *Cooper*, 565 F.3d at 594; *id.* at 631 (indicating the "likely basis for the positive test is the bleach used by Katherine Bilbia in cleaning the shower.").

Without any evidence, Mr. Keel asserts that a two-stage luminol test was conducted and that it resulted in a finding of blood. Nevertheless, the contemporaneous notes do not establish that the second-stage test was ever done, nor has a report from a second test ever been produced to Mr. Cooper's lawyers, despite repeated requests. Indeed, Judge Fletcher remarked that "[i]n order to exclude the possibility that a Luminol reaction is caused by bleach, rather than blood, a two-stage test is required. The evidence suggests that the detectives only conducted a one-stage Luminol test." *Cooper*, 565 F.3d at 594. With no supporting evidence, Mr. Keel summarily concludes that a "second test" was performed and Special Counsel's report adopts this unsupported conclusion. Keel Rpt. at 51-54. Special Counsel blindly adopts this conclusion.

Given that Special Counsel and his expert ignored forensic malfeasance and accepted that Mr. Cooper's blood was splattered at the crime scene, this would have meant that Mr. Cooper had cuts or lacerations from the brutal murders that he allegedly committed. But Special Counsel and his experts did nothing to investigate whether anyone noticed cuts on Mr. Cooper in the days following the murders. They likely did not do so because Owen Handy testified on cross-examination at the preliminary hearing that Mr. Cooper had no cuts on his hands or anywhere else. Nov. 30, 1983 Tr., Vol 12 at 17. Mr. Handy also testified he had ample opportunity to see Mr. Cooper's hands since Mr. Cooper was working on the boat and spent a lot of time drawing in the company of the family. *Id.*

This is yet another example of how the Special Counsel failed to conduct an independent investigation into Mr. Cooper's claims of actual innocence.

ii. Keel's Background Raises Questions About His Qualifications

Mr. Keel presents himself as an expert "forensic scientist" (Keel Rpt. at 2) and provides a summary of his experience and qualifications. Mr. Keel seeks to rely on his tenure at the San

Francisco Crime Lab to establish his expertise; however, he was forced to resign under a cloud from the two-person unit he led from 1996 to 1999 after Superior Court Judge Robert Dondero made a finding that the lab's procedures "barely satisfied" court muster.[58] Thus, Mr. Keel's statement that while working at the San Francisco Crime Lab he "implemented the same STR-based DNA analysis techniques used by the CAL DOJ lab in this case," *id.* at 2, raises serious questions.

Furthermore, Judge Dondero specifically noted that Mr. Keel "lacked the proper credentials" and found Mr. Keel's lab "in disarray, especially at the administrative level." Mr. Keel holds a bachelor's degree in zoology and did not have the graduate degree required by the guidelines at the time, nor has he since obtained any graduate degree. Further, while he testified in front of Judge Dondero "that he regularly took tests to prove his skills in analyzing DNA samples[,] in three instances (two of which he scored himself), his answers" to the tests "had been crossed out and replaced with correct responses."[59] Mr. Keel's incompetence, falsifying of forensic testing results and destruction of items critical for a review of his work is highlighted in a civil rights suit recently filed (on June 5, 2023) by a woman who was wrongfully convicted for the murder of her husband in which Mr. Keel's malfeasance was critical to the miscarriage of justice.[60]

Considering Mr. Keel's background, it is not surprising that he has repeatedly been excluded as an expert in court proceedings because he demonstrates extreme bias against the defense. For example, when Mr. Keel was the head of the San Francisco Crime Lab, the San Francisco Superior Court remarked that Mr. Keel had an "unacceptable degree of bias toward the prosecution." The court described Mr. Keel's declaration in opposition to defense discovery as "beyond advocacy—it indicated a critical attitude toward the defense function in a criminal case." *San Francisco Crime Lab. People v. Bokin*, SCN: 168461, slip op. at 15 (Cal. Super. Ct. May 5, 1999). Special Counsel should not have chosen Mr. Keel as an expert in this matter. Nonetheless, in defiance of clear standards that

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[58] Jaxon Van Derbeken, *DNA Lab Chief for S.F. Police Resigns / His office had been criticized by judge*, SFGate.com (June 9, 1999, 4:00 AM), https://www.sfgate.com/news/article/DNA-Lab-Chief-for-S-F-Police-Resigns-His-2926049.php (last visited June 13, 2023).

[59] *See supra* note 56.

[60] *Dorotik v. County of San Diego, et al.*, Case No. 23 CV 1045 CAB (D.D.C.) (filed June 5, 2023). *See also* https://www.sandiegouniontribune.com/news/courts/story/2023-06-06/jane-dorotik-lawsuit-san-diego-county (newspaper story about filing of the lawsuit that incudes Keel as a defendant) (last visited June 7, 2023) (last visited June 13, 2023).

govern the introduction of experts, Special Counsel relied heavily on Mr. Keel's unsupported conclusion that Mr. Cooper is "guilty."[61]

b) Delhauer and Lillienfeld

Mr. Paul Delhauer and Mr. Mark Lillienfeld were colleagues when they both served as deputies and homicide detectives in the Los Angeles Sheriff's Department. Special Counsel relies on their reports to conclude that Mr. Cooper is guilty of the Ryen/Hughes crimes. The murders for which Mr. Cooper was convicted took place in Chino Hills in San Bernardino County, which shares a border with Los Angeles County. In effect, Mr. Delhauer and Mr. Lillienfeld were asked "to grade the work of colleagues during a time in which [they] served alongside them in a law enforcement capacity." *See* Turvey Rpt. at 8. This presents a clear conflict of interest as a result and thus these reports cannot be considered independent and objective.

Over his years in law enforcement, Mr. Lillienfeld has engaged in questionable conduct. Mr. Lillienfeld cites his years of experience as a Los Angeles County Sheriff's deputy; however, he fails to mention that in 2018, while working for the Los Angeles County district attorney's office, he was banned from all Los Angeles County jails after falsely posing as a deputy and bringing contraband to an inmate. Jail officials were so concerned by Mr. Lillienfeld's behavior "that they posted Mark Lillienfeld's photograph inside Men's Central Jail and directed employees to alert a supervisor if he showed up."[62]

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[61] Keel was investigated in 2020 by the California Association of Criminalists for ethics violations in a Texas murder case in which attorneys seeking exoneration of an inmate serving two life sentences needed evidence in Keel's possession. Mr. Keel's lab had performed DNA work in the Texas case. Keel refused to turn over the evidence, calling it "work product." Keel was ultimately subpoenaed by a Texas judge but failed to appear in court, prompting a defense lawyer in the case to say he should be arrested. Keel belatedly turned over the evidence three years later after retaining a lawyer to represent him. The inmate died in prison. https://wacotrib.com/news/local/crime-and-courts/dna-scientist-a-no-show-at-lake-waco-murders-hearing/article_95988084-f9ce-5f81-9b32-b1bc02f6f6ac.html.

[62] Alene Tchekmedyian, Sheriff rehires corruption investigator accused of posing as deputy in bizarre jail incident, LA TIMES, Oct. 23, 2019, https://www.latimes.com/california/story/2019-10-23/retired-homicide-detective-mcdonalds-mens-central-jail (last visited May 8, 2023).

Furthermore, in 2021, a watchdog panel overseeing the Los Angeles County Sheriff's Department asked county attorneys to look into whether a special investigative unit had improperly and intentionally targeted political enemies of Sheriff Alex Villanueva at his direction. As part of the special unit, it was Mr. Lillienfeld's behavior that, in part, sparked the watchdog group to seek an investigation. An audio recording of a conversation between Mr. Lillienfeld and a witness in a criminal investigation captures Mr. Lillienfeld threatening the witness by telling him he was "poking the wrong f***ing bear" and calling the witness a "dumb f***."[63]

In 2014, Mr. Lillienfeld was investigated by internal affairs of the Los Angeles Police Department after he obtained information from confidential criminal records and reports for personal use. Specifically, the evidence suggests that Mr. Lillienfeld—at the time a Los Angeles sheriff's detective—attempted to incriminate a person whom his friend, Los Angeles County Superior Court Judge Craig Richman, had assaulted, and for which the judge had been charged with battery.

It is clear that Mr. Lillienfeld and Mr. Delhauer are not independent and unbiased even assuming they had the credentials and experience to provide relevant expert opinions, which they do not.

3. Special Counsel Had a Duty to Disclose the Identity of Their Experts

Special Counsel had a duty to disclose the identity of their experts to give Mr. Cooper and his team the opportunity to raise issues regarding their lack of impartiality and their qualifications. *See* Cal. Evid. Code § 720 ("Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert."). Here, no such disclosure occurred.

Instead, Mr. Cooper's legal team was unable to give any input into Special Counsel's choice of experts. Indeed, Mr. Cooper's team was made aware of the existence of Special Counsel's report just 20 minutes before it was circulated to the media, only learning the identity and opinions of the

[63] Alene Tchekmedyian, L.A. County sheriff's unit accused of targeting political enemies, vocal critics, LA TIMES, Sept. 23, 2021, https://www.latimes.com/california/story/2021-09-23/sheriff-alex-villanueva-secret-police (last visited May 8, 2023).

purported experts when the public did.[64] By keeping the contents of the report secret, Special Counsel avoided answering questions or defending his biased, compromised, and inadequate investigation. A serious consequence is that Mr. Cooper's experts never had the opportunity to review, analyze, or critique the new conclusions about the DNA by Special Counsel's expert, Mr. Keel. Even though the Bode DNA testing was litigated for over two years before Special Master, Honorable Daniel Pratt, and the defense and the prosecution each submitted Proposed Findings of Fact, Mr. Cooper's team and his experts never had an opportunity to challenge Mr. Keel's conclusions.

Moreover, given the number of available and highly qualified and impartial experts, there is no rational reason why Special Counsel used "experts" who are unqualified to give their opinions, improperly connected to Mr. Cooper's case, and have every incentive to deny the clear evidence of his actual innocence, unless Special Counsel sought to achieve a predetermined outcome. By relying on these experts, Special Counsel sought to "maintain law enforcement control of findings rather than a desire to solicit qualified, independent, and objective scientific / forensic results." Turvey Rpt. at 10.

4. Special Counsel Failed to Independently Assess and Evaluate the Reliability of Forensic Evidence

Special Counsel presumed that protocols and procedures concerning the collection and handling of forensic evidence were in place and were followed, without examining records and documents that would shed light on what actually took place with respect to some of the most important evidence in the case. Mitchell Rpt. at 10. This is a significant oversight given that the

[64] This response to the Special Counsel's report is required, in part, because Mr. Cooper's legal team was denied the opportunity to substantively respond to Special Counsel's report prior to its surprise and sudden release on January 13, 2023. Indeed, provided with only 20 minutes' notice, Mr. Cooper's counsel was summoned at 2:22 p.m. PST to appear on a Zoom call at 2:40 p.m. PST on Friday, January 13, 2023, during which Jennifer P. Shaffer, Executive Officer for the California Board of Parole Hearings, and Eliza Hersh, Deputy Legal Affairs Secretary for Gov. Gavin Newsom, informed Mr. Cooper's counsel that the report would be released at 3:00 p.m. PST and that it was not favorable for Mr. Cooper. For unknown and unexplained reasons, Special Counsel Mark R. McDonald did not attend that Zoom call and was not even copied on the email summoning the Cooper legal team to the Zoom call.

record before the Special Counsel was filled with examples of evidence being mishandled, including the destruction of the bloody coveralls worn by Mr. Furrow, a prime suspect. As part of his investigation, Special Counsel should have sought documentation and other evidence revealing that there is an unbroken chain of custody for Mr. Cooper's blood vial or vials collected on August 3, 1983, and for the reference card or cards (now collectively labeled as "VV-2") to establish whether there were any significant breaks in that chain of custody during which time that evidence could have been altered. *Id.* Special Counsel's Report is silent as to that threshold and critical issue. Special Counsel fails to determine and examine the following:

- Who drew Mr. Cooper's blood on August 3, 1983;
- How many vials of blood were collected;
- How full was each vial at the time it was taken into evidence;
- How was each vial sealed; was it in tamper-proof packaging;
- Who initially checked the blood vial into property and evidence and when did that occur;
- Who opened the vial of blood to create the reference blood sample on the card or cards and who was present;
- Where was the reference card or cards placed to dry before being packaged;
- How much blood was removed from the vial at the time the reference card was created;
- Whether the reference card was created before or after the vial was checked into evidence;
- Whether more than one reference card was created and, if so, what happened to the other card or cards;
- Whether the reference card (cards) was (were) created in a lab setting;
- When were the items labeled VV-2 checked into and out of evidence, by whom, and for what purpose;

- What were the procedures in place for checking blood evidence out of property and evidence, and was a supervisor's signature required; and

- Where was VV-2 stored while it was checked out of property and evidence for lab testing.

Id.

Special Counsel inexplicably failed to request and thus review any documentation or other evidence addressing these issues or answering these questions, which is information needed to establish that there were no significant breaks in the chain of custody for VV-2. Law enforcement has admitted that as part of its investigation into the Ryen/Hughes crimes, there is no evidence showing how much blood was collected on August 3, 1983, a fact which makes the need to establish an unbroken chain of custody for that evidence all the more important and urgent. *Id.*

It was essential for Special Counsel to collect and examine these records to establish that there were no opportunities for anyone in law enforcement to alter that evidence, particularly given the significant issues relating to evidence destruction and potential contamination. The reliability of any and all testing related to VV-2 rests upon "the ease or difficulty with which the particular evidence could have been altered." *People v. Catlin*, 26 Cal.4th 81, 134 (2001) ("In a chain of custody claim, [t]he burden on the party offering the evidence is to show to the satisfaction of the trial court that, taking all the circumstances into account including the ease or difficulty with which the particular evidence could have been altered, [that] it is reasonably certain that there was no alteration...."). "The requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely as not that the evidence analyzed was not the evidence originally received. Left to such speculation the court must exclude the evidence." *People v. Jimenez*, 165 Cal.App.4th 75, 81 (2008) (citing *Catlin*, *supra*, 26 Cal.4th at p. 134); *see also United States v. Rawlins* (3d Cir. 2010) 606 F.3d 73, 82–83 (although gaps in chain of custody usually go to weight of evidence rather than admissibility, "serious" gaps in chain of custody may require exclusion of evidence). The burden is on the prosecution to demonstrate to a reasonable certainty that the evidence at issue was not altered. *Catlin*, *supra*, 26 Cal.4th at 134. That requirement is especially important where the evidence in question is blood and DNA. *Jimenez*, 165 Cal.App.4th at 81 ("[Blood and] DNA samples that are relevant to a case are indistinguishable from other samples that have no connection at all to a case. Evidence like that requires expert analysis, the accuracy of which is entirely dependent on a proper chain of custody.").

Often, documenting an unbroken chain of custody is something that is skipped or glossed over at trial, especially in older cases such as Mr. Cooper's from 1984 because there were fewer accredited crime labs in existence and lab protocols and practices were often not in place to provide guidance on how evidence should be handled and stored to avoid contamination. *Id.* For example, even as recently as 2000, the San Diego County Sheriff's Department Crime Lab was unaccredited and was experiencing serious problems with a lack of protocols guiding its criminalists on the proper handling of evidence to avoid contamination.[65] Special Counsel failed to acknowledge, let alone investigate, these critical issues.

The same documentation (evidence logs, property receipts) establishing an unbroken chain of custody must also be provided and carefully examined for all of the items of evidence collected in the case and relied upon by the prosecution to obtain a conviction, with a sharp focus on the challenged forensic evidence. Mitchell Rpt. at 10-12. Special Counsel states on page 3 of his report, for example, that Criminalist David Stockwell took photos and collected 45 separate pieces of evidence. For these 45 items of evidence, as well as every other item of evidence collected, an independent investigation would include:

- Completely and thoroughly documenting the chain of custody for every item of evidence collected to establish that there were no opportunities for tampering, including:
    - Examining the packaging of all items of evidence collected, noting the dates each item of evidence was collected, sealed, initialed, and the dates, if any, the evidence was reopened, handled, and/or tested and then resealed, and by whom.
    - Examining all evidence logs and property room records to establish the dates that each item of evidence was checked into and out of the property room, and by whom, and for what reason.
    - For items of evidence that were checked out for lab testing, cross-referencing the lab reports and bench notes for each test conducted to ensure the dates

[65] https://www.latimes.com/california/newsletter/2021-10-19/san-diego-crime-lab-essential-california (last visited June 9, 2023).

match the property room records as to who checked the evidence out and for what purpose.

- Examining the negative sheets and printed photos; determining whether the photos are time-stamped and/or the order of operations during the processing of the crime scene so a precise record confirming the evidence was handled and collected according to protocols in place at the time. Mitchell Rpt. at 14.

Special Counsel also failed to analyze any of these acute issues relating to forensic evidence that are critical to any fair, impartial innocence investigation. Indeed, Special Counsel's investigation was so shoddy that he does not even recognize these to be issues that he was required to address.

As just one example, Alan Keel's Report does not address any issues related to the chain of custody of VV-2 from the time it was collected to the time it was entered into evidence, nor does it speak to whether the blood vial could have been accessed and tampered with prior to 1995. Mr. Keel's statement that the red tape seal purportedly placed on the vial in 1995 appears to still be in place is rank speculation based on a visual observation that the tape is red. Keel Rpt. at 24; Mitchell Rpt. at 13. It is but one of the many instances of Mr. Keel displaying significant confirmation bias of which his report is replete. Independent forensic experts who editorialize and make conclusory statements using exclamations points ("!"), as did Mr. Keel, should be viewed with a healthy dose of skepticism as their bias is not just present, it is bold and brazen and plain from the face of the document itself. Mr. Keel's bias renders the conclusions in his report unreliable, if not highly suspect. Despite these red flags, Special Counsel embraces Mr. Keel and all of his baseless conclusions.

Against this background, it was impossible for Special Counsel to credibly conclude, as he does, that the evidence does not support Mr. Cooper's arguments that his blood was planted in A-41 before DNA testing, that the evidence does not support Mr. Cooper's contention that Mr. Gregonis falsified test results of A-41 in 1983, that Mr. Cooper's blood was planted on the tan t-shirt as Judge Fletcher concludes, and that two cigarette butts from the Lease house were planted in the Ryen station wagon in Long Beach on June 12, 1983.

C. Special Counsel Failed to Adhere to the Executive Order and Instead Tasked Mr. Cooper With Establishing Someone Else's Guilt, Which Was Not Part of the Executive Order

The Executive Order did not mandate that Special Counsel conclude who committed the Ryen/Hughes crimes, and the Executive Order certainly does not in any way suggest that Mr. Cooper has the burden to prove who, in fact, committed the crimes. Yet early on, Special Counsel told Mr. Cooper's counsel that their best chance to "prevail" was to show that someone other than Mr. Cooper committed the crimes. Indeed, it appears as though Special Counsel started his investigation with the premise that Mr. Cooper would have to establish beyond a reasonable doubt someone else's guilt and if he did not, the Special Counsel would just follow the jury's conclusion that Mr. Cooper was "guilty." That turned the innocence investigation on its head and placed the burden for determining whether Mr. Cooper was actually innocent on Mr. Cooper. Special Counsel's role was to conduct a full and independent review of all evidence to determine whether Mr. Cooper was innocent. He abjectly failed to discharge this duty.

Even though Mr. Cooper had no duty to prove his innocence nor the guilt of someone else in this proceeding, his legal team tried to assist the Special Counsel by presenting its evidence of Lee Furrow's guilt—nevertheless, Special Counsel failed to pursue a robust investigation of alternate suspects.

[Even so, whether Special Counsel was convinced of Furrow's guilt or not is irrelevant. This burden never should have been put upon Mr. Cooper in the first place. Placing this burden on Mr. Cooper and his legal team is yet another clear sign that Special Counsel failed to comply with the Executive Order.]

III. SPECIAL COUNSEL FAILED TO CONDUCT AN ACTUAL INNOCENCE INVESTIGATION

The Report Special Counsel prepared pursuant to Executive Order N-06-21 is by no means an "independent investigation" into Mr. Cooper's claim of innocence. The Report is fraught with confirmation bias, incompetent analysis, and conclusory statements that are unsupported by any reasoned analysis.

Special Counsel did not conduct the independent investigation the Governor ordered. Instead, he produced a biased report designed to persuade the public and the Governor of Mr. Cooper's guilt, as shown by investigative errors and omissions discussed in this rebuttal. For example:

- Special Counsel failed to document an unbroken chain of custody for the most critical forensic evidence in the case—such as Mr. Cooper's blood vial(s), blood reference card(s), or other items of physical and forensic evidence. This is significant because it impacts the reliability of all the ensuing DNA and other forensic tests conducted and the mishandling of other evidence in this case, such as the bloody coveralls that were destroyed before they were ever examined or forensically tested.

- The Report fails to include a comprehensive objective timeline of the investigation undertaken in the case, supported by police reports, crime lab reports, photos, etc.

- Special Counsel's contorted and nonsensical "analysis" of Josh Ryen's statements is evidence of blatant confirmation bias.

- Special Counsel's failure to investigate the background, training, experience, and performance evaluations of the officers involved in the investigation is a glaring and egregious omission, particularly in view of the fact that some of those individuals have since been exposed as bad actors or potential bad actors, including criminalist Daniel Gregonis, who has been credibly accused of fabricating forensic evidence in the *William Richards* case.[66]

- Special Counsel's failure to review and evaluate crime lab protocols and practices in place at the time to assess whether they were followed is another egregious omission.

[66] Special Counsel dismisses Mr. Cooper's arguments about Mr. Gregonis based on the conclusion that there has not been a judicial finding of malfeasance made against him. Report at 27. However, that fact does not clear Mr. Gregonis for his wrongdoing in this case. And, as Paula Mitchell details in her report, Special Counsel closed his eyes to that potential wrongdoing when he did not conduct an independent investigation into the validity of the forensic evidence upon which he relies for his conclusions.

- The lack of transparency concerning Mr. Lillienfeld's witness interviews is also deeply troubling. He states in his unsigned, undated report that he interviewed Lee Furrow, Karee Kellison, Nikki Sue Giberson, James D. Cameron, James H. Cameron and Owen Handy, but where are the tapes of those interviews, where are the transcripts or his notes taken during those critically important interviews? There is no reasonable explanation for failing to record those interviews. *See* discussion *supra* Sections II.B.1.c.

Transparency is essential in reviewing the integrity of an alleged wrongful conviction, especially where evidence of misconduct has already been uncovered. Without full disclosure of the police agency records and all investigation files, there can be no thorough "independent" investigation, there can only be an investigation of the evidence the prosecution wants the public to know about. The Governor ordered the former, not the latter. In a case such as Mr. Cooper's, where *Brady* violations have already been exposed, it is absolutely necessary and especially incumbent on the prosecution to disclose anything and everything in its own files and in its constructive possession so a thorough analysis can be prepared for the Governor's review. Mitchell Rpt. at 6.

The cornerstone of any independent innocence investigation is the creation of a chronological timeline documenting all of the events surrounding the crime, law enforcement's ensuing investigation, and the prosecution of the case at trial. Depending on the issues present in a case, an independent investigation typically requires disclosure of: (i) all police agency files related to law enforcement's investigation; (ii) responding officers' and detectives' handwritten notes that may still be in existence (sometimes in the personal possession of retired officers); (iii) communications between the investigating officers and the prosecution team; (iv) coroner's reports, records, photos, notes, and a list of items of evidence that may still be housed at the coroner's office; (v) all crime lab reports, including the laboratory case file, bench notes, raw data from forensic testing, proficiency testing, and any relevant personnel records (such as those of the analysts involved in the case); and (vi) in cases where law enforcement consulted or contracted with outside experts, all bench notes, raw data from forensic testing, proficiency testing, and any relevant personnel records related to those outside analysts who handled, examined, and/or tested the evidence.

The timeline is created by full and unfettered access to and a thorough review of information gathered from all original police reports, including search warrants and affidavits, detectives' notes, evidence logs, witness interviews (including audio and video recordings), crime scene photos (and negatives), lab reports and related bench notes, and physical items of evidence collected. Examining

the negative sheets and printed photos taken at the crime scene, whether or not they are time-stamped, is critically important as it can fill in details often not found in written police reports about how the investigation was conducted, what the order of operations was, and what investigative steps were taken during the processing of the crime scene.

Once created, the timeline—supported by citations to actual law enforcement records—provides the best evidence of how the original investigation unfolded and how it was conducted. It lays bare what information was known to law enforcement and when it became known, which witnesses were interviewed and in what order, and audiotaped interviews may reveal whether or not witnesses were pressured or coerced. The timeline is essential to evaluating a claim of innocence because it is based on the records law enforcement created contemporaneously throughout the investigation, rather than on memories decades later, or law enforcement's working theory of the case at the time, or the narrative the prosecution presents to a jury. The timeline will also often expose errors and missteps made along the way which become lost when investigators lock onto a particular suspect and/or theory and begin setting aside leads and other evidence that do not support their theory of a particular suspect's guilt. Special Counsel failed to follow all of these requirements. Mitchell Rpt. at 5-18; *see also* Innocence Project, *Conviction Integrity Unit Best Practices*[67] (identifying several factors that a Conviction Integrity Unit's Investigation should consider, including (i) an open exchange of information and ideas with the party seeking relief; (ii) a cooperative approach, including coordination with defense lawyers or innocence organizations; (iii) an "open file" from the district attorney, including work product; (iv) the disclosure of all police agency files, including multiple agencies that may have been involved in the investigation; (v) the disclosure of crime laboratory records, including the laboratory case file, proficiency testing, and any relevant personnel records (such as those of the analysts involved in the case); (vi) the referral of cases involving substantial, nonconclusory allegations of prosecutorial misconduct involving prior or former members of the office to an independent authority for investigation and review; and (vii) a clear assertion of the appropriate standard of review for assessing claims of innocence—i.e., clear and convincing evidence of actual innocence for constitutional claim of "actual innocence" and "reasonable probability of a different outcome" for newly discovered evidence.

Likewise, other prominent international law firms, for example, Reed Smith LLP, who have been tasked with performing an innocence investigation, have identified several elements an

[67] Innocence Project, *Conviction Integrity Unit Best Practices* ("The Innocence Project") (Oct. 15, 2015), https://innocenceproject.org/wp-content/uploads/2016/09/Conviction-Integrity-Unit.pdf.

innocence investigation should consider, including interviews with law enforcement, jurors, experts, media, and the defense team; interviews with prosecution and the defense; all records from the police, district attorney, and the court; a full review of new documentation regarding the conviction; and interviews with witnesses who had not previously been interviewed. *See* Stan Perry, et al., *Reed Smith issues summary of independent investigation in Glossip Case.*[68] In this case, Special Counsel failed to review foundational evidence—documents from the Ryen house that may have highlighted critical evidence concerning a motive for the killings and phone records from the Ryen house—that could have established who the murderers were.

More recently, the Georgetown *American Criminal Law Review* published "The Innocence Checklist" in 2021.[69] Crucially, the *American Criminal Law Review*—after conducting an expansive examination of criminal procedure, the history of the innocence movement, causes of wrongful convictions, and the development of innocence commissions, among other things, *see id.* at 99—identified ***27 factors*** that were strongly indicative of a wrongful conviction and should otherwise lead to exoneration. *See id.* at 144. The *American Criminal Law Review* organized those factors into three broad categories: "(1) discovery of information that tracks, in general but not doctrinal terms, procedural miscarriages of justice or violations of constitutional law; (2) significant fresh evidence; and (3) other factors, which do not fit neatly into existing procedural silos." *See id.* at 144. The 27 factors they identified were "known causes of wrongful conviction divined from official exonerations and based on innocence-project commission exonerations" and from "factors that courts have repeatedly recognized play a role in unsafe convictions...." *See id.* And, as the *American Criminal Law Review* recognized, the presence of multiple factors—while not synonymous with reasonable doubt—"certainly overlaps with it." *See id.* What is notable is that there is no actual requirement that the defendant present evidence of another perpetrator or establish the guilt of another individual. That is what Special Counsel inappropriately required of Mr. Cooper here.

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[68] Stan Perry, et al., *Independent Investigation of State v. Richard E. Glossip*, Reed Smith ("Investigation Checklist") (June 7, 2022), https://www.reedsmith.com/en/news/2022/07/reed-smith-publishes-summary-of-independent-investigation-in-glossip (choose "full text" from website hyperlink).

[69] Carrie Leonetti, *The Innocence Checklist*, Georgetown Law American Criminal Law Review ("The Innocence Checklist") (Jan. 15, 2021), https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2021/01/Updated-58-1-Leonetti-The-Innocence-Checklist.pdf.

Instead of determining whether there was substantial support for Mr. Cooper's innocence, Special Counsel was seemingly determined to have Mr. Cooper solve the crime.

Special Counsel failed to conduct an actual innocence investigation consistent with the aforementioned factors and principles and those that the Mitchell Report details. First, Special Counsel failed to obtain an "open file" from the prosecutors underlying Mr. Cooper's conviction. *See* Innocence Project, *supra* Section III and note 64. Crucially, Special Counsel failed to collect all documents in the possession of the SBCDA and the SBSD underlying Mr. Cooper's conviction. *See supra* Section II.A.1. More than just failing to get the underlying files, Special Counsel failed to pursue documents Mr. Cooper identified as being solely within SBCDA's and SBSD's possession, custody, or control. *See supra* Section II.A.1. Further, Special Counsel failed to even interview witnesses with knowledge of facts underlying Mr. Cooper's conviction. *See id.* A list of several key witnesses that Special Counsel seemingly failed to consider interviewing are attached hereto as Appendix 2. As part of any innocence investigation, interviews with individuals provide additional leads to investigate. The practical import of this is that there was not a full review of all facts underlying Mr. Cooper's conviction to determine whether Mr. Cooper was actually innocent. In so doing, Special Counsel failed to foster an open exchange of information and ideas and to approach this innocence investigation cooperatively—both of which are necessary for an innocence investigation. *See* Innocence Project at *supra* Section III and note 64; Mitchell Rpt.

Second, as established above, *see supra* Section II.A.2. Special Counsel admitted that he failed to consider key factors that are fundamental to an innocence investigation, including prosecutorial misconduct by the SBCDA and its failure in many instances to disclose exculpatory evidence, including evidence that law enforcement destroyed evidence that could have supported a jury concluding that Mr. Cooper was innocent, and committed *Brady* violations; police misconduct by the SBSD, including undisclosed police reports; Mr. Cooper's race and the impact it played with respect to SBCDA's and SBSD's investigations; and whether Mr. Cooper was a victim of ineffective assistance of counsel, including whether the outcome of Mr. Cooper's trial may have been different if he obtained different counsel, trial resources, or presented different evidence at trial. *See also* SCR at 3 (admitting that Special Counsel did not investigate prosecutorial misconduct and ineffective assistance of counsel). The totality of the factors that Special Counsel ignored is staggering. *See* The Innocence Check List at 149 and note 64 (stating that the "conviction with multiple factors present from this checklist should be treated as unsafe because it carries too much risk of wrongful conviction.").

Third, Special Counsel established an inappropriate standard of proof for the innocence investigation. The Innocence Project states that the appropriate standard should be clear and convincing evidence of actual innocence. Here, however, Special Counsel required more than just evidence of actual innocence, but rather that the subject of the innocence investigation, Mr. Cooper—who lacks many tools, including subpoena power—to prove beyond a reasonable doubt that other perpetrator(s) committed the crimes. This is undoubtedly totally outside the norms of an innocence investigation.

Fourth, Special Counsel failed to independently assess and evaluate the reliability of forensic evidence, failed to create an independent chronology of pretrial and post-conviction investigations, and failed to review and evaluate crime lab protocols and practices to ensure they are followed. Unfortunately, faulty forensics is a systemic problem because the misapplication of forensics is responsible, at least in part, for 45% of the documented exonerations in the country. *See* Mitchell Rpt. at 5 (citing National Registry). In case after case, evidence was presented to juries as powerful scientific proof of guilt when there was little to no scientific support for that conclusion (e.g., bite marks, hair microscopy, cause and manner of death determinations), issues that are coming to light with increasing frequency—in large part as a result of lessons we are learning from innocence cases. Recognizing this critical problem in need of a remedy, on September 30, 2022, Governor Newsom signed SB 467 into law expanding the avenues for post-conviction relief to include those convicted due to (i) "false testimony" concerning faulty and/or unreliable scientific evidence and (ii) expert opinions relying on flawed scientific research or outdated technology. This new law recognizes the scale of the problem concerning the use of faulty and unreliable forensics and provides a much-needed avenue for those wrongly convicted based on faulty forensic evidence. Determining whether a conviction was obtained based on "false testimony" concerning faulty and/or unreliable scientific evidence and/or expert opinions relying on flawed scientific research or outdated technology, by definition, requires full disclosure of all police agency investigation records and files, as well as all crime lab reports, bench notes, and other records, including all records of outside forensic experts law enforcement with whom law enforcement contracted for consult. Disclosure of those critical records does not appear to have taken place as part of the Special Counsel's investigation.

Where, as here in Mr. Cooper's case, allegations of official misconduct are present, the independent investigation should include a review of all available public records concerning prior reports of misconduct or malfeasance by the individuals named. Depending on the law enforcement entity involved, a review of policy manuals and personnel records may also be required. The Special Counsel failed to explore or address any of that evidence.

The impact of Special Counsel's failure to consider and analyze these key factors cannot be understated. Not only did it lead to a sham investigation that was entirely inconsistent with the principles of an innocence investigation and dismissive of Governor Newsom's Executive Order, but also, and most fundamentally, it put blinders on the Special Counsel such that it is clear he was predetermined to find Mr. Cooper guilty and simply rubber-stamp the judicial history of this case.

The effect of a true innocence investigation is perhaps best demonstrated by the case of Christopher Williams, a Black man sentenced to death after being convicted of four murders. Mr. Williams was exonerated of all four on February 9, 2021, after the Philadelphia District Attorney's Conviction Integrity Unit ("CIU") completed an innocence investigation. Reopening of the case by the CIU revealed a trove of police reports and information that pointed to other suspects and undermined other witnesses' testimony in the prosecution's case. It also showed that the prosecution's sole eyewitness had been discredited and had admitted his testimony was false. The Nat'l Registry of Exonerations, *Christopher Williams*.[70] The newly disclosed information had been concealed by the trial prosecutor, David Desiderio, who denied any misconduct in the case.

Pamela Cummings, the then-director of the Philadelphia District Attorney's CIU, has explained that Mr. Williams' wrongful conviction was due to "a perfect storm" of injustice in which witnesses had lied, prosecutors had withheld exculpatory evidence and presented false forensic testimony, and Mr. Williams had been provided ineffective representation. None of this was revealed until the innocence investigation. Notably, "Williams' conviction was built on a house of cards that began to collapse in 2019 when the Commonwealth opened up its files to the defense," the District Attorney's Conviction Integrity Unit wrote in its filings.

Special Counsel's failure to seek the prosecution files in Mr. Cooper's case, despite repeated requests to do just that, destroyed any chance Mr. Cooper had of disclosing the truth or illuminating the "house of cards." Moreover, Special Counsel's admitted refusal to consider prosecutorial misconduct or ineffective assistance of counsel, both of which were key components of the innocence investigation that led to Mr. Williams' exoneration, further underscores that Special Counsel's conclusion could have—and Mr. Cooper maintains would have—been different had he

[70] The Nat'l Registry of Exonerations, *Christopher Williams*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5669 (last visited May 7, 2023).

analyzed all evidence as Governor Newsom ordered.

IV. SPECIAL COUNSEL DID NOT CONDUCT A CAREFUL AND FAIR REVIEW OF ALL RELEVANT EVIDENCE

Recognizing the finality of the death penalty, Governor Newsom ordered that all the relevant evidence regarding Mr. Cooper's conviction be "carefully and fairly" examined. *See* Executive Order N-06-21 at 2 (stating that "where the government seeks to impose the ultimate punishment of death, I need to be satisfied that all relevant evidence is carefully and fairly examined"). Not only did Special Counsel fail to conduct a full review of all evidence, *see supra* Section III, the investigation was not *careful and fair*. Instead, Special Counsel's report relies on analyses from unqualified, tainted experts and contains significant errors, omissions, and misrepresentations. The following is a list of some of the most glaring shortcomings of Special Counsel's report that show it is incomplete, biased, and unreliable.

A. Special Counsel's Experts Are Unqualified to Provide the Opinions They Offered

As detailed above, *see* II.B., Special Counsel's experts are unqualified to provide the opinions they offer. Relying on them is the antithesis of "carefully and fairly" examining all relevant evidence, and thus the Special Counsel's report should be disregarded for this reason alone.

B. Special Counsel Omits Key Considerations About Lee Furrow, Who Confessed to Committing the Ryen/Hughes Crimes

Special Counsel made significant misstatements and omissions in investigating the evidence and testimony. Further, Furrow confessed to the Ryen/Hughes crimes to multiple people over the last 20 years.

1. Special Counsel Disregards Evidence of Lee Furrow's Confessions to the Ryen/Hughes crimes

Special Counsel completely disregards evidence involving Furrow's multiple confessions to the Ryen/Hughes crimes. In or about 2018, Furrow confessed to his involvement in and commission of the Ryen/Hughes crimes to former coworkers, father and son James H. Cameron and James D. Cameron (collectively, "the Camerons"). Mr. Cooper provided Special Counsel with sworn affidavits from the Camerons attesting to Furrow's confession. *See* Exhibit 6 (Declarations of

James H. Cameron and James D. Cameron dated Aug. 1, 2019). Furrow had also separately confessed to committing the Ryen/Hughes crimes to Karee Kellison years before. *See* Exhibit 7 (Declaration of Karee Kellison dated May 6, 2018).

In an attempt to discredit Furrow's confession, *see* SCR at 79, Special Counsel states that the Camerons' recounting is unreliable because they had seen a true-crime T.V. show episode (*48 Hours*) about the Ryen/Hughes murders before Furrow confessed to them. *See* SCR at 79-80. However, contrary to Special Counsel's report, in an interview with documentary filmmaker Ken Carlson in September 2022, both Camerons say Furrow confessed **before** they saw the *48 Hours* episode.[71] *See* Exhibit 8 ("The Carlson Interview"[72] at 12:08:05 (noting that they may have heard about the murder of Mary Sue Kitts, the teenage girl Furrow murdered in 1974, before Furrow confessed to them about "killing a family")). It should also be noted that Furrow has a history of confessing—he confessed to the Mary Sue Kitts murder before these confessions to the Ryen/Hughes killings.[73] In fact, the Camerons did not believe Furrow at the time and said that it was only after they saw the *48 Hours* episode that they became concerned. *See* Carlson Interview at 12:08:05. Thus, Special Counsel's conclusion that the Camerons' accounts are unreliable must be disregarded.

Not only did the Camerons provide sworn declarations, they continue to maintain that Furrow is capable of and in fact committed the Ryen/Hughes crimes; this is based on their interactions with him leading them to believe his confession and that Furrow is a "twisted" individual. *See* Carlson Interview at 11:55:03 (Cameron Sr. stating he believes Furrow committed the

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[71] Kenneth ("Ken") Carlson is an award-winning documentary film director and producer.

[72] Ken Carlson's work is independent and unrelated to the efforts of Mr. Cooper's legal team. Moreover, the interview supports the Camerons' declarations of Furrow's confession. During the interview, the Camerons recount—without hesitation—Furrow's confession about the "killing of a family" and that they learned of it before they saw the *48 Hours* episodes. The Camerons make clear that it was only after they saw the episode that they started researching the Ryen/Hughes crimes. *See* Carlson Interview at 12:08:05 (noting that it was, in fact, Mary Sue Kitts, another person Lee Furrow murdered that they may have heard about before Furrow confessed). No one outside of Special Counsel—including Mr. Cooper's legal team, Mr. Carlson, or the Camerons—knew the substance of Special Counsel's findings and conclusions. This makes the Camerons' statements in the Carlson Interview highly credible as they were made *sua sponte* and not in response to Special Counsel's Report.

[73] https://dailyjournal.com/articles/285785-witness-to-an-execution (last visited June 9, 2023).

Ryen/Hughes crimes); Carlson Interview at 11:58:06 (Cameron Jr. agreeing); Carlson Interview at 11:59:28 (Camerons directly recounting confession); *see also* Carlson Interview at 11:37:15; *see also* Carlson Interview at 11:34:19.

Special Counsel also discredits the Camerons' statements because they did not immediately report Furrow's confession. *See* SCR at 79. However, there are several reasons why witnesses may not immediately come forward—including fears for their own safety. It is understandable that the Camerons had concerns about reporting a confession from someone they knew as a "twisted" individual. The Camerons explained they had stayed anonymous based on advice of counsel. They also told Mr. Carlson that before seeing the *48 Hours* episode, they assumed Furrow was making up the incident to send a message to "not mess with him." *See* Carlson Interview at 12:03:02. Special Counsel's conclusion that the Camerons' statements are untrustworthy is based on a misunderstanding of the facts and shows that Special Counsel did not *carefully and fairly* examine the evidence.[74]

2. Special Counsel Omits Evidence Showing That SBSD Had Possession of the Coveralls Spattered With Blood and That SBSD Knew the Coveralls Were Tied to Lee Furrow

In 2009, six Ninth Circuit judges identified several pieces of significant exonerating evidence that the jury in Mr. Cooper's case never had a chance to evaluate because the prosecution and the SBSD destroyed, tampered with, and hid the evidence from the defense. *See* 102 RT 6550-54. Among that evidence were coveralls, spattered with blood and tied directly to Furrow.

It is undisputed that two people—Diana Roper and Karee Kellison—said they saw Furrow wearing coveralls spattered with blood in the early morning hours of June 5, 1983. *See* SCR at 83; 102 RT 6546-48. On June 9, 1983, Ms. Roper gave the blood-spattered coveralls to SBSD Deputy

[74] Special Counsel also purports to discredit the declarations that Mr. Cooper obtained from Karee Kellison—Diana Roper's sister—when he writes that Karee Kellison stated that her statement in her declaration that she was afraid of Lee Furrow was untrue and that she did not review her 2018 declaration. Report at 74. Both of these statements are false. Ms. Kellison has reaffirmed her statement about Mr. Furrow and the fact that her 2018 declaration was reviewed and signed by her and is true. Indeed, the 2018 declaration has Ms. Kellison's initials on each of the seven pages; she signed the declaration and also attested to handwritten additions. Thus, Special Counsel's conclusions in this regard are concerning and raise questions about the integrity of his investigation in its entirety.

Fredrick Eckley and told him that she believed that Furrow was involved in the Ryen/Hughes crimes. 102 RT 6546-48.

However, with no citation, Special Counsel makes the misleading assertion that Diana Roper told "the authorities" that "she found those coveralls in her closet and that she did not know where the coveralls came from or whose they were." SCR at 83. If one examines the original police report, it is clear that Special Counsel cherry-picked the facts. Although Deputy Eckley wrote in his report that Roper "doesn't know where these coveralls come from," the following sentence of his report states, "[s]he suspects that her estranged husband Lee FURROW, a paroled convict, possibly put the coveralls in the closet." *See* Exhibit 9 (Report of Deputy Eckley, June 10, 1983, "Eckley Rpt.") at 1. In omitting a critical sentence from the police report, Special Counsel distorts the truth. It is documented in Eckley's report and his trial testimony that Roper asked that someone from homicide contact her. 102 RT 6552. No one from homicide ever followed up with her.

Roper's friend and neighbor, Teresa Monteleone, told a Cooper investigator in a 1998 interview that an SBSD detective came to her home shortly after Roper surrendered the coveralls, asking about a call Furrow made to his attorney from her home. *See* Exhibit 10 (Mem. to Special Counsel Re: Essential Documents related to alternative suspects and relevant Timeline of Case (citing Paul Ingels' interviews of Teresa Sanders Monteleone and Diana Roper) Oct. 27, 2021)(Attachments to this Memorandum are truncated). Monteleone confirmed the call after the deputy showed her a phone company record of the call. No SBSD report of this contact and interview has ever been produced despite numerous requests from Cooper's lawyers. Monteleone told Paul Ingels that she overheard Furrow tell his lawyer he was afraid he would be picked up for the crime, that he knew Diana Roper had turned in the coveralls and the news media was saturated with the fact that witness Josh Ryen survived. Diana Roper also said Furrow altered his appearance the day after the killings by cutting off his long hair, beard, and Fu-Manchu moustache. *See* Exhibit 10, Memo Re Alternative Suspects. Monteleone told a Cooper investigator that Furrow called his lawyer from her home again on May 16, 1984, the day Roper was finally interviewed by the SBSD, when she met with Detective Stalnaker. None of these facts are mentioned in the Special Counsel's report.

Special Counsel omits the fact that after Deputy Eckley took custody of the coveralls, he logged them into evidence with the Ryen/Hughes case number as directed by his supervisor. 102 RT 6546. Special Counsel also omits SBSD procedures that required all bloodstained evidence be immediately submitted to the SBSD crime lab for testing which Eckley failed to do. *Cooper*, 565 F.3d at 625; 102 RT 6550-6554. Crucially, Judge Browning of the Ninth Circuit acknowledged

the importance of Deputy Eckley's mishandling of the coveralls in his dissent in *Cooper v. Woodford*, 357 F.3d 1019 (9th Cir. 2004):

> On June 10, 1983, Sergeant Stodelle told [Sergeant] Arthur about the contents of Eckley's report about the coveralls. (Ex. 200.) Eckley's report clearly recounts Roper's story that Furrow had come home with the bloody coveralls on the night of the murder; that he had left them in the closet at her house; that he had been paroled three years before from his sentence for killing Mary Sue Kitts; and that she believed that the coveralls were connected to the Ryen/Hughes murders. (Ex. 194.)

See Cooper, 357 F.3d at 1041. The blood-spattered coveralls were never sent to a lab, and they were destroyed six months later by Deputy Eckley, who threw them in a dumpster. 102 RT 6550-52. The fact that Special Counsel failed to consider the destruction of this potentially exculpatory evidence is further proof that Special Counsel was determined to find ways to justify Mr. Cooper's conviction rather than search for the truth.

Special Counsel also conspicuously omits that at Mr. Cooper's trial in 1984, Deputy Eckley falsely testified that he acted alone when he destroyed the coveralls. 102 RT 6550-6554. Mr. Cooper learned only years later that Deputy Eckley did not act on his own, but, rather, the destruction was approved by his superior officer, Deputy Ken Schreckengost. *Cooper*, 565 F.3d at 625. When confronted in 2004 with the disposition report, Schreckengost admitted that he had approved the coveralls' destruction in December 1983, thereby establishing that Deputy Eckley lied at trial when he testified that he threw away the coveralls on his own. *See* Supplemental Declaration of Joseph P. Soldis dated Mar. 17, 2005, ER 4786-91. Special Counsel inexplicably failed to consider any of this, including the veracity of SBSD Deputy Eckley, who offered critical testimony against Mr. Cooper.

Sergeant Arthur, in his trial testimony, recalled receiving Eckley's June 9, 1983, report about the recovery of the coveralls and admitted he did nothing for almost a year. 97 RT 5246-51. At trial, Sergeant Arthur testified that his failure to respond to Eckley's report and to send the coveralls to the crime lab for analysis was because of "neglect." 97 RT 5261.

Special Counsel ignored additional facts tying the coveralls and Furrow to the Ryen/Hughes crimes. For instance, multiple people testified that they had seen three men, one of them matching Furrow's description and one of them wearing coveralls spattered with blood, on the night of the

murders at a bar about a mile-and-a-half from the Ryen home. *See* June 28, 2004, HRT 120-24; HRT 123-24, 164-65.

The coveralls are just one of many pieces of evidence Special Counsel failed *to carefully and fairly* examine. The coveralls are undoubtedly a significant piece of exonerating evidence that the jury never had an opportunity to evaluate because the prosecution and the SBSD destroyed, tampered with, and hid evidence from the defense. Further, Special Counsel abrogated his responsibility to fully investigate the more likely suspect, convicted killer Lee Furrow, despite the amount of evidence implicating him. Special Counsel asked Mr. Cooper's legal team to explain how Furrow could be guilty of the crime by providing a timeline of his whereabouts on June 4, 1983, yet Special Counsel ignored facts in the 1,500-word timeline Cooper's team submitted, reducing the timeline in Special Counsel's report to a skeletal summary of fewer than 200 words. *See* Exhibit 11 (Memo to Special Counsel Re: Alternative Suspects, October 27, 2021). Most importantly, Special Counsel did not interview key witnesses named in the Cooper timeline who were privy to Furrow's whereabouts throughout June 4, 1983.

3. Special Counsel Ignores Sightings of the Ryens' Station Wagon With Multiple Occupants, the Car's Movements Around Long Beach, and Mr. Cooper's Presence in Mexico – All of Which Exculpate Mr. Cooper

Special Counsel acknowledges that a neighbor of the Ryens told Detective Steve Moran that late in the night of Saturday, June 4, 1983, or possibly just after midnight on Sunday, June 5, 1983, she saw the Ryens' station wagon driving away from the Ryens' residence at "a very high rate of speed," SCR at 5; however, he omits that numerous additional witnesses also saw the speeding station wagon with several white men in the car around the same time. Furthermore, Special Counsel does not address the uncontested evidence that the Ryens' station wagon was parked in a church parking lot in Long Beach between June 7, 1983, and June 11, 1983, and that it was moved in and out of the lot during this time. At trial, a hotel clerk testified that Mr. Cooper checked into a hotel in Tijuana at 6:00 p.m. on June 5, 1983. At the preliminary hearing, Owen Handy testified that he met Kevin Cooper in Ensenada, Mexico, on June 9, 1983, and that starting that evening, Mr. Cooper stayed with Mr. Handy, his wife, and his 9-year-old daughter. They set sail on June 11, 1983. Preliminary Hearing, 11/30/1983, Vol 12, pgs. 3 -7. These facts establish that, at minimum, other people were in control of the Ryen car immediately and for days after the killings, that Mr. Cooper was never in the Ryens' station wagon, and that other people killed the Ryens. Special Counsel's bias and failure to critically look at the evidence is revealed by the omission in the Report of uncontested facts that exculpate Mr. Cooper: the numerous sightings of the Ryens' station

wagon leaving the scene of the Ryen/Hughes crimes with multiple occupants, the fact that Mr. Cooper was in Mexico starting Sunday, June 5, 1983, and that the Ryen car was moved around Long Beach between June 7, 1983, and June 11, 1983, when it would have been impossible for Mr. Cooper to have been the one doing that given the undisputed evidence that he was in Mexico during this time. When the Ryen's station wagon was discovered in Long Beach, law enforcement did not conduct a stake out that might very well have led to the capture of the people responsible for killing the Ryens. The reason for this should have been part of the Special Counsel's investigation.

A. Sightings of the car immediately after the killings. None of the several witnesses who saw the Ryens' station wagon being driven after the Ryen/Hughes crimes reported seeing a Black male in the vehicle. All but one witness described multiple people in the vehicle, one of whom was a white male. Less than a mile from the scene of the Ryen/Hughes crimes, Douglas Leonard and his wife were forced to stop in order to avoid a station wagon that resembled the Ryens' station wagon. *See* 102 RT 6588-90, 6595; *see also* 102 RT 6590-91, 6600-01. Shortly after the incident, Leonard described the driver as a young white male. 102 RT 6592. Leonard's wife saw the silhouettes of two people in the front seats of the station wagon and two in the rear. 102 RT 6603. Additionally, Linda Edwards—who lived at the bottom the hill from the Ryens' house at the entrance of the driveway to the Ryen property—recalled seeing the Ryen station wagon leaving at a faster-than-normal speed on either Friday, June 3 or Saturday, June 4 at about 12:30 a.m.,[75] preceding the discovery of the murders. *See* 103 RT 6800, 6801-03.

[75] Special Counsel discredits Lee Furrow as a possible murder suspect based primarily on Karee Kellison's interview with Detective Woods almost a year after the murder when she supposedly told the Detective that she was with Lee Furrow at the concert at 12:30 a.m. However, there is nothing that should give the Special Counsel confidence that Ms. Kellison's recollection of the time had any specific reliability. And more to the point, Special Counsel made no effort to independently and objectively determine when the concert ended. Credible reporting suggests that the concert ended before midnight, which would have given Lee Furrow time to travel to Chino Hills and to commit the murders. *See* https://books.google.com/books?id=wVBKAAAAIBAJ&pg=PA2&dq=willie+Nelson+midnight&article_id=6664,930243&hl=en&sa=X&ved=2ahUKEwj90aiArOyBAxX1AzQIHWt7D3MQ6AF6BAgHEAI#v=onepage&q=willie%20Nelson%20midnight&f=false.

B. Sighting of the Ryen car on Sunday June 5, 1983. Another witness saw three white men in a vehicle fitting the description of the Ryens' station wagon in Claremont on the afternoon of June 5, 1983; they nearly collided with the car she was driving with her grandmother in the passenger seat. The three white men were acting strangely enough that the witness wrote down the license plate. Shortly after learning of the killings, the witness saw on TV that the plate number she had recorded belonged to the Ryens' station wagon. She wrote a letter addressed to the "Chino Police" reporting this sighting and the license plate; this letter was never turned over to the defense, and Special Counsel ignores it completely. Declaration of Jane Doe dated Aug. 18, 2015. These statements led the SBSD to issue a statewide criminal bulleting on June 7, 1983, stating that the suspects were three young white or Mexican males driving the Ryen car.

C. The Ryen car in Long Beach. The Special Counsel ignored the fact that the Ryen station wagon was first seen in the parking lot of St. Anthony's Catholic Church in Long Beach on the afternoon of June 7, 1983 (92 RT 4173), two days *after* Mr. Cooper left Chino Hills and had arrived in Mexico, and the reports show that it was driven into and out of the parking lot in the following days according to various witness testimonies:

- Sister Joseph Ann James first noticed the Ryen station wagon in the church parking lot in Long Beach on Tuesday, June 7, 1983, at around 4:20 p.m. and said she also saw it on other days. (92 RT, 4173).

- George Murdock reported to Long Beach police finding the Ryen station wagon abandoned in the church parking lot around 7:30 a.m. on June 11, 1983. He testified that he walked his dog through the parking lot every morning and evening. He did not see the car on the lot on the afternoon of June 7, 1983 (103 RT, 6786-6797).

- SBSD Deputy John Hagen, who was surveilling the car in the lot on June 11, 1983, testified that Monsignor Gaulderon told him he did not see the car in the lot on Friday, June 10, 1983. (RT 103, 6861). Had it been there, Monsignor Gaulderon would have noticed it because he was monitoring a disabled car next to which the wagon had been parked. On June 11, 1983, the monsignor told Deputy Hagen that the disabled car had been there for 30 days, that he had wanted it towed, and that no car was parked next to the disabled car the previous day. (103 RT, 6861-6862).

The sightings of the Ryens' station wagon and its movements while parked in Long Beach during the time Mr. Cooper was in Mexico exculpate Mr. Cooper and show he had nothing to do with the

murder of the Ryens and Christopher Hughes. Rather than analyzing and investigating this information, the Special Counsel glibly dismisses Mr. Cooper's alibi evidence solely based on unimportant inconsistencies between details of what he remembered when he was interviewed in 2022 and his testimony at trial forty years earlier.

The Report also states that no witnesses have come forward to corroborate his testimony about hitchhiking. However, without examining the SBSD files, it cannot be assumed such evidence does not exist. Just as the SBSD destroyed the coveralls and hid the existence of the blue short-sleeved shirt, it may well have withheld exculpatory evidence in this case about Mr. Cooper's travel to Mexico.

C. Special Counsel's Statement That There Is No Evidence That Gregonis Opened the Glassine Vial Labeled A-41 Contradicts Established Lab Protocols

As stated by Judge Browning, "in common laboratory practice, a seal with an individual's initials on it indicated that the individual opened the bag and constitutes the only record of the evidence being opened. The presence of Gregonis's initials suggests that, contrary to his sworn testimony, Gregonis opened the bag containing A-41." 357 F.3d at 1019.

Nevertheless, Special Counsel asserts that there is "no direct evidence" that Gregonis opened A-41 and that "the presence of Gregonis's initials on the glassine bindle on the day he checked out A-41 does not establish that he opened the bindle." SCR at 23. This conclusion contradicts accepted laboratory protocols, leaving other reasonable inference[76] that Gregonis opened the bindle and either planted Mr. Cooper's DNA or contaminated the sample. *See* Mitchell Rpt. at 14.

If Special Counsel had *carefully and fairly* considered the evidence, he would have been forced to confront and address this significant irregularity.[77]

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[76] When utilizing "circumstantial" evidence, under California criminal jury instructions regarding circumstantial and direct evidence, if there is no other inference other than the reasonable inference from the circumstantial evidence being put forward, the jury must draw the reasonable inference—which is what Special Counsel should have done here.

[77] Mr. Cooper's counsel presented myriad evidence to Special Counsel concerning Gregonis's malfeasance, none of which was addressed. *See* Appendix 1, Email text from Mr. Cooper's counsel to Special Counsel providing a detailed description of Gregonis's malfeasance.

D. Special Counsel Misrepresents Evidence Surrounding the Shoeprints Purportedly Found at the Ryen Home

SBSD investigators claim to have found shoeprints at the crime scene that were later presented by the prosecution at trial to convict Mr. Cooper. SBSD criminalist William Baird, manager of the SBSD's crime lab, testified that he analyzed three shoeprint impressions purportedly implicating Mr. Cooper in the murders:[78] (1) a faint shoe impression that had been found on a spa cover outside of the Ryen master bedroom; (2) a bloody shoe impression on a fold of the sheet from the Ryen master bedroom; and (3) a tennis shoe impression from the Lease house. 94 RT 4755-56, 4760-63, 4767. However, shoeprint identification in recent decades has been found to be "junk science" and is not credible in contemporary courts. Thus, Special Counsel overlooked facts and circumstances that undermine the credibility and reliability of the shoeprint evidence.

1. Special Counsel Overlooks the Questionable Circumstances Under Which the Shoeprint on the Spa Cover Was Purportedly Found

The SBCDA presented evidence at trial of a "faint shoeprint found on a spa cover outside the Ryens' master bedroom on June 5, 1983." *See* 88 RT 3363;94 RT 4763; *see also* SCR at 4, 41. Specifically, on the morning of June 8, 1983, three days after the murders, Deputy Martha Smith was ordered to sketch ***all*** the shoeprints on the spa cover. 103 RT 6869, 6871-73, 6878-79. Deputy Smith completed this task, but when none of her sketches matched the print of a PRO-Keds Dude shoe, she was directed back to the spa cover to look again. 103 RT 6869, 6871-73, 6878-79. Only then did Deputy Smith "see" a print that purportedly matched the PRO-Keds Dude tread and create a sketch. 103 RT 6869, 6871-73, 6878-79. SBSD then destroyed this shoeprint during its processing, precluding any analysis by the defense of the print, which may never have even existed. 88 RT 3297-98, 89 RT 3447-48; *Cooper*, 565 F.3d at 617.

The prosecution tied the shoeprint to Mr. Cooper by misrepresenting to the jury that the type of shoe was available only to prisons and not sold in public retail. *See* discussion *infra* Section IV.D.3. Criminalist Baird testified that he might have told Mr. Michael Newberry (the Stride-Rite official who testified at trial) that the SBSD was looking for information about the

[78] Additional shoeprints at the scene were discovered but not investigated. For example, Deputy Gilmore noticed a bloody shoeprint on the concrete outside of the sliding glass door on the day of the murders but ignored it because they assumed it had been caused by fire personnel attending to Josh Ryen. 88 RT 3266-68.

availability of the particular model of shoes, so the prosecution could "shut down certain defenses." 94 RT 4792.

Had Special Counsel *carefully and fairly* examined the creation of this evidence, it would have led to the conclusion that this evidence was unreliable. This is more proof of Special Counsel's failure to *carefully and fairly* examine the evidence.

2. Special Counsel Overlooks Contradictory Testimony From the Only Person Who Testified They Had Seen the Bloody Shoeprint on the Sheet While the Sheet Was in the Master Bedroom

Deputy Sheriff Gale Dewey Duffy ("Deputy Duffy") was the only person who testified to seeing the shoeprint on the sheet while it was in the Ryens' master bedroom; however, he changed his testimony between the pretrial hearing and the trial.

It is dubious that Deputy Duffy, and the numerous other criminalists who were taking evidentiary photos of a crime scene, would see a bloody shoeprint on a sheet at the crime scene and not take a direct photo of it.[79] Furthermore, it is highly suspect that months later this bloody shoeprint would appear in a lab.

Specifically, at a pretrial hearing (June 1984), Deputy Duffy stated that while photographing the crime scene on June 5, 1983, he did not see any shoe impressions in the Ryens' master bedroom:

Q:	While you were taking photographs in the Ryen residence on June 5th, did you see any shoe impressions inside?
A:	[N]ot that I can recall, no.

See 43 RT 3343.

In November 1984, Deputy Duffy testified at trial that during his first walk-through of the crime scene with Sergeant Arthur on June 5, 1983, he did not have any equipment with him. *See*

[79] As of June 2023, Mr. Cooper is not aware of any photograph of the shoeprint on the sheet while the sheet was in the Ryen master bedroom. Deputy Duffy's trial testimony refers to Exhibit 177-A, which does not clearly depict any shoe impressions, just the area where Deputy Duffy purports to have seen the shoe impression.

88 RT 3358. It was only after the walk-through that Deputy Duffy collected his camera from his car and proceeded to take photographs:

Q.	After that walk-through did you leave the Ryen home?
A.	Yes, sir. I did.
Q.	Did you go to your car?
A.	Yes, I did.
Q.	Was that to get some equipment?
A.	Yes, it was.
Q.	What did you remove from your car?
A.	My camera kit and latent fingerprint kit.
Q.	Did you then re-enter the home to start processing that particular scene?
A.	Yes, sir. I did.

See 88 RT 3359.

Deputy Duffy's testimony is plainly contradictory because his pretrial testimony, in which he said he did not see a shoe impression while photographing, would require him to see the shoe impression in his first walk-through, which is the only time he was not photographing. However, his trial testimony states that he did not see any shoe impressions during his first walk-through and it was only later, after acquiring his camera and taking photographs of the scene, that he saw a shoe impression:

Q.	Did you notice any impressions in blood of shoe impressions inside the Ryen master bedroom while you were taking photographs in there on your first walk-through?
A.	On my first walk-through?
Q.	Yes.
A.	No sir.
Q.	Or at any time during that particular evening inside the master bedroom?
A.	Yes, sir.
Q.	Where was that?

A.	I believe it was on the sheet of the bed.
Q.	When did you notice that?
A.	Couple hours after I got there I think, it was.
Q.	Did you point it out to somebody?
A.	I believe somebody pointed it ought [sic] to me.
Q.	Who was that?
A.	I really don't know. I don't recall

See 89 RT 3497. Given this inconsistency, Deputy Duffy's testimony—especially his trial testimony in which he had time to convene with the prosecution—is entirely unreliable. Deputy Duffy simply changed his story. Special Counsel failed to consider this evidence at all, let alone *carefully and fairly*.

On recross-examination at trial, Defense Attorney Negus read from the preliminary hearing transcript and showed that Duffy had admitted then that he had not seen any shoe impressions. *See* 89 RT 3498.

> MR. NEGUS: If I could read, your Honor, from the preliminary transcript of Volume XXIV. Page 116.
>
> Q. Deputy. did you give this testimony. Lines 8 through 10?
>
> MR. KOCHIS: If I could have just a moment. I have that.
>
> MR. NEGUS: "Question: When you were inside the master bedroom on June the 5th. did you see any shoe impressions?
>
> "Answer: No. sir."
>
> MR. NEGUS: I have nothing further.
>
> THE COURT: Mr. Kochis.
>
> MR. KOCHIS: I have no further questions.

89 RT 3498. Either way, Deputy Duffy's trial testimony is unreliable in placing the shoeprint impression in the Ryens' master bedroom.

Special Counsel glosses over Deputy Duffy's inconsistency by implying that Deputy Duffy's later testimony was consistent with his pretrial testimony because while "[h]e did not notice or photograph the shoeprint on the bedsheet during his first walk-through, he photographed the shoeprint after it was pointed out to him by someone approximately two hours after he arrived."

89 RT 3497, SCR at 42.[80] But even limiting Deputy Duffy's pretrial statement to only his first walk-through, Deputy Duffy's later statements still result in contradictory testimony, as Deputy Duffy did not even have his camera with him for the first walk-through. Indeed, Special Counsel acknowledges this discrepancy when he quotes Judge Fletcher's 2004 dissenting opinion in *Cooper*, 565 F.3d 581:

> At trial, only one person testified that he saw the bloody print while the sheet was still in the bedroom. That person was SBSD Deputy Duffy. . . . If Deputy Duffy was telling the truth at the preliminary hearing, no one saw the blood print on the sheet while it was in the bedroom. If Deputy Duffy was telling the truth at the preliminary hearing, he lied at trial." *Cooper v. Brown*, 565 F.3d at 616. Judge Fletcher suggests that there was no shoeprint on the bedsheet on June 5 when Duffy was taking photographs or when Stockwell collected the bedsheet, but that someone later obtained a Pro Keds Dude tennis shoe, dipped it in some red-colored substance, and placed a shoeprint on the bedsheet before Stockwell observed it later.

SCR at 42 (citing *Cooper v. Brown*, 565 F.3d at 615). Notwithstanding the fact that the shoeprint evidence is considered junk science, Special Counsel glosses over this critical evidence that raises substantial support for Mr. Cooper's claims of innocence.

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[80] Special Counsel does not mention that it was a full month before, at the SBSD crime lab, that SBSD Deputy David Stockwell claimed to have discovered a rust-colored footwear impression on the sheet in two separate portions that came together when the sheet was folded in a certain manner. 89 RT 3506-07. Deputy Duffy was unable to recall the time he had collected the bedsheet, and his notes did not reflect whether at the time of collection there was a print. Deputy Duffy acknowledged that the time of collection could be important in establishing that the foot impression he found came from one of the many people who had been in the bedroom that day, rather than from a suspect. 90 RT 3680-81, 3687-88. Significantly, this was the same SBSD crime lab that Deputy Baird had been testing shoeprint stains by placing shoes in blood and testing the prints on surfaces, alongside evidence, as well as stealing heroin. *See* 94 RT 4764-4777.

3. Special Counsel Contradicts His Own Statements Regarding the Prosecution's Identification and Statements About the Pro-Keds Shoes

The prosecution misled the jury when it presented false evidence that the Pro-Keds shoes were only available to prison inmates and not the public. *See* SCR at 41 (Special Counsel's report acknowledges that the prosecution presented evidence to the jury that the type of shoe was only "issued at prisons, including CIM, and which was not sold in retail locations."). This and other erroneous facts were key factors in the jury's deliberations to tie Mr. Cooper to the crime scene, and the jury never learned the truth. *See, e.g.*, Exhibit 1, Doxey Decl.

However, in his purportedly *fair and careful* review, Special Counsel does not contend with the numerous sources that show there were improper and false representations by the prosecution to the jury that Pro-Keds shoes were "issued at prisons, including CIM and which was not sold in retail locations." SCR at 41. Instead, Special Counsel obfuscates, stating "the prosecution did not argue that a particular shoeprint came from a particular shoe; the prosecution argued that the shoeprint was relatively rare and unique to the incarcerated population." SCR at 43. This is meaningless semantics and disingenuous since Special Counsel also states that "the prosecution argued that shoeprint evidence at the Ryens' house matched the shoeprint at the Lease house and the tread of a tennis shoe (the Pro-Keds Dude) that was issued at prisons, including CIM, and which was not sold in retail locations." SCR at 41. In his opening statement, the trial prosecutor emphasized that the pair of prison tennis shoes received by Mr. Cooper were, "very unique, unique because of the pattern on the sole and because these shoes were supposedly supplied strictly for prison use within the State of California and were unavailable for retail stores within California." 84 RT 2280-81. Special Counsel fails to acknowledge that is all untrue.

Special Counsel's report makes no mention of the fact that Warden Midge Carroll of CIM called the SBSD numerous times to alert them that, contrary to assertions by the SBSD (and later the district attorney at the trial), the shoes in question were not special to the prison and, in fact, were available to the public through catalog and retail sales. *Cooper*, 565 F.3d at 620-25. Special Counsel completely omits her testimony at the 2004 evidentiary hearing before Judge Marilyn Huff. HRT 102-09; *Cooper*, 565 F.3d at 62.

Neither the fact that Warden Carroll had called the SBSD nor the contents of her communications were relayed to Mr. Cooper's defense team. The fact that the shoeprints, contrary to what the prosecution told the jury, could easily have been left by someone not from a prison is

highly significant exonerating evidence that the SBSD, and later, the prosecution, hid from the jury and the defense.

The evidence that the PRO-Keds Dude shoes were readily available to members of the public and the misrepresentation to the jury of the evidence relating to the shoes is substantial evidence supporting Mr. Cooper's claims of innocence that the Special Counsel failed to *carefully and fairly* consider.

4. Special Counsel Overlooks and Does Not Properly Consider That Shoe Print Identification Is "Junk Science" and That the SBSD Crime Lab Was Corrupt

The science surrounding shoeprint impressions is "junk science" and would not stand as evidence in contemporary courts.[81] *See* 2016 Clemency Pet. at 97. Like bite mark identification and microscopic hair analysis, identification of a particular shoeprint as coming from the tread of a particular shoe is no longer accepted as scientifically valid. *See* Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, 105-6 Harvard Univ. Press, 2012; *see also* Nat'l Academy of Sciences Report: Committee on Identifying the Needs of the Forensic Sciences Community, *Strengthening Forensic Science in the United States: A Path Forward*, National Research Council 7 (Aug. 2009), http://nap.nationalacademies.org/12589).

Special Counsel attempts to sidestep this consideration by, as above, stating that "the prosecution did not argue that a particular shoeprint came from a particular shoe; the prosecution argued that the shoeprint was relatively rare and unique to the incarcerated population." SCR at 43. Special Counsel's explanation in this regard is nonsensical because the statement that a particular shoeprint is rare and unique would require the identification of the shoeprint and was the only way to connect the shoeprint to Mr. Cooper. The conclusion had no basis in fact or science.

It does not appear that Special Counsel investigated the allegation that around the same time SBSD Crime Lab Manager William Baird was handling the shoeprint evidence in Mr. Cooper's case,

[81] Mr. Cooper also notes that the shoeprint evidence is also tainted by the fact that SBSD Detective William Baird, the manager of the SBSD's crime laboratory and in charge of the shoeprint analysis, was stealing heroin from the evidence locker at the San Bernardino County Crime Lab at the time of the investigation into the Ryen/Hughes crimes. *See* William Baird Investigative Report dated July 1, 1997. ER 1714-16. Special Counsel in countless other places fails to consider similar circumstances of information that only came to light after the original trial.

he was stealing $150,000 worth of heroin from the lab's evidence locker for personal use and to sell back to heroin dealers—evidence that was presumably logged into evidence from another case. Special Counsel essentially concludes that there is no cause for concern because "there is no evidence that Baird was using any drugs at the time of the Cooper investigation and Baird has denied that he was using any drugs at the time of the Cooper investigation." Report p. 43. According to Paula Mitchell, Director of the Los Angeles Innocence Project, "It is deeply, deeply troubling that Special Counsel finds no cause for concern that the SBSD Crime Lab Manager—the very person responsible for overseeing crime lab operations and ensuring that the lab is complying with its legal, ethical, and professional obligations to ensure that the constitutional rights of criminal defendants are protected, including the disclosure of *Brady* materials to the defense—was STEALING AND TAMPERING WITH EVIDENCE, and potentially fabricating evidence in one or more cases that were under investigation by the SBSD at the very time Mr. Baird was apparently analyzing evidence in Mr. Cooper's case." Mitchell Rpt. at 8. Indeed, public reporting reveals that during his tenure, Sheriff Tidwell was stealing more than 500 guns from the evidence locker, was eventually charged, and got off on a plea deal that was approved by SBCDA Michael Ramos but never fulfilled by Mr. Tidwell. Baird got off as well.[82]

The jury never heard any of that explosive impeachment evidence because Mr. Baird's theft apparently was not detected until after he testified in Mr. Cooper's trial. Special Counsel dismissed the concerns raised by Mr. Cooper and by Judge Fletcher that the shoeprint on the bedsheet was planted by someone in law enforcement or in the lab, and the fact that Mr. Cooper was deprived of his right to due process when the jury heard testimony from Deputy Baird about the similarity of the shoeprints purportedly found at the Ryen and Lease residences but did not hear any of the highly material impeachment evidence concerning Mr. Baird's history of stealing and tampering with evidence, by concluding that the shoeprint evidence was "probative" but not strong evidence of Mr. Cooper's guilt. Special Counsel should have investigated whether the misconduct of Mr. Baird was emblematic of the culture within that lab at the time. Instead, Special Counsel again retreats to his standard refrain when any official misconduct is exposed, which is essentially to ignore it or minimize it and conclude that even if there were errors, they were harmless and do not support Mr. Cooper's innocence claim. SCR at 43.

[82] https://www.latimes.com/archives/la-xpm-2004-may-11-me-sheriff11-story.html#:~:text=Floyd%20Tidwell%2C%20the%20former%20sheriff,during%20his%20eight%2Dyear%20tenure (last visited June 11, 2023).

If Special Counsel had carefully and fairly reviewed the shoeprint evidence, and the lack of factual or scientific basis for the evidence, this would be more proof supporting Mr. Cooper's claims of innocence.

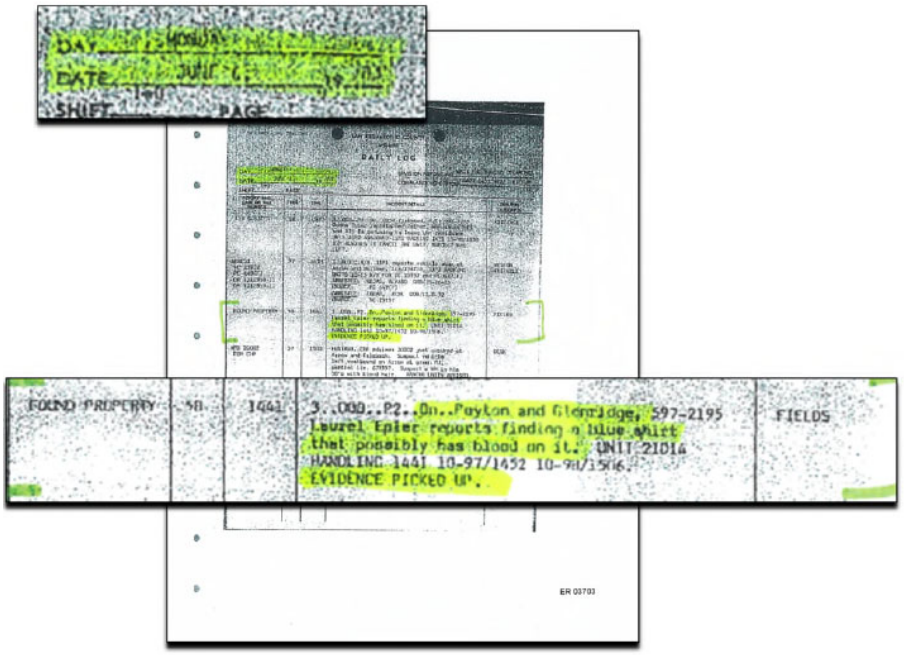
E. Special Counsel Inexplicably Dismisses Discovery of a Bloody Blue Shirt That Points to Multiple Killers, Evidence That Was Hidden From Mr. Cooper Until the 2004-2005 Habeas Hearing

It is an egregious miscarriage of justice that Mr. Cooper only learned about the discovery of a blue short-sleeved shirt with blood on it at the 2004-2005 evidentiary hearing before federal Judge Marilyn Huff, almost 20 years after Mr. Cooper's trial. This was a *Brady* violation and, on its own, should have afforded Mr. Cooper a new trial.

The evidence proves that the blue shirt was discovered by local resident Laurel Epler, that it was collected by the SBSD as documented in the SBSD daily phone log, and was found in a location that tied it to the Ryen/Hughes crimes. The blue shirt's existence, along with the tan T-shirt found the following day along the same roadway, strongly indicates that multiple persons and not Mr. Cooper committed the Ryen/Hughes crimes.

1. The Sheriff's Daily Log Clearly States That Epler Reported a Blue Shirt and the Blue Shirt Was Picked Up by Deputy Scott Field

A sheriff's daily telephone log for June 6, 1983, records that Laurel Epler, who lived in the area near where the murders occurred, saw a discarded blue shirt with blood on it and called the SBSD. Deputy Scott Field met Epler at her house, she gave Deputy Field a statement, and she directed him to the blue shirt. He logged in the daily log for June 6 that "Evidence [was] picked up." SBSD Log June 6, 1983; Aug. 26, 2004, HRT 133-34, 140. Further, Laurel Epler confirmed the existence of the blue shirt at a hearing in 2004. *See* Aug. 26, 2004, HRT 161-162; Aug. 26, 2004, HRT 171-172.



SBSD Log dated June 6, 1983.

This evidence, in records created by the SBSD, demonstrates that a blue shirt with blood on it was found and collected by the SBSD on June 6, 1983. It is incomprehensible that Special Counsel would decide from this evidence that the blue shirt did not even exist, especially if he conducted a *careful and fair* examination of the evidence.

2. The SBSD Relied on Josh Ryen's Description of a Blue Shirt in Its Criminal Bulletin

The following day, the SBSD issued a "Criminal Bulletin," dated June 7, 1983, that identifies the suspects in the Ryen/Hughes crimes as "[t]hree (3) . . . white or Mexican males," one wearing a "blue short sleeve shirt." SBSD Criminal Bulletin No. 16 dated June 7, 1983. The source of that description is Josh Ryen, who gave a statement shortly after he arrived at the hospital on June 5, 1983. Josh was interviewed by Deputy Dale Sharp who later testified that Josh described the three suspects, one of whom was "Suspect No. 2, five nine, slim build, dark hair, short, wearing Levi's and a blue short sleeved shirt …" 99 RT 6029. Also, one of three possible suspects in the Canyon Corral Bar the night of the murders was wearing a blue shirt. *See* Exhibit 12 (Interview of Shirley Killian, Mar. 31, 2004).

(SBSD Criminal Bulletin No. 16 dated June 7, 1983.)

The description of a blue short-sleeved shirt in the SBSD's Criminal Bulletin establishes that there was a blue shirt and the SBSD had tied it to the Ryen/Hughes crimes. It is incomprehensible that Special Counsel adopts the prosecution argument that the blue shirt did not exist.

3. Special Counsel Erred in His Attempt to Discredit Ms. Epler's Testimony

Laurel Epler directly affirmed in the 2004 evidentiary hearing that the blue shirt existed. Epler stated "[she] was sure it was blue" and that it "couldn't have been any other color [other than blue]." *See* Aug. 26, 2004, HRT 161-161-172. Epler simply could not remember the exact shade of blue.

Dep. Atty. Gen. Holly Wilkens (Q): Do you recall that it was blue?

Laurel Epler (A): Yes, I do recall it was blue…

Q: Okay. What shade of blue was it?

A: I - - that I don't remember what shade of blue . . .

Q: …But you remember it was blue?

A: Yes…the recollection I have, it was medium to dark. I don't recall anything being real light…

Q: Okay. It could have been light blue?

A: It could have been, but it...

Q: I'm sorry. I'm not trying to be difficult, but I'm just -- I don't understand why you look at a black and white photograph and decide that it's not blue in color.

A: I didn't say it wasn't blue. I said it wasn't a very dark blue. I work with color all the time, okay. And I do know that if you photograph a dark blue shirt, it's going to photograph differently than if you photograph a light blue shirt.

Q: So, when you said the photographs don't look like the garment you saw--

A: -- that's not what I said. I said it didn't look like it was a darker blue shirt.

Q: Okay. But are you telling me that you recall it being dark blue?

A: I - - the recollection I have, it was medium to dark. I don't recall anything being real light.

Q: Okay. So, but you're sure it was blue?

A: Yes.

Q: It couldn't have been any other color?

> **A:** No.
>
> **Q:** Okay. And you remember that 21 years later?
>
> **A:** I remember it, and I also, after reading this, impressed it on my memory more, yes.

Aug. 26, 2004, HRT 161-162.

Even when pressed further, Ms. Epler maintains that the shirt existed and was blue.

> **Dep. Atty. Gen. Holly Wilkens (Q):** Now, do you recall telling Deputy Fields [the] color the shirt was?
>
> **Laurel Epler (A):** Again, I cannot remember 21 years ago. It was a blue shirt. That's what's in the log. I mean…
>
> **Q:** Again, Ms. Epler, I don't want you to tell me it's a blue shirt because that's what the log says. I want you to tell me it's a blue shirt because that's what you remember sitting here 21 years later. Now, was it a blue shirt?
>
> **A:** Yes.
>
> **Q:** And how do you know that?
>
> **A:** … I saw the shirt. That's how I know it was blue.
>
> **Q:** All right. So, you recall it being blue?
>
> **A:** Yes.
>
> …
>
> **Q:** And so, it has nothing to do with reading the log and seeing the word blue, correct?
>
> **A:** I don't think it had an awful lot to do with the log. I just think it just reinforced my memory.
>
> **Q:** Okay. So, you had a memory before anyone called you 21 years after the fact to talk about it -- I just want to know if you know it's blue or if you were told it was blue recently. That's very important.
>
> **A:** It was a blue shirt.

Aug. 26, 2004, HRT 171-172.

Despite this clear and unequivocal testimony, Special Counsel states that after "[i]ndependently reviewing the transcript of her testimony at the evidentiary hearing, it is obvious that [Ms. Epler] had no clear recollection of seeing a blue T-shirt on June 6, 1983, near the Ryens'

house." SCR at 102.

The truth and the testimony are that Ms. Epler clearly recounts finding a blue shirt near the Ryen house. However, instead of "[i]ndependently reviewing the transcript of her testimony at the evidentiary hearing," SCR at 102, Special Counsel adopted Judge Huff's factually deficient decision. Special Counsel's report restates Huff's incorrect recounting that Epler only "vaguely remembers finding the 'blue shirt' … she could not recall exactly where the shirt was found … could not recall driving and seeing the shirt on the side of the road. … [T]he Court questions whether Ms. Epler actually recalls a blue shirt." SCR at 101 (citing *Cooper v. Brown*, 2005 U.S. Dist. LEXIS 46232, at *268-69).

If Special Counsel had carefully and fairly reviewed the record (including simply reading the evidentiary hearing testimonies of witnesses Laurel Epler and John Kochis), he would have known the blue shirt existed and that it shows there were multiple killers, evidence that supports Mr. Cooper's claims of actual innocence.

4. The Discovery of the Blue Shirt by the SBSD Led to the Finding of the Tan T-Shirt

On June 7, 1983, the day after the blue shirt was collected by Deputy Field, the SBSD conducted a wider search of the area around the Canyon Corral Bar. That search revealed a bloodstained tan medium-sized Fruit of the Loom T-shirt with a front pocket beside Peyton Road, not far from the Ryen house and the Canyon Corral Bar, and about a block from where the blue shirt had been found the day before. *Cooper*, 565 F.3d at 584; 31 RT 1790; ER 2780-81, Testimony of Scott Field; SBSD Report re: Recovery of tan shirt and towel dated June 10, 1983. A subsequent test found blood on the tan T-shirt consistent with Doug Ryen's blood type. 93 RT 4602-06; 94 RT 4663.

In a contortion of logic and in denial of accepted facts, Special Counsel however concluded that the blue shirt with blood listed in the log on June 6, 1983, was in fact the tan T-shirt documented to be found on June 7, 1984. This conclusion is unsupportable. It is undisputed that the tan T-shirt was found during a search on June 7, 1983, by a larger group of investigators that had been sent out by the chief homicide detective, Billy Arthur. Furthermore, this search on June 7, 1983, was conducted because of the discovery of the blue shirt the previous day, June 6, 1983. It was in the course of that well-documented second search that the tan T-shirt and the orange towel were found. Special Counsel also errs throughout his report (as seen in Special Counsel's quotes above) by further misrepresenting the blue shirt as a *T-shirt*. The attempt to conflate the tan t-shirt

and blue short-sleeved (collared) shirt—different pieces of evidence found on different days—is illogical and must be rejected.

The jury never heard about the blue shirt due to its loss or destruction by the SBSD. If Special Counsel had completed a *careful and fair* examination of the evidence, he would have recognized that the tan t-shirt and the blue short-sleeved shirt are two distinct pieces of evidence that support Mr. Cooper's claims of innocence.

5. Special Counsel Misrepresents Mr. Cooper's Theory About the Blue Shirt

Special Counsel states that Mr. Cooper's theory "seems to be" that Deputy Field "committed perjury" when he did not testify about finding the blue shirt. SCR at 101-102. This is incorrect: Mr. Cooper's point is that Deputy Field did not mention the blue shirt because he was never questioned about the events of June 6, 1984, but was only questioned about June 7, 1984. SCR at 99; 101 RT 6508.

Despite the documentation and extensive memoranda submitted to Special Counsel by Mr. Cooper, Special Counsel ignores the thrust of Mr. Cooper's argument, which is simple and straightforward: Had the blue shirt been turned over in the original 1984 trial, the defense would have had additional convincing evidence of multiple killers, and this fact alone could have resulted in the jury finding Mr. Cooper not guilty of the Ryen/Hughes crimes. Special Counsel failed to *carefully and fairly* consider the evidence surrounding the blue shirt in assessing Mr. Cooper's claims of innocence.[83]

[83] Special Counsel's discussion of supposedly bloodstained rope found in the Bilbia bedroom (J-9) is misleading, contains false, unproven statements, and is not probative. The rope was not admitted into evidence during the trial nor has it ever been raised since by either the defense or the prosecution as being relevant or consequential. It has never been reliably established that the stain was blood and not another substance. The defense did not ask for it to be DNA tested, and the prosecution informed Special Counsel it would not make the sample available now. Nevertheless, Special Counsel states that "it is incriminating that the rope with Doug Ryen's blood on it was found in the Bilbia bedroom," repeating a false statement made by the prosecution in closing argument. Report at 51. The conclusion that this rope had Doug Ryens' blood on it has absolutely no basis in fact. Wraxell's testimony (cited by Special Counsel) was merely that the stain was not inconsistent with Doug Ryen's blood type. Gregonis's testimony was that he was only able to type it as Type A. The defense position is that neither expert established that it was actually blood. In a memo

F. Special Counsel Omits Key Facts and Makes Blatant Misrepresentations Regarding Josh Ryen's Statements About Three Men Committing the Ryen/Hughes Crimes

The sole surviving victim of the murders, Josh Ryen, told police and hospital staff within hours of the murders that the killers were "three white men." Mr. Cooper is Black. Josh Ryen made many consistent statements throughout the investigation that multiple white or Mexican men committed the Ryen/Hughes crimes. As Dr. Eisen, Special Counsel's own expert, found, it was only later, after being influenced by investigators, that the eight-year-old child testified that he saw either a single man or a single dark shadow in the house during the murders.[84] He also was coached by District Attorney Kottmeier, who prepared him for his video testimony in the trial. Defense Attorney Negus did not cross-examine him, to avoid upsetting the child.

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submitted to the Special Counsel at his request in April 2022, the defense demonstrated that the most one could say about the rope was that it may have had a small amount of blood on the outside of the bundle and that it may have been from a person with Type A blood, and that John Kochis falsely stated at numerous points in closing argument that the blood was Doug Ryen's when that had not been proven. Attorney Negus's failure to object to that is another example of how he failed his client. The fact that Special Counsel states that Mr. Cooper's counsel failed to address this evidence is false, and the fact that he devoted two pages of the Report to this irrelevant and false analysis highlights the absurdity of the investigation because it is not grounded in evidence or anything probative and simply parrots a false prosecutor statement made at closing.

[84] Note that Special Counsel also did not address the Expert Analysis submitted to him by the defense showing that the earlier accounts of the attacks reflect Josh's true memory of the events and exonerate Mr. Cooper. *See* Declaration of Kathy Pezdek, Ph.D., dated Sept. 25, 2013. Dr. Pezdek, one of Mr. Cooper's retained experts, is a professor in Claremont Graduate University's Department of Psychology. She is a cognitive psychologist specializing in the study of memory, specifically eyewitness memory. Dr. Pezdek frequently serves as an expert witness in the area of eyewitness memory and identification and has testified on this topic in federal, state, and superior court cases.

1. Special Counsel Completely Omits Josh Ryen's First Communication and Subsequent Statements That Mr. Cooper "Didn't Do It" and Also Fails to Address the Destruction of Notes From the Josh Ryen Interviews

Special Counsel and Dr. Mitchell Eisen, the eyewitness expert, incorrectly state that "Joshua Ryen's original memory report" was the "first attempt to interview eight-year-old Josh." Exhibit 13 at 1 (Eisen Report). Dr. Eisen totally ignored that first interview in his report.

Josh's first interview, in fact, was with Don Gamundoy, a clinical social worker, on June 5, 1983, shortly after Josh arrived at the hospital. 99 RT 5918-20; 88 RT 3264-66. When Gamundoy discovered Josh was unable to speak, he therefore wrote out all the letters of the alphabet, the numbers "0" through "9" and the words "yes" and "no." He had Josh point at letters and numbers to answer questions. 99 RT 5921-23. Using this system, Josh was able to accurately give his birthdate and phone number. 99 RT 5925-27. When Gamundoy asked how many people had attacked him, Josh pointed to the numbers "3" and "4" then "3" again. 99 RT 5928. Through further questioning, Josh identified the attackers as white males. 99 RT 5928-29. Deputy Sharp testified that Josh told him three white men were in the house and three Mexican men approached his father in the driveway, but they did not go into the house. Josh also reported that he did not know the attackers but had seen them before. 99 RT 5931-32. Calvin Fischer, a registered nurse assigned to the emergency room, took notes and confirmed Gamundoy's recollections that Josh Ryen was alert and able to communicate and that he held up three fingers to indicate the number of attackers. SBSD Interview of Calvin J. Fischer dated Jan. 9, 1984; R. Forbush Interview of Calvin J. Fischer dated Oct. 12, 1983, at 2, 12; 100 RT 6232, Testimony of Calvin Fischer. Josh Ryen's subsequent conversations with law enforcement confirmed this information. R. Forbush Interview of Mary Howell dated Oct. 27, 1983, at 2-3.

The second report (which Special Counsel incorrectly contends is Josh Ryen's first report)[85] involved SBSD Deputy Dale Sharp, who took over the questioning from Gamundoy. Under Sharp's interrogation, Josh again identified the attacker as three white male adults. 99 RT 6010-12, 6016-17. The SBSD believed Josh Ryen, as indicated by their using his description of "three white or Mexican men" in the criminal bulletins and information they released to the public. Josh Ryen made further consistent statements about Mr. Cooper and multiple men in the weeks following the

[85] Also note that Special Counsel's Expert, Eisen, refers to "the second interview conducted on 6/14/83" with O'Campo in which "Dr. Hoyle was present." SCR at 219, Eisen Rpt. 2. This was the third interview.

attacks. After seeing a picture of Mr. Cooper on TV in his hospital room, Josh remarked several times that Mr. Cooper did not commit the murders. *Cooper*, 565 F.3d at 584, 612. The first statement on June 15, 1983, was to San Bernardino County Reserve Deputy Louis Simo, who informed Detective O'Campo that Josh spontaneously said that Mr. Cooper did not commit the attacks after viewing the picture of Mr. Cooper on the TV. Detective O'Campo, however, failed to relay this information. He was prompted by a call from Deputy Simo several months later while the preliminary hearing was underway to inquire if O'Campo had written a report about what Deputy Simo heard from Josh. *Cooper*, 565 F.3d at 612-13. No such report was ever turned over to the defense. On August 1 or 2, 1983, when Cooper was arrested and Josh saw the news, he asked his uncle, "Are you sure you have the right guy?" His uncle said "yes." At the end of summer 1983, Josh and his grandmother saw a picture of Mr. Cooper on television, and Josh did not recognize Mr. Cooper. *Cooper*, 565 F.3d at 613. Special Counsel failed to *carefully and fairly* consider this evidence.

The failure of Detective O'Campo and the other officers to record any of their early interviews with Josh Ryen—the only eyewitness to a quadruple homicide—in the hours and days immediately following the crime demonstrates their lack of training and experience. It raises serious questions about potential misconduct. These officers knew or should have known to record the interviews; they also destroyed all of their notes. These are issues that an independent investigation should and would explore, especially given the susceptibility of the child eyewitness, Josh Ryen. Special Counsel was required to examine those issues, interview the officers about their training and experience, looking to see whether there was any new evidence supporting Mr. Cooper's claim of innocence that needs to be considered. Instead, he presumed the officers were acting in good faith and that the evidence they presented was reliable and trustworthy. The analytical gymnastics Special Counsel performed to reach the conclusion that Josh Ryen's statement that Cooper "wasn't the guy" actually meant that Cooper was the guy is confirmation bias in its highest, and most blatant, form. Mitchell Rpt. at 16. Special Counsel failed to *carefully and fairly* consider this evidence.

2. Special Counsel Omits From His Report His Own Expert's Conclusion That It Was "Very Likely" the Investigators' Influence Is What Changed Josh Ryen's Testimony About the Crime Being Committed by Three Men

Special Counsel's own eyewitness expert, Eisen, admits that it is "very likely that the change in Joshua Ryen's memory reports was driven by suggestion from the investigators who likely convinced the boy that the crime was not committed by three Mexican men but rather a single Black male." SCR at 223, Eisen Rpt. at 6.

> 25) **In my opinion, Josh Ryen's original memory reports are not exculpatory of Mr. Cooper's guilt, and carry little weight in this matter**. Indeed, although it is very likely that the change in Joshua Ryen's memory reports was driven by suggestion from the investigators who likely convinced the boy that the crime was not committed by three Mexican men but rather a single black male, I do not see this as an eyewitness case at all. Rather, in my opinion, this is clearly a case based on DNA. In essence, the weak and inconsistent eyewitness evidence does not weigh strongly on determining Mr. Cooper' guilt or innocence.

Exhibit 8 at 6, SCR at 223, Eisen Rpt. at 6.

If we take Eisen as the expert he purports to be (an eyewitness expert and not a DNA expert, which he is not), Special Counsel's own eyewitness expert contends that the only surviving eyewitness initial accounts were consistent and truthful. It was only the later influence by the prosecution and investigation that makes them contradictory. In fact, Eisen all but admits that the prosecution and investigation tampered with the only eyewitness, the eight-year-old survivor of the attack. Further, Special Counsel fails to explain how Josh's "account carries little weight in the matter" when Josh is the only surviving witness and made multiple consistent statements before being influenced by the prosecution. At no time from June 5 through the trial did Josh say a Black man was the sole killer, only that he saw one "dark shadow" down the hallway.

It is clear, that had investigators not influenced Josh Ryen to change his testimony from his initial truthful memory, the defense would have had additional, convincing evidence of multiple killers, and the jury may well have found Mr. Cooper not guilty. Further, had Special Counsel *carefully and fairly* examined the evidence surrounding Josh Ryen's account of the murders, this would be further compelling support for Mr. Cooper's claims of innocence.

G. Special Counsel Misrepresents Key Evidence in Consideration of the Provenance of V-12 and V-17 Cigarette Evidence From the Ryen's Station Wagon[86]

It is uncontested that on June 11, 1983, the Ryen station wagon was found in a Long Beach church parking lot, within a few minutes' proximity of the home of Furrow's stepmother, and not in the direction Mr. Cooper purportedly traveled. 103 RT 6786-89. As discussed above, witness testimonies reported sightings of the car in and out of the parking lot on various days after Mr. Cooper was known to be in Mexico. For example, the man who reported the car to the police

[86] Note that V-12 and V-17 are also subject to other acts of prosecutorial misconduct; however, this section and brief will only discuss Special Counsel's misrepresentations of their provenance.

testified that he walked his dog through the lot every day at the same time and it was not always in the same space.

SBSD Detective Mike Hall conducted an initial examination of the exterior of the vehicle. SBSD Report June 16, 1983. After the vehicle was moved at 6 p.m. to a City of Long Beach impound lot, Detective Hall, in the presence of Deputy Craig Ogino and Deputy David Stockwell, conducted an extensive interior search. *Id.* Detective Hall formed an extensive report of items contained in the car down to the detail of finding a small matchbox and black tape.[87] *Id.* Notably, Detective Hall documented the findings of cigarette butts and ashes in the ashtray. These cigarette butts, contrary to law enforcement protocol, were never mentioned again, much less tested.

After the search in Long Beach, the Ryen car was towed to San Bernardino. Upon its arrival, Deputy Ogino and Deputy Stockwell, the same deputies who had previously processed the Lease house where they failed to submit into evidence numerous pieces of tobacco evidence, initiated another search of the interior of the car and conducted luminol testing for the presence of blood. SBSD Supplemental Report re Processing Station Wagon June 15, 1983. It was only then that the handwritten, unsigned, and undated note was created, as well as their supplemental report. Handwritten list of Car Search, undated, unsigned; SBSD Supplemental Report re Processing Station Wagon 6/15/83. Notably, the cigarette butts reported by Detective Hall in the ashtray were not listed as evidence, and the Burger King cup and Hansen's soda can were not seized for saliva or fingerprint testing.

Special Counsel ignores all evidence surrounding the questionable provenance and discovery of the V-12 and V-17 cigarette evidence. *See* SCR at 8, 35. Specifically, Special Counsel makes the representation that "[a] written report signed by both Ogino and Stockwell states that on June 11, 1983 (the day the station wagon was first searched), they collected V-12 and V-17 from the station wagon while it was in Long Beach. Discovery at 1712-14. Furthermore, they both testified under oath that they found those items on June 11, 1983, while collecting evidence from the wagon in Long Beach. 92 RT 4233-4235, 4286-4289." SCR at 35 (emphasis removed).

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[87] The contents from the initial search in Long Beach included a paper flyer, a matchbox, ashes and cigarette butts in the ashtray, tobacco-type substances, black electric tape, a blue cord, a magazine, a Burger King cup, a Burger King french fry container, a Burger King wrapper, a Footlocker bag containing Nike shoes, and an empty 12-ounce can of Hansen's grapefruit soda. SBSD Report June 16, 1983.

Special Counsel concludes that "Nor is there any inconsistency between Detective Hall's report and the report of Ogino and Stockwell. Detective Hall noted 'tobacco type substances' 'on the front seats and floorboard area of the vehicle,' although he did not itemize or collect the items, leaving that work for the criminalists. Discovery at 617." SCR at 35. Special Counsel misrepresents the dates of the report, because Deputy Ogino and Stockwell's report was not created on June 11, 1983, but rather multiple days later. Further, instead of *carefully and fairly* examining the evidence, Special Counsel ignores that the later report directly contradicts earlier reports by adding evidence that was not initially in the vehicle, the V-12 and V-17 cigarette butts.

In sum, it is extremely questionable that an interior search of a vehicle, one as thorough and detailed as Detective Hall's, would not find the two cigarette butts. It is even more illuminating that only after the very same deputies that failed to log tobacco evidence at another location—the Lease house—including cigarette butts known to have Mr. Cooper's DNA, would, days later, file a report about finding cigarette butts in an easily viewable area of the vehicle that a previous search would have uncovered. Further, one would assume the investigators would test the cigarette butts in the ashtray as well as the cup and bottles for fingerprints or DNA, but this, suspiciously, was not done.

Perhaps more conspicuously, Special Counsel fails to consider the impact of the evidence from the station wagon, given that Mr. Cooper was not even able to access the car when he was in Mexico beginning on June 7, 1983, and in light of the multiple movements of that car thereafter.

If Special Counsel had *carefully and fairly* evaluated the V-12 and V-17 evidence, at minimum, Special Counsel would have had doubts as to their provenance, if not finding them fundamentally unreliable. Had Special Counsel *carefully and fairly* considered the circumstances surrounding V-12 and V-17's discovery, this would be further proof of Mr. Cooper's claims of actual innocence.

H. Special Counsel's Reliance on Mr. Keel's Report, Which Lacks Proper Scientific Rigor, Demonstrates Special Counsel's Failure to Carefully and Fairly Consider the DNA Evidence

As explained above, Special Counsel's DNA Expert, Mr. Keel, submitted a report lacking scientific rigor. By relying on this report, Special Counsel 1) drew incorrect conclusions regarding the planting of evidence, including, but not limited to, A-41, and 2) failed to consider the possibility that the DNA evidence had been contaminated. Either of these factors, when *carefully and fairly* reviewed, would have at least resulted in a finding that the DNA evidence against Mr. Cooper is unreliable, if not purposefully planted.

1. Mr. Keel's Report Is Void of the Scientific Rigor Customary to Expert Reports and Ignores Scientifically Sound Information Provided by Mr. Cooper Throughout the Investigation

Mr. Keel is not qualified to opine as a DNA expert. *See supra* Section B.1.d. Further, Mr. Keel's work product is deficient and is, as Ms. Barlow and Mr. Taylor state in their joint expert report, "unsupported by the state of forensic DNA testing as reflected in the scientific literature and our collective experience and training." *See* Barlow Report at 1.

A clear example is Mr. Keel's explanation of Gregonis's mishandling of the evidence at the San Bernardino sheriff's lab, based on the age of the sample. Yet, the scientific reality is that:

> Nevertheless, it is well accepted in the forensic community that it is not possible to determine the age of DNA by any method now available, and that DNA in evidence samples degrades based on many different variables. A new sample handled incorrectly can have substantial levels of degradation while an extremely old sample that is stored properly can yield robust DNA profiles. Keel's analysis about the age of the DNA is simply a guess and should be given little credence.

See Barlow Report at 10.

Mr. Keel makes similar mistakes throughout his report, including with VV-2 *and* the orange towel evidence. Mr. Keel improperly opines that the degradation or lack of degradation, respectively, for the VV-2 and the orange towel dictates whether or not it was planted. *See* Keel Rpt. at 20, 32, 44. This type of analysis is scientifically impossible, "[a]s every forensic scientist working in the field knows, DNA degrades in the presence of factors such as moisture, bacteria, heat and sunlight. The conclusion that any sample contaminated by blood from VV-2 must appear pristine and robust is without foundation, since each sample is essentially its own microclimate subject to different levels of moisture, heat and bacterial levels due to the same reasons." *See* Barlow Rpt. at 12.

A further example of the unreliability of Mr. Keel's opinion is his explanation of the DNA testing by the DOJ in December 2004. Mr. Keel incorrectly stated that the testing provided additional proof that Mr. Cooper's blood on the beige T-shirt was not planted, since it comes from a sample proved to contain very little EDTA. *See* Keel Rpt. at 38. However, Mr. Keel relies on the conclusory assumption that the samples of the original evidence contained blood at all. *Id.* In reality, these types of tests do not prove a stain is blood, and any opinion suggesting otherwise would be conclusory, at best, and false, at worst:

> [P]resumptive test for blood, such as the phenolphthalein test, does not prove that a stain is blood, and certainly not human blood. It is an indication that it may be blood but does not identify the stain as blood. Presumptive tests have false reactions with numerous chemical and biological samples. Positive reactions can occur to chemical salts, bacteria and fungi, and blood that is not from humans. It is well recognized in forensic science that one cannot state that human blood is present based on a positive presumptive test.

See Barlow Rpt. at 11. Mr. Keel repeats these mistakes for other pieces of evidence throughout the report, such as his similarly conclusory remarks regarding the use of luminol. *See* Keel Rpt. at 51-53; *see* Barlow Rpt. at 13-14.

Mr. Cooper sent Special Counsel numerous memoranda on topics that include evidence surrounding the DNA testing, including A-41, based in scientific rigor. *See, e.g.*, Exhibit 14 (Memo to Special Counsel Re Independent Investigation—Blood Drop A-41, June 20, 2021). Special Counsel all but ignored this evidence and thus failed to *carefully and fairly* review all relevant evidence.

2. Special Counsel Completely Fails to Consider the Likely Possibility That the DNA Evidence Could Have Been Contaminated

Special Counsel, as part of his failure to *carefully and fairly* examine the evidence, did not consider the strong and likely possibility that the DNA evidence could have been contaminated. As Ms. Barlow and Mr. Taylor submit, "given the facts related in Keel's report, contamination of evidence with Mr. Cooper's biological material could have inadvertently occurred at the time of the original serological testing, rather than through deliberate planting." *See* Barlow Rpt. at 1.

The mishandling of evidence by Gregonis and the San Bernardino Lab fail to meet requisite rigor, as "current standards forbid this type of evidence handling" and is thus unreliable. *See* Barlow Rpt. at 7. This is particularly salient to Gregonis and the particular lab, both due to practices at the time, as well as the lack of skill on behalf of Gregonis and the state of the laboratory and storage. *See* Barlow Rpt. at 7-11, *passim*. In their report, Ms. Barlow and Mr. Taylor review in depth the numerous contamination sources and events in respect to the evidence in this case. *Id.* However, the point does not require such recitation here. The lack of discussion and consideration of contamination as a possible factor with respect to the DNA evidence demonstrates Mr. Keel's and Special Counsel's lack of *careful and fair* review of the evidence. Had Special Counsel completed a *careful and fair* review of the DNA evidence, he would have at least considered whether the DNA

evidence was unreliable, especially when considered alongside all relevant evidence available to them. Instead, Special Counsel uses this unreliable DNA evidence blindly to discredit reliable evidence throughout the report, the antithesis of a *careful and fair* examination. Special Counsel's actions in this regard are further proof—on top of the mountain of evidence discussed herein—that reveals that Special Counsel failed to conduct an innocence investigation and objectively consider whether Mr. Cooper is actually innocent of the Ryen/Hughes crimes.

I. Special Counsel's Investigation Fails to Investigate Official Misconduct Relating to Olympia Gold Beer Can

Special Counsel admits that on June 5, 1983, a six-pack of Olympia Gold Beer was found in the Ryens' refrigerator, with one can missing, and with red staining on one of the cans inside the refrigerator that was later confirmed to be blood consistent with Doug or Joshua Ryen, as well as with 70% of the white population. SCR at 55. Special Counsel further admits that on June 5, 1983, Mr. Stockwell found an empty can of Olympia Gold Beer in a plowed horse-training arena located halfway between the Ryens' house and the Lease house. *Id.* Stockwell did not collect the beer can as evidence, so it was never tested. Incredibly, based on this record, Special Counsel bizarrely concludes that "[t]he beer can evidence is not very probative of Cooper's guilt since anyone who had committed the crimes could have disposed of a beer can between Ryen and Lease house, and no forensic test results established that Cooper handled either can. Cooper's contention that the Sheriff's Department's investigation was flawed does not establish innocence." *Id.* at 55-56.

"Special Counsel's obfuscation is jaw-dropping. It is painfully obvious that had the Olympia Gold Beer been collected and tested, it would very likely have provided highly probative DNA evidence pointing to an individual who was involved in the Ryen-Hughes crimes, given the other blood evidence found inside the refrigerator. A report that is the product of an unbiased and independent investigation would be forthright about the fact that this beer can likely would have yielded highly probative DNA, and it would be forthright about the fact that Deputy Stockwell's failure to collect it and test it warrants further investigation as to his training, experience, level of competence, and potential other malfeasance or misconduct he may have committed in the case." Mitchell Rpt. at 8. This is clearly not a careful and fair review of the evidence.

J. Special Counsel Invents a Motive for the Murders That Even Law Enforcement Has Never Advanced and Concludes Without Any Basis That Mr. Cooper's Criminal History Reflected a Likelihood That He Committed the Hughes/Ryen Crimes

Shockingly, Special Counsel offers an unsubstantiated and conclusory motive for the killing that even law enforcement has never advanced. Indeed, the prosecution has acknowledged through the long history of this case that they do not have a motive for Mr. Cooper, and thus they never presented one at trial. Undaunted by this, Special Counsel offers a reckless and crude analysis that is illustrative of the complete lack of merit of the Report's analysis and conclusion. Special Counsel writes that "Cooper had a motive to commit the Ryen/Hughes Crimes. Cooper realized that he had to leave the Lease house, and the area, to evade recapture. The Ryens' house was nearby, it was relatively secluded, and there were vehicles there. Further, whether or not Cooper entered the Ryens' house with an intent to kill, once there, he had reasons to take actions to avoid recapture." Report at 97. This explanation is specious on its face. If Mr. Cooper's aim were to evade recapture, which it was, then Mr. Cooper would not have killed four people and almost a fifth which would clearly draw intense attention, when he could have simply stolen the Ryen station wagon with the key inside to make a getaway even had Mr. Cooper approached the Ryen house. Special Counsel's speculative motive simply makes no sense and highlights the absolute inadequacy of the analysis throughout the Report.

Finally, Special Counsel writes that Mr. Cooper's prior criminal background supports his conclusion that Mr. Cooper committed the Ryen/Hughes crimes. Special Counsel again reveals his lack of independent judgment in this regard. Regarding a rape that Mr. Cooper allegedly committed while on the run from law enforcement after June 5, 1983, Special Counsel writes that he "finds the victims' statements about being raped with the use of a knife to be more credible than Cooper's statements that they had consensual sex." Report at 99. The problem with Special Counsel making a credibility assessment is that Special Counsel failed to interview Mr. Cooper about this alleged crime and thus the Special Counsel was making a credibility determination about both the alleged victim to whom he never spoke or about the alleged perpetrator to whom he also never spoke about this subject. This confirms Special Counsel's willingness to justify his conclusions without reference to independence, credibility, or objectivity.

V. CONCLUSION

Special Counsel failed to conduct an independent innocence investigation into Kevin Cooper's claim of innocence, as ordered by Governor Newsom. Special Counsel's report is riddled with confirmation bias and a steadfast commitment to "stick to the script" the prosecution has been peddling for the last 40 years, in contrast to what it should be: findings based on a searing and unflinching investigation designed to search for the truth as to all of the circumstance surrounding the original investigation in this case, and what has transpired over the last four decades. Given Special Counsel's refusal to investigate some of the most foundational issues in the case, and his failure to obtain all of the materials in the possession of the prosecution team, the crime lab, and the police agencies necessary to conduct an independent investigation, Mr. Kevin Cooper respectfully requests that Governor Newsom reject the Special Counsel report and select new unbiased and fully vetted special counsel to conduct such an investigation and ensure that such counsel has the requisite experience to conduct that investigation with professional, experienced, and qualified investigators.

Dated: October ___, 2023

Respectfully submitted,

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Report A – Paula Mitchell, Esq.

LOS ANGELES
INNOCENCE
PROJECT

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I have been asked by pro bono counsel for Kevin Cooper to review the Special Counsel's Report on the Independent Investigation of Kevin's Cooper's Claim of Innocence, dated January 13, 2023 ("Report") prepared by Morrison & Foerster LLP. I agreed to review the materials I was provided and render an opinion on a pro bono basis. Specifically, Mr. Cooper's counsel asked that I provide an opinion as to (i) whether the Report comports with or is consistent with an "independent" investigation into a claim of innocence in a serious felony case according to best practices, (ii) whether the Report provides the Governor with the information, evidence, and analysis he ordered, and (iii) whether the findings and conclusions are reliable for purposes of reaching a determination as to Mr. Cooper's application for clemency and his claim of actual innocence. For the reasons stated below, the answer to all three questions, in my opinion, is a resounding and emphatic "No."

Experience & Qualifications

Between 2008 and 2013, I reviewed and assisted in reaching dispositions of 200 federal petitions for a writ of habeas corpus and prisoner civil rights violation suits filed by individuals incarcerated in California state prisons while I was a law clerk to Senior Circuit Judge Arthur L. Alarcon on the Ninth Circuit Court of Appeal and as he sat by designation on the U.S. District Court for the Eastern District of California. Throughout that experience, I saw numerous claims of constitutional rights violations that appeared to have merit but which were almost always denied on procedural grounds because the doors to the federal courts have been essentially slammed shut to state prisoners seeking relief on habeas since the passage of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). It was deeply troubling to me that so many petitioners were articulating well-reasoned claims of innocence based on due process and other constitutional violations occurring during the course of their criminal proceedings and yet they were unable to get relief from the courts.

In 2015, I began investigating and litigating claims of innocence through habeas corpus proceedings as Legal Director of Loyola Law School's Project for the Innocent. Since 2015, I have conducted investigations in over 50 serious felony cases for indigent individuals seeking to prove their innocence. In that time, I have successfully overturned the convictions and sentences of ten men and women, who cumulatively spent over 260 years wrongfully imprisoned for crimes they did not commit (8 murder convictions and 2 attempted murder convictions).

In November 2020, newly elected Los Angeles County District Attorney ("LACDA") George Gascón appointed me to serve on his transition team and requested that I draft new directives for the LACDA's Conviction Integrity Unit - Special Directive 20-13, and the LACDA's Habeas Litigation Unit – Special Directive 20-10. The new directives set forth the most common indicators or "red flags" indicating that a conviction may have been wrongfully obtained and provide guidance on how to conduct an independent investigation that affirmatively seeks to uncover new evidence supporting a claim of innocence, rather than merely looking for ways to uphold a conviction. The new directives were drafted

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based on my research, experience, and numerous consultations with experts from across the country who have experience investigating and litigating innocence claims. The new directives expand access to provide more avenues for case review by the LACDA in cases where the applicant has a colorable claim of innocence. Special Directives 20-13 and 20-10 are attached as Exhibit 1.

I am currently Director of the Los Angeles Innocence Project (LAIP) at Cal State LA's California Forensic Science Institute ("CFSI"), a new groundbreaking collaboration between an innocence organization and an academic graduate training program in criminalistics at Cal State LA CFSI. LAIP represents indigent incarcerated individuals with claims of innocence and investigates and litigates innocence claims. LAIP collaborates with CFSI faulty on forensic issues and is developing a proprietary Faulty Forensics Database, collecting case data to better understand systemic problems concerning the use of faulty forensics in criminal courts. LAIP also collaborates with Los Angeles County District Attorney's CIU to resolve innocence claims outside of court and collaborates with defender organizations to sponsor continuing education programs concentrated on the use of forensic evidence in the courtroom. LAIP is assisting CFSI on DOJ-BJA Post-Conviction DNA Testing grant. As Director, I oversee all aspects of LAIP's operations.

In addition to conducting independent investigations in the innocence cases I handle, I have attended numerous trainings and continuing education programs focused on best practices for conducting post-conviction innocence investigations, including the use of cognitive interview techniques to interview witnesses and recanting witnesses, investigating forensic evidence and DNA issues, crime lab policies and protocols and the reliability of forensic tests conducted in accredited vs. non-accredited crime labs, and law enforcement best practices, policies and procedures in use in various jurisdictions since the early 1980, among other topics. My CV is attached as Exhibit 2.

In addition to the work I have done on wrongful convictions, I have studied California's dysfunctional death penalty system in depth and published on the topic at length. *See* Judge Arthur L. Alarcón & Paula M. Mitchell, *Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle*, 44 Loy. L.A. L. Rev. S41 (2011).[1] *See also*, Judge Arthur L. Alarcón & Paula M. Mitchell, *Costs of Capital Punishment in California: Will Voters Choose Reform this November?*, 46 Loy. L.A. L. Rev. 221 (2012).[2] LAIP, under my supervision, is currently investigating two cases of individuals on death row and incarcerated at San Quentin.

I am familiar with the statistics concerning the racial make-up of those individuals the state incarcerates and sentences to death. Nine of the ten clients my team of attorneys and I have successfully exonerated are people of color. Five of the ten exonerated clients are Black men who were threatened with the death penalty in an effort to coerce a plea; all five maintained their innocence and were convicted. While all were spared a death sentence, they were nevertheless sentenced to die in prison, as all five received sentences of life without the possibility of parole. In my experience, having reviewed numerous convictions

[1] Available at: https://digitalcommons.lmu.edu/llr/vol44/iss0/1
[2] Available at: https://digitalcommons.lmu.edu/llr/vol46/iss1/5

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that are decades old and thousands of pages of trial transcripts from the 1980s, racial bias was present, if not pervasive, throughout criminal justice system during that time. It is now a well-recognized fact and one of the reasons Governor Newsom signed landmark legislation to advance Racial Justice and California's fight against systemic racism and bias in the legal system in September 2020.

Summary of Opinion

The Report Special Counsel prepared pursuant to Executive Order N-06-21 is by no means an "independent investigation" into Mr. Cooper's claim of innocence. The Report is so fraught with confirmation bias, incompetent analysis, and conclusory statements that are unsupported by any reasoned analysis that it is difficult to know where to begin a thorough critique. In the interest of providing this report to the Governor with all due haste and so Mr. Cooper can see some measure of justice in response to the well-founded serious concerns he has raised about the evidence used to convict him—concerns that numerous judges on the Ninth Circuit Court of Appeal share—this report will address the Report's most glaring deficiencies, based on my reading of the materials I was provided, my understanding of best practices for conducting independent investigations, and my experience investigating claims of actual innocence.

One of the clearest indicators that the Special Counsel failed to conduct an independent investigation is his failure to obtain and review all documents in the possession of the San Bernardino County District Attorney's Office, the San Bernardino Sheriff's Department, including the crime lab, and other law enforcement agencies relating to the investigation into the Ryen-Hughes crimes. While it appears Special Counsel may have requested those records, it is my understanding they were never produced, nor did Special Counsel issue subpoenas to procure them. It thus appears that Special Counsel limited his investigation to a review of only those discovery materials that were produced to the defense at the time of Mr. Cooper's 1984 trial. And, even worse, Kevin Cooper's counsel informed Special Counsel that the materials provided to him from the 1984 trial were incomplete and counsel told Special Counsel that they were incomplete.

Specifically, Mr. Cooper requested that Special Counsel's investigation include a review of all documents relating to: SBSD personnel files for Daniel J. Gregonis, Craig Ogino, Hector O'Campo, David Stockwell, Tim Wilson and Mike Stodelle; SBSD's awareness of other suspects and their failure to investigate those suspects; Joshua Ryen's initial description of suspects; SBSD's misconduct and *Brady* violations; as well as the Pro-Ked shoes and shoeprints purportedly found at the scene of the Ryen/Hughes crimes, the articles of clothing related to the Ryen/Hughes crimes, the blood drop A-41 and Mr. Cooper's claims of evidence tampering, the cigarette butts SBSD found as part of its investigation, and the Luminol testing of the shower in the Lease house. While Special Counsel reportedly subpoenaed records from Mr. Cooper's defense team, no subpoenas were issued to obtain the above-referenced items, nor—to my knowledge—has Special Counsel offered any explanation as to why he failed to obtain and review these critical materials, without which a thorough independent investigation cannot be undertaken.

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Instead, throughout the Report, Special Counsel points to evidence that was presented in prior court proceedings and places the burden on Mr. Cooper to disprove the prosecution's theory based on that limited evidence, all the while crediting the prosecution's evidence a presumption of reliability, without having conducted an independent investigation into the issues that appear most concerning to the Governor. Reviewing the integrity of a conviction by summarizing and relying on evidence that was presented at trial is the work of appellate courts. **An independent innocence investigation affirmatively seeks to determine whether there is any new evidence not yet uncovered that supports a person's claim of actual innocence.** Independent investigations require a careful review of all of the circumstances surrounding the original investigation to determine whether any evidence was missed or falsely presented, and/or whether there was official malfeasance or misconduct that compromised the reliability of the evidence and/or the overall integrity of the investigation in the case.

Contrary to Special Counsel's approach to his work in this case, independent investigations are not limited to addressing and refuting a defendant's articulated theory as to what went wrong in his case, i.e., why he was convicted despite his innocence; such theories are by definition almost always based on limited information and documentation provided by the prosecution. An independent innocence investigation should be an exhaustive search for the truth and should include efforts to uncover new evidence, or leads to new evidence, that would or could support a person's claim of innocence. In my opinion, the Report does not reflect the results of an independent investigation. It is especially concerning that Special Counsel admittedly made no effort to investigate any of the already established instances of malfeasance, misconduct and due process violations. That fact alone demonstrates the Report is incomplete; its conclusions are biased and unreliable.

Records Reviewed

1. Governor Newsom's Executive Order N-06-21, dated May 28, 2021, appointing Morrison and Foerster LLP to serve as Special Counsel to the Board of Parole Hearings for the purpose of conducting an independent investigation in connection with Mr. Cooper's application for clemency and claims of innocence. Governor Newsom further instructed Special Counsel to "conduct a full review of the trial and appellate records in this case and of the facts underlying the conviction, including facts and evidence that do not appear in the trial and appellate records. The firm's review shall include an evaluation of all available evidence, including the recently conducted DNA tests."

2. Special Counsel's Report on Independent Investigation of Kevin's Cooper's Claim of Innocence (unsigned and undated), with Appendix A and the attached reports of Alan Keel, dated January 13, 2023 (with exhibits), Dr. Mitchell Eisen (undated), Paul Delhauer (unsigned and undated).and Mark Lillienfeld (unsigned and undated).

3. Kevin Cooper's Petition for Executive Clemency Pursuant to Article V, Sec. 8(A) of the California Constitution and Request for Hearing, dated February 17, 2016, and Appendices A-D.

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Primary Concerns with the Report

1. <u>Special Counsel Failed to Independently Review and Evaluate SBSD Crime Lab Protocols and Failed to Investigate Competence and Alleged Malfeasance / Misconduct of Lab Analysts and Other Investigators Tasked with Collecting, Handling & Preserving Forensic Evidence</u>

We now know that faulty forensics is a systemic problem because the misapplication of forensics plays some role in 45% of the documented exonerations in the country. See, *National Registry.* In case after case, evidence was presented to juries as powerful scientific proof of guilt when there was little to no scientific support for that conclusion (e.g., bitemarks, bruise matching, SBS, hair microscopy, cause and manner of death determinations), issues that are coming to light with increasing frequency—in large part as a result of lessons we are learning from innocence cases.

Recognizing that the problem had become acute, in September 2014, Governor Jerry Brown signed SB 1058 into law, a bill that allows individuals to challenge as "false evidence" expert testimony and related forensic evidence that is later repudiated by the expert who originally provided the opinion at a hearing or trial or that has been undermined by later scientific research or technological advances. (Cal. Pen. Code 1473 (e)(1).) This bill was a direct response to the wrongful conviction of William Richards, who was convicted of killing his wife in San Bernardino County in 1997, based on "bite mark" and other forensic evidence that was alleged to have been fabricated by SBSD criminalist Daniel Gregonis, the same criminalist alleged to have tampered with evidence in Mr. Cooper's case.[3]

On September 30, 2022, Governor Newsom signed SB 467 into law, further expanding the avenues for post-conviction relief to include those convicted due to (i) "false testimony" concerning faulty and/or unreliable scientific evidence and (ii) expert opinions relying on flawed scientific research or outdated technology. The new law recognizes the scale of the problem concerning the use of faulty and unreliable forensics and provides a much-needed avenue for those wrongly convicted based on faulty forensic evidence.

Determining whether a conviction was obtained based on "false testimony" concerning faulty and/or unreliable scientific evidence and/or expert opinions relying on flawed scientific research or outdated technology, *by definition*, requires full disclosure of all police agency investigation records and files, as well as all crime lab manuals, policies, protocols, performance evaluations and corrective actions for all criminalists involved in the case, along with their reports, bench notes, and other records, including all records of outside forensic experts with whom law enforcement contracted for consulted.

Transparency is essential in reviewing the integrity of an alleged wrongful conviction, especially where evidence of misconduct has already been uncovered. Without full disclosure of the police agency

[3] *See Richards v. Cnty. of San Bernardino*, 39 F.4th 562, 568-69 (9th Cir. 2022) (overturning district court's grant of summary judgment in favor of Defendant Daniel Gregonis because Plaintiff established that there was a triable issue of fact as to whether Gregonis deliberately fabricated evidence to implicate Richards in the murder of his wife and the prosecution relied on that false evidence and false testimony at trial to convict him).

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records and all investigation files, there can be no thorough "independent" investigation, there can only be an investigation of the evidence the prosecution wants the public to know about. The Governor ordered the former, not the latter. In a case like Mr. Cooper's where *Brady* violations have already been exposed, it is absolutely necessary and especially incumbent on the prosecution to disclose anything and everything in its own files and in its constructive possession so a thorough analysis can be prepared for the Governor's review.

But here, Special Counsel failed to obtain and review any of the records and materials needed for a complete and thorough and independent review, despite Mr. Cooper's repeated and explicit requests that all documents relating to SBSD personnel files for Daniel J. Gregonis, Craig Ogino, Hector O'Campo, David Stockwell, Tim Wilson and Mike Stodelle, and despite the trial court's observation that the collection and processing of the evidence collected at the crime scene in this case was so poorly handled that a lay person with no training in criminalistics could have done a better job.

a. No Investigation of Official Misconduct: Blue Short Sleeve Shirt

In the Report, Special Counsel offers a contorted analysis, unsupported by logic or reason, in an effort to justify its conclusion that the mishandling of the blue shirt was not probative of Mr. Cooper's guilt or innocence, all while failing to investigate any of the misconduct already exposed concerning this item of evidence.

Special Counsel admits that evidence was suppressed from the defense at the time of trial showing that Laurel Epler called SBSD on June 6, 1983 and reported finding a blue short sleeve shirt which possibly had blood on it and that Deputy Sheriff Field noted on June 6, 1983 that he picked up evidence that same afternoon. Report 99-100. Special Counsel further acknowledges that Dep. Field may have committed perjury when he omitted collecting the blue short sleeve shirt during his trial testimony. Report 99-100. Special Counsel nevertheless concludes that the prosecution's failure to produce evidence of the daily logs and the existence of the blue shirt, *Brady* violations, was harmless since Dep. Field had been "questioned in depth" about his role in the investigation and asked questions that "would have elicited testimony about his finding a blue shirt on June 6th."[4] (Report 100). The record is clear, however, that Defense attorney Negus did not know about the search on June 6th or the blue shirt and so did not know to examine Dep. Field about it. Moreover, Special Counsel's conclusion that Dep. Field "would have" testified about the blue shirt had he collected one is simply not plausible, given that the SBSD has now been caught and forced to admit that it *suppressed* the evidence concerning Epler's report and Field's collection of the blue shirt. Special Counsel's tautological argument is glib and misleading. The more reasonable conclusion is that SBSD was affirmatively taking steps to hide the existence of the blue shirt because it did not fit with their

[4] The suppression and mishandling of Epler's report and Field's collection of the blue short sleeve shirt was in no way harmless to Mr. Cooper, who has been severely prejudiced by SBSD's complete and utter failure to conduct and document a thorough investigation in this case. The shirt is now nowhere to be found and therefore unavailable for examination and testing. Field is now deceased and Ms. Epler's memory has faded.

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theory of the case and therefore Dep. Field committed perjury when he omitted any reference to that evidence during his testimony.

Special Counsel goes even further and concludes that "whether a blue t-shirt was seen near the Ryen's house on June 6, 1983 is highly uncertain" and that "if Deputy Sheriff Field truly had found a blue t-shirt on June 6, 1983, he would have photographed it; marked it with his initials; tagged it with an evidence tag; placed it in the evidence locker, and written up a 'Recovered Evidence Report' reflecting those things." Id. at 103. Because Special Counsel has not investigated any employee records or other materials concerning Field's performance on the job, any complaints against him, or any other information about how he performed his duties, Special Counsel's unsupported conclusion that Field would have properly collected, labeled, and logged the evidence had it existed appears to be biased, rank speculation.[5] Special Counsel's conclusion that the blue short sleeve shirt likely never existed is simply untenable. It should not be deemed the result of an unbiased independent investigation, especially in view of the numerous issues already exposed concerning the totally botched investigation into the Ryen-Hughes crimes. A more reasonable conclusion, given the record in this case, is that the SBSD has offered no innocent explanation for its failure to collect, test, and preserve the blue short sleeve, nor has he provided any explanation as to why the evidence of its collection was suppressed at the time of trial. As item after item of potentially exculpatory evidence is shown to have disappeared, it is reasonable to conclude that an inference can and should be drawn that there is a strong possibility of foul play that infected the SBSD investigation.

Moreover, Special Counsel's attempt to take cover by placing the burden on Mr. Cooper to lay out all of the possible ways misconduct may have occurred in the case and all of the possible motives underlying any misconduct is misplaced and, in my opinion, a product of blatant confirmation bias. The purpose of an independent investigation is to seek the truth and to search for new evidence that sheds light on what happened in the case, not to continue playing hide the ball with a person who has been sitting in a cage on death row for four decades, trying to untangle the many errors that occurred during the investigation in his case—errors that have already been exposed and are now part of the record—as he awaits his execution date.

b. No Investigation of Official Misconduct: Olympia Gold Beer Can

Similarly, Special Counsel admits that on June 5, 1983, a six pack of Olympia Gold Beer was found in the Ryens' refrigerator, with one can missing, and with red staining on one of the cans inside the

[5] This assumption of proper handling of this evidence is even more absurd given the strong proof that the same department suppressed another article of clothing in this case a few days later – the bloody coveralls that were turned over on June 9. Sergeant Billy Arthur was directly involved in hiding/destroying the evidence in both instances. The day after the blue short sleeve shirt was found, Arthur ordered a wider search of the area (where the blue short sleeve shirt had been found and near the Canyon Corral Bar. This is when the tan t-shirt and the orange towel were recovered.

Regarding Lee Furrow's coveralls, Sergeant Stodelle immediately told Arthur about them but homicide never retrieved them from the Yucaipa substation. They were never tested and were ultimately destroyed by the SBSD at the start of Cooper's preliminary hearing even though they had been tagged as relating to the Ryen-Hughes crimes.

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refrigerator that was later confirmed to be blood consistent with Doug or Joshua Ryen, as well as with 70% of the White population. Special Counsel further admits that on June 5, 1983, Mr. Stockwell found an empty can of Olympia Gold Beer in a plowed horse training arena located halfway between the Ryens' house and the Lease house. Id. at 55. Stockwell did not collect the beer can as evidence so it was never tested. Incredibly, based on this record, Special Counsel bizarrely concludes that "[t]he beer can evidence is not very probative of Cooper's guilt since anyone who had committed the crimes could have disposed of a beer can between Ryen and Lease house, and no forensic test results established that Cooper handled either can. Cooper's contention that the Sheriff's Department's investigation was flawed does not establish innocence." Id. at 55-56.

Special Counsel's obfuscation is jaw-dropping. It is painfully obvious that had the Olympia Gold Beer can been collected and tested, it would very likely have provided highly probative DNA evidence pointing to an individual who was involved in the Ryen-Hughes crimes, given the other blood evidence found inside the refrigerator. A report that is the product of an unbiased and independent investigation would be forthright about the fact that this beer can likely would have yielded highly probative DNA, and it would be forthright about the fact that Deputy Stockwell's failure to collect it and test it warrants further investigation as to his training, experience, level of competence, and potential other malfeasance or misconduct he may have committed in the case.

c. No Investigation of Official Misconduct: SBSD Crime Lab Manager William Baird & Shoeprint Testimony

It does not appear that Special Counsel investigated the allegation that the SBSD Crime Lab Manager, William Baird, was stealing $150,000 worth of heroin from the lab's evidence locker for personal use and to sell back to heroin dealers—evidence that was presumably logged into evidence from another case, around the same time Mr. Baird was handling the shoeprint evidence in Mr. Cooper's case. Special Counsel essentially concludes that there is no cause for concern here because "there is no evidence that Baird was using any drugs at the time of the Cooper investigation and Baird has denied that he was using any drugs at the time of the Cooper investigation." Report 43.

It is deeply, deeply troubling that Special Counsel finds no cause for concern that **the SBSD Crime Lab Manager—the very person responsible for overseeing crime lab operations and ensuring that the lab is complying with its legal, ethical and professional obligations to ensure that the constitutional rights of criminal defendants are protected, including the disclosure of Brady materials to the defense—was STEALING AND TAMPERING WITH EVIDENCE**, and potentially fabricating evidence in one or more cases that were under investigation by the SBSD at the very time Mr. Baird was apparently analyzing evidence in Mr. Cooper's case. Indeed, public reporting reveals that during his tenure Sheriff Tidwell was stealing guns from the evidence locker, was charged and got off on a plea deal. Baird got off as well.

The jury never heard any of that explosive impeachment evidence because Mr. Baird was apparently not caught until after he testified in Mr. Cooper's trial. Special Counsel dismissed the concerns raised by Mr. Cooper and by Judge Fletcher that the shoe print on the bed sheet was planted by someone in

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law enforcement or in the lab, and the fact that Mr. Cooper was deprived of his right to due process when the jury heard testimony from Crime Lab Manager Baird about the similarity of the shoe prints purportedly found at the Ryen and Lease residences, but did *not* hear any of the highly material impeachment evidence concerning Mr. Baird's history of stealing and tampering with evidence, by concluding that the shoeprint evidence was "probative" but not strong evidence of Mr. Cooper's guilt. **Special Counsel should have investigated whether the misconduct of Mr. Baird—who was the SBSD Crime Lab Manager—was emblematic of the culture within that lab at the time**. Special Counsel again retreats to his standard refrain when any official misconduct is exposed, which is essentially to ignore it or minimize it and conclude that even if there were errors, they were harmless and do not support Mr. Cooper's innocence claim. Id. at 43.

In this respect, a simple google search reveals that "Floyd Tidwell, the former sheriff of San Bernardino County, pleaded guilty [in May 2004] to four felony counts of concealing stolen property as investigators said he took at least 523 guns from evidence rooms during his eight-year tenure." https://www.latimes.com/archives/la-xpm-2004-may-11-me-sheriff11-story.html#:~:text=Floyd%20Tidwell%2C%20the%20former%20sheriff,during%20his%20eight%2Dyear%20tenure. This suggests that misconduct existed within law enforcement that was responsible for investigating the Ryen-Hughes crimes. Thus, Special Counsel's decision no to investigate this is irrational.

Special Counsel also inexplicably ignored the evidence Mr. Cooper presented that the prosecution committed misconduct when it knowingly misrepresented the evidence to the jury and conveyed to the jury that the shoeprints found were "unique" to the incarcerated population, which the prosecution knew was false.

d. No Investigation of Official Misconduct: Detective Moran's False Testimony

Mr. Cooper exposed the fact that Detective Moran lied about entering the Bilbia bedroom and Special Counsel admits that Det. Moran falsely testified that "he did not enter the Bilbia bedroom when he entered the Lease house on June 6, 1983." Id. At 45. Mr. Cooper contends that Det. Moran's deception is further official misconduct related to the planting or fabrication of evidence, specifically the hatchet sheath that was later found in the Bilbia bedroom. Instead of investigating Det. Moran's motive for lying about being the Bilbia bedroom, however, Special Counsel concludes in summary fashion, based on no independent investigation, that "Cooper does not establish that the hatchet sheath was planted . . . [and] [t]he authorities did not establish that Cooper had been staying in the Lease house until June 9, 1983." Id. June 9, 1983 was coincidentally the same day that Sheriff Tidwell proclaimed Mr. Cooper the sole suspect and the day Lee Furrow's bloody coveralls were retrieved.

Special Counsel further posits that it is not reasonable to believe investigators concocted an "elaborate" plan to frame Mr. Cooper within a day or two of the crimes because "[t]here had not been much, if any, testing of the evidence collected within the first two days after the victims were found." Id. At 46. In my experience, however, it is not uncommon for investigators to develop a hunch, immediately lock onto a particular suspect, and begin tailoring investigative efforts to focus on that suspect; sometimes efforts are focused *only* on that suspect.

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In the circumstantial case of my client Jane Dorotik, where blood and DNA evidence were also the primary evidence used to convict her in 2001, San Diego County Sheriff's Department investigators immediately, but erroneously, decided that she was guilty of killing her husband. She was arrested 72 hours after her husband's body was found on the road side, bludgeoned to death and strangled—and before a single blood or DNA test had been conducted, and before a single piece of forensic evidence had been analyzed. She was wrongfully convicted and spent 20 years in prison for a murder she did not commit. Her conviction was ultimately overturned when we discovered a mountain of evidence showing that the criminalists who handled and analyzed the blood and DNA evidence in her case were biased, incompetent, and had a long history or errors in the lab which were not disclosed to the defense at the time of Ms. Dorotik's trial. Here too, Special Counsel should have subpoenaed the records of those on the investigation team who appear to have lacked training and/or experience, as part of an independent, unbiased innocence investigation.

Moreover, to go after the wrong person in a criminal investigation does not have to involve an "elaborate" plan; all it takes is a hunch and some untrained or unsupervised or inexperienced investigators, who believe they are doing the right thing by zealously pursuing a particular suspect. Tunnel vision is a very real thing; it can be incredibly powerful. It acts as blinders and causes law enforcement to double down and dig in when they believe they have the right suspect in their sites, pushing aside any and all evidence that points to other suspects or contradicts their working theory of the case. Special Counsel should have investigated whether this tunnel vision phenomenon may have been at work or played some role in this case.

2. <u>Special Counsel Failed to Independently Assess and Evaluate the Reliability of the Forensic Evidence Mr. Cooper is Challenging</u>

With respect to the forensic evidence Mr. Cooper is challenging, Special Counsel presumed that protocols and procedures concerning the collection, handling, preserving and testing of evidence were in place and were followed, without examining records and documents that would shed light on what actually took place with respect to some of the most important evidence in the case.

This is a significant oversight given that record is already replete with examples of evidence being mishandled, including the destruction of physical evidence before it was ever examined or forensically tested and given that the trial court judge stated on the record: "Counsel, as I sat there and listened to the evidence over a prolonged period of time, I thought ... [without] any criminalistics experience at all, I could have gone in there and done a better job, I think, than [the SBSD] did." (63 RT 5622.)

<u>VV2</u>

Mr. Cooper has for decades been seeking documentation and other evidence showing that there is an unbroken chain of custody for the blood sample law enforcement collected on August 1, 1983, and for the reference card or cards (now collectively labeled as VV2), to establish whether there were any significant breaks in that chain of custody during which time that evidence could have been altered. A clear

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record documenting the chain of custody for VV2, showing that the chain is unbroken, is the only way to ensure that there were no opportunities for it to be altered.

To my knowledge, no such records have been produced and Special Counsel failed to obtain them and failed to investigate any of these critical foundational questions:

- How many vials of Mr. Cooper's blood were drawn by Mr. Stockwell on August 1, 1983? In my experience, it is not uncommon for law enforcement to collect more than one vial of blood from a suspect to be used as a reference sample for forensic testing, as part of an ongoing murder investigation. Rather than investigating SBSD's policies in place in 1983 for conducting such blood draws, Special Counsel relies on Mr. Stockwell's handwritten notes, his August 1, 1983 report and his testimony describing that he collected only one vial of blood. Given that there is already ample evidence in the record showing that Mr. Stockwell repeatedly failed to document the steps he took while collecting and handling other items of physical evidence in this case, see, e.g., Stockwell's failure to collect and test the Olympia Gold Beer case, Stockwell and Ogino's failure to report the times, dates and persons responsible for collecting evidence from the Ryens' station wagon, Special Counsel's investigation should have included an inquiry into the possibility that Mr. Stockwell collected more than one vial of blood from Mr. Cooper on August 1, 1983, rather than blindly crediting as reliable and accurate Mr. Stockwell's notes, report and testimony.

- Even assuming only one vial of blood was drawn from Mr. Cooper on August 1, 1983, the government has admitted that there are no records indicating what volume of blood was drawn, i.e., how full the vial was on August 1, 1983. Given the critical nature of this evidence, Special Counsel should have investigated whether there were any opportunities for the blood sample to be accessed, altered or tampered with by determining, for example, how the vial was sealed when the sample was initially collected (the government has stated that after 1995, the vial was tape sealed but how was it sealed prior to 1995?); was it in tamper-proof packaging; who initially checked the blood vial into property and evidence and when did that occur; who opened the vial of blood to create the reference blood sample card; was more than one reference card created, who was present during that process, how much blood was removed to create the reference card or cards, where was the reference card or cards placed to dry before being packaged, was the reference card created before or after the vial was checked into evidence, and was the reference card (or cards) created in a sterile lab setting. These are all foundational issues that Special Counsel should have investigated.

- Is there a complete record or evidence log showing when the items labeled VV2 were checked into and out of evidence, by whom, and for what purpose? Do crime lab reports corroborate the dates the samples were checked out for lab analysis?

- What were the SBSD procedures in place for checking blood evidence out of property and evidence, was a supervisor's signature required, where was VV2 stored while it was checked out of property and evidence for lab testing and who had access to those samples?

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- Is there documentation showing who removed sections of dried blood from the reference card sample or samples, when it was removed, how much was removed and for what purpose (see, e.g., Keel Report 25-26, stating that only a tiny amount of blood remains on the card: "Mr. Gregonis used the dried Cooper VV-2 reference bloodstain swatch several times in the course of his analysis in 1983-1984.") Where are those lab reports and bench notes related to Mr. Gregonis's testing?

I have not seen any documentation or other evidence addressing these issues or answering these questions, which is needed to establish that there were no significant breaks in the chain of custody for VV2.

The reliability of any forensic testing of evidence related to VV2 rests upon "the ease or difficulty with which the particular evidence could have been altered." (*People v. Catlin* (2001) 26 Cal.4th 81, 134 ["In a chain of custody claim, '[t]he burden [is] on the party offering the evidence is to show to the satisfaction of the trial court that, taking all the circumstances into account including the ease or difficulty with which the particular evidence could have been altered, [that] it is reasonably certain that there was no alteration...." [citing *People v. Diaz* (1992), 3 Cal.4th 495,559] [emphasis added]].) "The requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely as not that the evidence analyzed was not the evidence originally received. Left to such speculation the court must exclude the evidence." (*People v. Jimenez* (2008) 165 Cal.App.4th 75, 81 [citing. *Catlin*, *supra*, 26 Cal.4th at p. 134; see also *United States v. Rawlins* (3d Cir. 2010) 606 F.3d 73, 82–83 [although gaps in chain of custody usually go to weight of evidence rather than admissibility, "serious" gaps in chain of custody may require exclusion of evidence].) The burden is on the prosecution to demonstrate to a reasonable certainty that the evidence at issue was not altered. (*Catlin*, *supra*, 26 Cal.4th at p. 134.) That requirement is especially important where the evidence in question is blood and DNA. (*People v. Jimenez* (2008) 165 Cal.App.4th 751, 81, "[Blood and] DNA samples that are relevant to a case are indistinguishable from other samples that have no connection at all to a case. Evidence like that requires expert analysis, the accuracy of which is entirely dependent on a proper chain of custody"].)

In my experience, clearly documenting an unbroken chain of custody is something that is often skipped or glossed over at trial, especially in older cases from the 1980s because there were fewer accredited crime labs in existence and lab protocols and practices were often not in place to provide guidance on how evidence should be handled and stored to avoid contamination. Even as recently as 2000, the San Diego County Sheriff's Department Crime Lab was unaccredited and was experiencing serious problems with a lack of protocols guiding its criminalists on the proper handling of evidence to avoid contamination. See, https://www.latimes.com/california/newsletter/2021-10-19/san-diego-crime-lab-essential-california.

In *People v. Jane Dorotik*, the location of the blood vial collected from her husband at autopsy in February 2000 was undocumented and unaccounted for two weeks, before it was finally checked in to the property room. There, as here, the blood vial was not tape sealed, nor was it packaged in heat-sealed tamper-proof packaging. We argued to the court in *Dorotik* that these significant breaches in the chain of custody made the ensuing DNA tests unreliable and that the proper handling of blood and other biological evidence (as compared to other types of physical evidence), is especially critical because inculpatory blood

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and DNA evidence can be extremely powerful evidence of guilt. The prosecution retained Alan Keel to conduct DNA testing for the prosecution in Ms. Dorotik's case in 2000. After Ms. Dorotik's conviction was overturned in 2020, it was revealed that while Mr. Keel prepared a DNA report concluding that Mr. Dorotik's "blood" was found the truck bed of the family's F-250 (which the prosecution argued Ms. Dorotik used to transport her husband's dead body to a dump site), in truth, Mr. Keel testified, there were no scientific tests conducted that confirmed the DNA in the truck was from "blood." Instead, he later admitted under oath that he *inferred* it was from blood but it could also have been from mucus or saliva or other sources. The prosecution ultimately abandoned its efforts to retry Ms. Dorotik and dismissed the charges against her, following a lengthy preliminary hearing during which the prosecution's forensic evidence and forensic experts were discredited and/or exposed as incompetent.

In Mr. Cooper's case, the government has admitted that there is no evidence showing how much blood was collected on August 1, 1983, a fact which makes the need to establish an unbroken chain of custody for that evidence all the more important. Moreover, a documented unbroken chain of custody for the evidence labeled VV2 is further important here where contamination of the sample was detected, including by Mitotyping Technologies (MT lab) for mitochondrial DNA (mtDNA). Mr. Keel states that in his opinion "the contamination experienced by MT lab is innocuous adventitious contamination rather than a mixture of blood from Cooper and another person or person," but he fails to cite to any documentation, like a chain of custody, demonstrating there were no opportunities for the sample to be altered.

Moreover, in his report, Mr. Keel is careful to limit his conclusion concerning whether VV2 was altered to one alleged instance, that of Mr. Gregonis possibly tampering with the sample in 1999: "This evidence in and of itself proves the VV-2 blood vial could not have been 'topped off' in 1999 . . . " (Keel Report 24.) It does not appear that Special Counsel investigated the chain of custody for VV2 from the time it was collected to the present day at all.

Alan Keel's Report also does not address any issues related to the chain of custody of VV2 from the time it was collected in 1983 to the time it was entered into evidence, nor does it speak to whether the blood vial could have been accessed and tampered with between 1983 and 1995, during which it was reportedly tape sealed. Mr. Keel's statement that the red tape seal purportedly placed on the vial in 1995 appears to still be in place is rank speculation based apparently on nothing more than a visual observation that the tape is red. Keel Report 24. It is but one of the many instances of Mr. Keel displaying significant confirmation bias, as he does throughout his report (see e.g., describing DNA contamination that occurs in lab settings not as compromising the integrity of the evidence but as "laboratory misadventures.") Id. at 44.

Reports by independent forensic experts who editorialize and make conclusory statements using exclamations points!, as did Mr. Keel, should be viewed with a healthy dose of skepticism as their bias is not just present, it is bold and brazen and plain from the face of the document itself. Mr. Keel's bias renders the conclusions in his report unreliable, if not highly suspect, in my opinion.

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A 41

As with VV2, Special Counsel should have conducted an independent investigation around the circumstances of Mr. Stockwell collecting A 41 by shaving the stain off of the wall, rather than collecting the stain on a swab or swabs. Why was this stain not collected on a swab, what were the lab protocols in place at the time concerning the collection of blood evidence at a crime scene? The record already establishes that the process of collecting bloodstain evidence from the Ryen home was thoroughly botched. The record further establishes the physical items of evidence bearing bloodstains that were collected for testing were not properly preserved and were therefore destroyed before any testing could be conducted. At a minimum, Special Counsel should have documented a complete chain of custody for A 41 to ensure that there were no opportunities for that evidence to be altered, especially in view of the fact that there was a DNA mixture found in A-41 by Cal DOJ when it tested the evidence in 2001.

Chain of Custody for Other Items of Evidence

Given the botched collection of evidence and allegations of misconduct in this case, Special Counsel should have documented the chain of custody by examining evidence logs, property receipts, etc., for all of the items of evidence collected in the case and relied upon by the prosecution to obtain a conviction, with a sharp focus on the challenged forensic evidence. The Report states on page 3, for example, that Criminalist David Stockwell took photos and collected 45 separate pieces of evidence. For these 45 items of evidence, as well as every other item of evidence collected, an independent investigation should include:

- Completely and thoroughly documenting the chain of custody for every item of evidence collected to establish that there have been no opportunities for tampering, including:
    - Examining all evidence logs and property room records to establish the dates that each item of evidence was checked into and out of the property room, and by whom, and for what reasons.
    - Examining the packaging of all items of evidence collected, noting the dates each item of evidence was collected, sealed, initialed, and the dates, if any, the evidence was reopened, handled, and/or tested and then resealed, and by whom.
    - For items of evidence that were checked out for lab testing, cross reference the lab reports and bench notes for each test conducted to ensure the dates match the property room records as to who checked the evidence out and for what purpose.
- Examining the negative sheets and printed photos; determine the order of operations during the processing of the crime scene so a precise record confirming the evidence was handled and collected according to protocols in place at the time.

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3. Special Counsel Failed to Create an Independent Chronology of Pre-Trial & Post-Conviction Investigations

The cornerstone of any independent innocence investigation is the creation of an independent chronological timeline documenting all of the events surrounding the crime, law enforcement's ensuing investigation, and the prosecution of the case at trial. Depending on the issues present in a case, an independent investigation typically requires disclosure of: (i) all police agency files related to law enforcement's investigation; (ii) responding officers' and detectives' handwritten notes that may still be in existence (sometimes in the personal possession of retired officers), (iii) communications between the investigating officers and the prosecution team; (iv) coroner's reports, records, photos, notes and a list of items of evidence that may still be housed at the coroner's office; (v) all crime lab reports, including the laboratory case file, bench notes, raw data from forensic testing, proficiency testing, and any relevant personnel records (such as those of the analysts involved in the case); and, (vi) in cases where law enforcement consulted or contracted with outside experts, all bench notes, raw data from forensic testing, proficiency testing, and any relevant personnel records related to those outside analysts who handled, examined and/or tested the evidence.

The timeline is created by full and unfettered access to and a thorough review of information gathered from all original police reports, including search warrants and affidavits, detectives' notes, evidence logs, witness interviews (including audio and video recordings), crime scene photos (and negatives), lab reports and related bench notes, and physical items of evidence collected. Examining the negative sheets and printed photos taken at the crime scene, whether or not they are time-stamped, is critically important as it can fill in details often not found in written police reports about how the investigation was conducted, what the order of operations was and what investigative steps were taken during the processing of the crime scene.

Once created, the timeline—supported by citations to actual law enforcement records—provides the best evidence of how the original investigation unfolded and how it was conducted. It lays bare what information was known to law enforcement and when it became known, which witnesses were interviewed and in what order, audiotaped interviews may reveal whether or not witnesses were pressured or coerced. The timeline is essential to evaluating a claim of innocence because it is based on the records law enforcement created contemporaneously throughout the investigation, rather than on memories decades later, or law enforcement's working theory of the case at the tie, or the narrative the prosecution presents to a jury. The timeline will also often expose errors and missteps made along the way which become lost when investigators lock onto a particular suspect and/or theory and begin setting aside leads and other evidence that do not support their theory of a particular suspect's guilt. To my knowledge, Special Counsel failed to undertake the creation of this foundational investigative tool, which severely limits the ability to conduct an independent innocence investigation.

4. Special Counsel's "Analysis" of Josh Ryen's Statements is Textbook Confirmation Bias

Perhaps the most glaring and painfully obvious example of Special Counsel's confirmation bias in the Report is its analysis of Joshua ("Josh") Ryen's eyewitness account. Report 56-61.

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Josh Ryen stated when he saw Kevin Cooper on television that, "[t]hat wasn't the guy that did it," but in Special Counsel's view that statement does not "establish" Cooper's innocence because "Josh Ryen did not state *why* he believed Cooper '[was not] the guy that did it.'" Id. It is clear from the record that police were counting on Josh to help identify the perpetrator who killed his family *because he was a witness to the crimes.* It is further clear from the context of the exchange that he believed Cooper was not the guy *because he was a witness to the crimes.*

While SBSD failed to audio record any of the early interviews with Josh Ryen, the experts on both sides (Dr. Kathy Pezdek and Dr. Mitchell Eisen) agree that the record shows Josh immediately and repeatedly reported that there were three to four assailants, none of them Black. Eisen Report 4-5. Pedzek and Eisen further agree that Josh's evolving accounts of there being multiple White or Hispanic assailants to his more recent statement that he saw Mr. Cooper wielding a hatchet in one hand and a knife in the other "are not credible and likely a result of suggestion." Id. at 5-6. Coercing an eyewitness to change their description of an assailant is witness tampering and, here, the experts agree that Josh's account is not credible and "likely as a result of suggestion" by law enforcement. In fact, as Special Counsel's own expert Dr. Eisen clearly states: "**it is very likely that the change in Joshua Ryen's memory reports was driven by suggestion from the investigators who likely convinced the boy that the crime was not committed by three Mexicanmen but rather a single black male**." Id. at 6 (emphasis added). The Report fails to address those damning opinions, including by its own retained expert, and instead summarily concludes that "Josh Ryen's statements and other effort to communicate in the days following the Ryen/Hughes Crime do not establish Cooper's innocence." Report 61.

The failure of O'Campo and the other officers to record any of their early interviews with Josh Ryen—the only eyewitness to a quadruple homicide—in the hours and days immediately following the crime, speaks volumes about their lack of training and experience, at best. At worst, it raises serious questions about potential misconduct. These officers knew they should have been recording those interviews but they inexplicably failed to do so, and then on top of that, they destroyed all of their notes—those are issues an independent investigation should and would explore because they are highly suspect, given the importance of that particular eyewitness, Josh Ryen.

Adding insult to injury, Special Counsel failed to obtain any additional records surrounding those early interviews with Josh Ryen during which time experts on both sides agree law enforcement *suggested* to Josh that he was not accurately describing the assailant of the crimes. Special Counsel failed to investigate any of that critical evidence. An independent investigation would examine all of those issues, interview the officers about their training and experience, looking to see whether there was any new evidence supporting Mr. Cooper's claim of innocence that needs to be considered, rather than presuming the officers were acting in good faith and that the evidence they presented was reliable and trustworthy. The analytical gymnastics Special Counsel had to perform to reach the conclusion that Josh Ryen's statement that Cooper "wasn't the guy" actually meant that Cooper *was* the guy is confirmation bias in its highest, but most obvious, form.[6]

[6] Another example of confirmation bias is seen in the report of Special Counsel's crime scene reconstruction expert,

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5. Mark Lillienfeld's Witness Interviews Are Unreliable

Mark Lillienfeld states in his unsigned, undated report that he interviewed several crucial witnesses in Mr. Cooper's case: Lee Furrow, Kerri Kellison, Nikki Sue Giberson, James D. Cameron, James H. Cameron and Owen Handy. He further states that he was asked "to evaluate the claim by Kevin Cooper" that Lee Furrow was responsible for the Ryen-Hughes crimes. He states that he conducted "substantial" in-person and phone interviews with numerous witnesses, which were apparently not recorded or transcribed and for which no notes were provided. Given Mr. Lillienfeld's experience, he should know that it is best practices to record witness interviews so there is a clear record of what was discussed and so both sides have access to the same information. If recording an interview is not possible or feasable, a detailed memorandum documenting all of the questions asked and answered during each witness interview should be drafted immediately following the interview, so the information is preserved for the record and can be provided to all parties concerned. That did not occur in this case.

Given the Governor's order for an independent investigation and given the stakes—Mr. Cooper's decades-long effort to prove his innocence, it is simply unconscionable that the interviews with these important witnesses were not tape recorded, nor were they apparently witnessed by anyone other than Mr. Lillienfeld, nor were any notes or memoranda documenting the contents of those interviews provided to Mr. Cooper. There is no reasonable explanation for failing to record and document those interviews. Rather, the lack of transparency strongly suggests that these interviews were not conducted using cognitive interview techniques, which are best practices and especially important when questioning witnesses about events that occurred long ago.

Conclusion

It is my opinion that Special Counsel failed to conduct an independent innocence investigation into Kevin Cooper's claim of innocence, as ordered by the Governor. The Report Special Counsel provided reads more like an appellate opinion, albeit one that is riddled with confirmation bias and a steadfast commitment to "stick to the script" the prosecution has been peddling for the last 40 years, than a summary of findings based on a searing and unflinching investigation designed to search for the truth as to all of the circumstance surrounding the original investigation in this case, and what has transpired over the last four decades. Given Special Counsel's refusal to investigate some of the most foundational issues in the case, and its failure to obtain all of the materials in the possession of the prosecution team, the crime lab, the police agencies, etc., necessary to conduct an independent investigation, it would be my recommendation

Paul Q. Delhauer, who attempts to refute the observation by SSA Gregg O. McCrary (FBI retired) that there may have been multiple assailants because there is evidence Jessica Ryen escaped and was apprehended outside the house, brought back inside the house and then killed by the assailants (blood swipes along the walls, two burrs on her nightgown, and an insect found in the body bag). Delhauer Report 10. Delhauer concludes that the physical evidence is inconsistent with McCrary's observation about the possibility of multiple assailants because there were no abrasions or dirt on Jessica's feet, which "confirmed" she did not escape outside and get brought back in. Id. Delhauer's conclusion, however, assumes without citing to anything in the record that Jessica ran outside of the Ryen's house while barefoot and further assumes she walked or ran across dirty terrain rough enough to leave dirt and abrasions on her feet. Id. To my knowledge, none of that was investigated by Special Counsel.

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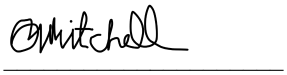
that the Governor select new special counsel to conduct such an investigation and ensure that such counsel has the requisite experience to conduct that investigation.



Date: June 13, 2023

Paula M. Mitchell

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EXHIBIT 1

SPECIAL DIRECTIVE 20-13

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: CONVICTION INTEGRITY UNIT

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of Bureau of Prosecution Support Operations, Conviction Integrity Unit (formerly known as the Conviction Review Unit) in Chapter 1.07.03 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 1.07.03 of the Legal Policies Manual.

INTRODUCTION

The CIU shall conduct strategically collaborative, good-faith case reviews designed to ensure the integrity of challenged convictions, remedy wrongful convictions, and take any remedial measures necessary to correct injustices uncovered, within the bounds of the law. The CIU will also study and collect data on the causes of wrongful convictions in L.A. County, in service of informing office wide policies and procedures designed to prevent such injustices going forward and strengthen community confidence in the criminal legal system overall. The CIU is committed to seeking the truth and ensuring transparency in the review process and shall openly and regularly report its case review numbers to the public. To fulfill its mission, the CIU will operate independently from litigation units in the office and approach its review and investigation in a non-adversarial manner to ensure that justice prevails in each and every case.

GUIDING PRINCIPLES

"The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants."

-American Bar Association, Criminal Justice Standards for the Prosecution Function, Standard 3-1.2(b)

"When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall: (1) promptly disclose that evidence to an appropriate court or authority, and (2) if the conviction was obtained in the prosecutor's jurisdiction, (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit...When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction."

-American Bar Association, Model Rules of Professional Conduct, Standard 3.8(g)-(h); California Rules of Professional Conduct (F)-(G)

POLICIES GOVERNING CIU CASE REVIEW

In view of the growing body of evidence demonstrating that wrongful convictions occur with greater frequency than is acceptable in our criminal legal system, as well as the legislature's recent revisions to the Penal Code that expand the legal avenues available for review of new evidence supporting claims of wrongful conviction, and based on a review of best practices employed in CIUs in other jurisdictions, the policies governing this office's CIU shall be as follows:

The CIU shall be an independent unit that reports directly to the District Attorney or his designee. It shall be staffed with specially trained deputies, investigators, paralegals and other staff who are committed to its mission.[1] The CIU shall be comprised of members with diverse backgrounds and experiences.

The CIU has a broad mandate to review a wide range of issues relating to wrongful convictions but shall prioritize claims of actual innocence brought by individuals who are currently in custody. The CIU shall not reject any case because a conviction is based on a guilty plea, an appeal is pending, the case is in active litigation, or where the applicant has completed his or her sentence. The CIU shall be authorized to fast-track cases submitted by applicants who are represented by counsel, including innocence organizations, where those cases have undergone substantial, reliable investigation and where new evidence supporting the wrongful conviction claim is presented.

CASE REVIEW CRITERIA

The CIU shall accept for review cases in which:

(1) the applicant was prosecuted by the Los Angeles County District Attorney's Office; and,

[1] The CIU shall work with defense organizations and members of the post-conviction legal community, including innocence organizations, as well as relevant experts, to develop and implement trainings on best practices for conducting post-conviction investigations.

(2) there is a claim of actual innocence or wrongful conviction; and,

(3) the CIU identifies one or more avenues of investigation that have the potential to substantiate the applicant's claim(s) of actual innocence and/or wrongful conviction.

The intake criteria shall always include an "interest of justice" exception. Under this exception, the CIU shall be authorized to undertake a review and investigation in cases that do not meet the intake criteria, if doing so is in the interests of justice. The interests of justice may be met where the applicant alleges and/or the CIU concludes that further investigation is warranted to determine whether:

1. There is a reasonable probability that the applicant is actually innocent[2];
2. Some or all of the evidence relied upon to obtain the conviction is no longer deemed credible;
3. There is evidence the prosecution or conviction was tainted by racial discrimination, whether or not a court previously agreed with the applicant's assertion of racial discrimination;
4. The prosecution failed to disclose material evidence in the possession of any law enforcement agency that was favorable to the defense, whether exculpatory, impeaching, or mitigating;
5. The fact-finding process was so corrupted as to deny the applicant a fair adjudication of his or her guilt or innocence at trial;
6. A manifest injustice rendered the trial fundamentally unfair; and/or,
7. Had the office known at the time of trial what it now knows about the evidence, the office would not have chosen to prosecute the case, or would have charged the case differently.

The above list is intended to be illustrative; it is not exhaustive.

The CIU shall pay special attention to cases where the applicant claims the conviction was obtained based on any of the following high-risk factors, or common causes of wrongful conviction, which shall not be rejected without meaningful review and investigation:

1. The applicant was convicted based, in whole or in part, on eyewitness identification evidence or testimony, particularly where it was a stranger identification or cross-racial identification, or both[3];

[2] *See*, Rule 3.8 Special Responsibilities of a Prosecutor (Rule Approved by the Supreme Court, Effective June 1, 2020).

[3] Both at the application stage and in the investigation of cases accepted for review, the CIU shall verify that eyewitness identifications supporting a conviction comport with standards and research accepted by the scientific community and do not run afoul of the best practice and recommendations in the 2019 Third Circuit Eyewitness Identification Report. The CIU shall assess the reliability of eyewitness identification evidence in light of the non-exhaustive lists of system and estimator variables set forth in *State v. Henderson* (N.J. 2011) 27 A.3d 872, and continually examine and apply emerging research related to eyewitness identifications, including but not limited to the American Psychological Association white papers Policy

2. The applicant was convicted based, in whole or in part, on the applicant's confession and there are allegations that this confession was false or coerced[4];
3. The applicant was convicted based, in whole or in part, on testimony that has since been recanted as false or coerced;
4. The applicant's conviction is alleged to have been borne from official misconduct, including witness tampering, misconduct in interrogations, fabricated evidence and confessions, the concealment of exculpatory evidence, and misconduct at trial[5];
5. Law enforcement personnel involved in the investigation or arrest of the applicant were subsequently discharged or relieved of their duties for misconduct;
6. Law enforcement personnel involved in the investigation or arrest of the applicant who have been adjudicated by a court or an internal investigation by a law enforcement entity to have been committed an act of dishonesty or sexual assault as defined by Cal. Penal Law Section 832.7 (b) (B) and (C);
7. The applicant was convicted based on forensic evidence grounded in methodologies that have since been largely or wholly discredited as unreliable, including but not limited to bloodstain pattern analysis, comparative bullet lead analysis, forensic odontology (bitemarks), hair microscopy for the purpose of determining whether known/unknown hairs share a common source, Shaken Baby Syndrome (SBS). The CIU shall review the forensic methods used to analyze the evidence and ensure that forensic evidence used to obtain a conviction is foundationally valid and valid as it was applied in the case[6];

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and Procedure Recommendations for the Collection and Preservation of Eyewitness Identification Evidence (2020) and Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads (1998).

[4] The CIU shall consult the 2010 American Psychological Association white paper on police interrogation and confessions, and any emerging literature or research regarding false confession and recanting witnesses, to inform its review of convictions supported by statements obtained during custodial interrogations that have since been recanted or disavowed by the person who allegedly made the statement. https://web.williams.edu/Psychology/Faculty/Kassin/files/White%20Paper%20-%20LHB%20(2010).pdf

[5] The CIU shall consult the National Registry of Exonerations report *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement* (2020), and any emerging literature or research regarding official misconduct, to inform its review of convictions alleged to have resulted in whole or in part from official misconduct.

[6] The use of unreliable and misleading forensic evidence, which we know is a common cause of wrongful convictions, imperils the integrity of the criminal legal system. The CIU shall critically and continually examine emerging scientific literature, which may also call into question older forensic methods, and train staff about these changes, so that case review criteria can be updated as needed. The CIU shall ensure that forensic evidence supporting a conviction complies with the findings, recommendations, and best practices set forth in specific reviews of the relevant sciences, including but not limited to:

I. American Association for the Advancement of Science (AAAS) reports on Fire Investigation (2017) and Latent Fingerprint Examinations (2017)
II. American Statistical Association (ASA) Position on Statistical Statements for Forensic Evidence (2019)
III. National Academy of Sciences (NAS) report *Strengthening Forensic Science in the United States: A Path Forward* (2009)

8. The applicant was convicted based on forensic evidence that the LACDA has generally accepted as reliable, but the particular conclusions or opinions presented to the jury in support of the prosecution's case exceeded the bounds of what is now recognized to be valid science – for example, through testimony purporting to "identify" an applicant as the unique source, or through expert testimony implying or stating a statistical basis for the likelihood of a particular conclusion that is not verifiable or otherwise valid;
9. A conviction was based either on the factors identified above but corroborated only with jailhouse informant testimony or testimony by an informant that has been used by law enforcement or this office on more than one occasion;
10. The conviction was based, in whole or in part on jailhouse informant testimony or testimony by an informant that has been used by law enforcement or this office on more than one occasion;
11. The conviction was based in whole or in part on the testimony of witnesses who received benefits from this office or law enforcement in exchange for, or close in time to, their testimony against the applicant;
12. A gang allegation was found true by a jury where the only evidence of gang membership was presented by a gang expert, and that evidence would now be deemed inadmissible hearsay under *People v. Sanchez* (2016) 63 Cal. 4th 665, and the evidence of gang membership served as the only evidence of motive used to obtain the conviction;
13. Evidence based on analysis by crime labs that were not accredited when the analysis was conducted, and/or have been implicated in scandals related to their handling and testing of evidence;
14. Evidence supporting the conviction was corroborated by one or more of the above types of unreliable evidence;
15. The applicant was convicted after one or more retrials, following a hung jury;
16. Defense counsel was disbarred or otherwise disciplined after the challenged conviction was obtained, and/or presented no evidence to counter the prosecution's case at trial, and/or was found by a court to have provided ineffective assistance of counsel in one or more other cases.

IV. National Institute of Standards and Technology (NIST) report on Latent Print Examination and Human Factors (2012), Working Group on Human Factors in Handwriting Examination (2020), and Scientific Foundation Studies on DNA mixture interpretation, bitemark analysis, firearms examination, and digital evidence (forthcoming)

V. President's Council of Advisors on Science and Technology (PCAST) report *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (2016).

SPECIAL CONCERNS IN EVALUATING FORENSIC EVIDENCE

In cases involving forensic evidence, the CIU shall request or permit the applicant's counsel to conduct forensic testing, when doing so could be probative, in that it may tend to identify the identity of the perpetrator of the crime or may exculpate the applicant seeking review of their conviction. The CIU shall request that forensic results be expressed in reports and testimony using clear and comprehensible language, to inform the CIU's own decision making and that of other legal actors. Where such testing is conducted, the CIU shall permit any forensic analysts retained by the CIU to speak freely and independently with the applicant's counsel and shall make the analysts' underlying data and case materials available to the defense.

The CIU shall not raise procedural challenges or defenses to oppose, nor shall it oppose, requests for seeks forensic testing, including but not limited to DNA testing, fingerprint analysis, firearms comparison, GSR, toxicology, where the testing may lead to evidence relevant to the applicant's claim of actual innocence or wrongful conviction, including but not limited to testing that is capable of identifying the perpetrator of a crime. The CIU shall assist applicants in ascertaining the status of physical evidence by facilitating contacts between individuals seeking testing and/or their attorneys and the crime lab and/or law enforcement personnel needed to search evidence and property rooms to locate the evidence in question.

The CIU shall carefully scrutinize cases in which experts or others opined or testified by using terms like "reasonable degree of scientific certainty," which have no accepted scientific meaning yet convey an unsupported measure of reliability or conclusiveness to the factfinder. The CIU shall request that all information concerning the limitations of forensic techniques should be disclosed alongside the results of any analyses. All forensic methods have limitations, and none are error free. Where error rates for a method are not known or have not been adequately measured, reports shall state that fact. The CIU shall carefully scrutinize any conviction based in whole or in part upon testimony that states or implies a "zero error rate" or which purports to provide an error rate that has not been independently validated. The CIU shall similarly make those limitations clear in communications with the applicant and/or their counsel and the court. The CIU shall also request that all methods of forensic analyses be documented in the first instance to permit the CIU's review and disclosure of all steps followed and the methodology used to arrive at the conclusions reached.

The CIU shall ensure that the applicant and/or their counsel receive not just certificates or reports of forensic analyses, but also complete documentation of the methods used, and the results reached. The CIU shall disclose the applicant and/or their counsel all inconclusive and exculpatory forensic results, in addition to any information about corrective actions taken in a laboratory or proficiency testing of individual analysts. The CIU shall also make routine requests to preserve forensic evidence, especially where the applicant and/or their counsel seek preservation for potential future testing.

The CIU shall facilitate a CODIS, AFIS or NBIN search of evidence that may help demonstrate an individual was wrongly convicted.

PRO SE APPLICANTS

When a case accepted for review is submitted by a *pro se* applicant, the CIU shall determine whether appointment of independent legal representation would promote justice and facilitate review of the case, such as in cases involving high-risk factors, listed above. In the absence of those factors, the determination as to whether appointment of counsel would promote justice shall be determined on a case-by-case basis. In such cases, the CIU shall recommend that the applicant seek legal representation and, if requested, assist by referring the individual to an appropriate innocence project, law school clinic, *pro bono* counsel, or public defender office. The CIU shall also consider whether to file a joint petition for writ of habeas corpus stipulating that an order to show cause should issue and counsel should be appointed pursuant to Penal Code section 1484.

Where an applicant is represented by counsel, the CIU shall use joint discovery and/or limited disclosure agreements, in appropriate cases, to share work product information. The CIU will seek to conduct investigations jointly and collaboratively with counsel, sharing exculpatory or improperly withheld information as quickly as practicable. Any attorney-client or work-product privileged information that is shared between a claimant and the CIU shall not be shared with other units in the office and shall not be used at trial or in post-conviction proceedings by other units for any purpose.

COMMUNICATIONS WITH APPLICANT'S COUNSEL

This Office respects the sanctity of the attorney-client privilege between an applicant and defense counsel. An applicant who alleges Ineffective Assistance of Counsel may have, unwittingly, impliedly waived some portion of the attorney-client privilege as to communications with their trial counsel. This waiver is not absolute, however, and is extremely limited.

The CIU shall err on the side of caution and notify an applicant before seeking to contact defense counsel or seeking to obtain counsel's file and provide the applicant with a chance to object or modify a claim to avoid an inadvertent or implied waiver of the attorney-client privilege. The CIU shall not seek disclosure of anything beyond that which is strictly necessary and legally allowable under California and Federal law, including information that exceeds the limited scope of the ineffective-assistance-of-counsel claim.

The CIU shall not encourage any attorney to violate their ethical duties of confidentiality and loyalty to former clients, as articulated in the California Rules of Professional Conduct; rather, CIU attorneys or investigators speaking to defense counsel must remind defense counsel of the attorney-client privilege prior to the start of a substantive interview.

ACCESS TO DISCOVERY

If the CIU accepts a case for review, the CIU shall assist the applicant in obtaining all discovery the applicant is entitled to under P.C. 1054.9, as well as any and all *Brady* materials in the constructive possession of the office. The CIU shall also allow applicants and/or their attorneys

to have access to all non-privileged and non-sensitive information in the case files under review, including information in police reports and lab reports concerning the testing of forensic evidence.

Recognizing that certain categories of otherwise privileged information and work product prepared by this office may contain exculpatory or impeachment information relevant to an applicant's claims, and the benefit to the truth-seeking process of having both parties review this material, the CIU shall err on the side of disclosing the complete LACDA trial file to the applicant's counsel for independent review, subject only to reasonable and necessary disclosure agreements. Any redactions shall be limited to those deemed strictly necessary to protect victim or witness privacy.

The CIU shall not condition its review of a case or its own disclosures on any reciprocal commitment by the part of the applicant to waive any aspect of the attorney-client or work-product privilege or waive such privileges generally. Where otherwise privileged information may be necessary for the CIU to fully investigate and consider an applicant's claims for relief – for example, to speak with the applicant's trial counsel or review portions of the trial file to determine if certain *Brady* information was or was not timely disclosed – the CIU shall limit its waiver requests to only those necessary to investigate the claim or issue. Similarly, where the CIU seeks to interview the applicant or the applicant's prior counsel, the CIU shall afford the applicant's current counsel the opportunity to be present (or waive counsel's presence) at the interview.

The CIU shall proactively seek to obtain complete files from law enforcement agencies pertaining to the case, including forensic evidence and files maintained by laboratories and coroner or medical examiner's offices. In the event the CIU discovers that the case file(s) have been lost in whole or in part, the CIU shall immediately inform the person seeking review of their conviction, or their counsel, that the file(s) has been lost. The CIU shall work with the Discovery Unit to reconstruct the file by obtaining records from:

- The LACDA's internal files;
- The LAPD, LASD, LAFD, and/or any other law enforcement agency or emergency services provider involved in the case;
- Crime labs;
- The coroner's office, in homicide cases;
- The original trial deputy's personal file;
- The superior court file;
- The courthouse exhibit room;
- The court of appeal; and
- Any other source reasonably likely to have relevant materials, records, and/or evidence, such as medical records, where appropriate releases are provided, 911 dispatch call recordings, etc.

The CIU shall review every case previously rejected by the former CRU, whether at the screening stage or after an investigation, in light of all of the above.

INVESTIGATIONS IN CLAIMS OF WRONGFUL CONVICTION

CIU investigations often require looking into convictions that are decades old, where witnesses' memories have faded, and/or that involve reluctant or recanting witnesses, and therefore often require specialized knowledge and training on issues such as memory science, eyewitness identifications, and police practices used at the time that are no longer considered best practices. CIU deputies and investigators shall consult with outside experts, as needed, to obtain relevant materials concerning best practices regarding conducting CIU investigations.

These investigations shall not be undertaken as a means of "protecting" a conviction, nor shall they be adversarial in nature. Thus, for example, investigators shall not engage in tactics designed to dissuade a recanting witness and shall not threaten to charge that witness with perjury; rather the paramount goal of a CIU investigation shall be to determine the reliability and truthfulness of the recantation. Using a high-pressure, coercive, or intimidating approach in these investigations wastes time and resources and sends a mixed message to office staff about the CIU's mission and undermines the CIU's credibility with the public.

CIU deputies and investigators shall also make all reasonable efforts to avoid *un*intentional witness intimidation. These efforts shall include, but are not limited to, conducting interviews in non-threatening or neural locations (rather than in this office or another law enforcement entity's office or station), if possible, and the concealing of the investigator's weapon, if one is carried, except where specifically required to do so by law, or if approved by the elected District Attorney.

CIU deputies and investigators shall understand what confirmation bias is—also referred to as tunnel vision—and how to avoid it. Studies have shown that confirmation bias is pervasive in the reinvestigations in wrongful conviction cases. It can occur, for example, when original police reports are viewed deferentially and/or treated as unassailable accounts of the truth of what transpired in the case, when research shows that police reports are often incomplete and contain inaccuracies, sometimes due to the fast-pace at which criminal investigations unfold, following serious felony offenses. CIU deputies and investigators shall test and probe information in police reports, witness accounts, and other new evidence presented by an applicant, in a manner designed to uncover the truth.

INDEPENDENCE OF THE CIU

To the extent possible the CIU shall not disclose or discuss ongoing investigations with other units within this office, other than the elected District Attorney and/or his designee. Nor will the CIU share information from ongoing investigations with other governmental entities, except where specifically required to do so by law, or if approved by the elected District Attorney. In addition, to ensure a full and fair review of each case, investigations and case reviews shall be conducted independently by CIU deputies and investigators, without consultation or input from the original trial deputy, Head Deputy, or Assistant District Attorney of the trial division, except as needed to obtain historical information about the case.

The trial deputies who handled the original prosecution shall be afforded a reasonable opportunity to respond to any challenges that have been made to the prior handling of the case, but

shall not take part in the office's determination as to whether to accept a case for review or whether to recommend that relief from a conviction be granted. This unique investigative and litigation perspective underscores the need for CIU independence from other areas of the office and should be read to encourage collaboration with an applicant seeking review of a conviction wherever possible.

CASE RESOLUTION & REMEDIAL OPTIONS

Once a case that has been accepted for review undergoes a full investigation, the CIU shall make a recommendation to the District Attorney as to whether it is in the interest of justice to seek relief from the applicant's conviction or sentence.

If the CIU concludes that it is not in the interests of justice to revisit the conviction and/or sentence, the CIU shall inform the District Attorney of its conclusion and recommendation. The District Attorney shall have final decision-making authority to determine whether it is in the interest of justice for the office to seek relief from a conviction or sentence. If the determination is made that relief is not warranted, the CIU shall communicate the reasons for its decision, in writing, to the applicant with an explanation as to why and how the decision was reached, including what investigative steps were taken.

If the determination is made that relief is warranted, the CIU shall determine and consider all available and appropriate remedies, including seeking dismissal of the case pursuant to P.C. 1385, moving for a reduction of sentence pursuant to P.C. 1170(d), joining the applicant in filing a joint petition for writ of habeas corpus that stipulates to the need for an issuance of an order to show cause, advocating before parole boards for early release, supporting a petition for the restoration of rights, seeking expungement of the case, and/or supporting a request for clemency or pardon, where such remedies are in the interest of justice.

The CIU shall not delay the release of those persons whose entitlement to post-conviction relief has been established, for any reason; it is the duty of the CIU to immediately arrange for conditional release of those individuals pending the formalization of the conviction being vacated.

VICTIM OUTREACH & ADVOCACY

The CIU shall comply with all statutes and rules governing victims' rights and may engage a victim representative at any stage in the investigation when doing so may be in the best service of the investigation and/or the victim. The CIU will be respectful of victims and institute a culture of keeping victims abreast of investigation outcomes, when the outcome affects or changes the nature of the conviction and/or sentence. Upon the District Attorney's decision to seek relief in a case, the CIU shall engage a victim representative to liaise with the victim or victims.

REENTRY ASSISTANCE & COMPENSATION ASSISTANCE

Where the CIU determines that a conviction should be overturned and a case dismissed based on actual innocence, the CIU shall assist in securing necessary support and documentation,

such as a finding of actual innocence, that facilitate successful reentry into the community and will support the enactment of systems of compensation for those wrongfully convicted.

FINDINGS OF FACTUAL INNOCENCE

This office recognizes that monetary compensation is essential to a wrongfully convicted person's ability to rebuild their life. Under California law, wrongfully convicted persons who are innocent of the crimes for which they were convicted may file a claim for compensation with the California Victim Compensation and Government Claims Board (CVCGC Board), under California Penal Code section 4900.

Where the CIU determines that an applicant has demonstrated their innocence, the CIU shall proactively assist the applicant in seeking the statutory compensation to which they are entitled, including filing in the superior court, jointly with the applicant, if requested, a motion "for a finding of factual innocence by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her." Cal. Pen. Code 1485.55 (b). The court's "finding of factual innocence," is binding on the CVCGC Board and this office's joint request for that finding will expedite and facilitate the compensation process. The CIU shall also assist the applicant by supporting their claim before the CVCGC Board, when filed, if requested.

Under current law, to obtain a "finding of factual innocence" in the superior court, a wrongfully convicted person must demonstrate that they are innocent by a preponderance of the evidence. The burden is on the wrongfully convicted person to prove their innocence. Because that standard is antithetical to the bedrock principle of our criminal justice system, which presumes a person is innocent until they are proven guilty beyond a reasonable doubt,[7] it shall be the policy of this office, absent extenuating circumstances and with supervisor approval, to move jointly for and/or concede in the superior court that "a finding of factual innocence" should be made, where the conviction has been overturned, the charges have been dismissed, and there no longer exists constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt.

TRANSPARENCY

The CIU will conduct business in the most transparent manner possible, with biannual updates to the website on the number of cases submitted, under review, rejected, and outcomes. The CIU shall have open discussions with a designated ethics officer about critical case-related

[7] "Absent conviction of a crime, one is presumed innocent." *Nelson v. Colorado.* (2017) 137 U.S. 1249, 1255 (explaining that once a criminal conviction is erased, the presumption of innocence is restored and holding that the state "may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions"), citing *Johnson* v. *Mississippi* (1988) 486 U. S. 578, 585 (1988) (holding that after a "conviction has been reversed, unless and until [the defendant] should be retried, he must be presumed innocent of that charge"); *Coffin* v. *United States* (1895) 156 U. S. 432, 453 ["axiomatic and elementary," the presumption of innocence "lies at the foundation of our criminal law."

decisions; the pursuit of justice and the interest in avoiding and remedying wrongful convictions shall be at the forefront of each decision.

The CIU's expansive scope of review and transparent practices are designed to remedy past individual wrongful convictions and enhance community confidence in the justice system, as well as provide a tool for improving office wide practices in a manner that reduces the likelihood of errors occurring again in the future.

"LEARNING ORGANIZATION"

The outcomes of CIU investigations are intended to provide a critical opportunity to identify systemic gaps that go beyond just one individual's error and can reinforce the idea that the District Attorney's office is a "learning organization." The CIU will have a clear avenue for recommending policy and procedural changes, as well as enhanced training, to address any deficiencies that are uncovered, including but not limited to:

- Consistent with its commitment to ensure that the forensic evidence underlying convictions is scientifically sound and accepted, the CIU shall develop appropriate systems, curricula, and CLE opportunities to help ensure that forensic evidence is used appropriately office-wide, prospectively, at every stage of criminal and post-conviction proceedings.
- Consistent with its commitment to the use of best practices in policing, the CIU shall develop appropriate systems, curricula, and CLE opportunities to help ensure that, officewide, deputies are regularly trained on what constitutes best practices in policing and rely on evidence obtained through policies and procedures reflecting the use of best practices in policing prospectively, at every stage of criminal and post-conviction proceedings.
- The CIU shall develop and maintain a database to track errors and other causes of wrongful convictions uncovered in the course of its case reviews. On a periodic basis, not less than once a year, the CIU shall review and synthesize the data collected to proactively recommend policy and procedural changes officewide. The CIU shall develop a well-defined method to develop, implement, and train the office on these changes. The CIU shall publish these findings and policy changes on the website not less than once a year.
- The database shall track official misconduct, including the names of law enforcement officers, prosecuting attorneys, agents of law enforcement including jailhouse informants and crime lab analysts, expert witnesses, and any other actor found to have committed misconduct or whose testimony has otherwise been proven to be unreliable. Not less than once a year the CIU shall use the data compiled in the database to compile a list of all other cases office wide, past and present, in which those actors participated in a case that resulted in a plea or conviction. The CIU shall review each of those cases and notify the applicant and/or defense counsel that their case is being reviewed and the reason for the review.

The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.

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SPECIAL DIRECTIVE 20-10

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: HABEAS CORPUS LITIGATION UNIT

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of Bureau of Prosecution Support Operations, Habeas Corpus Litigation Team in Chapter 1.07.03 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 1.07.03 of the Legal Policies Manual.

INTRODUCTION

Irrefutable evidence shows that wrongful convictions occur with unacceptable frequency, including convictions that are obtained in proceedings where due process violations and other fundamental constitutional errors denied a defendant their right to a fair trial. The mission of the Habeas Corpus Litigation (HABLIT) Unit is to ensure that justice is done in every case filed in that unit and that every potentially meritorious claim raised in a petition for a writ of habeas corpus is carefully reviewed and investigated.

In every case, HABLIT shall undertake a good-faith case review designed to ensure the integrity of the challenged conviction. In every case, where any injustice is uncovered, including racial injustice, whether or not it is of a constitutional magnitude, HABLIT shall examine and recommend appropriate remedies capable of redressing the harm uncovered, within the bounds of the law. For example, HABLIT is directed to ascertain whether, based on its review and investigation into claims raised in a petition, the outcome in the case comports with the office's current views what would constitute a fair and just conviction and sentence today and, if not, HABLIT shall take steps to find a remedial solution to bring the conviction and sentence into line with today's standards, such as recommending that a petitioner be considered for resentencing to a lesser term pursuant to Penal Code § 1170(d).

HABLIT shall not, as a policy, defend every conviction or raise every conceivable procedural challenge with equal fervor and without regard to the potential merits of the claims presented. Before relying on procedural challenges to defeat any claims raised in a petition, HABLIT shall make a fulsome initial assessment as to whether a petitioner's claims have potential merit, i.e., whether the facts alleged, if true, state a prima facie case for relief. Where a claim appears potentially meritorious on its face, HABLIT shall immediately commence investigating the claim, and seek the earliest possible resolution where it is determined that the claim is meritorious. If the petitioner has failed to state a prima facie case and/or the petitioner is abusing

the writ process by filing successive petitions without additional new evidence supporting the claims presented, HABLIT shall defend the conviction.

GUIDING PRINCIPLES

"The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants."

-American Bar Association, Criminal Justice Standards for the Prosecution Function, Standard 3-1.2(b)

"When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall: (1) promptly disclose that evidence to an appropriate court or authority, and (2) if the conviction was obtained in the prosecutor's jurisdiction, (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit...When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction."

-American Bar Association, Model Rules of Professional Conduct, Standard 3.8(g)-(h); California Rules of Professional Conduct (F)-(G)

POLICIES GOVERNING HABLIT UNIT CASE REVIEW OF NON-CAPITAL CASES

A. Habeas Corpus Litigation

Post-conviction litigation differs significantly from the primary work of our office at the trial level. Postconviction litigation at its core is an attempt to balance the People's interest in finality—that a jury's verdict is presumed reliable and brings closure to a case—with an individual's interest in fundamental Constitutional rights and statutory due process rights, and society's interest in preventing wrongful convictions. When tasked with responding to a petition for writ of habeas corpus, HABLIT must weigh these competing interests and find the appropriate balance in each individual case.

Where a petitioner's claims are patently meritless or plainly refuted by the record, the balance tips strongly in favor of finality and HABLIT shall defend that conviction. But where a petitioner presents allegations that are supported by reasonably available evidence, the balance tips against finality and HABLIT shall not simply oppose the petitioner's claim, for the sake of protecting a conviction. Rather, HABLIT shall assess each claim on the merits and if it could potentially expose fundamental constitutional error and/or a statutory right to due process HABLIT's response to the court should so indicate.

In weighing whether a conviction should be defended and protected, or whether a different outcome or resolution is in the interests of justice, HABLIT shall investigate and take into account the following considerations:

- Whether there is a reasonable probability that the applicant is actually innocent, despite the petitioner's ability or inability to articulate a legally sound claim[1];
- Whether material evidence relied upon to obtain the conviction is no longer deemed credible;
- Whether there is evidence the prosecution or conviction was tainted by racial discrimination, whether or not a court previously agreed with the applicant's assertion of racial discrimination;
- Whether the prosecution failed to disclose material evidence in the possession of any law enforcement agency that was favorable to the defense, whether exculpatory, impeaching, or mitigating;
- Whether the fact-finding process was so corrupted as to deny the applicant a fair adjudication of his or her guilt or innocence at trial;
- Whether a manifest injustice rendered the trial fundamentally unfair; and/or,
- Whether, had the office known at the time of trial what it now knows about the evidence, the office would not have chosen to prosecute the case.

The above list is intended to be illustrative; it is not exhaustive.

HABLIT's *de novo* weighing of these interests, prior to a decision to defend a conviction, will ensure greater confidence in this Office's convictions, promote transparency, and strengthen the public's confidence in our criminal justice system, which is capable of addressing errors when they are exposed.

HABLIT's approach to case review and case resolution shall be guided by this office's policy of avoiding unnecessary litigation and resolving cases at the earliest possible juncture, where it is in the interests of justice to do so. HABLIT shall consider what steps, if any, can and should be taken to remedy any injustice it uncovers, whether or not the error or errors are of a constitutional magnitude.

Where HABLIT determines, for example, that based on its review and investigation into claims raised in a petition, the outcome in the case does not comport with the office's current views and policies of what constitutes a fair and just conviction and sentence today, HABLIT shall take steps to find a remedial solution to bring the conviction and sentence into line with today's standards, including seeking dismissal of the case pursuant to P.C. 1385, moving for a reduction of sentence pursuant to P.C. 1170(d), advocating before the BPH for release on parole, supporting a petition for the restoration of rights, seeking expungement of the case, and/or supporting a request for clemency or pardon, where such remedies are in the interest of justice.

B. Screening and Litigation Prior to the Issuance of an Order to Show Cause

[1] *See*, Rule 3.8 Special Responsibilities of a Prosecutor (Rule Approved by the Supreme Court, Effective June 1, 2020)

Upon the filing of a petition, the reviewing court may either summarily dismiss the petition, ask our office for informal briefing, or issue an order to show cause (OSC). The issuance of an OSC is analogous to issuing the writ of habeas corpus, *i.e.*, requiring the body of the petitioner to be brought to court to initiate a cause of action as to whether the petitioner's confinement is constitutional. The writ—an OSC—must issue if a petitioner's allegations state a prima facie case on a claim that is not procedurally barred. *People v. Romero*, 8 Cal. 4th at 738; Pen. Code § 1476.

1. Informal Briefing

HABLIT's involvement in the foregoing process is triggered when a reviewing court requests an informal response. The purpose of an informal response to assist the court in deciding whether to summarily deny a petition or issue an OSC. *See* Cal. Rules of Ct. R. 8.385(b).

If HABLIT is tasked with informal briefing, an independent review of the petitioner's allegations must be done with the balancing between finality and individual rights discussed above as the paramount consideration. If a determination is made that the petitioner's allegations—accepted as true and resolving inferences in favor of the petitioner as the law requires—set forth a prima facie claim for relief, HABLIT's informal response to the court should be to advise it that an OSC is necessary. This does not mean that HABLIT is conceding the conviction should be overturned at this stage. It means that HABLIT acknowledges a case should be initiated, and that the court may exercise its "full power and authority" to hold a hearing, allow discovery, "and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case." Pen. Code. § 1484.

In the preparation of an informal response, HABLIT shall be cognizant of the expedited manner in which the California Legislature and Courts intend for habeas corpus petitions to be litigated. California Rules of Court 4.551; *Maas v. Superior Court* (2016) 1 Cal.5th 962, 981. The informal reply need only address the petition's sufficiency as a pleading – that is, whether it states a prima facie claim for relief, and whether there are any applicable procedural bars. *People v. Romero* (1994) 8 Cal.4th 728, 737. The informal response shall not present evidence or otherwise address the merits of the claims presented, except to state whether or not a prima facie case has been made and an OSC should issue, or that, instead, the petition fails to state a prima facie case and/or is procedurally barred.

2. Procedural Bars

Procedural bars to post-conviction relief were erected for the express purpose of preventing abuse of the writ. When this office urges the court to dismiss a potentially meritorious claim on the basis of a procedural bar alone, it undermines confidence in our ability to fairly administer justice and, ultimately, in the People's faith in our convictions and the integrity of our system.

Because HABLIT's decision to argue that a procedural bar prevents a court from considering the merits of a petitioner's claims, such decisions shall be based on whether the petition, in fact, constitutes an abuse of the writ. Procedural bars of otherwise meritorious claims should not be argued, ***absent compelling good cause that has been approved by a supervisor***. ***In no circumstance shall HABLIT assert a procedural bar when there is a credible claim of factual innocence.***

While HABLIT's post-conviction investigation into a petitioner's claims will often be underway while informal briefing is being prepared, that ongoing investigation should not form

the basis of any requested extension of time in which to file the informal response.

3. Post-Conviction Investigation

The goal of a post-conviction investigation is to uncover the truth and determine whether a petitioner's claims have merit, not to defend a conviction that is unsound. These investigations shall not be undertaken as a means of "protecting" a conviction, nor shall they be adversarial in nature. Threatening a witness, recanting or otherwise, with prosecution for perjury, either directly or indirectly, is witness intimidation and prosecutorial misconduct under California law. *People v. Bryant* (1984) 157 Cal.App.3d 582.

The HABLIT Unit Head Deputy shall work with the training division and management to ensure deputies and investigators are trained in best practices for conducting post-conviction investigations and deputies shall consult with relevant experts when investigating potentially meritorious claims raised in a petition. HABLIT investigations often require looking into convictions that are decades old, where witnesses' memories have faded, and/or that involve reluctant or recanting witnesses, and therefore often require specialized knowledge and training on issues such as memory science, as eyewitness identifications, and police practices used at the time that are no longer considered best practices.

These investigations shall not be undertaken as a means of "protecting" a conviction, nor shall they be adversarial in nature. Thus, for example, investigators should not engage in tactics designed to dissuade a recanting witness by threatening to charge that witness with perjury; rather the paramount goal of a HABLIT investigation shall be to determine the reliability and truthfulness of the recantation. Using a high-pressure, coercive, or intimidating approach in these investigations wastes time and resources and sends a mixed message to office staff about the HABLIT's mission and undermines the office's credibility with the public.

HABLIT deputies and investigators shall also make all reasonable efforts to avoid *un*intentional witness intimidation. These efforts will include, but are not limited to, conducting interviews outside of a police station in a non-threatening or neural location, if possible, and the concealing of the investigator's gun, if one is carried, except where specifically required to do so by law, or if approved by the elected District Attorney.

HABLIT deputies and investigators shall audio record and/or video record all witness interviews conducted in the course of post-conviction investigations. HABLIT shall provide copies of those recordings to the petitioner or petitioner's counsel, once an OSC has issued, and shall continue providing all discovery to which the petitioner has a right, as soon as it is discovered. All discovery provided by this office shall be documented by signed discovery receipts.

HABLIT deputies and investigators shall understand what confirmation bias is—also referred to as tunnel vision—and how to avoid it. Studies have shown that confirmation bias is pervasive in reinvestigations in wrongful conviction cases, where prosecutors tasked with checking their own work and the work of their colleagues fail to see error because they are looking to confirm that no mistakes were made in the original investigation and trial. When original police reports are viewed deferentially and/or treated as unassailable accounts of the truth of what transpired in the case, for example, confirmation bias is likely driving the investigation. Research shows that police reports are often incomplete and contain inaccuracies, due to the fast-pace at which criminal investigations unfold, following serious felony offenses, and therefore should be reviewed critically, not deferentially. HABLIT deputies and investigators shall test and probe

information in police reports, witness accounts, and other new evidence presented by an applicant, in a manner designed to uncover the truth, rather than protect the conviction.

4. Facilitating Informal Discovery and Limited Factfinding

Prior to the issuance of an OSC, the court's power to compel discovery is limited. However, Penal Code § 1054.9 and ongoing *Brady* requirements obligate our office to provide discovery where conditions are met. HABLIT should interpret these bases in good faith and in accordance with this office's policies governing discovery.

Recognizing that certain categories of otherwise privileged information and work product prepared by this office may contain exculpatory or impeachment information relevant to a petitioner's claims, and the benefit to the truth-seeking process of having both parties review this material, HABLIT shall err on the side of disclosing the complete LACDA trial file to the petitioner's counsel for independent review, subject only to reasonable and necessary disclosure agreements. Any redactions shall be limited to those deemed strictly necessary to protect victim or witness privacy.

Moreover, absent clearly abusive or frivolous attempts to obtain information, HABLIT shall facilitate a petitioner's ability (or petitioner's counsel's ability) to speak with law enforcement agents and prosecution experts to obtain information and/or materials the petitioner needs to further support the claims raised in the petition, where such communications can be facilitated.

In the event the petitioner's case file(s) have been lost in whole or part, HABLIT shall immediately inform the petitioner, or their counsel, that the file(s) is lost or incomplete. HABLIT shall work with the Post-conviction Discovery Unit to reconstruct the case file by complete files from law enforcement agencies responsible for investigating the case, including:

- The LACDA's internal files;
- The LAPD, LASD, LAFD, and/or any other law enforcement agency or emergency services provider involved in the case;
- Crime labs;
- The coroner's office, in homicide cases;
- The original trial deputy's personal file;
- The superior court file;
- The courthouse exhibit room;
- The court of appeal; and
- Any other source reasonably likely to have relevant materials, records, and/or evidence, such as medical records, where appropriate releases are provided, 911 dispatch call recordings, etc.
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5. Red Flags

Documented wrongful conviction cases show that convictions obtained by the presentation of certain types of evidence are at a higher risk of producing an unreliable or unconstitutional outcome. HABLIT shall pay special attention to claims involving any of the following high-risk

factors, most of which are considered to be the most common causes of wrongful convictions:

- the petitioner was convicted based, in whole or in part, on eyewitness identification evidence or testimony, particularly where it was a stranger identification or cross-racial identification, or both[2];
- the petitioner was convicted based, in whole or in part, on a confession and there are allegations that this confession was false or coerced [3];
- the petitioner was convicted based, in whole or in part, on testimony that has since been recanted as false or coerced;
- the petitioner's conviction is alleged to have been borne from official misconduct, including witness tampering, misconduct in interrogations, fabricated evidence and confessions, the concealment of exculpatory evidence, and misconduct at trial[4];
- law enforcement personnel involved in the investigation or arrest of the petitioner were subsequently discharged or relieved of their duties for misconduct;
- the petitioner was convicted based on forensic evidence grounded in methodologies that have since been largely or wholly discredited as unreliable, including but not limited to bloodstain pattern analysis, comparative bullet lead analysis, forensic odontology (bitemarks), hair microscopy for the purpose of determining whether known/unknown hairs share a common source, Shaken Baby Syndrome (SBS). HABLIT shall review the forensic methods used to analyze the evidence and ensure that forensic evidence used to obtain a conviction has standardized scientific principles and/or otherwise remains foundationally valid and valid as applied[5];

[2] HABLIT shall verify that eyewitness identifications supporting a conviction comport with standards and research accepted by the scientific community and do not run afoul of the best practice and recommendations in the 2019 Third Circuit Eyewitness Identification Report. The CIU shall assess the reliability of eyewitness identification evidence in light of the non-exhaustive lists of system and estimator variables set forth in *State v. Henderson* (N.J. 2011) 27 A.3d 872, and continually examine and apply emerging research related to eyewitness identifications, including but not limited to the American Psychological Association white papers Policy and Procedure Recommendations for the Collection and Preservation of Eyewitness Identification Evidence (2020) and Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads (1998).

[3] HABLIT shall consult the 2010 American Psychological Association white paper on police interrogation and confessions, and any emerging literature or research regarding false confession and recanting witnesses, to inform its review of convictions supported by testimony that has since been recanted.

[4] HABLIT shall consult the National Registry of Exonerations report *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement* (2020), and any emerging literature or research regarding official misconduct, to inform its review of convictions alleged to have resulted in whole or in part from official misconduct.

[5] The use of unreliable and misleading forensic evidence, which we know is a common cause of wrongful convictions imperils the integrity of the criminal legal system. The CIU shall critically and continually examine emerging scientific literature, which may also call into question older forensic methods, and train staff about these changes, so that case review criteria can be updated as needed. The CIU shall ensure that forensic evidence supporting a conviction complies with the findings, recommendations, and best practices set forth in specific reviews of the relevant sciences, including but not limited to:

- the petitioner was convicted based on forensic evidence that the LACDA has generally accepted as reliable, but the particular conclusions or opinions presented to the jury in support of the prosecution's case exceeded the bounds of what is now recognized to be valid science – for example, through testimony purporting to "identify" a petitioner as the unique source of an item of biological evidence through a method other than DNA analysis, or through expert testimony implying or stating a statistical basis for the likelihood of a particular conclusion that is not verifiable or otherwise valid;
- the conviction was based on evidence, the reliability of which has since been called into question, and was corroborated only with jailhouse informant testimony or testimony by an informant that has been used by law enforcement or this office on more than one occasion;
- a gang allegation was found true by a jury where the only evidence of gang membership was presented by a gang expert, and that evidence would now be deemed inadmissible hearsay under *People v. Sanchez* (2016) 63 Cal. 4th 665, and the evidence of gang membership served as the only evidence of motive used to obtain the conviction;
- evidence based on analysis by crime labs that were not accredited when the analysis was conducted, and/or have been implicated in scandals related to their handling and testing of evidence;
- evidence supporting the conviction was corroborated by one or more of the above types of unreliable evidence;
- defense counsel was disbarred or otherwise disciplined after the challenged conviction was obtained, or was found by a court to have provided ineffective assistance of counsel in one or more other cases.

6. Forensic Evidence

Where a petitioner challenges the reliability of forensic evidence the prosecution presented at trial to obtain the conviction, HABLIT shall examine the reliability of the forensic testing obtained at the time of trial. Where the reliability of that evidence is in question, HABLIT shall consult with experts and determine whether re-testing the evidence in question would be probative, in that it may tend to help identify the identity of the perpetrator of the crime, or may otherwise exculpate the petitioner. HABLIT shall request that forensic test results be expressed in reports

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- American Association for the Advancement of Science (AAAS) reports on Fire Investigation (2017) and Latent Fingerprint Examinations (2017)
- American Statistical Association (ASA) Position on Statistical Statements for Forensic Evidence (2019)
- National Academy of Sciences (NAS) report *Strengthening Forensic Science in the United States: A Path Forward* (2009)
- National Institute of Standards and Technology (NIST) report on Latent Print Examination and Human Factors (2012), Working Group on Human Factors in Handwriting Examination (2020), and Scientific Foundation Studies on DNA mixture interpretation, bitemark analysis, firearms examination, and digital evidence (forthcoming)
- President's Council of Advisors on Science and Technology (PCAST) report *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (2016).

and testimony using clear and comprehensible language, to inform the HABLITS's decision making.

Where a petitioner seeks DNA testing of evidence as part of new evidence sought in support of a claim raised in a petition and has facially satisfied the requirements of P.C. 1405, HABLIT shall not raise procedural challenges or defenses to oppose, nor shall it oppose, requests DNA testing, where the testing may lead to evidence identifying the perpetrator of a crime. Where a petitioner requests DNA testing and needs assistance in ascertaining the status of the evidence to be tested, HABLIT shall assist the petitioner in ascertaining the status of physical evidence by facilitating contacts between petitioners seeking DNA testing, or their attorneys, and the crime lab, the coroner's office, law enforcement, or other entities, who can assist in searching the locations where the evidence may be stored in an effort to locate the evidence in question.

HABLIT shall carefully scrutinize cases in which experts or others opined or testified using terms like "reasonable degree of scientific certainty," which have no accepted scientific meaning, yet convey an unsupported measure of reliability or conclusiveness to the factfinder. HABLIT shall request that all information concerning the limitations of forensic techniques should be disclosed alongside the results of any analyses. All forensic methods have limitations, and none are error free. Where error rates for a method are not known or have not been adequately measured, reports shall state that fact. HABLIT shall carefully scrutinize any conviction based in whole or in part upon testimony that states or implies a "zero error rate" or which purports to provide an error rate that has not been independently validated. HABLIT shall similarly make those limitations clear in communications with the applicant and/or their counsel and the court. HABLIT shall also request that all methods of forensic analyses be documented in the first instance to permit HABLIT's review and disclosure of all steps followed and the methodology used to arrive at the conclusions reached.

HABLIT shall ensure that the petitioner and/or their counsel receive certificates or reports of forensic analyses, as well as complete documentation of the methods used and the results reached. HABLIT shall disclose to the petitioner or petitioner's counsel all inconclusive and exculpatory forensic results. If a petitioner alleges that evidence was improperly analyzed and/or mishandled by the crime lab or coroner's office, or other governmental entity, HABLIT shall seek and provide the petitioner with any information discovered concerning "corrective actions" taken in a laboratory relating to problematic methods and personnel, and proficiency testing of individual analysts, if any, where relevant.

Once HABLIT learns that a petitioner is seeking to test forensic evidence, HABLIT shall make a request to preserve any forensic evidence in the case.

7. Cumulative Error Claims

Where a petitioner alleges a claim of cumulative error, the allegation is that there are at least two separately cognizable trial errors which, while viewed independently may be harmless error, but when the prejudice from the two or more errors is viewed cumulatively it rises to the level of prejudicial error. *People v. Hill* (1998) 17 Cal.4th 800, 844.

HABLIT shall be cognizant that errors can be and are made, both during the investigation and prosecution of felony cases. HABLIT shall, where a cumulative error claim is raised, affirmatively and fairly assess the combined prejudice to a petitioner, where the petition states a

prima case for relief as to one or more claims in the petition. HABLIT shall consider, in assessing whether the petitioner was denied the right to a fair trial, whether the court, during the direct appeal or a prior habeas proceeding, ruled that another error, or other trial errors, did occur (in addition to the errors alleged in the petition), but denied relief as to the earlier-identified error(s) on the ground that they were harmless. Any prejudice flowing from the error or errors earlier ruled to be harmless, must be considered along with the prejudice arising from the additional error identified in the petition, in determining whether the errors, combined, can together sustain a cumulative error claim. *In re Reno* (2012) 55 Cal.4th 428, 483. As with other claims, if a petitioner's cumulative error claim sets forth a prima facie claim for relief, HABLIT shall so advise the court in its informal response and indicate that an OSC as to the cumulative error should issue.

8. C.C.P. §170.6 Challenges

The superior court generally assigns habeas corpus petitions to the same department that presided over the trial and/or sentencing proceedings. On occasion, the matter will be reassigned to another judge, such as when a judge retires or where there may be a conflict of interest.

Conflicts are not infrequent because the vast majority of criminal court judges are former prosecutors, and petitions often allege government or prosecutorial misconduct that implicates former LACDA colleagues of the judge assigned to hear the post-conviction case.

When such reassignments occur, HABLIT shall not challenge, pursuant to Civil Procedure §170.6, any judge who is not a former prosecutor unless there is a non-pretextual and articulable justification for the filing of a §170.6 challenge, approved by a supervisor. When HABLIT files a C.C.P. §170.6 challenge to an assigned judge who is not a former prosecutor, it creates the appearance that this office believes it will receive more favorable treatment from a judge who was a former prosecutor than one who was not. While the law does not require that any specific reason be articulated in the public filing, HABLIT shall avoid even the appearance of judge-shopping and shall not file §170.6 challenges for that purpose.

C. Post-OSC Litigation

When the court issues an OSC, formal briefing begins. During this formal briefing and up to and including an evidentiary hearing, HABLIT's role shall not be merely adversarial to the petitioner but—again—one of seeking justice and balancing the interest of finality with potentially meritorious claims indicating a wrongful conviction.

1. Post-OSC Discovery

Once the court issues an OSC, the petitioner is entitled to discovery and has subpoena power to seek materials from sources outside this office. To the extent HABLIT did not already provide discovery to the petitioner informally as set forth in B.4., *infra*, once the OSC issues, HABLIT shall do so and shall continue providing the petitioner with additional new materials that are discovered, as they become available. As noted above, HABLIT deputies and investigators shall audio record or video record all witness interviews conducted in the course of post-conviction investigations and shall provide copies of those recordings to the petitioner. All discovery shall be documented through the use of signed discovery receipts.

2. The Return

Upon issuance of the OSC, HABLIT shall file a timely Return that admits or denies the material factual allegations in the petition. Denials shall be supported by citations to evidence; general denials may be deemed "admissions," and shall be avoided. The Return is the People's opportunity provide the court with the factual bases for any denial, and allege new facts in support of petitioner's conviction. HABLIT shall provide, in the Return, an articulable reason or justification for any allegation being denied, supported by a factual basis and evidence. HABLIT shall admit factual allegations where there is no basis for denying them. The purpose of the admission and denial of facts in the Return is to assist the court in determining whether the merits of the petition can be reached, without the need for an evidentiary hearing, and to limit the scope of any required evidentiary hearing only to those facts actually in dispute.

3. Communications with Petitioner's Trial Counsel

This Office respects the sanctity of the attorney-client privilege between a defendant and defense counsel. A petitioner who alleges Ineffective Assistance of Counsel may have impliedly waived some portion of the attorney-client privilege as to communications with petitioner's trial counsel. This waiver is not absolute, however, and is extremely limited.

HABLIT shall err on the side of caution and notify a petitioner before seeking to contact defense counsel and provide petitioner with a chance to object or modify a claim to avoid an inadvertent or implied waiver of the attorney-client privilege. HABLIT will not seek disclosure of anything beyond that which is strictly necessary and legally allowable under California and Federal law, including information that exceeds the limited scope of a pending ineffective-assistance-of-counsel claim.

HABLIT shall not encourage any attorney to violate their ethical duties of confidentiality and loyalty to former clients, as articulated in the California Rules of Professional Conduct; rather, HABLIT attorneys or investigators speaking to defense counsel must remind defense counsel of the attorney-client privilege prior to the start of a substantive interview.

D. Case Resolution

Where the court, or HABLIT, determines that a petitioner's conviction and sentence must be vacated for any reason, HABLIT shall ascertain (i) if determined by the court, whether the court's decision should be appealed; (ii) whether there still exists constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt; and/or (iii) whether there are identifiable avenues for obtaining constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt.

If there are grounds for appealing a court's ruling, and it is in the interests of justice to do so, HABLIT shall ensure that a notice of appeal is timely filed. If a decision is made to appeal the grant of a habeas corpus petition, a memorandum shall be submitted to a supervisor for approval, justifying the decision to appeal before a notice of appeal is filed. If an appeal is taken, there shall be a strong presumption that a petitioner who has secured a grant of habeas relief in the superior court should be released OR, or granted bail, pending that appeal.

If, in HABLIT's assessment, there exists constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt and/or there are identifiable avenues for

obtaining constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt, and it is in the interests of justice to do so, HABLIT shall articulate what the remaining evidence is and, if approved by the District Attorney, shall announce that the LACDA intends to retry the petitioner.

If there are no grounds for appealing the court's ruling, and where there no longer exists constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt and there are no identifiable avenues for obtaining constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt, HABLIT shall announce that the LACDA does not intend to appeal, nor does it intend to retry, the petitioner.

1. Re-Sentencing Cases

Where HABLIT determines that the fair and just resolution in a case involves, among other relief, seeking a reduction in the petitioner's sentence pursuant to P.C. 1170(d), and the decision is approved by the District Attorney, HABLIT shall inform the petitioner or petitioner's counsel of the decision at the earliest possible opportunity. With the petitioner's agreement, HABLIT shall coordinate with deputies tasked with resentencing so that a motion for resentencing can be filed by the LACDA at the earliest opportunity.

HABLIT's decision to seek a sentence reduction shall not be dependent upon the petitioner's agreement to withdraw any claims made in a pending petition. For example, a petitioner who maintains that they are actually innocent of the crimes of conviction shall not be forced to choose between dropping the claim of innocence and receiving the support of the LACDA for a P.C. 1170(d) reduction in sentence.

2. Reentry Assistance & Compensation Assistance

HABLIT shall not delay the release of any person whose entitlement to post-conviction relief and release from custody has been established, for any reason; it is the duty of the HABLIT to immediately arrange for conditional release of those individuals pending the formalization of the conviction being vacated, including facilitating the release process by coordinating with the CDCR, providing the CDCR with court orders and any other documentation required to secure the petitioner's release from custody.

Where HABLIT determines that a conviction should be overturned and a case dismissed based on actual innocence, HABLIT shall assist the petitioner in securing necessary support and documentation, such as a finding of actual innocence, that facilitate successful reentry into the community and will support the enactment of systems of compensation for those wrongfully convicted.

3. Findings of Factual Innocence

This office recognizes that monetary compensation is essential to a wrongfully convicted person's ability to rebuild their life. Under California law, wrongfully convicted persons who are innocent of the crimes for which they were convicted may file a claim for compensation with the California Victim Compensation and Government Claims Board (CVCGC Board), under California Penal Code section 4900.

Under current law, the CVCGC Board determines whether to approve a claim by either: (i) holding a hearing at which the claimant presents evidence supporting their claim of innocence, and reaching a determination as to whether the claimant has met the standard; or, (ii) receiving a "finding of factual innocence" made by the superior court, which is binding on the CVCGC Board.

Under current law, a wrongfully convicted person must demonstrate that they are innocent by a preponderance of the evidence. The burden is on the wrongfully convicted person to prove their innocence. Because that standard is antithetical to the bedrock principle of our criminal justice system–which presumes a person is innocent until they are proven guilty beyond a reasonable doubt[6]–absent extenuating circumstances and supervisor approval, it shall be the policy of this office to move jointly for and/or concede in the superior court that "a finding of factual innocence" should be made, where the conviction has been overturned, the charges have been dismissed, the LACDA does not intend to appeal the court's ruling overturning the conviction, and there no longer exists constitutionally permissible evidence sufficient to prove that person's guilt beyond a reasonable doubt.

In such cases, the LACDA shall proactively assist the petitioner in seeking the statutory compensation to which they are entitled, including filing in the superior court, jointly with the petitioner, if requested, a motion "for a finding of factual innocence by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her." Cal. Pen. Code 1485.55 (b). Because the court's "finding of factual innocence," is binding on the CVCGC Board, this office's joint request for that finding will expedite and facilitate the compensation process. HABLIT shall also assist the petitioner, in the above-described circumstance, by supporting their claim before the CVCGC Board, when filed, if requested.

4. Victim Outreach & Advocacy

HABLIT shall comply with all statutes and rules governing victims' rights and may engage a victim representative at any stage in the investigation when doing so may be in the best service of the investigation and/or the victim. HABLIT will be respectful of victims and institute a culture of keeping victims abreast of investigation outcomes, when the outcome affects or changes the nature of the conviction and/or sentence. Upon the District Attorney's decision to seek relief in a case, HABLIT shall engage a victim representative to liaise with the victim or victims.

5. "Learning Organization"

[6] "Absent conviction of a crime, one is presumed innocent." *Nelson v. Colorado.* (2017) 137 U.S. 1249, 1255 (explaining that once a criminal conviction is erased, the presumption of innocence is restored and holding that the state "may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions"), citing *Johnson* v. *Mississippi* (1988) 486 U. S. 578, 585 (1988) (holding that after a "conviction has been reversed, unless and until [the defendant] should be retried, he must be presumed innocent of that charge"); *Coffin* v. *United States* (1895) 156 U. S. 432, 453 ["axiomatic and elementary," the presumption of innocence "lies at the foundation of our criminal law."

The outcomes of HABLIT investigations are intended to provide a critical opportunity to identify systemic gaps that go beyond just one individual's error and can reinforce the idea that the District Attorney's office is a "learning organization." HABLIT will have a clear avenue for recommending policy and procedural changes, as well as enhanced training, to address any deficiencies that are uncovered.

The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.

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EXHIBIT 2

LOS ANGELES
INNOCENCE PROJECT

Curriculum Vitae
Paula M. Mitchell
Paula.Mitchell@InnocenceLA.org

PROFESSIONAL EXPERIENCE

Los Angeles Innocence Project (LAIP) at Cal State LA California Forensic Science Institute (CFSI), Director, August 2022 to Present

LAIP launched a groundbreaking collaboration between an innocence organization and an academic graduate training program in criminalistics at Cal State LA CFSI. LAIP represents indigent incarcerated individuals with claims of innocence, investigating and litigating innocence claims. LAIP collaborates with CFSI faulty on forensic issues and is developing a proprietary Faulty Forensics Database collecting case data to better understand systemic problems concerning the use of faulty forensics in criminal courts. LAIP also collaborates with Los Angeles County District Attorney's CIU to resolve innocence claims outside of court and collaborates with defender organizations to sponsor continuing education programs concentrated on the use of forensic evidence in the courtroom. Assists CFSI on DOJ-BJA Post-Conviction DNA Testing grant, including exoneration of Maurice Hastings who was exonerated through DNA after 38 years in prison for a murder he did not commit. As Director, I oversee all aspects of LAIP's operations.

Los Angeles County District Attorney George Gascón Transition Team, Nov-Dec 2020

At the request of D.A. George Gascón, drafted new directives for the LACDA's Conviction Integrity Unit - Special Directive 20-13, and the LACDA's Habeas Litigation Unit – Special Directive 20-10, in consultation with California exoneree Frank Carrillo. The new directives expanded access to provide more avenues for case review by the LACDA in cases where the applicant has a colorable claims of innocence.

Loyola Law School Project for the Innocent, Legal Director & Supervising Attorney, Loyola's Ninth Circuit Appellate Clinic., August 2015-August 2022

Conducted and supervised post-conviction investigations and litigations resulting in the overturning of wrongful murder convictions and other serious felony convictions of numerous clients, including Jane Dorotik 2022 (20 years of wrongful incarceration), Janet Dixon 2020 (40 years in prison), Dwight Jones 2022 (21 years in prison), Emon Barnes 2020 (19 years in prison), Michael Tirpak 2019 (25 years in prison), Maria Mendez 2018 (11 years in prison), Andrew

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Wilson 2017 (32 years in prison), Marco Contreras 2017 (20 years in prison), Jaime Ponce 2017 (19 years in prison). U.S. DOJ-BJA Post-Conviction DNA Testing grant in collaboration with California Forensic Science Institute at Cal State LA, 2018 to 2022. Courses taught include Wrongful Conviction Seminar and Ninth Circuit Appellate Clinic.

Reed Smith LLP, Los Angeles, Counsel, Appellate Practice Group, Jan. 2014-July 2015

Appellate matters before state and federal appellate courts, including amici briefs in the U.S. Supreme Court and U.S. Court of Appeal for the Ninth Circuit in both criminal and civil matters.

United States Court of Appeal for the Ninth Circuit, Los Angeles, Term and Career Law Clerk to Judge Arthur L. Alarcon and Judge Erithe Smith, 2004-2006; 2008-2013

Assisted in resolution of over 500 appellate matters and 200 petitions for a writ of habeas corpus and prisoner civil rights violation suits before the Ninth Circuit Court of Appeal and U.S. District Court, Eastern District of California, as well as appellate matters before the Ninth Circuit Bankruptcy Appellate Panel.

Loyola Law School, Los Angeles, Adjunct Professor, various semesters, 2010-2022

Courses taught include Habeas Corpus & Prisoner Civil Rights Litigation, Wrongful Conviction Seminar, Ninth Circuit Appellate Clinic.

McDermott, Will & Emery, Century City, Associate, Trial Department, 2006-2008

Mound, Cotton, Wollan & Greengrass, New York, Associate, Trial Department, 2002-2003

Cozen & O'Connor, New York, Summer Associate & Bi-lingual Legal Asst.**,** 1995-2001;
Holtzmann, Wise & Shepard, New York, Bi-lingual Paralegal, 1989-1995

Primary cases: *In re Amoco Cadiz Oil Spill* in the U.S. Court of Appeal for the Seventh Circuit (on behalf of the Government of France); *In re Exxon Valdez Oil Spill* in Alaska state and federal courts (on behalf of Native American Corporation Landowners in Prince William Sound.

EDUCATION

Loyola Law School, Los Angeles, California, Juris Doctor, 2002
The London School of Economics & Political Science, London, UK, M.A., 1988

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University of Massachusetts, Amherst, Massachusetts, BA, cum laude 1987
Georgetown University, Washington, D.C., visiting student, 1986-1987
Université de Paris, La Sorbonne, Cours de Civilsation, 1984-1985
Trinity College, Oxford, UK, Summer Program, 1984
L'Institut d'Etudes Etrangers de Touraine, 1982

RECENT TRAINING & CONTINUING EDUCATION

NACDL/Cardozo National Forensic College, New York: 2023 **[**presenter and planning committee member]; 2022 [attendee]; 2019 [attendee]. The college is a week-long program featuring faculty who are experts in forensic evidence from across the country.

Annual Innocence Network Conferences: 2023 Phoenix; 2022 Phoenix; 2019 Atlanta; 2018 Memphis; 2017 San Diego; 2016 San Antonio. Attended numerous sessions on a wide range of issues concerning investigation and litigation of innocence claims, including dismantling faulty forensic evidence used to obtain wrongful convictions.

DNA Bootcamp at Cal State LA CFSI: March 2023, LAIP attended and co-sponsored with the Federal Public Defender of the Central District of California a Los Angeles County Public Defender, weekend long training for defense community addressing latest developments in DNA testing and interpretation.

NOTEWORTHY AMICI BRIEFS

Author, Brief Amicus Curiae of Ryder Systems Inc. in *Penske Logistics, LLC and Penske Truck Leasing v. Mickey Lee Dilts, et al* (U.S. Supreme Court Feb. 9, 2015) (No. 13-1345)

Author, Brief Amicus Curiae of Public Counsel, Loyola Law School Project for the Innocent, and Death Penalty Focus *Bishop v. Humphrey* (U.S. Supreme Court June 6, 2014) (No. 14-801)

Author, Brief Amicus Curiae of Members of Congress Rohrabacher (R-CA) and Farr (D-CA), *United States v. Charles Lynch* (Ninth Cir. May 5, 2015) (No. 10-50219, 10-50264)

Author, Brief Amicus Curiae of Loyola Law School, Alarcon Advocacy Center, *Jones v. Davis* (Ninth Cir. March 6, 2015) (No. 14-56373)

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SELECTED SCHOLARSHIP

Law Reviews

Costs of Capital Punishment in California; Will Voters Choose Reform This November? 46 LOY. L.A. L. Rev. S1 (2012).
http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2803&context=llr

Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion Dollar Death Penalty Debacle, 44 LOY. L.A. L.Rev. S41 (2011)
http://digitalcommons.lmu.edu/llr/vol44/iss0/1/
http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1030&context=llr

Professor Mitchell was also instrumental in compiling and analyzing data which provided the foundation for *Remedies for California's Death Row Deadlock*, 80 U.S.C. L. Rev. 697 (2007), and *A Prescription for California's Ailing Inmate Treatment System: An Independent Corrections Ombudsman*, 58 Hastings L.J. 591 (2007), other articles authored by Judge Alarcón.

Book Reviews

The Forensic Unreliability of the Shaken Baby Syndrome, by Randy Papetti. L.A. Lawyer Magazine, Jan. 2020.

Murder at the Supreme Court: Lethal Crimes and Landmark Cases, by Martin Clancy and Tim O'Brien. Federal Lawyer, Vol. 62 Issue Six, March 2014.

Life Without Parole: America's New Death Penalty?, edited by Charles J. Ogletree, Jr., and Austin Sarat. Federal Lawyer, Vol. 60, Issue Six, with Tara Lundstrom, July 2013.

Opinion Pieces

Of Bottlenecks and Tipping Points: The Fundamental Problems With California's Death Penalty System Are Now Before The Ninth Circuit, August 28, 2015 https://casetext.com/posts/of-bottlenecks-and-tipping-points

Curious Clerks and the Case of the Yellow Hat, California Litigation, Vol. 28, No. 2 (2015)

California's Death Penalty: A Year in Review, Verdict, November 18, 2013
https://verdict.justia.com/2013/11/18/californias-death-penalty-year-review

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The Weight of Capital Punishment on Jurors, Justices, Governors, & Executioners, Verdict, October 25, 2013
https://verdict.justia.com/2013/10/25/weight-capital-punishment-jurors-justices-governors-executioners

Are Trial Courts Even-Handed in Excusing Jurors Based on their Views on the Death Penalty? Verdict, October 9, 2013
https://verdict.justia.com/2013/10/09/trial-courts-even-handed-excusing-jurors-based-views-death-penalty

Ripe for Resolution: Ending Taxpayer Expenditures on Pointless Litigation, Verdict, September 24, 2013
https://verdict.justia.com/2013/09/24/ripe-for-resolution-ending-taxpayer-expenditures-on-pointless-litigation

California Voters' Shifting Views on the Death Penalty, Verdict, September 11, 2013
https://verdict.justia.com/2013/09/11/california-voters-shifting-views-on-the-death-penalty

An Educated Electorate: Essential to a Robust Democracy, Verdict, October 1, 2012
https://verdict.justia.com/2012/10/01/an-educated-electorate

PUBLIC & BOARD SERVICE

California Appellate Project, Board Member, 2014-Present
Death Penalty Focus, Board Member, 2013-2017
Women Lawyers of Los Angeles, Board Member, 2011-2015
State Bar of California's Standing Committee on Appellate Courts, Past Chair
Past Lawyer Representative for the Central District of California & Ninth Circuit Judicial Conference.

Testimony Before the Assemb. Public Safety Committee, Death Penalty: Hearing on Proposition 62 to repeal the death penalty, 2016.

Testimony Before the Assemb. Appropriations Comm., Death Penalty: Hearing on SB 490, 2011 Leg., 2011–12 Sess. (Cal. 2011), August 17, 2011

MEDIA

Professor Mitchell has been featured in major media outlets including New York Times, L.A. Times, The Atlantic, BBC World Service Radio, BBC News Magazine, KCRW Which Way LA?, Sacramento Bee, San Francisco Chronicle, San Diego Union Tribune, The Guardian, CNN Money.

COURT & BAR ADMISSIONS

State Bar of California
New York Bar
District of Columbia
United States District Court, Central District of California
Fourth Circuit Court of Appeals
Sixth Circuit Court of Appeals
Ninth Circuit Court of Appeals
Tenth Circuit Court of Appeals
Eleventh Circuit Court of Appeals
United States Supreme Court

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Report B – Bicka Barlow, Esq. / Marc Taylor

RESPONSE TO REPORT OF ALAN KEEL

Introduction

We were asked by Orrick, Herrington & Sutcliffe, counsel to Kevin Cooper, to review the Report of Alan Keel, attached to the Special Counsel's Report on Independent Investigation of Kevin Cooper's Claim of Innocence. This report addresses the larger opinions of Keel rather than the entire case file. This report does not address questions of evidence planting or tampering; instead, it focuses on conclusions and opinions regarding the serological and DNA testing conducted in this case.

We find that the opinions and conclusions of Mr. Keel are unsupported by the state of forensic DNA testing as reflected in the scientific literature and our collective experience and training. In particular, Mr. Keel focuses solely on discrediting the theory of deliberate planting of Mr. Cooper's DNA on evidence samples. However, given the facts related in Mr. Keel's report, contamination of evidence with Mr. Cooper's biological material could have inadvertently occurred at the time of the original serological testing, rather than through deliberate planting. Mr. Keel's singular focus on the theory of planting appears to have blinded him to the more likely problem of cross contamination and the recognition that evidence contamination for purposes of DNA testing is grossly different from contamination for serology testing. This type of contamination generally is not detected or observed at the time it occurs. Subsequent testing of any type would be impacted by this event. The basis for our opinion comes from a number of facts related by Mr. Keel in his report as described below.

Qualifications

Bicka Barlow received her JD, *Magna Cum Laude*, from the University of San Francisco, School of Law in 1995. Ms. Barlow was awarded an M.S. degree from Cornell University from the Department of Genetics and Development in 1990, and a B.S. degree from the University of California, Berkeley, in Genetics, in 1984. Since passing the California State Bar, she has focused the majority of her time on criminal cases involving DNA evidence. These cases range from misdemeanor gun possession to capital murder cases, at both trial and post-conviction stages. She has personally conducted cross examination of prosecution experts in pre-trial hearings and during trial. She has consulted with, and prepared defense experts for testimony. For nine years, Ms. Barlow was the DNA attorney at the San Francisco Public Defenders Office. In 2013, she returned to private practice and has focused all of her time on cases involving DNA evidence.

Ms. Barlow is familiar with the technologies used in DNA testing including RFLP and STR based PCR testing and serological methods used prior to the advent of DNA analysis.

Ms. Barlow has reviewed DNA test case files from many different crime labs and jurisdictions including the California Department of Justice; the Arizona Department of Public Safety; the Phoenix Police Department Crime Lab; the St. Charles, Missouri, Sheriff's Department; the San Francisco Police Department; the Santa Clara County District Attorney's Office; the Alameda County Sheriff's Department; the Sacramento County Sheriff's Department; and the FBI; and private laboratories including SERI, Bode, Orchid-Cell mark and Forensic Analytical.

In addition to consulting, Ms. Barlow regularly trains attorneys in forensic DNA testing with an emphasis on the evolving nature of DNA testing.

Marc Scott Taylor is President and owner of Technical Associates, Inc. (TAI), a private forensic science consultation and testing laboratory. Following his graduation with a Bachelor of Science degree in Zoology, Mr. Taylor continued his education in graduate school completing the coursework for a Master of Science degree in cellular biology. Interrupting his formal education, Mr. Taylor was hired as a research scientist at the Los Angeles Department of Chief Medical Examiner Coroner where he performed research to develop new techniques to assist the Medical Examiners in determination of cause and mode of death. Since his initial employment in Forensic Science, Mr. Taylor has devoted more than 50 years to providing quality work in the field of forensic science and has analyzed evidence from thousands of cases. In 1980, he incorporated TAI, and built their first laboratory in 1984. In the late 1980s, he began developing many of the procedures and techniques still utilized in forensic DNA analysis today, and has published or presented much of this work to the forensic science community. He developed the DNA typing system that added the Amelogenin locus to the PM-DQA1 system and directed the developmental validation on this system at TAI (Published in 1997). He has also conducted numerous studies on mechanisms of DNA transfer and testified regarding these studies across the United States.

Mr. Taylor has been appointed by the courts of various jurisdictions in California and over 40 other states as well as overseas to consult on and/or perform PCR based DNA typing in criminal and civil cases in excess of 4,500 times, and he has testified for both the defense and prosecution in many of these cases. TAI performs DNA analysis on a variety of forensic

specimens, and the results of its DNA profiling and the conclusions of TAI's staff have been accepted by courts in numerous jurisdictions in California and other states.

Mr. Taylor has attended numerous classes on different aspects of DNA analysis, regularly attends forensic science meetings, and stays abreast of the current literature in this field. TAI laboratory procedures require participation in periodic external proficiency tests to verify the accuracy of its DNA typing and related biological analyses, and these surveys have affirmed the validity of its procedures and the accuracy of our results. Mr. Taylor has been certified as having the credentials to be DNA Technical Leader/Technical Manager by unanimous decision of the Credentials Review Committee for the American Society of Crime Laboratory Directors (ASCLD).

TAI was one of the first laboratories to use PCR-based DNA analysis in forensic casework. Mr. Taylor has consulted on many high-profile cases involving DNA analysis performed at TAI as well as other laboratories on more than 100 occasions. He has been court qualified as an expert in DNA analysis, Blood Spatter, GSR analysis, and General Criminalistics. TAI performs independent research projects for both legal and private matters, and periodically provides training and education for students, attorneys, and other groups regarding Criminalistics and DNA analysis. The staff at TAI is routinely involved in the education of attorneys in the significance of DNA evidence.

True and correct copy of Ms. Barlow's and Mr. Taylor's Curriculum Vitae are attached hereto.

Background: Potential Sources of Cooper DNA Found on Various Items of Evidence

Modern DNA testing methods, including those used in 2001 by DOJ and 2019 by Bode, are exquisitely sensitive, capable of obtaining DNA results from the equivalent of a few human cells worth of DNA.[1] Because of the sensitivity of DNA testing methods, it has become evident that historical evidence handling methods were such that inadvertent contamination of evidence could easily occur, and has, occurred. The contamination of evidence is not something that can be seen or observed and even labs that follow high levels of contamination control, experience contamination events. These events range from an analyst contaminating a sample or control with their own DNA, to contamination of a sample with DNA from another sample being tested. Recent research articles have demonstrated that DNA from an individual working in a laboratory can end up in a sample with which the person had no direct contact via indirect transfer.[2] The forensic community has conducted research into the modes of DNA transfer, but many questions are left unanswered, and some experts have suggested that an expertise in mode of transfer is a completely separate area of expertise that lies outside of the typical DNA analysts' realm.[3]

The Scientific Working Group on DNA Analysis Methods (SWGDAM), a group of forensic scientists overseen by the FBI director, develops standards that are applicable to forensic DNA labs in the United States and have been adopted by accrediting bodies as a part of their

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[1] A human cell contains approximately 6 pg of DNA. Full DNA profiles have been obtained from 25 to 100 pg worth of DNA which is equivalent to 4-17 human cells. A 1 ng is equivalent to 1,000 pg. Liquid blood can contain 20,000 ng/ml to 40,000 ng/ml. A drop of liquid blood can contain 500 ng or ~80,000 cells worth of DNA. John Butler, Advanced Topics: Methodology.

[2] Taylor et al., OBSERVATIONS OF DNA TRANSFER WITHIN AN OPERATIONAL FORENSIC BIOLOGY LABORATORY, For. Sci. Int.: Genetics 23 (2016) 33-49

[3] van Oorschot et al., DNA TRANSFER IN FORENSIC SCIENCE: A REVIEW, For. Sci. Intl.:Genetics 38 (2019) 140-166.

standards.[4] In 2015, SWGDAM published standards for serological testing of evidence, which stated unequivocally that "the quality and integrity of the serological testing process is critical for the success of subsequent DNA analysis."[5]

In 2017, SWGDAM published "SWGDAM Contamination Prevention and Detection Guidelines for Forensic DNA Laboratories."[6] Sources of contamination identified by SWGDAM include laboratory personnel, contaminated reagents, and cross contamination between evidentiary samples or other samples and contamination can occur either through direct transfer or indirect transfer.[7]

Most competent laboratories that conduct DNA testing handle evidence prior to references samples up to, and including, the interpretation of the evidence data.[8] In order to avoid contamination events in the laboratory, SWGDAM suggests a number of methods to control for contamination. The methods recommended by SWGDAM range from the design of the lab and the use of disposable versus reusable tools, to protective clothing, gloving and cleaning methods.[9]

The contamination control method most relevant to this assessment is:

> §2.1.2 Separate processing (e.g., handling and prep for DNA extraction) in pre-PCR areas by case type. ***Reference samples should be processed separately from evidentiary items by area and/or time. High copy evidentiary samples (e.g., blood) should be***

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[4] https://www.swgdam.org. Many of the standards developed by SWGDAM are the basis for the criteria for lab accreditation in the United States.
[5] Available at https://www.swgdam.org/_files/ugd/4344b0_b3deba7a272b4b268d7f522840607410.pdf
[6] Available at https://www.swgdam.org/_files/ugd/4344b0_c4d4dbba84f1400a98eaa2e48f2bf291.pdf
[7] *Id.* at 3 §§1.1, 1.2.
[8] Laboratories analyze and interpret DNA test results prior to testing reference sample for two reasons: 1) to avoid contamination and 2) to minimize the impacts of cognitive bias.
[9] *Id.* at 4-14

processed separately from low copy evidentiary samples (e.g., touch, hair, bone) by area and/or time

Standards for serological testing in the 1980s allowed an analyst to handle both evidence and reference samples from known individuals at the same time and encouraged the testing of references samples prior to evidence, as well as running evidence and references samples side by side to aid with interpretation (*See*, Keel at 7). Despite being "standard" procedure at the time, the placement of a reference sample alongside an evidence sample, even with a control sample separating the two, would have risked contamination.

The reason that these methods were deemed acceptable in the 1980s was that the tests used were not nearly as sensitive as current methods, and contamination would not have been seen in serological testing. Current methods of DNA testing, including those conducted by DOJ, could reveal earlier undetected contamination. Current standards forbid this type of evidence handling.

a. Improper Methods Could have caused Contamination of Specific Evidence A-41

There were several opportunities for contamination to occur in Mr. Cooper's case that Mr. Keel does not even address, let alone analyze. First, a blanket from the Lease house was "screened" with multiple other items of evidence on June 13, 1983. It appears from the Keel report, that both the blanket and A-41 and potentially additional items of evidence were all examined at the same time (Keel at 5-6). This blanket had a semen stain which is presumed to come from Mr. Cooper, and Mr. Cooper admitted at trial that he had used the blanket in the Lease home, wrapping himself in it to sleep. Many individuals drool during sleep, so it is possible that not only was there semen on the blanket, but also saliva. Both semen and saliva are rich sources of DNA, and as we now know, what is called "contact" or "touch" DNA can

transfer from a person to an object via direct contact without the presence of an obvious biological stain. Current standards prohibit the handling and examination of evidence from a suspect and evidence from a crime scene due to the risk of contaminating crime scene evidence with biological material from a suspect. If the two samples were handled at the same time, in the same area of the lab, using standard serological methods from 1983, there is a high probability that cross contamination occurred.

Second, as noted by Mr. Keel, the blood reference sample from Mr. Cooper was handled at the same time and tested for EAP as the presumptive blood found on A-41, the stain from the wall of the Ryan residence (Keel report at 6-7), as well as the tan T-shirt (Keel at 28). Mr. Keel essentially concedes that A-41 and Cooper's blood were handled at the same time. As set forth in the SWGDAM standards, references samples should be handled at a different time and/or place and samples with high DNA content such as those with blood or semen, should be kept separate from evidence with potentially lower levels of DNA.

Review of contamination and corrective action logs from numerous crime labs using current standards of contamination control reveal that contamination within the lab is a chronic problem, despite the best efforts of the lab analysts using best practices today. Contrary to Mr. Keel's assertion that the majority of contamination is with the analysts' DNA (Keel at 23), many labs have documented sample switches, contamination with analysts' DNA from analysts that are not involved in the specific case testing, contamination with profiles from unknown sources, and contamination between reference and evidence samples from the same case, despite the lab handling these sample at different times and/or places.

Mr. Keel opines that because Gregonis' methods and evidence handling were the standard of practice, the evidence in this case is not suspect. His singular focus on the theory of planting appears to have blinded him to the more likely problem of cross contamination and the recognition that evidence contamination for purposes of DNA testing is grossly different than contamination for serology testing. Trace amounts of a rich source of DNA such as blood or semen, could easily be undetected by serology but be observed via DNA testing using PCR methods as was done here.

Contrary to Mr. Keel's assertion, it is impossible to determine at this point in time if the DNA results from the testing of A-41 by DOJ and Bode, are the result of a contamination event or not. Certainly, contamination cannot be ruled out. Mr. Keel himself notes that trace levels of the minor DNA profile seen in A-41 could be the result of "touch biology," where DNA was transferred to the pillbox during handling—"an inescapable feature of the world we live in"—(Keel at 23). Or, the results could be the result of gross contamination of the evidence by the handling of Mr. Cooper's reference sample or the blanket from the Lease house at the same time as the physical evidence A-41.

b. VV-2

When received by Bode in 2019, the blood vial VV-2, taken from Mr. Cooper in 1983 as a reference sample, appeared to be empty but for residue at the bottom of the tube. (Keel report at 18-20). Mr. Keel excuses the empty vial by stating, with no proof, that "[m]uch of the blood originally in the vial was consumed/removed by Mr. Gregonis by his conventional testing and the preparation of the dried blood swatch specimen in 1983. There was no 'accounting' for volumes of blood removed from a blood vial during this era." (Keel at 18). However, standard

serological testing simply would not be expected to consume the entire volume of the blood vial.[10]

We do not opine on where the liquid blood from VV-2 went between its collection in 1983 and its arrival at Bode in 2019. However, it is concerning that the volume of missing blood is large, and the failure to track the use of the blood makes it impossible to determine whether the use of the blood was necessary for testing. The fact that the vial itself is sealed with red evidence tape (*see* photos, Keel at 19-20), does not guarantee that the contents of the vial were protected from tampering. As is clear from the photo on pg. 20, Bode managed to scrape dried residue from the bottom of the tube, yet the red tape appears to be intact, indicating that the tape itself is not a "seal" for purposes of ensuring evidence integrity. Additionally, the purple top is specifically designed to be punctured by needles to withdraw samples, further weakening the position that the integrity of the tube contents is shown via the presence of the red tape and the purple stopper.

Mr. Keel spends many pages attempting to explain what occurred when the evidence was handled by Gregonis and the San Bernadino lab, based on the amount of degradation seen in the evidence. Nevertheless, it is well accepted in the forensic community that it is not possible to determine the age of DNA by any method now available, and that DNA in evidence samples degrades based on many different variables. A new sample handled incorrectly can have substantial levels of degradation while an extremely old sample that is stored properly can

[10] Taylor conducted many of the same types of serology tests as conducted by Gregonis in this case. In his experience, very little blood was necessary to carry out the testing, even if there were repeat rounds of testing were necessary.

yield robust DNA profiles. Keel's analysis about the age of the DNA is simply a guess and should be given little credence.

c. The T-shirt

It appears that the EDTA testing that Mr. Keel says is not reliable due to the amount of EDTA in the environment, is reliable to prove that Mr. Cooper's blood was not planted on the shirt (*see infra*, regarding EDTA). Mr. Keel states that the DNA testing by the DOJ in December 2004 provides additional proof that the Cooper blood on the beige T-shirt was not planted, as it comes from a sample proved to contain very little EDTA. We do not know that this *is* blood, or if it is blood, who the blood came from. All of the tests for blood performed on the beige T-shirt were presumptive tests for blood.

A presumptive test for blood, such as the phenolphthalein test, does not prove that a stain is blood, and certainly not human blood. It is an indication that it may be blood but does not identify the stain as blood. Presumptive tests have false reactions with numerous chemical and biological samples. Positive reactions can occur to chemical salts, bacteria and fungi, and blood that is not from humans. It is well recognized in forensic science that one cannot state that human blood is present based on a positive presumptive test.

d. The Role Played by EDTA in Preserving DNA on Items of Evidence

Mr. Keel asserts that the results from Bode's testing in 2019 of VV-2 *prove* that it could not have been used to "plant" blood. (Keel at 20).

Mr. Keel's analysis of why blood from VV-2 could not have been the source of the DNA profiles found in A-41 and the T-shirt is based on his conclusion that the EDTA in VV-2 would prevent any degradation of DNA from VV-2; thus, the DNA found on these items of evidence is

too degraded to have come from the EDTA treated VV-2. While EDTA is known to stabilize liquid blood samples, the environment of a specific sample must also be considered. As every forensic scientist working in the field knows, DNA degrades in the presence of factors such as moisture, bacteria, heat and sunlight. The conclusion that any sample contaminated by blood from VV-2 *must* appear pristine and robust is without foundation, since each sample is essentially its own microclimate subject to different levels of moisture, heat and bacterial levels.

Additionally, as discussed above, the evidence was handled at the same time as the Lease blanket which was known to have semen from Mr. Cooper on it. Finally, it is possible that if a person wanted to plant blood from Mr. Cooper on Item A-41 in particular, it would be possible to scrape blood dust from the dried stain prepared from VV-2.[11]

e. The Orange Towel

Mr. Keel asserts that the profile found on the orange towel is "recent" and not relevant to the charged crimes, based on the apparent lack of degradation and suggests that its presence is due to inadvertent cross contamination. The lack of degradation does not mean that the source of the DNA is recent. The forensic community has reached a consensus that it is not possible to age DNA on an item of evidence. DNA in biological material is impacted by numerous environmental factors that are individual for each item of evidence. DNA is degraded by factors such as moisture, UV light, and the activity of bacteria. A properly stored

[11] Oddly, Mr. Keel does not seem to know that when blood dries, it forms an almost invisible dust that is easily transmitted. Both authors have observed this phenomenon. Keel (at page 19) states "it is unclear how that blood would become rendered to a fine powder between 1999 and 2001 when Mr. Myers sampled the pill box canister."

item can produce robust DNA profiles even after decades of storage. An improperly stored item can produce highly degraded DNA results even after relatively short periods.

In his report, Mr. Keel completely dismisses the DNA tests results from the orange towel as "recent" and "not relevant to this investigation" (Keel at 44). This unfounded conclusion appears to be wholly based in the "degradation index" observed by Bode in 2019, when the orange towel was tested. Keel cites to no scientific literature to support this opinion. It is our opinion that Mr. Keel's conclusion is completely unsupported by the breadth of scientific research in the area of forensic DNA testing and our collective experience.

f. Luminol Testing of Lease House

The use of Luminol to detect latent blood is an easy but very nonspecific test. It is well known that Luminol reacts with many chemicals and minerals that are not blood. One of the areas where Luminol is likely to react is in bathroom showers and sinks because of chemicals that are used in these areas. Following a positive Luminol reaction with a reliable presumptive test for blood, such as orthotolidine reagents or phenolphthalein reagents can give a greater assuredness that blood has been detected; however, these are still presumptive tests and can give false results. The presumptive tests that are in common use rely on the peroxidase activity of hemoglobin that is found in blood. The hemoglobin makes oxygen in hydrogen peroxide available to react with the orthotolidine molecule and change color, indicating that blood may be present. However, there are many microorganisms that produce peroxidase enzymes that will also react with orthotolidine or phenolphthalein and give the same color change as blood. One area where concentrations of microorganisms can be found is in bathrooms around showers or sinks and in drains. It is understood that because of this moist environment, testing

for blood in showers or skinks is likely to be unreliable. False positive reactions have been seen due to concentrations of microorganisms in these areas and not the presence of blood.

Dated: May 15, 2023

Bicka Barlow

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Professional Vita
(Selected)
Marc Scott Taylor

Formal Education

Bachelor of Science, Zoology; California State Polytechnic University, Pomona, 1972.

Graduate Research, Cellular Biology; California State Polytechnic University, Pomona, 1971-1973.

Specialized Courses and Workshops

Serology – DNA Analysis:

1. California Bootcamp; presented by Los Angeles County Public Defender, Federal Defender Central Dist. Of California, Los Angeles Innocence Project, and Cal State LA California Forensic Science Institute; March 2023:
   - DNA Mixtures and Cognitive Bias
   - Statistics
   - Workshop: Reviewing a case file
   - Transfer and Activity Level Propositions
   - Current DNA Research on Recovery of Touch DNA
   - Optional Data on SNP Research Phenotyping/Lab Tour
   - Probabilistic Genotyping
   - Discovery
   - Admissibility Challenges
2. Association of Criminalists (CAC): DNA Workshop; December, 2020
3. CAC: Joint Northern and Southern DNA Study Group Meeting; July 2020
4. The 30th International Symposium on Human Identification; sponsored by Promega Corporation; DNA Mixture Interpretation Principles and Best Practices; September 2019
5. National Institute of Justice (NIJ) Forensic Technology Center of Excellence: Probabilistic Genotyping of Evidentiary DNA Typing Results – An Online Workshop Series; May-July 2019
   - The Elements of DNA Profile Interpretation and Probabilistic Genotyping
   - Statistical Genetics and the Mechanisms of Probabilistic Genotyping

- Probabilistic Genotyping Software and Output
- Validation of Probabilistic Genotyping Systems for Casework Usage
- Representation of Statistical Weight to Stakeholders and the Court
- Uncertainty and Limitations of Probabilistic Genotyping Systems
- Probabilistic Genotyping Summation and Special Topics

6. CAC: DNA Workshop; October 2018
7. CAC: DNA Workshop; September 2017
8. CAC: DNA Workshop; DTL and R&D; May 2016
9. CAC; Probabilistic Genotyping Workshop; August 2015
10. CAC; Seminar Workshop; DNA: Probabilistic Genotyping; May 2015
11. National Institute of Standards and Technology (NIST) DNA Analyst Webinar Series: Probabilistic Genotyping and Software Programs (Part 2); September 2014
12. NIST DNA Analyst Webinar Series: Validation Concepts and Resources (Part 1); August 2014
13. NIST DNA Analyst Webinar Series: Probabilistic Genotyping and Software Programs (Part 1); May 2014
14. CAC; Seminar Workshop; DNA; May 2014
15. NIST DNA Mixture Interpretation Workshop & Webcast; April 2013
16. Applied Biosystems HID University: Future Trends in Forensic DNA Technology Seminar Series; September 2012
17. CAC Seminar Workshop; DNA; May 2011
18. CAC Advanced DNA Mixture Interpretation Workshop; December 2010
19. CAC Seminar Workshop; ASCLD/LAB Legacy-to-ISO Transition; May 2009
20. The Nineteenth International Symposium on Human Identification; sponsored by Promega Corporation; October 13-16, 2008
21. Technical Leader's Workshop; a workshop presented by Promega Corporation; October 16, 2008
22. CAC Seminar Workshop; DNA; May 2007
23. CAC Seminar Workshop; DNA; October 2006
24. Applied Biosystems HID University: Future Trends in Forensic DNA Technology Seminar Series: Practical STR Statistics Workshop, & Genemapper *ID* Software Verification Workshop; March 2006
25. CAC Seminar Workshop; DNA Quantification: Using Quantifiler Kits and Real-Time PCR; October 2004
26. CAC Seminar Workshop; DNA; October 2004
27. Practical Y-STRs: Implementation, Analysis and Reporting; a workshop presented by Promega Corporation; September 30, 2003
28. Statistics Workshop; a workshop presented by Promega Corporation; October 7, 2002
29. Y-Chromosome Analysis, workshop at the American Academy of Forensic Sciences (AAFS) 54th Annual Meeting, February 14, 2002
30. Mitochondrial DNA Analysis, workshop at the AAFS 54th Annual Meeting, February 12, 2002
31. Genetic Update Conference; sponsored by Ventura County Biotechnology Institute; October 24, 2000

32. The Eleventh International Symposium on Human Identification; sponsored by Promega Corporation; October 10-13, 2000; (PCR, RFLP, STRs…)
33. Fluorescent STR Validation Workshop, sponsored by Promega Corp., October 10, 2000
34. Casework Guidelines & Complex Mixture Interpretation Workshop, sponsored by Promega Corp., October 9, 2000
35. DNA Workshop, Joint Meeting of California Association of Criminalists (CAC) and The Forensic Science Society (FSS), May 9, 2000
36. DNA in the Laboratory and in the Courtroom: Scientific, Technical, and Legal Aspects, workshop at the AAFS 52nd Annual Meeting, February 22, 2000
37. Forensic Applications of Capillary Electrophoresis; workshop at the AAFS 52nd Annual Meeting, February 21, 2000
38. The Tenth International Symposium on Human Identification; sponsored by Promega Corporation; September 1999; (PCR, RFLP, STRs…)
39. CAC Seminar; DNA Workshop; September 1999
40. Tools for the STR Typing Lab; workshop at the International Association of Forensic Sciences 15th Triennial Meeting, August 22, 1999
41. CAC Seminar; DNA Workshop; May 1998
42. CAC Seminar; DNA Users Group; March 19, 1998
43. The Eighth International Symposium on Human Identification; sponsored by Promega Corporation; September 1997; (PCR, RFLP, STRs…)
44. The Seventh International Symposium on Human Identification; sponsored by Promega Corporation; September 1996; (PCR, RFLP, STRs…)
45. Statistics Workshop; a workshop presented by Promega Corporation; September 16-18, 1996
46. The Sixth International Symposium on Human Identification; sponsored by Promega Corporation; October 1995; (PCR, RFLP, STRs…)
47. CAC Seminar; DNA Users Group; June 22, 1995
48. DNA Typing With STRs (Short Tandem Repeats); a workshop presented by Promega Corporation; May 22-23, 1995; (STR, PCR)
49. CAC Seminar; DNA Users Group; April 4, 1995
50. The Fifth International Symposium on Human Identification; sponsored by Promega Corporation; October 1994; (PCR, RFLP…)
51. CAC Seminar; DNA Users Group; May 11, 1994
52. The Fourth International Symposium on Human Identification; sponsored by Promega Corporation; September 1993; (PCR, RFLP…)
53. Practical Techniques In DNA Analysis of PCR Fragments; a workshop presented by Armed Forces DNA Identification Laboratory, Armed Forces Institute of Pathology; September 26, 1993; (PCR)
54. CAC Seminar; DNA Users Group; August 26, 1993
55. California Public Defenders Association (CPDA); Scientific Evidence for Criminal Defense; July 10, 1993
56. CAC Seminar; DNA Users Group; May 27, 1993

57. Perkin-Elmer—Roche Molecular Systems Seminar; Forensic DNA Amplification and Typing Workshop (Polymerase Chain Reaction), three day supplement; August 3-5, 1992; (D1S80, D17S5 & Polymarker typing)
58. The Third International Symposium On Human Identification; sponsored by Promega Corporation; April-May, 1992 (PCR, RFLP…)
59. Perkin-Elmer—Roche Molecular Systems Seminar; Polymerase Chain Reaction (PCR) Symposium; April 7, 1992; (PCR)
60. California State University, Fullerton; Forensic Applications of Molecular Biology; September, 1991-January, 1992; (RFLP, PCR & general molecular biology)
61. Cetus Corp. – CAC Seminar; Polymerase Chain Reaction (PCR) Amplification Workshop; May, 1991; (PCR)
62. AGTC Inc. – CAC Seminar; Isoelectric Focusing Methods Workshop; May, 1991
63. UC Statewide Biotechnology Research and Education Program; The Application of DNA Technology to Forensics; March, 1991; (RFLP, PCR)
64. National Association of Criminal Defense Lawyers; DNA, National Defense Symposium; November, 1990; (RFLP, PCR)
65. Cellmark Diagnostics – CAC Seminar; DNA Profiling Workshop, Autoradiograph Interpretation; October, 1990; (RFLP)
66. Cetus Corp., Forensic PCR Division; HLA-DQα Forensic DNA Amplification and Typing: Training Workshop; August 13-17, 1990; (PCR)
67. Lifecodes Corp. – CAC Seminar; DNA Profiling Workshop, Lifeprint Hae III system; May, 1990; (RFLP)
68. National Association of Criminal Defense Lawyers; DNA, National Defense Symposium; March, 1990; (RFLP, PCR)
69. California District Attorney's Association; Seminar on FBI DNA Identification Techniques; August, 1989
70. University of California, Berkeley; Forensic DNA Analysis, lab & lecture; July, 1989; (RFLP, PCR)
71. Cetus Corp. – CAC Seminar; Polymerase Chain Reaction (PCR) Amplification Workshop; May, 1989; (PCR)
72. Serological Research Institute; private instruction in biological stain analysis and multi-system electrophoresis; August, 1984

Blood Spatter Analysis:
1. CAC Seminar; Blood Spatter Workshop; 1989

Trace Analysis:
1. CAC Seminar; Hair Workshop; 1989

General Criminalistics:
1. FBI Academy; Crime Lab Photography; 1976
2. FBI Academy; Criminalistics; 1975

Forensic Medicine:

1. California State University, Los Angeles; Forensic Medicine, 5 units, evaluation of cause and mode of death; 1974.

Occupational History

May 1980 – Present:	President, Lab Director, DNA Technical Lead/Technical Manager & Principal Consultant, Forensic Science & Criminalistics, Technical Associates, Inc.
Aug 1973 – Jan 1978:	Forensic Laboratory Analyst, Criminalistics Research; Los Angeles County Department of Chief Medical Examiner-Coroner.

Teaching Projects

"Courtroom Presentation of DNA Analysis Evidence"; small group instruction for the Ventura County Crime Laboratory, DNA Section; October 1999.

"Advanced Criminalistics: Forensic DNA Analysis, RFLP and PCR Technologies"; Instructor (Lecture and Lab); California State University at Los Angeles; Spring Quarter, 1995. Course lecture covered the full range of DNA analysis as performed in forensic science at this time. The lab covered collection of evidence, DNA extraction, quantitation, PCR amplification and typing, interpretation and report writing.

"Scanning Electron Microscopy/Energy Dispersive X-ray (SEM-EDX) Analysis"; Clinical Instructor; American Society of Clinical Pathologists; October 1975

Certifications

July 2002	DNA Technical Leader/Technical Manager Certification, American Society of Crime Laboratory Directors (ASCLD), Credentials Review Committee

Professional Organizations

Feb 1999 – Oct 2001	Member, Ventura County Biotechnology Institute (VC Bio)
Apr 1993 – Present	Member, California Association of Criminalists (CAC); DNA Study Group
Feb 1993 – 1995	Charter member, Human Identity Trade Association (HITA)
1984 – 1985	Executive Vice President, American Institute of Forensic Science (AIFS)

Aug 1974 – Aug 1975	Founding member, AIFS
Mar 1974 – Present	Member, American Academy of Forensic Sciences (AAFS)
May 1976 – Present	Member, CAC; Member, Serology Study Group
Apr 1971 – Mar 1979	Member, California Society for Electron Microscopy

Publications and Presentations

2023 Taylor, M.S.; Haney, Eliza; 18 March 2023; DNA Bootcamp; presented by Los Angeles County Public Defender, Federal Defender Central Dist. Of California, Los Angeles Innocence Project, and Cal State LA California Forensic Science Institute; "DNA Refresher including a Discussion of Post-Conviction Evaluation".

2020 Taylor, M.S.; 7 May 2020, Los Angeles County Public Defenders Office; "What does it mean when they've got DNA that matches your client?".

2015 Taylor, M.S.; 14 Feb 2015, CACJ/CPDA Capital Case Defense Seminar; "Forensic DNA Analysis: Issues with DNA Transfer".

2014 Taylor, M.S.; 21 May 2014, Santa Cruz County Defense Bar; "Forensic DNA Analysis: Issues with DNA Transfer".

2014 Taylor, M.S.; 20 May 2014, Santa Clara County Defense Bar; "Forensic DNA Analysis: Issues with DNA Transfer".

2014 Taylor, M.S.; 12 May 2014, Ventura County Criminal Defense Association; "Forensic DNA Analysis: Issues with DNA Transfer".

2012 Taylor, M.S.; 23-24 Aug 12, U.S. Courts: Multi-Track Federal Criminal Defense Seminar; Chicago, IL; "Challenging Laboratory Reports Received in Discovery".

2011 Taylor, M.S.; 4 June 11, DC Public Defender Service 9th Annual Forensic Science Conference, Decoding DNA: The Fundamentals of DNA Defense; Washington, DC; "Defense Testing: Reasons for Testing, Retesting, and Monitoring".

2011 Barlow, B. & Taylor, M.S.; 25 Mar 11, NACDL & CACJ's 4th Annual Forensic Science Seminar: Forensic Science & the Law; Las Vegas, NV; "Principles of DNA Evidence".

2010 Taylor, M.S.; 12-13 Aug 10, U.S. Courts: Multi-Track Federal Criminal Defense Seminar; Miami, FL; "Issues with DNA Analysis in Forensic Casework".

2009 Taylor, M.S.; 4 Apr 09, NACDL & CACJ's 2nd Annual Forensic Science Seminar: Making Sense of Science II; Las Vegas, NV; "Transfer of DNA".

2008 D. Krane, S. Ford, J. Gilder, K. Inman, A. Jamieson, R. Koppl, I. Kornfeld, D. Risinger, N. Rudin, M.S. Taylor, W.C. Thompson. "Sequential unmasking: A means of minimizing observer effect in forensic DNA interpretation." Journal of Forensic Sciences. 2008;53(4):1006-7.

2008 Taylor, M.S.; 4 Apr 08, NACDL & CACJ's 1st Annual Forensic Science Seminar: Making Sense of Science; Las Vegas, NV; "Timeline for DNA Analysis".

2007 ----------.; 17 Aug 07, Forensic Bioinformatics 6th Annual Conference, The Science of DNA Profiling: A National Expert Forum, Dayton, OH; Keynote Speaker: "Perspectives on DNA from the Last 30 Years".

2007 Holland, M.; Taylor, M.S.; 17 Aug 07, Forensic Bioinformatics 6th Annual Conference, The Science of DNA Profiling: A National Expert Forum, Dayton, OH;

"Crime Lab Fundamentals: What to expect from a crime lab from design to record keeping to the tools a forensic scientist uses".

2007 Taylor, M.S.; 17 Aug 07, Forensic Bioinformatics 6th Annual Conference, The Science of DNA Profiling: A National Expert Forum, Dayton, OH; "The Beginning: DNA basics from crime scene to crime lab – the good, the bad, and the ugly".

2007 ----------.; 17 Aug 07, Forensic Bioinformatics 6th Annual Conference, The Science of DNA Profiling: A National Expert Forum, Dayton, OH; "Studying the transfer of DNA in a forensic context".

2007 ----------.; 21 Mar 07, Ventura Community College, Ventura, CA; "DNA in Forensic Science".

2007 ----------.; 17-18 Mar 07, West Coast Forensic Trial College DNA Seminar, San Francisco Public Defender Office, University of San Francisco Law School, San Francisco, CA; "Mixture Interpretation – Scientific and Legal Issues".

2006 ----------.; 12 Dec 06, Missouri State Public Defender Winter Workshop, St. Louis, MO; "Y-STR & Mitochondrial DNA Testing" & "Challenging Presumptive Forensic Tests".

2006 Rowland, C.D., Van Trees, R.V., Taylor, M.S., Raymer, M.L. & Krane, D.E.; "Was the Shawnee War Chief Blue Jacket a Caucasian?"; Ohio Journal of Science, September 2006.

2006 Taylor, M.S.; 20 Apr 06, Los Angeles Public Defender DNA Unit, Los Angeles, CA; "Understanding Decisions in DNA Analysis".

2005 ----------.; 17 Sep 05, DNA Cross-Examination College Conference, Georgetown University Law Center, Washington, D.C.; Faculty Member.

2005 Barlow, B., Taylor, M.S.; 12 Sep 05, Habeas Corpus Resource Center, San Francisco, CA; Panel Co-Presenter "Assessing DNA & Serology Evidence".

2005 Taylor, M.S.; 12 Aug 05, Forensic Bioinformatics 4th Annual Conference, Dayton, OH; DNA Typing Methodologies, Chair: "Timeline for DNA Analysis", "Extraction Techniques", and "Y-STR Typing".

2005 ----------.; 29 April 05, California Public Defenders Association workshop – "DNA/Scientific Evidence".

2004 Thompson, W.C., J.D., Ph.D.; Inman, K., Sr. Forensic Scientist; Cotton, R., Ph.D.; Wraxell, B.; Taylor, M.S.; 15 Oct 04, Los Angeles County Criminal Bench Seminar, Los Angeles, CA; Forensic DNA Analysis Panel.

2004 Taylor, M.S.; 20 Aug 04, Forensic Bioinformatics 3rd Annual Conference, Dayton, OH; "Studies of DNA Transfer" and "Strengths and Weaknesses of Commonly Used Serological Tests".

2004 ----------.; 14 May 04, DePauw University Center for Law & Science and the Office of the Cook County Public Defender; Science in the Courtroom for the 21st Century: Issues in Forensic DNA, Chicago, IL; "Validation of Y-STR Multiplex".

2004 ----------.; 19 Apr 2004, Puget Sound Chapter of the Inns of Court; "DNA & Problems".

2002 ----------.; 19 Aug 2002, Monterey County Bar Association and the Monterey County Public Defender's Office; "The ABC's of DNA: An Introduction to Genetic Profiling".

2001 ----------.; 1 Oct 2001, Colorado State Public Defender Annual Training Conference; "General Session, New DNA".

2001 Barlow, B.; Windham, M.; Taylor, M.S.; 19 Feb 2001, California Attorneys for Criminal Justice (CACJ) and California Public Defenders Association (CPDA) – Death Penalty Defense Seminar; "Bring Your DNA Case – Brainstorming with the Experts".

2001 Windham, M.; Taylor, M.S.; 17 Feb 2001, California Attorneys for Criminal Justice (CACJ) and California Public Defenders Association (CPDA) – Death Penalty Defense Seminar; "Basic DNA".

2000 Thoma, J., Taylor, M.S.; 14 Sept 2000, State Bar of California 2000 Annual Meeting; "DNA Evidence: In Search of the Truth".

2000 Neufeld, P., Taylor, M.S., Friedman, J.; 3 June 2000, Los Angeles County Public Defenders Association; "Using DNA to Exonerate – Testing and Tactics".

2000 Taylor, M.S., Burt, M.; 19 Feb 2000, California Attorneys for Criminal Justice (CACJ) and California Public Defenders Association (CPDA) – 2000 Capital Case Seminar; "Addressing DNA That Implicates Your Client (including STR)".

1999 ----------.; 20 Nov 1999, California Public Defenders Association lecture – "Exploring Scientific Evidence" and "DNA and the Crime Lab: A DNA Primer".

1999 ----------; 13 Oct 1999, CAC – Fall 1999 Seminar, "Developmental Validation Issues".

1998 ----------; 12 Sept 1998; California Public Defenders Association lectures – "Forged Fingerprints" and "STR is Not DQA1, PCR is Not PCR".

1998 ----------; 21 Aug 1998; Riverside County Public Defenders Office, "DNA Analysis in Forensic Science".

1998 ----------; May 1998; CAC – Spring 1998 Seminar; "STR Troubles".

1997 Taylor, M.S., A. Challed-Spong, E.A. Johnson, Ph.D.; "Co-Amplification of the Amelogenin and HLA DQ-Alpha Genes: Optimization and Validation"; J. of Forensic Sciences, January 1997.

1996 Ballard, K.D., R.S. Orkiszewski, M.S. Taylor, E.A. Johnson and L. Ragle; Seventh International Symposium On Human Identification, Scottsdale, AZ; "DNA Typing and the Determination of EDTA in Forensic Samples by GC-MS/MS.

1996 Ballard, K.D., R.S. Orkiszewski, M.S. Taylor, E.A. Johnson and L. Ragle; 44th ASMS Conference on Mass Spectrometry and Allied Topics, Portland, OR; "Determination of EDTA in Forensic Samples by Capillary GC-MS and GC-MS/MS.

1996 Taylor, M.S.; 10 Apr 1996; 1996 Moorpark College Science Exposition; "Forensic DNA on Trial".

1995 ----------; 27 Feb 1995; Scientific Seminar sponsored by the Association of Women In Science, Orange Coast College; "Forensic DNA Analysis".

1994 Taylor, M.S., A. Challed, E.A. Johnson, Ph.D.; 9 Oct 1994, Promega Meeting 1994 poster; "Co-Amplification of the Amelogenin Gene with DQ-Alpha Utilizing the AmpliType Reaction Mix and Amplification Process".

1994 Taylor, M.S.; 25 Aug 1994, Orange County Bar Association – Criminal Law Section; "An Understandable Approach to DNA Testing".

1994 Taylor, M.S., A. Challed, E.A. Johnson, Ph.D.; 12 May 1994; CAC – Spring 1994 Seminar; "Co-Amplification of the Amelogenin Gene with DQ-Alpha Utilizing the AmpliType Reaction Mix and Amplification Protocol".

1994 Taylor, M.S., A. Challed; 12 May 1994; CAC – Spring 1994 Seminar; "Tracking Down DNA Contamination in Reagents".
1994 Taylor, M.S.; 14 Jan 1994, Orange County Bar Association – "LAST DASH: MCLE"; "DNA Typing and the Law".
1993 ----------; 23 Oct 1993, CAC – Fall 1993 Seminar; "Increasing the Yield of Spermatozoa from Stains and Swabs".
1993 ----------; 23 Oct 1993, CAC – Fall 1993 Seminar; "Utilization of Metaphor Agarose for AMP-FLP D1S80 Gels".
1993 ----------; 19 Jul 1993, Orange County Paralegal Association; "DNA Use In Forensic Science".
1993 ----------; 19 Jul 1993, Orange County Public Defenders Office; "DNA Use In Forensic Science".
1993 ----------; 21 May 1993, CAC – Spring 1993 Seminar; "Increasing the Yield of Spermatozoa from Stains and Swabs".
1993 ----------; 21 May 1993, CAC – Spring 1993 Seminar; "Utilization of Metaphor Agarose for AMP-FLP D1S80 Gels".
1993 ----------; 13 Apr 1993, San Fernando Valley Criminal Bar Association; "Forensic Use of DNA Testing".
1992 Vale, G.L., L. Kahn, J.M. Suchey, M.S. Taylor; 12 Feb 1992; AAFS – New Orleans; "The Role of the Expert: To Inform or To Confuse?"
1990 Taylor, M.S.; 18 Jan 1990, California Attorneys for Criminal Justice (CACJ) and California Public Defenders Association (CPDA) – Death Penalty Defense Seminar; "DNA: The New Witness".
1989 ----------; 20 Feb 1989, CACJ and CPDA, Death Penalty Defense Seminar; "Case Organization: A Computerized System".
1989 ----------; 18 Feb 1989, CACJ and CPDA, Death Penalty Defense Seminar; "The Forensic Science Expert – Mandatory in a Death Penalty Case".
1987 ----------; 28 Mar 1987, CPDA – Seminar; "How Fingerprints Can Be Faked".
1986 ----------; 9 Aug 1986, CPDA, Workshop; "Handling Complex Criminal Cases with the Computer".
1985 ----------; 9 Nov 1985, AIFS, Seminar; "Challenges to Eyewitness Testimony".
1985 ----------; Chapter 5 "Challenges to Eyewitness Testimony", Forensic Science, Legal and Investigative Techniques, by The American Institute of Forensic Science, 1985.
1985 ----------; 13 Jul 1985, CPDA, Workshop; "Organizing the Complex Criminal Case with the Computer".
1984 ----------; R.H. Fox, February 1984, Pasadena, Glendale and Burbank Bar Associations Joint Meeting; "Forensic Science in Defense Work and Demonstrative Evidence".
1983 ----------; AIFS, Seminar; "Forensic Science In Court Presentations: Demonstrative Evidence".
1983 ----------; September 1983, National Society for Histotechnology; "Technical Overview of Forensic Science".
1982 ----------; November 1982, Springfield Dental Association, Springfield, MO; "An Overview of Forensic Odontology".

1981 ----------; February 1981, AAFS; Moderator and Speaker, Criminalistics Section for the Jr. Academy of AAFS.

1978 ----------; January 1978, Arcadia Chapter – American Association of University Women; "Rape: Justice through Science".

1977 ----------, R.L. Taylor; February 1977, AAFS; "Toolmark Examination via SEM/EDX".

1976 Taylor, R.L., M.S. Taylor, V.P. Guinn, T.T. Noguchi; "Firearm Identification by Examination of Bullet Fragments: A SEM/EDX/NAA Study"; IITRI, Scanning Electron Microscopy Symposium, 1976.

1975 Taylor, R.L., M.S. Taylor, T.T. Noguchi; "Applications of Scanning Electron Microscopy in Forensic Science"; IITRI, Scanning Electron Microscopy Symposium, 1975.

1973 Taylor, M.S., J. Wu, R.S. Daniel; "Fine Structure of Virus Lesion Periderm Formation in Nicotiana Glutinosa"; J. of Ultrastructure Research 48:143 –and- 6th Bi-annual meetings, California E.M. Society, Proc., L. Anderson (ed), Monterey.

1973 ----------; 1973; "Fine Structure of Wound Periderm Formation in Nicotiana Glutinosa"; Southern California Academy of Sciences Meeting, Patten (ed), Long Beach.

BICKA BARLOW
ATTORNEY AND FORENSIC CONSULTANT
2358 MARKET STREET, SAN FRANCISCO CA 94114
(415) 553-4110

EDUCATION

University of San Francisco, School of Law, Juris Doctor, Magna Cum Laude, May 1995

Cornell University
M.S., Genetics (Minors: Plant Molecular Biology, Cell Biology), January 1990
McKnight Fellow, 1986 -1988
National Science Foundation Predoctoral Fellowships, Honorable Mention, 1985, 1986

University of California, Berkeley
B.S., Genetics, December 1984
President's Research Fellowship, 1984

MEMBERSHIPS

American Academy of Forensic Science Standards Board, DNA Consensus Body, 2016-2022

Subcommittee on Accreditation and Proficiency Testing, National Commission on Forensic Science, September 2014-2017

American Academy of Forensic Science, 2007-2014

National Association of Criminal Defense Lawyers

State Bar of California, Member #178723
Member, Executive Committee, Criminal Law Section, 2013-2017

LEGAL EXPERIENCE

Attorney and Forensic Consultant, San Francisco March 2013-present
Private practice with an emphasis on serious felony and homicide cases involving forensic evidence with an emphasis on DNA evidence. Services include consultation with lead counsel cases involving DNA evidence, conducting pretrial hearings on DNA evidence, and cross examination of trial experts as well as preparation and presentation of defense experts on DNA evidence

Deputy Public Defender, San Francisco August 2004 -March 2013
DNA attorney for Public Defender's Office. Duties include consultation with lead counsel on serious felony cases involving DNA evidence, conducting pretrial hearings on DNA evidence, and cross examination of trial experts as well as preparation and presentation of defense experts on DNA evidence. In-house training on DNA evidence of attorney, investigators, paralegals and interns.

Private Practice, Criminal Defense, San Francisco August 1996-August 2004
Represent clients in criminal prosecutions, with a focus on the challenge of DNA evidence at both *Kelly* hearings as well as trial.

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Superior Court of San Francisco, Criminal Division
Research Attorney August 1995 - August 1996
Reviewed pretrial motions in the Criminal Division, including Penal Code § 995 and 1538.5 motions; wrote memoranda to judges analyzing relevant law and facts. Assisted judges in trial motions, particularly those involving evidentiary issues.

San Francisco Public Defender, San Francisco, CA January 1995 - May 1995
Intern, Supervising Attorney Michael Burt
Researched and wrote motion for discovery of DNA evidence for a capital case. Researched state law and scientific issues for a motion to suppress DNA evidence in a capital case.

Federal District Court for the Northern District of California, San Francisco, CA
Legal Extern, The Honorable Judge Eugene Lynch September - December 1994
Researched and wrote orders on 42 U.S.C. § 1983 civil rights claims and habeas corpus writs. Reviewed and orally briefed judge on civil matters.

Law Offices of Carmen Gutierrez, Anchorage AK July - August 1994
Researched and wrote motion to suppress DNA evidence in a criminal trial; interviewed DNA experts; and prepared trial attorney for direct and cross-examination of expert witnesses.

Alaska Office of Public Advocacy, Anchorage, AK
Intern, Supervising Attorney Leslie Hiebert June - August 1994
Represented misdemeanor clients in hearings for bail, change of plea, sentencing, and revocation of probation; wrote motions and appeals; and interviewed clients. Advisor on DNA evidence in homicide trial; coordinated DNA testing and data interpretation; and prepared supervising attorney for direct and cross-examination of expert witnesses.

University of San Francisco, School of Law, San Francisco, CA June - August 1993
Research Assistant, Steve Shatz.
Researched burglary statutes and case law from all fifty states in order to compare the elements of burglary and the proportionality of sentencing to California law.

OTHER EXPERIENCE

ICF Kaiser Engineers, San Francisco, CA
Environmental Associate January 1990 - August 1992, June - August 1993
Managed group of engineers and geologist responsible for conducting over 100 environmental assessments of hazardous waste sites for the EPA. Duties included preparation of over 20 site assessment reports requiring government agency record searches, field sampling, and data evaluation.

Cornell University, Ithaca, NY
Graduate Research, McKnight Fellow August 1985 - September 1989
Independent research using DNA and protein chemistry methods. Presented departmental seminars on original research.

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PRESENTATIONS

DNA Mixtures and Cognitive Bias, 2023, DNA Bootcamp, Los Angeles County Public Defender, Federal Defender Central District of Cal., Los Angeles Innocence Project, Cal State LA Forensic Sci. Instit.

Admissibility Challenges, with Jennifer Friedman, 2023, DNA Bootcamp, Los Angeles County Public Defender, Federal Defender Central District of Cal., Los Angeles Innocence Project, Cal State LA Forensic Sci. Instit.

Theories of Defense: Touch and Transfer, 2022, Wisconsin State Public Defender, Forensic University

Mixture Issues in DNA Cases, 2022, CACJ/CPDA Capital Case Defense Seminar

Transfer, 2021, San Mateo Private Bar Program

Introduction to DNA, 2021, San Mateo Private Bar Program

Complex Mixtures, 2021, National Forensic College, NACDL-Cardozo National Forensic College

DNA Foundations, 2021, Invited Speaker, Forensic Science & The Law, Santa Clara University School of Law

DNA Mixtures: Part I, 2021, CACJ/CPDA Capital Case Defense Seminar

Genetic Genealogy: the new frontier, Arizona Death-Penalty Seminar 2020: Still Fighting for Life

DNA Transfer: Why do we care?, Arizona Death-Penalty Seminar 2020: Still Fighting for Life

Genetic Genealogy, with Erin Murphy and Barry Scheck, 2020, NACDL-Cardozo National Forensic College

DNA Transfer Evidence, 2020, NACDL Defending Sexual Assault and Child Victims Cases Seminar

Mixture Deconvolution using STRmix, 2020, Wisconsin Bar Association

DNA Foundations, 2020, CACJ/CPDA Death Penalty Seminar, Monterey, CA

DNA Transfer, with Kelly Kulick, 2020, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Advanced DNA, 2020, CACJ/CPDA Death Penalty Seminar, Monterey, CA

*Cognitive Bias***,** 2019, Contra Costa County Public Defender and Northern District of California, Federal Defender, DNA Boot Camp, Oakland CA

Familial DNA Searching as a Law Enforcement Tool, 2019, with Michael Chamberlain and Kevin Kellog, Appellate Judicial Attorneys Institute, Redwood City, CA

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What every defense lawyer need to know about SFPD's latest software program: STRmix, 2019, San Francisco Bar Assn, San Francisco Superior Court, San Francisco Public Defenders Office

Introduction to DNA Evidence, 2019, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Complex DNA Mixtures, 2019, with Kate Philpott, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Cold Hits and Database Issues, 2018, Contra Costa County Public Defender and Northern District of California, Federal Defender, DNA Boot Camp, Oakland CA

Evolving Issues in DNA, 2018, NACDL, Annual Forensic Science Seminar, Las Vegas, NV

Cross Examining a DNA Expert, with Jessica Goldthwaite, 2018, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Introduction to DNA Evidence, 2018, CACJ/CPDA Death Penalty Seminar, Monterey, CA

*Evolution of Statistical Analysis in DNA Testing of Mixed Samples***,** 2017, Fall Conference, Habeas Corpus Resource Center, San Francisco, CA

DNA Primer, 2017, Advanced Topics in Criminal Defense, NACDL/UACDL, Provo, Utah

Keeping Pseudo-Science Out of the Courtroom, 2017, Advanced Topics in Criminal Defense, NACDL/UACDL, Provo, Utah

Database Cases 2016, Contra Costa County Public Defender and Northern District of California, Federal Defender, DNA Boot Camp, Oakland CA

Emerging Issues in DNA Cases- Mixtures and Low Copy DNA, with Jennifer Friedman, 2016, Hennepin County Public Defenders, DNA Bootcamp, St. Paul/Minneapolis, MN

Introduction to DNA Evidence, 2016, Hennepin County Public Defenders, DNA Bootcamp, St. Paul/Minneapolis, MN

Just Because It's a Match Doesn't Mean It's a Match: Mixtures, LCN, and CODIS Searches, 2016, DNA and More: Developments in Forensic Science, Cook County Public Defender Office, Forensic Division, Chicago, Il

Litigating DNA Evidence, 2016, CACJ/CPDA Death Penalty Seminar, San Diego, CA

Foundations of a Successful Challenge to DNA Evidence, with Kelly Kulick, 2016, CACJ/CPDA Death Penalty Seminar, San Diego, CA

DNA and Wrongful Convictions, 2005, 2006, 2008, 2009, 2013, 2014, 2015, Wrongful Convictions Course, Invited Speaker, Golden Gate University, School of Law

DNA Basics, 2015, Contra Costa County Public Defender and Northern District of California, Federal Defender, DNA Boot Camp, Oakland CA

Foundations of STR Testing including Mixtures, 2015, NACDL and Cardozo Law's National Forensic College, New York City, NY

Database Cases and Low Copy Number/Enhanced Detection Methods, with Jennifer Friedman and Jessica Goldthwaite, 2015, NACDL and Cardozo Law's National Forensic College, New York City, NY

DNA and Penal Code sec 1473, 2015, Spring Conference, Habeas Corpus Resource Center, San Francisco, CA

PLENARY: New Developments in DNA, with Andrea Roth, 2015, CACJ/CPDA Death Penalty Seminar, Monterey, CA

DNA: Low Copy Numbers and Mixtures, 2015, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Low Copy Number DNA and Mixtures, 2014, California Public Defenders Association, Berkeley CA

Understanding-and Challenging-DNA Evidence, 2014, California Appellate Defense Counsel, Annual Conference, Sacramento, CA

Pattern Impression Evidence, Including Toolmark Comparisons, 2014, CACJ/CPDA Death Penalty Seminar, Monterey, CA

DNA Database Issues, 2014, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Taking DNA to Trial, 2013, Texas Criminal Defense Lawyers Association, 11th Annual Forensic Seminar, Dallas, TX

Recent Developments on the Evidentiary Limits of Expert Testimony and Forensic Evidence 2013, with Michael Chamberlain, Appellate Judicial Attorneys Institute, Redwood City, CA

Basic DNA, 2013 CACJ/CPDA Death Penalty Seminar, Monterey, CA

Why Not All Cold Hits Are Created Equal, 2013, CACJ/CPDA Death Penalty Seminar, Monterey, CA

DNA Training Series, September – November, 2012, San Francisco Public Defender's Office, San Francisco CA

Investigating the Lab and Examiner, 2012, Mississippi Spring Public Defender Conference, Biloxi, MI

DNA Update, with Denise Gragg, 2012, CPDA's 43rd Annual Convention Training Program, Oxnard, CA

DNA: From Basics to Advanced - with Jennifer Friedman 2012, Making Sense of Science, 5th Annual Forensic Science Seminar, NACDL and CACJ, Las Vegas, NV.

Low Copy Number DNA Testing and Mixtures, with Rosette Isip, 2012, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Low Copy Number DNA Testing, Mixtures and Cold Hits, with Rosette Isip, 2011, Los Angeles Public Defender's Office Forensic Science Training, Los Angeles CA

Principles of DNA Evidence, 2011, Making Sense of Science, 4th Annual Forensic Science Seminar, NACDL and CACJ, Las Vegas, NV.

DNA: Not All Cold Hits Are Equal, 2011, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Undermining & Utilizing DNA, 2010, CACJ Annual Criminal Defense Seminar, San Francisco CA

The Fallibility of the Infallibility of DNA Evidence, 2010, Annual Western All-Star Conference and Confabulation, Federal Defenders of Eastern Washington and Idaho, Boise ID.
Lab 101 for Lawyers, 2010, THRILLS AND SKILLS XVI, SNITCHES, SCIENCE & SINSEMILLA, Federal Defenders of Eastern Washington and Idaho, Spokane WA.

Can Cold Hit Cases Be Tried Fairly?: Confrontation Clause and DNA Analysis, 2010, 62nd Annual Scientific Meeting, American Academy of Forensic Science, Seattle WA

Cold Hit Statistics and Database Access, 2010, 62nd Annual Scientific Meeting, American Academy of Forensic Science, Seattle WA

Cutting Edge Issues in DNA Evidence, with Andrea Roth, 2010, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Basic DNA Evidence, 2010, CACJ/CPDA Death Penalty Seminar, Monterey, CA

West Coast Forensic Trial College: DNA, 2009, Organizer and Trainer, San Francisco Public Defenders Office

DNA Database Issues, 2009, NACDL and CACJ, 2nd Annual Forensic Science and Technology Seminar, Las Vegas, NV

Access to DNA Databases and Familial Searching, 2009, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Understanding and Debunking DNA Statistical Misinformation, 2009, CPDA, DNA Evidence Seminar, Monterey, CA

Cold Hit Statistics, 2008, Solano County Public Defenders Office, Fairfield CA

Introduction to DNA, 2008, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Basic DNA, 2008, Forensic Science Course, Invited Speaker, University of California, Hastings School of Law

Using DNA Evidence to Your Advantage, 2007, Habeas Corpus Research Center, Summer Conference, San Francisco, CA

DNA Evidence: The Meaning of a Match, 2007, Habeas Corpus Research Center, Summer Conference, San Francisco, CA

West Coast Forensic Trial College: DNA, 2007, 2009, Organizer and Trainer, San Francisco Public Defenders Office

California Commission on the Fair Administration of Justice, 2007, Testimony

DNA Analysis, 2006, Solano County Public Defenders Office, Fairfield CA

Understanding DNA, 2006, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Brainstorming DNA, 2006, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Litigating DNA Discovery, 2005, 2006, Pre Trial Discovery Course, Invited Speaker, University of California, Boalt School of Law

CSI and the Urban Myth of DNA, 2006, Women Defenders, Fall Seminar, San Francisco, CA

DNA Cross Examination College, 2005, Trainer, Public Defender Service, Washington DC

DNA and Serology, 2005, Habeas Corpus Research Center, Fall Conference, San Francisco, CA

DNA, 2005, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Bring Your DNA Case Brainstorming with the Experts, 2005, CACJ/CPDA Death Penalty Seminar, Monterey, CA

Neuroscience and the Law, 2003, Invited Participant, American Association for the Advancement of Science and The Dana Foundation, Washington D.C.

Basic DNA, 2003, CACJ/CPDA Death Penalty Seminar, Monterey, CA

The Basics of Defending a Case in Which DNA Evidence Implicates your Client, 2003, San Francisco Bar Association

DNA is Different, 2002, Panelist with Dr. Henry Lee and Ronald Weich, American Bar Association Annual Convention, Washington D.C.

DNA Evidence: Motions and Challenges, 2001, Arizona Capital Defense Seminar

Attacking DNA Evidence, 2001, California Public Defender's Association, Scientific Evidence Seminar

Forensic DNA Evidence: Is it as Good as You Think?, 2001, Cornell University, Department of Genetics and Molecular Biology

Trial Strategies for Forensic DNA Evidence, 2001, Office of the Public Defender, State of Colorado

DNA Workshop, February 2001, CACJ/CPDA Death Penalty Seminar, Monterey, CA

DNA and the Crime Lab: A DNA Primer, 1999, California Public Defenders Association, Scientific Evidence Seminar

PUBLICATIONS

DNA Warrants Violate Rights, U.S.A. Today, Editorial, November 1, 1999, pg. 28A (with Kim Kruglick)

Severe Penalties for the Destruction of "Potential Life"--Cruel and Unusual Punishment? 29 **U.S.F. L. Rev**. 463 (Winter 1995)

Regulation of the Expression of Pet 122 in the Yeast Saccharomyces Cerevisiae, Thesis, Cornell University (1990)

A Highly Conserved Brassica Gene with Homology to the S-Locus-Specific Glycoprotein Structural Gene, 1 **The Plant Cell** 249 (Feb. 1989) (with Beth LaLonde, Mikhail E. Nasrallah, Kathleen G. Dwyer, Che-Hong Chen, June B. Nasrallah)

Report C – Brent Turvey, Ph.D.

Crime Scene Analysis

To: Orrick, Herrington & Sutcliffe LLP
51 West 52nd St.
New York, NY 10019-6142
Phone: (212) 506 5000

From: Brent E. Turvey, PhD - Forensic Criminologist
Forensic Solutions, LLC
234 Lakeview Drive
Sitka, Alaska 99835
Phone: (907) 738-5121

Date: April 6, 2023

Re: *California v. Kevin Cooper*, Case No. SD CR72787

Mr. Kathawala;

Your office has contracted me to provide an independent forensic assessment of the "Report of Paul Delhauer" in the matter of *California v. Kevin Cooper.* As explained in *People v. Kevin Cooper* (1991) [No. S004687. Crim. No. 24552. May 6, 1991.]: "The jury convicted defendant of hacking to death Douglas (Doug) and Peggy Ryen, their 10-year-old daughter Jessica, and an 11-year-old houseguest, Christopher Hughes (Chris), inside the Ryen home, 4.9 miles from the California Institution for Men (CIM), a state prison in Chino. Eight-year-old Joshua Ryen (Josh), although severely injured, survived."

Mr. Delhauer's report states: "I was contacted by Attorney Mark McDonald of Morrison [&] Foerster LLP (the "Firm"), who requested that I perform an independent review of crime scene evidence, autopsy findings and other relevant evidence a) to determine whether facts precluded the possibility that a single offender could have committed the combined offenses and b) whether facts supported the likelihood that either one or multiple offenders did so."

As described in Mr. Delhauer's report, this is apparently meant to be a single-issue crime reconstruction request. However, this report offers multiple crime scene analysis and criminal profiling-related opinions within — to include inferences regarding offender approach (e.g., a "blitz attack"); and discussions regarding the choices and "mind of the offender" on multiple issues. Mr. Delhauer's report further contains medical opinions regarding the impact of alcohol and specific wounds on

the ability of victims to defend themselves during their respective attacks. His report ultimately concludes that Kevin Cooper is not only the sole offender, but that his conviction was justified.

The purpose of this forensic assessment is to evaluate Mr. Delhauer's report in consideration of best practices as established in the scientific and forensic literature. This requires the objective consideration of all relevant physical, behavioral, and contextual evidence — and not the legal positions taken by any one party. This is a post-conviction assessment.

EXPERT QUALIFICATIONS

This examiner (Brent E. Turvey, PhD) is a court qualified Forensic Scientist, Crime Scene Analyst, Crime Reconstructionist, Forensic Criminologist, and Criminal Profiler. I hold a BS in History, a BS in Psychology, an MS in Forensic Science, and a PhD in Criminology. I am also the author or co-author of multiple industry standard texts on related subjects, including:

1. Chisum, W. & Turvey, B. (2012) *Crime Reconstruction, 2nd Ed*., San Diego: Elsevier Science.
2. Coronado, A. & Turvey, B. (2022) *Criminal Psychology*, San Diego: Elsevier Science.
3. Crowder, S. & Turvey, B. (2017) *Forensic Investigation*, San Diego: Elsevier Science.
4. Turvey, B. (2013) *Forensic Victimology, 2nd Ed*., San Diego: Elsevier Science.
5. Turvey, B. (2023) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 5th Ed*., London: Elsevier Science.

Since 1996, I have worked for law enforcement agencies (police and prosecutors), attorney clients, and private entities all over the world. This includes providing consultations, forensic assessments, certification training, and expert testimony on both criminal and civil matters. My caseload tends to involve sexual assault, false allegations, shooting incident reconstructions, serial rapes and homicides, mass homicides, sexual homicides, domestic homicides, staged crime scenes, and other forms of violent crime.

I also maintain a caseload of femicides (e.g., sexual homicides, gender motivated homicides), pre-femicidal violence, trafficking, and human rights cases in Latin America. Many of these are related to drug trafficking and human trafficking. This involves the implementation of the *UN Model Protocol for Femicide Investigation in Latin America*, with The Forensic Criminology Institute's Behavioral Science Lab (BSL). In operation since 2019, the BSL collaborates with USAID (Mex), JAVA (Mex), The United Nations, and The Attorney Generals Office in Bogota DC, providing

investigative support and training to attorneys and investigators.

As a result of casework and research, I have served as a trial consultant, and have qualified in court as an expert witness, on the subjects of Criminal Investigation, Forensic Science, Crime Reconstruction, Wound Pattern Analysis, Shooting Incident Reconstruction, Firearms and Tool-marks, Interpretation of Presumptive Blood Test Results, Crime Scene Analysis, Crime Scene Investigation, Case Linkage/ Linkage Analysis (Motive, Modus Operandi and Signature Analysis), Criminal Profiling, Offender Deterrability, Offense Foreseeability, Offender Motivations, Staged Crime Scenes, Sex Crimes Investigation, False Allegations, and Forensic Victimology. I have testified or given evidence as an expert witness in these and related areas on more than 50 occasions in the United States, in both state and federal court. I have also testified as an expert witness in multiple jurisdictions in Mexico, and also in Colombia, for the Prosecution.

My full professional CV is submitted with this report.

EXECUTIVE SUMMARY

1. Mr. Delhauer's report contains investigative theories improperly presented as forensic interpretations.

2. Mr. Delhauer's report contains forensic interpretations in multiple areas of forensic expertise that are well beyond his education, training, and the requisite scientific standards. Specifically, he is operating outside of his areas of ability and expertise when offering medical, scientific, or forensic opinions.

3. Mr. Delhauer's report is technically negligent, in that it lacks provenance, references, adherence to acceptable practice standards and protocols, and it is burdened with inherent bias.

4. Mr. Delhauer's report is methodologically biased and negligent, in that it relies on deficient and disproven approaches; fails to acknowledge known error rates; fails to provide the required disclaimers; fails to evaluate victimology; lacks objectivity; and breaches the ultimate issue.

5. Mr. Delhauer's report fails to acknowledge or discuss relevant areas of evidence that contradict his opinions. These failures are sufficiently significant to demonstrate both an intense law enforcement bias and a pattern of forensic negligence.

6. The opinions expressed in Mr. Delhauer's report are based on a list of factors that, as presented, contain unfounded assumptions and interpretations, some at odds with the evidence, that are subsequently used to render inexpert conclusions.

FINDINGS

This section provides a discussion of findings presented in the executive summary, with supporting evidence.

1. Best Practices

The findings of this forensic examiner comport with the established literature on scientific methodology and the subsequent interpretation of forensic evidence. See: Edwards & Gotsonis (2009); Gardenier (2011); NAS (2002); NAS (2009); PCAST (2016); and Thornton (1997).

They are also in agreement with this examiners education, training, research, publications, and experience. See: Chisum & Turvey (2012); Coronado & Turvey (2022); Crowder & Turvey (2017); Turvey (2013); and Turvey (2023).

2. Crime Scene Analysis and Reconstruction

The goal of scientific crime scene analysis and reconstruction is to reliably establish what happened, how it happened, where it happened, to whom, and ultimately why—from the perspective of the physical and behavioral evidence (Crowder & Turvey, 2017; Turvey, 2023). This is a holistic process that requires the assessment, integration, and agreement of available investigative and forensic testing efforts—to reliably establish context and then accurately reconstruct essential elements of the crime. Cwiklik & Taupin, in their work on the forensic examination of clothing, state (2010; p.7): “The holistic approach we describe in this text considers all elements of evidence recovered from the clothing examination and the how and the why of the relationships among those pieces of evidence. As well as a consideration of all the evidence, there should be a concordance of that evidence. For example, bloodstain pattern evidence should not contradict the ballistic analysis. Integration of the findings thus places the evidence in context.” In other words, regardless of the area of forensic examination, interpretations must comport with (or at least not be contradicted by) other competent forensic findings to be considered reliable and accurate.

This integrated approach requires the establishment and consideration of context (e.g., forensic victimology—which is required to be collected as part of every medico-legal examination), *and* the examination of available physical and behavioral evidence (e.g, crime reconstruction). Additionally, limitations and disagreement within the available evidence must be identified to prevent inappropriate or unfounded theories and interpretations. See generally Chisum & Turvey (2012); Coronado & Turvey (2022); Crowder & Turvey (2017); Edwards & Gotsonis (2009); NIJ (2011); Peterson & Clark (2006); and Turvey (2023).

3. **Locard's Exchange Principle**
A cornerstone of the forensic sciences and crime reconstruction, this states that when a person comes in contact with a surface, location, or another person—an exchange of evidence occurs. This applies to every area of forensic science and includes all manner of physical evidence (most of which indicates action and/or behavior). For extensive discussions of foundation and relevance, see Chisum & Turvey (2012); Coronado & Turvey (2022); Cwiklik & Taupin (2010); Edwards & Gotsonis (2009); Gaennslen, & Lee (1983); Locard (1928); and Mozayani & Noziglia (2006).

4. **Evidence Dynamics**
This refers to any condition or influence that changes, relocates, obscures, or obliterates physical evidence. Evidence dynamics are at work before the crime happens, during evidence creation or transference, after evidence collection; and during evidence transportation and storage (e.g., weather, animal predation, inept/ destructive evidence collection or storage practices, and unrelated prior or subsequent injuries to a body; Chisum & Turvey, 2012). It can also be the result of microbial activity, and "environmental insult, such as heat damage, insect attack, or decomposition due to time and weather" (Cwiklik & Taupin, 2010; p.12). Consideration of evidence dynamics is critical with respect to establishing a reliable chain of custody, evidence integrity, and the association of evidence with a particular origin or event — such as a specific crime (Cwiklik & Taupin, 2010; Gardenier, 2011; Mozayani & Noziglia, 2006; NIJ, 2013; and Turvey, 2023). Evidence sufficiency, integrity, and association must be established as part of the forensic examination process and may not be assumed for the purposes of an examination.

5. Evidence Examined

In order to complete this forensic assessment, this examiner considered at least the following evidentiary material:

A. The "Report of Paul Delhauer"
B. 55 separate pdf files labelled as trial exhibits
C. Various scene photos
D. Various evidence photos
E. Autopsy reports, including trauma-gams
F. *People v. Kevin Cooper* (1991) No. S004687. Crim. No. 24552. May 6, 1991
G. IACHR, Report No. [26/15], Case 12,831. Merits. Kevin Cooper. United States. July 21, 2015 (Inter-American Commission on Human Rights).

6. Background / Context

The following factual summary and timeline information is taken from the record in *People v. Kevin Cooper* (1991) [No. S004687. Crim. No. 24552. May 6,

1991.]:

On Saturday, June 4, 1983, the Ryens and Chris Hughes attended a barbecue at the home of George Blade in Los Serranos, a few miles from the Ryen home in Chino. Chris had received permission to spend the night with the Ryens. Between 9 and 9:30 p.m., they left the Blade residence to drive to the Ryen home. Except for Josh, they were never seen alive again.

The next morning, June 5, Chris's mother, Mary Hughes, became concerned when he did not come home. A number of telephone calls to the Ryen residence received only busy signals. Shortly after 9 a.m., Mary went to the Ryen home. On her return, she told her husband, William Hughes, that something appeared wrong because "everything was quiet up there." After a second trip failed to reassure Mary, William went to the Ryen home to investigate.

William observed the Ryen truck at the home, but not the family station wagon. Although the Ryens normally did not lock the house when they were home, it was locked on this occasion. William walked around the house trying to look inside. When he reached the sliding glass doors leading to the master bedroom, he could see inside. William saw the bodies of his son and Doug and Peggy Ryen on the bedroom floor. Josh was lying between Peggy and Chris. Only Josh appeared alive.

William frantically tried to open the sliding door; in his emotional state, he pushed against the fixed portion of the doors, not the sliding door. He rushed to the kitchen door, kicked it in, and entered. As he approached the master bedroom, he found Jessica on the floor, also apparently dead. In the bedroom, William touched the body of his son. It was cold and stiff. [53 Cal. 3d 795] William asked Josh who had done it. Josh appeared stunned; he tried to talk but could only make unintelligible sounds.

William tried to use a telephone in the house but it did not work. He drove to a neighbor's house seeking help. The police arrived shortly. Doug, Peggy, Chris, and Jessica were dead, the first three in the master bedroom, Jessica in the hallway leading to that bedroom. Josh was alive but in shock, suffering from an obvious neck wound. He was flown by helicopter to Loma Linda University Hospital.

The victims died from numerous chopping and stabbing injuries. Doug Ryen had at least 37 separate wounds, Peggy 32, Jessica 46, and Chris 25. The chopping wounds were inflicted by a sharp, heavy object such as a hatchet or axe, the stabbing wounds by a weapon such as a knife. Jessica also had some chest wounds, probably inflicted after death by a pointed instrument such as an ice pick. Josh had fewer injuries, including wounds to the head possibly caused by a hatchet and a stab wound in the throat. Dr. Irving Root, who performed the autopsies, believed the injuries could have been inflicted quickly, within one minute for each of the victims. All of the victims had a moderate amount of food in the stomach, indicating that death probably occurred about one to three hours after they had eaten last.

Notably, the case against the defendant was based on circumstantial evidence and includes evidence suggesting the involvement of more than one attacker. This will be discussed further in laters sections of this report.

7. Delhauer Report / Examiner Qualifications

Mr. Delhauer’s report relies heavily on his own interpretations of bloodstain patterns and toxicological evidence related to the crime scene and victims in this case. It also contains: medical opinions regarding the impact of alcohol, medical opinions regarding specific wounds, and related medical opinions regarding the

ability of victims to defend themselves during their respective attacks.

Mr. Delhauer relies heavily on assertions of his own experience working in law enforcement as the basis for his findings, given the absence of a defined methodology and scientific practice standards in his work. This is an appeal to authority, which is a well-established logical fallacy. As explained in Thornton (1997; pp.17):

Experience is neither a liability nor an enemy of the truth; it is a valuable commodity, but it should not be used as a mask to deflect legitimate scientific scrutiny, the sort of scrutiny that customarily is leveled at scientific evidence of all sorts. To do so is professionally bankrupt and devoid of scientific legitimacy, and courts would do well to disallow testimony of this sort. Experience ought to be used to enable the expert to remember the when and the how, why, who, and what. Experience should not make the expert less responsible, but rather more responsible for justifying an opinion with defensible scientific facts.

This is further discussed in PCAST (2016; p.32-33):

Notably, some forensic practitioners espouse the notion that extensive "experience" in casework can substitute for empirical studies of scientific validity. Casework is not scientifically valid research, and experience alone cannot establish scientific validity. In particular, one cannot reliably estimate error rates from casework because one typically does not have independent knowledge of the "ground truth" or "right answer."

Consequently, appeals to authority have no place in scientific practice. Rather, the quality of an examiner's experience is demonstrated by competent and ethical practice; transparency of methodology; and adherence to best practices set forth in the established scientific literature.

To be clear: Mr. Delhauer is not a medical doctor, not a scientist, and certainly not a forensic scientist. He has no formal medical or scientific education, training or experience. He is a former sheriff's deputy that holds a BA in Liberal Arts; and he has received some short course training from law enforcement instructors on a variety of forensic subjects. While a useful background for enhancing investigative practice and evidence collection / scene processing responsibilities — this is not to be confused with the practice of scientific evidence interpretation or scientific crime reconstruction.

Specifically, as explained in The National Academy of Sciences Report on Forensic Science (Edwards & Gotsonis, 2009; p.177):

Understanding how a particular bloodstain pattern occurred can be critical physical evidence, because it may help investigators understand the events of the crime. Bloodstain patterns occur in a multitude of crime types—homicide, sexual battery, burglary, hit-and-run accidents—and are commonly present. Bloodstain pattern analysis is employed in crime reconstruction or event reconstruction when a part of the crime scene requires interpretation of these patterns. However, many sources of variability arise with the production of bloodstain patterns, and their interpretation is not nearly as straightforward as the process implies.

Interpreting and integrating bloodstain patterns into a reconstruction requires, at a minimum:
-an appropriate scientific education;
-knowledge of the terminology employed (e.g., angle of impact, arterial spurting, back spatter, castoff pattern);
-an understanding of the limitations of the measurement tools used to make bloodstain pattern measurements (e.g., calculators, software, lasers, protractors);
-an understanding of applied mathematics and the use of significant figures;
-an understanding of the physics of fluid transfer;
-an understanding of pathology of wounds; and
-an understanding of the general patterns blood makes after leaving the human body.

Mr. Delhauer fails with respect to these basic prerequisite qualifications, and related requisite qualifications for giving medical opinions, as he is not a medical doctor, a scientist, nor has he been trained by scientists to use the scientific method in his approach. Lacking any of this formal education and lacking an appreciation for the limitations of related evidence, he subsequently fails with respect to defining his methods; the limitations of those unidentified methods; and the limitations of his subsequent interpretations[1].

To summarize: while Mr. Delhauer is no doubt a qualified law enforcement officer — and therefore certainly capable of making investigative inferences — he is operating well outside of his areas of ability and expertise when offering medical, scientific, or forensic opinions. Having spent a career inside of a law enforcement bubble without scientific requirements or guidance, he confuses his investigative theories with conclusive findings that are based on competent scientific methodology and consequently sufficiently reliable for use in forensic contexts. This is discussed further in the next section.

8. Delhauer Report / Technical Dimensions

Scientific examinations require attendance to technical dimensions / protocols prior to the examination and interpretation of evidence. In crime reconstruction, this refers to the heuristic identification of items or evidence that may be related to the crime; the collection of evidence in accordance with established scientific protocols; recognizing the different conditions and variables that can affect that evidence; and recognizing and mitigating biasing influences that might tend to prejudice an examiner's beliefs, theories, and interpretations. Attendance to technical dimensions — by identifying and following established scientific protocols as set forth in the accepted scientific literature — helps to distinguish information and evidence that can be reliably used. It also helps to identify missing or undisclosed investigative and forensic activities, preventing misrepresentations and misinterpretations. See Chisum & Turvey (2012); Edwards & Gotsonis (2009); NAS (2002); NAS (2009); NIJ (2011); NIJ (2013);

[1] As explained in Edwards & Gotsonis (2009; p.22): "Forensic reports, and any courtroom testimony stemming from them, must include clear characterizations of the limitations of the analyses, including measures of uncertainty in reported results and associated estimated probabilities where possible."

and PCAST (2016).

Mr. Delhauer's report is technically negligent. This negligence is evident for the following reasons:

A. *Provenance*: Mr. Delhauer's report is unsigned and undated. Its provenance is therefore unconfirmed. This is negligent forensic practice.

B. *References to Protocols and Practice Standards*: Mr. Delhauer's report does not contain a reference section. This is unacceptable in the context of a scientific examination, as it allows the author to proceed with a display of confidence regarding unconfirmed experience-based opinions that the literature would prohibit, or at the very least would fail to support. At a bare minimum, essential practice standards must be identified; terms of art must be sourced and defined; and the scientific foundations for heuristic or probabilistic / likely conclusions must be properly cited[2]. Without this essential quality control, findings may be presented as scientific using jargon that doesn't actually comport with any established scientific literature. Consequently, this is negligent forensic practice.

C. *Methodological Approach*: Mr. Delhauer's report does not actually describe what kind of report it is. Instead, it wanders between crime reconstruction narratives and criminal profiling narratives. This approach is often an attempt to conceal the absence of a clearly defined methodology. The identification of specific methodologies necessitates adherence to related standards of practice and specific areas of examination; examiner education and training requirements; and the establishment of related limitations. However, this approach can also indicate professional ignorance of such methodology. Either way, this is negligent forensic practice.

D. *Inherent Bias*: Mr. Delhauer is a retired sergeant with the Los Angeles County Sheriff's Department, having served from 1983 to 2012 (service for which he presumably receives a pension). The crime took place in Chino Hills, in San Bernardino County. These counties share a border, and Chino Hills is right on that border. In effect, Mr. Delhauer has been asked to grade the work of colleagues during a time in which he served alongside them in a law enforcement capacity[3]. And this is in relation to one of the most highly contested

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[2] Mr. Delhauer's report uses to the term "likely" on multiple occasions to describe the probability of events. This term, when used in a forensic report, suggests scientific support in the form of a probability. There is no citation associated with this repeated usage; and explanation in the report as to whether this is merely experiential (which would need to be qualified), or if the examiner believes there is some supporting foundation in the literature.

[3] Additionally, a conflict of interest is suggested by the fact that Mr. Delhauer and fellow investigator Mark Lilienfeld both served as deputies and homicide detectives in the Los Angeles Sheriff's Department contemporaneously.

and high-profile cases of the time.

Consequently, Mr. Delhauer's report cannot be viewed as an independent, let alone objective, crime scene analysis or reconstruction. In fact, given the availability of other more highly qualified forensic experts in these areas, his selection to conduct this analysis is problematic at best. It suggests a desire to maintain law enforcement control of findings rather than a desire to solicit qualified, independent, and objective scientific / forensic results.

9. Delhauer Report / Methodology

Scientific examinations require attendance to methodological dimensions / protocols prior to and during the examination and interpretation of the evidence. In crime reconstruction, this refers to interpreting information and evidence in accordance with the scientific method and the most recent and relevant scientific literature. This helps to prevent negligent practice, enables scientific transparency, and facilitates the requirement of peer review. See Chisum & Turvey (2012); Edwards & Gotsonis (2009); NAS (2002); NAS (2009); NIJ (2011); NIJ (2013); and PCAST (2016).

Mr. Delhauer's report is methodologically negligent. This negligence is evident for the following reasons:

A. *No Methodology*: As mentioned in the prior section, Mr. Delhauer's report does not actually describe what kind of report it is. This approach, again, is often an attempt to conceal the absence of a clearly defined methodology, with related standards of practice necessitating specific areas of examination, examiner education, and examiner training. However, it can also indicate ignorance of basic competent practice. Either way, this is negligent forensic practice.

B. *Criminal Profiling*: As mentioned prior, Mr. Delhauer's report wanders often into the realm of criminal profiling, which is only natural given that he has been trained by the FBI as a Criminal Investigative Analyst[4]. Criminal Investigative Analysis is both methodologically deficient and outdated, with consistently established failures and limitations. FBI-trained profilers have been routinely criticized by the court and independent peer reviewers for the following practices related to "research" and interpretations of the evidence**:**

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[4] Depue et al (1995, p.115) states explicitly that the term Criminal Investigative Analysis is merely the FBI's replacement term for their approach to criminal profiling — to discriminate between the work of psychologists and FBI profilers: "A criminal investigative analysis (CIA) of an illegal and violent act may give the client agency a variety of useful information depending on the service requested. Previously termed "psychological profiling" and "criminal personality profiling," the term "criminal investigative analysis" was coined to differentiate the procedure from that used by mental health professionals."

- Lack of reliability
- Unsystematic gathering of offender biographical material for research/study
- Uncritical reliance upon offender interviews as the source of data worthy of research/study
- Failure to use appropriate control groups
- Uncritical reliance upon law enforcement theories and opinions as fact;
- Treatment of investigative hypotheses and theory as fact
- Circular reasoning, assuming the guilt of the subject in order to establish their involvement in a crime
- Failure to be forthcoming about the weaknesses of opinions and conclusions;
- Failure to base opinions on data susceptible to testing
- Cronyism evident in both the community and the published research.

See, fore example, Darkes et al. (1993); Homant and Kennedy (1998); New Jersey v. Fortin (2000); Pennsylvania v. Christopher Distefano (2001); Tennessee v. William Stevens (2001); Turvey (2023); United States v. Gordon E. Thomas III (2006); and United States v. Roger Wesley Farris II (2008).

As a direct result of these methodological limitations, FBI trained profilers have also been associated with, and even responsible for, numerous miscarriages of justice — including some within the State of California. See Koen & Bowers (2018) and Turvey (2023).

Consequently, continued use of the FBI's Criminal Investigative Analysis methodology in forensic contexts represents negligent forensic practice.

C. *Error Rate*: Mr. Delhauer fails to identify his report as an ad hoc Criminal Investigative Analysis, which would necessitate that he disclose the known error rate for this methodology. According to Howard Teten (arguably the very first FBI profiler), in an FBI study of 192 cases in which profiling was performed, 88 cases were solved. Of those 88 cases, the profile possibly helped with the identification of the suspect only 17% of the time (15 cases). So, the only known efficacy rate for FBI profiling (Criminal Investigative Analysis) is 15 out 192 at best (Teten, 1995; p.45).

Consequently, use of this methodology in forensic contexts again represents negligent forensic practice.

D. *Investigative Disclaimer*: Mr. Delhauer fails to identify his report as an ad hoc Criminal Investigative Analysis, which would further necessitate that he place the appropriate disclaimer on what is an investigative report with investigative conclusions — not a forensic report with scientific conclusions. According to Hazelwood (1995, pp.176–177), a criminal profile, a.k.a. Criminal Investigative Analysis (Depue et al., 1995, p.115), is an investigative tool only. As such, the

following disclaimer should precede each such report prepared by members of the FBI's Behavioral Analysis Unit:

> *It should be noted that the attached analysis is not a substitute for a thorough and well-planned investigation and should not be considered all inclusive. The information provided is based upon reviewing, analyzing, and researching criminal cases similar to the case submitted by the requesting agency. The final analysis is based upon probabilities. Note, however, that no two criminal acts or criminal personalities are exactly alike and, therefore, the offender may not always fit the profile in every category.*

The caution indicated by this disclaimer is explained in Depue et al. (1995, p.125): "CIA [Criminal Investigative Analysis] and profiling should be used to augment proven investigative techniques and must not be allowed to replace those methods; to do so would be counterproductive to the goal of identifying the unknown offender." Failure to provide the appropriate disclaimers and limiting language in such a report demonstrates either ignorance of methodological limitations or an attempt to intentionally conceal them.

Consequently, use of this methodology in forensic contexts again represents negligent forensic practice. Moreover, the failure to acknowledge these well-documented limitations with the appropriate limitations is both negligent and ultimately misleading.

E. *Forensic Victimology:* Crime Scene Analysis, and Criminal Investigative Analysis, specifically require consideration of forensic victimology and related assessments of victim vulnerability in order to reliably establish and narrow a suspect pool (Depue, et al, 1995; Hazelwood, 1995). This is a formal assessment and not something that can be done as an insert or afterthought. The entire report presumes a suspect pool of one, with no mention or discussion of other known suspects. This is negligent and biased practice.

F. *Objectivity*: Scientific and forensic conclusions require a high degree of objectivity in order to be considered credible. The objectivity of scientific and forensic conclusions is a function of the degree to which it is free from bias, role strain[5], and personal beliefs. One can evaluate the objectivity of such a report by

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[5] As explained in Coronado & Turvey (2022; p.20): "Role Strain, as a part of General Strain Theory, posits that individuals experience difficulty when required to fulfill competing or contradictory role demands (Goode, 1960; Hecht, 2001; Kennedy and Kennedy, 1972). Specifically, it provides that individual strain increases when "demands associated with one role interfere directly with one's ability to satisfy the demands of another role" (Hecht, 2001, p. 112)… In a violent criminogenic context—such as within an abusive home or violent institutional structures like the military, law enforcement, street gangs, or prisons—individuals experiencing role strain continually bargain with themselves regarding which of their competing anxieties to satisfy. They tend to make choices that protect themselves or those they care about, to reduce or alleviate the anxiety (and fear) caused by strain (Goode, 1960). The theory of Role Strain is used "to illuminate the problem of structurally determined tension and conflict in organizations" (Pettigrew, 1968, p. 206)."

assessing whether the examiner's beliefs and assumptions were disclosed, whether they followed established and ethical standards / methods, and any *conflicts of interest*[6]. The failure of Mr. Delhauer's report to disclose a clear methodology, let alone follow a reliable scientific methodology based on peer reviewed literature — along with the conflicts of interest mentioned in the prior section — demonstrate a lack of objectivity. This is negligent forensic practice, and ultimately misleading.

G. *The Ultimate Issue*: Mr. Delhauer's report concludes by rendering all offender characteristics, naming Mr. Cooper as the offender. It then goes further, vouching for Mr. Cooper's conviction. All of this is unethical practice and prohibited in both independent ethical guidelines and the established literature (for a review of the literature related to this subject, see Turvey, 2023). As these legal conclusions are well outside the stated objectives for the report, it becomes clear that vouching for the prosecution and conviction in this case has been the only actual objective. This is negligent forensic practice grounded in a firm prosecutorial bias; would not be permissible expert testimony; and would earn a sanction from any legitimate professional scientific or forensic organization[7].

10. Delhauer Report / Consideration of Relevant Evidence:

Mr. Delhauer's report offers two clear opinions: "It is my opinion that one person acting alone could have committed all of the reported offenses… It is also my opinion that one person did, in fact, commit these offenses." This offers the same opinion twice, a self-buttressing tactic to give the appearance of greater reliability and unearned certainty.

In rendering these and other inexpert opinions, Mr. Delhauer's report fails to consider, and subsequently suppresses, the extensive and significant record of relevant contradictory evidence. Specifically, credible evidence and admissions "that the processing of the crime scene was mishandled, that the District Attorney presented false evidence at trial, that the San Bernardino Sheriff's

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[6] As explained in NAS (2009; p.43): "The term "conflict of interest" refers to situations where researchers have interests that could interfere with their professional judgment. Conflicts of interest involving financial gain receive particular scrutiny in science… in some cases the prospect of financial gain could affect the design of an investigation, the interpretation of data, or the presentation of results. Indeed, even the appearance of a financial conflict of interest can seriously harm a researcher's reputation as well as public perceptions of science. Personal relationships may also create conflicts of interest." Subsequently, ethical scientists disclose their conflicts of interest (monetary and otherwise), and generally avoid work in which prior relationships can create *role strain* or bias, or even its appearance.

[7] Mr. Delhauer's evident comfort with violating the ultimate issue is evidence of working in a context of impunity. It is also further evidence that he has spent a career inside of a law enforcement bubble — without scientific requirements or guidance; and without understanding the limits that forensic practitioners must necessarily set in place to biased examinations and avoid wrongful convictions.

Department (SBSD) failed to disclose exculpatory [alternative suspect evidence and] information to the defense and planted and manipulated evidence" (IACHR, 2015; p.3).

This includes at least the following:

A. *DNA Sample A-41*: Mr. Delhauer's report goes out of its way to mention that "A blood sample (A-41) was obtained from a stain near the base of the west wall in the hallway opposite the second (west) entry to the master bathroom… Later (post-appeal) DNA testing confirmed that it was from Cooper." This is a half-truth at best, which greatly assists the State's position rather than representing objective scientific findings and practice.

A more complete discussion of this evidence, and it's true implications and limitations, can be found in the IACHR Report No. 52/15 (2015; p.5, III A No/ 17 & 18):

According to the petitioners, during the investigation of the crime scene a single drop of blood was discovered ("blood drop A-41 "). A test conducted by a SBSD criminalist purportedly determined this drop had characteristics consistent with Mr. Cooper's genetic profile and inconsistent with any of the victims, becoming a central part of the prosecution's case against Mr. Cooper. Petitioners assert that the testing was performed under suspicious circumstances. They allege that the criminalist waited to conduct testing until he had Mr. Cooper's blood profile and, after learning that Mr. Cooper's blood group (EAP) was "rB " and not "B" as originally found, he allegedly altered his testing records so that A -41 would match Mr. Cooper's blood type. Petitioners also claim that there is uncontested evidence that, unbeknownst to the defense, in 1999 the criminalist took possession of A-41 in advance of DNA testing and lied about it under oath. Mr. Cooper believes that in 1991 the criminalist used this opportunity to plant his blood on A -41.

Further, DNA testing conducted in 2002 reportedly revealed that A-41 contained the DNA of two individuals, one of whom was supposedly Mr. Cooper. The identity of the second donor was allegedly unknown. In 2010, the alleged victim brought a motion to have the remaining portions of A-41 tested at his expense utilizing a new DNA test that is much more sensitive than the testing method utilized in prior testing in 2002. However, the State opposed the request, which was ultimately denied by the Court.

Rather than address the implications regarding an additional contributor and suspect, and the evidence of tampering with this blood sample that is apparent, Mr. Delhauer's report simply ignores it. This is biased forensic practice and demonstrates scientific negligence.

B. *Context of Witness Tampering*: Mr. Delhauer's report ignores the statements of the only surviving witness, Josh Ryen. He also ignored related law enforcement efforts to tamper with that statement in order to create the false impression that Josh Ryen reported seeing only one attacker. As explained in the IACHR Report (2015; p.6):

…the District Attorney manipulated the testimony of the surviving victim Josh Ryen, who immediately after the attacks allegedly identified three white males as his attackers, but whose testimony was reportedly manipulated by the State so that the jury heard Josh testify at trial to only having seen a singular shadow with a "puff" of hair. According to the petitioners, after seeing a photograph of Mr. Cooper on TV, Josh Ryen remarked at least two times in the weeks following the attacks that Mr. Cooper did not commit the murders. Further, a SBSD Detective allegedly perjured himself by testifying that Josh did not refer to multiple assailants during his formal June 14, 1983 interview. The psychologist who was assigned to attend the interview reportedly noted at least five instances where he referred to his attackers in the plural.

These inconsistencies, and the resultant law enforcement effort to suppress and obscure the record of evidence and testimony, are significant. They demonstrate both uncertainty and unreliability with respect to all law enforcement investigative and forensic efforts in this case, by revealing negligent and corrupted tactics. An objective forensic examiner would understand the need to address this, as it bears directly on the stated purpose of the report. This failure — and the further suppression of the evidence record it represents — is both evidence of biased forensic practice, and demonstrates scientific negligence.

C. *Discarded Shirts and EDTA:* Mr. Delhauer's report ignores the recovery and related test results of two different colored bloody shirts in this case: one tan and one blue. Their existence immediately suggests the strong possibility of at least two different offenders in this case. There are also clear indications of evidence tampering related to the tan T-shirt, revealed by subsequent forensic testing. This is explained in the IACHR Report (2015; p.7):

Petitioners further allege that the existence of two bloody shirts discarded near the crime scene points to multiple killers and to Mr. Cooper's innocence. They state that unknown individuals from the SBSD planted Mr. Cooper's blood on a tan T-shirt recovered near the Canyon Corral Bar two days after the discovery of the murders. This T-shirt allegedly had Douglas Ryen's blood on it. Prior to trial, law enforcement reportedly tested two separate portions of the T-shirt for blood, but released only one test result. That test allegedly found only blood that was consistent with Douglas Ryen's blood type and inconsistent with Mr. Cooper's serological profile. However, when the tan T-shirt was tested in 2002 pursuant to Mr. Cooper's request, the DNA test report indicated there was "strong evidence" that Mr. Cooper was the donor of the DNA extracted from the tan T-shirt.

At Mr. Cooper's request, subsequent testing was conducted to determine whether the blood samples contained heightened levels of the blood preservative EDTA, which would indicate that Mr. Cooper's blood was planted. Petitioners indicate that heightened levels of EDTA were detected. However, upon learning of this result, the State's expert purportedly withdrew the test results, claiming they were inconclusive due to an unspecified EDTA contamination in his laboratory. Mr. Cooper's counsel were allegedly never provided with the complete results of the EDTA testing by the State's expert , and a request for discovery into how this EDTA contamination occurred was denied.

Mr. Delhauer's report fails to address or even acknowledge the existence of these shirts. This is not a surprise, because the context of their discovery and subsequent examination contradicts his opinions. They also cast a very negative light on the credibility of the law enforcement investigation and related efforts at

evidence testing. This failure — and the further suppression of the evidence record it represents — is both evidence of biased forensic practice, and demonstrates scientific negligence.

D. *The Station Wagon*: Mr. Delhauer's report states "The only known item of value taken from the Ryen's residence was the family's station wagon." Mr. Delhauer's report does not mention or discuss any of the evidence found in the station wagon. Again, this is not a surprise because none of it helps his opinions or the credibility of his former colleagues in law enforcement. The first problem is that witnesses reported observing three people in that vehicle, none of whom were Black. The second problem is that three areas of blood were discovered in the vehicle: on the driver's seat, on the front passenger seat, and on the back seat. This pattern of transfer is most consistent with three bloodstained occupants entering the vehicle. The third problem is the cigarette butts. An initial search of this vehicle resulted in multiple items of evidence, but no cigarette butts. By contrast, a search of the location where Mr. Cooper had been hiding *had* resulted in the discovery of cigarette butts. Subsequently, a second search of this vehicle was conducted, as explained in the IACHR Report (2015; p.6):

A later search conducted by SBSD officers, which was inconsistent with an initial search that yielded an extensive list of items contained in the car, discovered two cigarette butts labeled V-12 and V-17. The defense was reportedly told that the initial forensic testing in 1984 consumed V-12 . However, V-12 was, according to the petitioners "resurrected and introduced during trial. " Later in 2002, when V-12 was sent off for DNA testing, it was reportedly significantly larger than the sample that was tested in 1984. Accordingly, petitioners conclude that the SBSD planted the cigarette butts in the Ryen car and used substitutes during later testing.

This assertion is not unreasonable given the other irrefutable law enforcement efforts to obscure, tamper with, and otherwise corrupt the evidence in this case. The failure to mention and consider this blood and cigarette evidence — and the further suppression of the evidence record it represents — is both evidence of biased forensic practice, and demonstrates scientific negligence.

While these are by no means the only relevant areas of evidence ignored by Mr. Delhauer's report, they are sufficiently significant to demonstrate both an intense law enforcement bias, and a pattern of forensic negligence.

11. Delhauer Report / Review of Supporting Argumentation

Mr. Delhauer's report offers a list of factors that purportedly support his opinions that "one person acting alone could have committed all of the reported offenses" and that "one person did, in fact, commit these offenses" (p.3). These factors, as presented, contain unfounded assumptions and interpretations, some at odds with the evidence, that are subsequently used to render inexpert conclusions. Consider the following:

A. “The adult victims had been drinking, were asleep and were caught by surprise.” While this is true, both adult victims suffered defensive injuries to the arms and hands. This means that they both woke up and fought back.

B. “Both adults were attacked and overwhelmed by an explosively violent blitz on their bed.” This merely repeats the prior factor (A) using different language. It is refuted with the same evidence.

C. “Bedding and possibly the nature of the bed further impaired victim resistance.” This is an interesting possibility, and would be confirmed if the victims were only stabbed through the sheets, or did not suffer defensive injuries. Neither is the case. As such it is an unsupported theory.

D. “The victims were contained within a confined area.” This context makes it more dangerous and difficult for a single attacker, not easier. Especially given that, again, both adult victims were clearly awake and fighting back. Specifically, in the confines of a smaller space distance cannot be used in a protective fashion, as there is less ability for an attacker to separate the victims or retreat. There is also greater ability for multiple victims to coordinate and triangulate their defenses against a single attacker.

E. “Victim movement facilitated deliberate offender efforts to disable them.” This is a nonsensical statement. In reality, victim movement—which indicates that they were awake and fighting back—generally serves to inhibit an offender’s efforts to disable them. It also contradicts the theory offered about bedding impairing victim resistance in Item C above. It is difficult to understand why Mr. Delhauer’s report lists this as a supporting factor when it clearly tends to work against his other theories and opinions.

F. “Blood evidence indicates that priority was given to incapacitation of Doug Ryen.” This indicates that Doug Ryen was awake and fighting back, not that he was surprised and overwhelmed by a “blitz” attack or trapped under the sheets. Again, it is difficult to understand why Mr. Delhauer’s report lists this as a supporting factor when it clearly tends to work against his other theories and opinions.

G. “The children appeared later and separately, allowing each to be subdued in succession.” There is no evidence presented in Mr. Delhauer’s report, which would require complex and multidisciplinary reconstruction efforts, to confirm this narrative.

H. “All of the victims suffered injuries consistent with two distinguishable sharp -force implements, consistent with use of two weapons simultaneously.” When a

victim suffers injuries consistent with two distinguishable sharp-force implements, this is by no means evidence of simultaneous (two handed) use. This interpretation of the evidence has no basis in reality. More specifically, there is no evidence or research presented in Mr. Delhauer's report, which would require complex and multidisciplinary reconstruction efforts, to confirm this narrative.

I. "All of the murder victims suffered peri /postmortem injuries, that is, many of the wounds were inflicted after death." This factor has no bearing on the possibility or likelihood of multiple attackers.

J. "The postmortem (after death) activity may have included use of a third implement." This merely repeats the prior factor (I) using different language. It is also couched in limiting language — "may have". Consequently, this factor has no established bearing on the possibility or likelihood of single as opposed to multiple attackers.

K. "Autopsy findings indicated no evidence of individual target zones, that is, evidence that would typically be present if multiple offenders had attacked from multiple positions." This interpretation has no foundational basis. Moreover, as the victims were all acknowledged to be awake and all received defensive injuries, individual target zones would not necessarily be present given a body in motion that is responding to, and attempting to avoid, sharp force injury. Furthermore, the presence of individual target zones (repeated injury from the same weapon to a single area) would tend to suggest a victim that is unconscious or deceased. Their absence therefore works against the opinions expressed in Mr. Delhauer's report.

L. "All five victims exhibited evidence of convergent wound tracks consistent with separate implements in either hand of a single offender." This merely repeats a prior factor (H) using different language. There is no evidence or research presented in Mr. Delhauer's report, which would require complex and multidisciplinary reconstruction efforts, to confirm this narrative. Moreover, this type of interpretation is clearly well outside of his area of education, training, and expertise.

M. "Identical or remarkably similar weapons produced injuries to multiple areas on the front and back of all five victims ' bodies." This factor has no bearing on the possibility or likelihood of single as opposed to multiple attackers. Moreover, there is no evidence or research presented in Mr. Delhauer's report, which would require complex and multidisciplinary reconstruction efforts, to confirm this narrative and associate it with a single attacker. This is an attempt to make a profiling inference about offender signature without saying it — and this would require an entirely more complex and involved expert examination.

N. “Only distinctly postmortem activity suggested possible use of a third implement.” This merely repeats two prior factors (I&J) using different language. This factor subsequently has no bearing on the possibility or likelihood of single as opposed to multiple attackers. It also represents an attempt to enhance the value of a non-confirmatory factor by stacking it with itself using different language. This is negligent practice at best. It is also misleading.

O. “Blood evidence was consistent with a progression from a single area of onset on the bed to the area north of the bed without any evidence of divergent activity.” This factor is stated as “consistent with” in the section of his opinions which he argues is confirmatory. One cannot render a confirmatory finding with equivocal evidence. Moreover, and again, there is no evidence or research presented in Mr. Delhauer’s report, which would require complex and multidisciplinary reconstruction efforts, to confirm this narrative and associated it with a single person.

P. “Blood evidence beyond the area of the killings in the master bedroom was limited to traces in a few areas of the house and specific items of evidence found outside the house.” This factor has no bearing on the possibility or likelihood of single as opposed to multiple attackers.

Q. “There was no physical evidence of more than one offender in the Ryen house or more than one interloper in the rental house nearby. There was a conspicuous lack of other evidence of multiple offenders, such as other footwear impressions, blood from incidental wounds to additional offenders.” This compound factor is not only false, it is misleading and suppresses the evidence record.

First, the assertion that there is an absence of evidence of more than one attacker in the Ryen house is refuted by DNA testing conducted in 2002, which reportedly found that A-41 contained the DNA of two individuals.

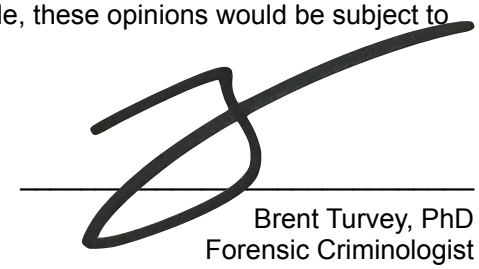
Second, at least three separate sharp force weapons were reported to have been used to kill the victims in this case — in the house. The inference that two sharp force weapons must have been wielded simultaneously by a single attacker, and the third used post-mortem by the same attacker, is both unproven and an exercise in circular reasoning. Moreover, only one weapon was found (a bloody hatchet). The other weapons necessarily indicated in these murders were never located.

Third, evidence was found in the stolen vehicle suggesting three occupants with bloody clothes, as mentioned prior — however it is true that Mr. Delhauer’s report fails to acknowledge and subsequently ignores this evidence.

Fourth, the existence of two discarded bloody shirts associated with the crime suggests at least two attackers — however, and again, it is true that Mr. Delhauer's report fails to acknowledge and subsequently ignores this evidence.

And *finally*, the fact that there is no evidence of "more than one interloper in the rental house nearby" is irrelevant, as its value requires us to assume that Mr. Cooper committed the crime — which is again circular reasoning.

Should any new information be made available, these opinions would be subject to revision.



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References

Chisum, J. & Turvey, B. (2012) *Crime Reconstruction, 2nd Ed.*,San Diego: Elsevier Science.

Coronado, A. & Turvey, B. (2022) *Criminal Psychology*, San Diego: Elsevier Science.

Crowder, S. & Turvey, B. (2017) *Forensic Investigation*, San Diego: Elsevier Science.

Cwiklik, C. & Taupin, J. (2010) Scientific Protocols for Forensic Examination of Clothing, Boca raton: CRC Press.

Darkes, J., Otto, R. K., Poythress, N.,&Starr, L. (1993). APA's expert panel in the congressional review of the USS Iowa incident. American Psychologist, 8–15 (January).

DeForest, P., Gaennslen, R., Lee, H., 1983. Forensic Science: An Introduction to Criminalistics. McGraw-Hill, New York.

Depue, R., Douglas, J., Hazelwood, R., Ressler, R., Burgess, A., & Hazelwood, R. (Eds.) (1995) "Criminal Investigative Analysis: An overview" In *Practical aspects of rape investigation (2nd ed.),* Boca Raton: CRC Press.

Edwards, H. & Gotsonis, C. (2009) *Strengthening forensic science in the United States: A path forward*. Washington, DC: National Academies Press.

Gardenier, J. (2011) "Data integrity is earned, not given" Office of Research Integrity Newsletter, 19(3); p.3.

Goode, W. (1960) "A theory of role strain" Am. Sociol. Rev. 25 (4); pp.483–496.

Hazelwood, R. (1995) "Analyzing the rape and profiling the offender" In A. Burgess, & R. Hazelwood (Eds.) *Practical aspects of rape investigation (2nd ed.),* Boca Raton, FL: CRC Press.

Hecht, L. (2001) "Role conflict and role overload: different concepts, different consequences" Sociol. Inq. 71 (1); pp.111–121.

Homant, R., & Kennedy, D. (1998). Psychological aspects of crime scene profiling: Validity research. Criminal Justice and Behavior, 25(3), 319–344.

IACHR (2015) Report No. [26/15], Case 12,831. Merits. Kevin Cooper. United States. July 21, 2015 (Inter-American Commission on Human Rights)

Inman, K. & Rudin, N. (2000) *Principles and Practice of Criminalistics: The Profession of Forensic Science,* Boca Raton: CRC Press.

Koen, W. & Bowers, C.M. (2018) *Forensic Science Reform: The Psychology and Sociology of Wrongful Convictions*, San Diego: Elsevier Science.

Locard, E. (1928) "Dust and its Analysis: An Aid to Criminal Investigation" *Police Journal,* Vol. 66(2); pp.53-165

Mozayani, A. & Noziglia, C. (2006) *The Forensic Laboratory Handbook: Procedures and Practice*, Totowa, NJ: Humana Press Inc.

NAS (2002) *Integrity in Scientific Research: Creating an Environment That Promotes Responsible Conduct*. Washington, DC: The National Academies Press; url: https://doi.org/10.17226/10430.

NAS (2009) *On Being a Scientist: A Guide to Responsible Conduct in Research: Third Edition*. Washington, DC: The National Academies Press; url: https://doi.org/10.17226/12192.

New Jersey v. Steven Fortin (2000) No.A-95/96–98, Supreme Court of New Jersey, 2000 (745 A.2d 509).

NIJ (2011) *Death Investigation: A Guide ForThe Scene Investigator (Technical Update),* Washington, DC: National Institute of Justice, Research Report NCJ 234457.

NIJ (2013) Crime Scene Investigation: A guide for law enforcement, Washington, DC.: National Institute of Justice, Research Report NCJ 234457, June.

PCAST (2016) *Report to the President: Forensic Science in Criminal Courts: Ensuring scientific validity of feature-comparison method*, The President's Council of Advisors on Science and Technology, September; url: https://obamawhitehouse.archives.gov/sites/ default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf

Pennsylvania v. Christopher Distefano, 2001. August 16, 2000 (2001 WL 923333).

Peterson, G. & Clark, S. (2006) Forensic Autopsy Performance Standards, Atlanta, GA: The NationalAssociation of Medical Examiners.

Pettigrew, A. (1968) "Inter-group conflict and role strain" J. Manag. Stud. 5 (2); pp.205–218.

Tennessee v. William Stevens (2001) No. M1999-02067-CCA-R3-DD, May 30, 2001 (Tenn.Crim.App.2001).

Teten, H. (1995). Offender profiling. In W. Bailey (Ed.), The encyclopedia of police science. New York, NY: Garland Publishing.

Thornton, J. (1997) "The General Assumptions and Rationale of Forensic Identification" in Faigman, D.L. Kaye, D.H., Saks, M.J. & Sanders, J. (Eds.) Modern Scientific Evidence: The Law and Science of Expert Testimony, Vol. 2, West Publishing.

Turvey, B. (2013) *Forensic Victimology, 2nd Ed*., San Diego: Elsevier Science.

Turvey, B. (2023) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 5th Ed*., London: Elsevier Science.

United States v. Gordon E. Thomas III (2006) No. CRIM. CCB-03-0150, WL 140558.

United States v. Roger Wesley Farris II (2008) No. 2:08cr145, WL 1944131.

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EDUCATION

PhD – Criminology
2012: Bond University, QLD, Australia

M.S. in Forensic Science (1996)
1996: University of New Haven, West Haven, Connecticut

B.S. - Psychology
1994: Portland State University, Portland, Oregon

B.S. - History
1993: Portland State University, Portland, Oregon

CASE EXPERIENCE

Since 1996, this examiner has performed casework as a Forensic Scientist, Crime Scene Analyst, Crime Reconstructionist, Forensic Criminologist, and /or Criminal Profiler for law enforcement agencies (police and prosecutors), attorney clients, and private entities all over the world. This includes consultations, forensic assessments, and expert testimony on both criminal and civil matters. These cases tend to involve sexual assault, false allegations, shooting incident reconstructions, serial rapes and homicides, mass homicides, sexual homicides, domestic homicides, staged crime scenes, and other violent crimes.

This examiner also maintains a caseload of femicides (e.g., sexual homicides, gender motivated homicides), pre-femicidal violence, trafficking, and human rights cases in Latin America. Many of these are related to drug trafficking and human trafficking. This involves the implementation of the *UN Model Protocol for Femicide Investigation in Latin America*, with The Forensic Criminology Institute's Behavioral Science Lab (BSL). In operation since 2019, the BSL collaborates with USAID (Mex), JAVA (Mex), The United Nations, and The Attorney Generals Office in Bogota DC, providing support and training to attorneys and investigators.

COURT EXPERIENCE

As a function of casework and research, this examiner has served as a trial consultant, and has qualified in court as an expert witness, on the subjects of Criminal Investigation, Forensic Science, Crime Reconstruction, Wound Pattern Analysis, Shooting Incident Reconstruction, Firearms and Tool-marks, Interpretation of Presumptive Blood Test Results, Crime Scene Analysis, Crime Scene Investigation, Case Linkage/ Linkage Analysis (Motive, Modus Operandi and Signature Analysis), Criminal Profiling, Offender Deterrability, Offense Foreseeability, Offender Motivations, Staged Crime Scenes, Sex Crimes Investigation, False Allegations, and Forensic Victimology.

This has included expert forensic testimony in the following criminal and civil cases, in State and Federal Court:

1. *Arkansas v. Damien Echols*
2. *California v. Addison Beverly*
3. *California v. Vincent Brothers*
4. *California v. Jason Y. Cai*
5. *California v. Joseph Chapman*
6. *California v. Dwight Colton*
7. *California v. Joseph Cordova*
8. *California v. Charles Davis*
9. *California v. Robert Earl Davis Jr.*
10. *California v. Matt & Jennifer Fletcher*
11. *California v. Eugene Focaarelli*
12. *California v. Chris Graham*
13. *California v. Pierre Haobsh*
14. *California v. Andre Jackson*
15. *California v. Gerald Johnson*
16. *California v. Darryl Kemp*
17. *California v. Edgar Leura*
18. *California v. Jack Lewis*
19. *California v. Johnny Miles*
20. *California v. Douglas Mouser*
21. *California v. Louis Peoples*
22. *California v. Wesley Shermantine*
23. *California v. Christopher Smith - I*
24. *California v. Christopher Smith - II*
25. *California v. Marvin Smith*
26. *California v. David Suen*
27. *California v. Alex Thomas*
28. *California v. Thomas Triplett*
29. *California v. Darren Womack*
30. *Colorado v. Mario Raxon*
31. *Connecticut v. Jose Ayuso*
32. *Connecticut v. Ralph Birch and Shawn Henning*
33. *Connecticut v. Casmier Zubrowski*
34. *Florida v. Ray Jackson*
35. *Illinois v. Edward Phillips*
36. *Kansas v. Artis Cobb*
37. *Kentucky v. Donald Southworth*

38. *Lee Mannheimer v. Linda Morrissett*
39. *Massachusetts v. Timothy Imbriglio*
40. *Mississippi v. Robert Grant*
41. *Nebraska v. Anthony Garcia*
42. *Nevada v. Kirstin "Blaize" Lobato*
43. *Nevada v. Salvador Rico-Rivas*
44. *New York v. Francisco Acevedo*
45. *Ohio v. David Thorne*
46. *Ohio v. Paula Rizer - I*
47. *Ohio v. Paula Rizer - II*
48. *Oklahoma v. Elvis Thacker*
49. *Oklahoma v. Nicholas Williams*
50. *Parkhurst et al v. Tabor et al.*
51. *Polite v. Doubleview, et al.*
52. *South Carolina v. Marquis McDonald*
53. *South Carolina v. Stephen Stanko*
54. *Wisconsin v. Peter Kupaza*

This has also included expert forensic testimony in the same areas, in the following International Courts:

1. *Coahuila v. Liliana Inés Martinez Dominguez (MEXICO) - Double Femicide*
2. *Sonora v. Hilario Martínez Moreno (MEXICO) - Homicide /* Stabbing
3. *Zacatecas v. Sergio Herrera Martinez (MEXICO)* - Law Enforcement Serial Rapist
4. *Colombian National Police, Bogota DC, in re: Capt. Eduardo Yepes (COLOMBIA)* - Forensic Fraud / Motivation

This has also included forensic examinations and expert consultation on the following high profile / high impact cases (this is a selected list intended to be demonstrative; it includes only a fraction of forensic case consultations and necessarily excludes those where a confidentiality agreement, or the law, prohibits disclosure):

1. 1999: *Femicide* — *The Estate of Sam Sheppard v. Ohio*
   - Sexual homicide with staging - civil actual innocence claim;
   - Consultation regarding reports and testimony of retired FBI profiler;
   - Assisted with development of cross of retired FBI profiler;
   - Demonstrated false testimony by retired FBI profiler Gregg McCrary regarding education, experience, and expertise.
   CIVIL: Plaintiff's Attorney Client

2. 2000: *Femicide* — *Minnesota v. Keith Misquadace*
   - Consultation and report to Defense re: staged crime scene in elder burglary-homicide;
   - 1st Degree murder case; forensic findings suggested actual innocence;
   - Prosecution subsequently offered Alford Plea to clear unrelated charges involving greater jail time; Defense accepted.
   CRIMINAL: Defense Attorney Client

3. 2000: *Regina v. Giuseppe "Joseph" Russo*
   - Double homicide, domestic;
   - Forensic report for Victoria Police in Melbourne re: crime scene analysis and staging;
   - Suspect identified and convicted; appealed and re-convicted in subsequent re-trial.
   CRIMINAL: Police/ Prosecution Client

4. 2000: *Femicide — Regina v. Graham Stafford*
   - Child abduction and sexual homicide;
   - Consultation and report to Defense in post-conviction re: forensic evidence;
   - Identified issues re: forensic evidence and misleading expert forensic testimony;
   - Defendant convictions subsequently vacated in 2009 due to physical evidence; no retrial.
   CRIMINAL: Defense Attorney Client / Exoneration

5. 2000: *Femicide — Illinois v. Gerald Simonson*
   - Sexual Homicide. Consultation and report to Defense in post-conviction re: forensic evidence;
   - Identified issues re: forensic evidence and misleading expert forensic testimony;
   - Defendant conviction subsequently overturned in 2009 due to IAC; Defendant released.
   CRIMINAL: Defense Attorney Client / Alford Plea

6. 2000-2001: *Femicide — Jessica I. Baggen*
   - Criminal Investigation / Special Police Commission, Sitka Police Department
   - Sexual homicide. Worked inside a special office at the SPD for over a year, supervised by The Chief of Police: accessed law enforcement databases, conducted interviews, screened witnesses and suspects; re-examined old and collected new physical and testimonial evidence; and collected DNA samples. Developed new DNA profiles (STR & mtDNA) which were eventually used in a genealogy database to identify the killer who, upon contact with law enforcement, wrote a confession and then immediately committed suicide.
   CRIMINAL: Suspect confessed in writing and then committed suicide / DNA confirmed

7. 2000-2001: *Alaska v. Shaun M. Paul*
   - Criminal Investigation / Special Police Commission, Sitka Police Department
   - Processed crime scene, collected evidence, located stolen firearms and electronics
   CRIMINAL: Defendant convicted of BURGLARY-1ST DEGREE and TAMPER W/EVIDENCE

8. 2001: *Alaska v. Dick & Cynthia Sky*
   - Criminal Investigation / Special Police Commission, Sitka Police Department
   - Investigative examination and evidence review re: serial child abuse by Forest Service employee, at their cabin Bauer Island, in collusion with his wife. Multiple child victims sexually assaulted, victims also forced to view / create pornography, and trafficked for sexual purposes.
   CRIMINAL: Cynthia Sky convicted of twenty-nine counts of first-degree sexual abuse of a minor, one count of attempted first-degree sexual abuse of a minor, and two counts of sexual exploitation of a minor. Dick Sky convicted of thirty-eight counts of first-degree sexual abuse of a minor, one count of attempted first-degree sexual abuse of a minor, two counts of sexual exploitation of a minor, and one count of third-degree weapons misconduct (felon in possession).

9. 2001: *Borthick & Allen v. Benjamin*
   - Civil case: Defendant accused of sexual assaults by four (4) subordinates;
   - Consultation to Defense re: reports and testimony of forensic nurse and retired FBI profiler;
   - Assisted with development of deposition questions;
   - Profiler Greg Cooper subsequently removed from case as an expert witness for making false claims in report and depositions;
   - Jury found primarily for the defendant at trial, rejecting the majority of alleged torts.
   CIVIL: Defense Attorney Client

10. 2002: *Femicide — Ohio v. Clarence Elkins*
    - Sexual homicide adult female w/ child sexual assault;
    - Consultation and report to Defense in post-conviction re: forensic reconstruction issues and DNA exclusions;
    - Defendant subsequently exonerated in 2005.
    CRIMINAL: Defense Attorney Client / Exoneration

11. 2002: *Serial Femicide — Washington v. Robert Yates*
    - Serial murder case (15 victims);

- Prepared report re: linkage analysis issue for the defense;
- Consultation to the defense regarding the reports and testimony of state law enforcement profiler and FBI profiler;
- Assisted with development of cross to successfully exclude unreliable and inaccurate law enforcement profiler testimony (Robert Keppel) regarding crime databases and case linkage.
CRIMINAL: Defense Attorney Client

12. 2003: *Femicide — Pennsylvania v. Jamie Fleming*
- Domestic homicide/ staged crime scene assessment;
- Consultation and report to defense regarding reports and testimony of an FBI profiler;
- FBI profiler subsequently removed from the case as an expert witness.
CRIMINAL: Defense Attorney Client

13. 2005: *United States v. O.C. Smith*
- Federal charges against Medical Examiner for allegedly faking an attack against himself;
- Consultation to the defense re: reports and testimony of forensic psychiatrist and retired FBI profiler Gregg McCrary;
- Assisted with development of cross to help successfully exclude profiler testimony;
CRIMINAL: Defense Attorney Client / Mistrial/ charges dropped

14. 2005: Royal Barbados Police Force - Serial Rape Task Force
- Consulted with RBPF Task Force at the direction of Commissioner Darwin Dottin;
- Assisted law enforcement investigators with the development of a criminal profile, case linkage, and investigative strategy (one month on site managing investigative efforts with task force);
- Venslow Small arrested and plead to multiple counts of rape and burglary in Dec. of 2005.
CRIMINAL: Police Agency Client

15. 2006: *JAW v. Old Cutler Presbyterian Church*
- Serial rape (5 cases) - premises liability;
- Report and deposition for Defense re: modus operandi and offender deterrability;
- Evaluation of plaintiff's expert criminological report - expert subsequently replaced;
- Testified in deposition; Case subsequently settled out of court.
CIVIL: Defense Attorney Client

16. 2007: *In Re: the Detention of Kevin Coe*
- Civil commitment hearing re: alleged serial rapist;
- Prepared linkage analysis report re: 19 sexual assaults for the defense;
- Consultation regarding linkage databases, reports, and testimony of a retired law enforcement profiler, demonstrating multiple unsupported findings;
- Identified lack of investigative effort and potential false reports.
- Testified in deposition
CIVIL: Defense Attorney Client

17. 2008: *Femicide — Estate of Elizabeth Garcia v. Allsup's Convenience Stores, Inc.*
- Sexual homicide - premises liability case;
- Consultation to Plaintiff re: reports and testimony of retired FBI profiler Gregg McCrary;
- Assisted with the development of cross to successfully exclude of profiler testimony;
- Case subsequently settled for the Plaintiff.
CIVIL: Plaintiff's Attorney Client

18. 2009: *California v. Caleb Madsen*
- Homicidal stabbing involving two prior failed prosecutions of same defendant;
- Consultation to defense regarding the reports / false testimony of FBI profiler Mark Safarik;
- Assisted with the development of cross to successfully exclude of profiler testimony;
- Defendant subsequently found not guilty of first degree murder; jury hung on 2nd degree; no retrial.
CRIMINAL: Defense Attorney/ Hung Jury/ Charges dropped

19. 2010: *Mississippi v. Shelton Myers*
    - Shooting Incident Reconstruction report for the defense re: homicide;
    - Consultation to defense regarding crime scene evidence and expert testimony;
    - Assisted with development of cross-examination to successfully elicit exculpatory testimony from witnesses and law enforcement investigators;
    CRIMINAL: Defense Attorney Client / Acquitted on Murder charges

20. 2010: *Oregon v. Kevin Driscoll*
    - False report of sexual assault involving prior failed prosecution;
    - Crime scene analysis report for the defense re: false allegation of sexual assault;
    - Assisted with development of cross-examination to successfully elicit exculpatory testimony from state's witnesses;
    CRIMINAL: Defense Attorney Client / Acquitted

21. 2011: *Equivocal Death - Arturo Gatti, World Boxing Champion*
    - Participated in re-investigation of asphyxial death declared "suicide" in Brazil;
    - Reconstruction report regarding homicide staged to appear as a suicide;
    - ME's Office in Montreal conducted separate medico-legal death investigation: subsequently changed position from "Suicide" to "Undetermined".
    CIVIL: Plaintiff's Attorney

22. 2010-2013: Serial *Femicide* — *T. R. Young v. Her Majesty's Advocate*
    - Prepared 150+ page linkage analysis report working for the Crown Office (Attorney General's Office/ prosecution) re: eight (8) sexual homicides, including the World's End murders (double rape homicide);
    - Evaluated FBI profiler's report, and reports from other academic profilers, for the Crown;
    - Assisted the Crown with development of cross examination regarding reports and testimony of Defense experts in related court proceedings.
    - FBI profiler for the defense, Mark Safarik, withdrew from case; Court ruled to exclude defense testimony from Dr. David Canter in favor of the Crown; conviction upheld.
    CRIMINAL: Attorney General's Office / convictions upheld/ convictions achieved

23. 2012-2013: *Femicide* — *Karl Fontenot v. Oklahoma*
    - Post-conviction examination of an abduction-homicide.
    - Case Assessment and reconstruction revealed exculpatory police reports and physical evidence withheld from the defense leading to critical evidentiary findings. Forensic Report provided.
    CRIMINAL: Defense Attorney Client / Defendant released on actual innocence claim

24. 2013-2014: *New Hampshire v. P.G.*
    - *Trial consultant:* false report of sexual assault determination;
    - Assisted with development of crime reconstruction and cross-examination to help successfully elicit exculpatory testimony from state's witnesses;
    CRIMINAL: Defense Attorney Client / Acquitted

25. 2013-2014: *Tennessee v. Ralph O'Neal*
    - *Crime Scene Investigation, Crime Scene Analysis, and Shooting Incident Reconstruction*
    - Defendant accused of First Degree Murder.
    - Examined the quality of the investigation and the forensic evidence.
    - Prepared expert report of findings; disproved state's theory of the case.
    CRIMINAL: Defense Attorney Client / Charges dropped

26. 2015: *Oregon v. Joseph Leonetti*
    - *Trial consultant:* false report of sexual assault determination;
    - Assisted with development of crime reconstruction and cross-examination to help prep case and elicit exculpatory testimony from state's witnesses;
    CRIMINAL: Defense Attorney Client / Case Dismissed during trial

27. 2014-2016: *Texas v. Carla Cox*
- *Crime Reconstruction and Crimes Scene Analysis: alleged arson-homicide;*
- Crime scene analysis report for the defense re: physical evidence and investigative issues;
CRIMINAL: Defense Attorney Client / Case Dismissed for lack of evidence pre-trial

28. 2018-2019: *Officer Mary Ferguson v. City of Sitka, The Sitka Police Department, et al.*
- *Forensic Assessment of Sexual Harassment, Civil Rights & Public Corruption in a police department;*
- Forensic report delivered; Offender (supervising officer) resigned; chief of police resigned.
CIVIL: Plaintiff client / Case settled in 2020, in favor of Officer Mary Ferguson

29. 2019: *California v. Darrell A. DeLeoz*
- *Crime Reconstruction and Crimes Scene Analysis: alleged domestic homicide*
- Crime scene analysis report for the defense re: physical evidence and investigative issues;
- Report used to cross states experts
CRIMINAL: Defense Attorney Client / Acquitted of murder charges; guilty of involuntary manslaughter and released with time served.

30. 2019-2020: *Femicide — Yovanna Yaneth Torres Briseno*
- *Crime Reconstruction and Crimes Scene Analysis: unsolved homicide*
- Appointed and sworn as special forensic examiner in crime scene analysis and reconstruction for the Attorney General's Office in Aguascalientes
CRIMINAL: Case reopened by The Attorney General's Office as a homicide

31. 2020: *Andrea Dodoni Scalfo, Oaxaca — Forensic Victimological Assessment*
CI: 3313/FCOS/POCHUTLA/2020
- Forensic Assessment in a case involving a false report of trespassing and domestic assault against an indigenous female / human trafficking case
- Prepared forensic assessment of damages and reparations
CRIMINAL: Forensic report read into evidence; judge ruled in favor of those findings.

32. 2019-2021: *Sergio Herrera Martinez, State Police, Zacatecas — Forensic Assessment*
File No. 50/2019; FGJE Zacatecas
- Forensic investigation of victim abducted and sexually assault by law enforcement officer subsequent to a traffic stop. Involved allegations of kidnapping and attempted murder.
- Officer Martinez arrested and placed on trial based on forensic findings
- Prepared forensic assessment of damages and reparations
CRIMINAL: Prosecutor Client / Officer Martinez convicted; damages report submitted

33. 2020-2021: *United States v. Gary Baldock, Shooting Incident Reconstruction*
- Defendant, a law enforcement officer with severe medical conditions, was charged w/ attempted murder re: shooting of an FBI agent during a breach of his home by multiple federal agents with a BearCat.
- Forensic examination conducted of related evidence.
- Crime reconstruction with shooting incident reconstruction performed on site, with preliminary findings refuting states theory.
CRIMINAL: Forensic findings used to assist negotiating a plea deal with reduced charges. Defendant died in custody awaiting sentencing.

34. 2020-2021: *Femicide — Kansas v. Rontarus Washington*
- Defendant charged with the murder of an acquaintance female from Latin America.
- Forensic examination conducted of related evidence.
- Crime reconstruction established an alternate suspect and disproved law enforcement case theories.

CRIMINAL: All charges dismissed. Forensic findings used to assist with the release of defendant in 2020, after five years waiting for trial. Forensic findings subsequently used to assist with motion to dismiss in 2021.

35. 2021-2022: *Oregon v. Kiah Lawson*
Forensic Examination: false report of sexual assault determination
- Assisted with development of crime reconstruction and cross-examination to help prep case and elicit exculpatory evidence from state's witnesses;

CRIMINAL: Defense Attorney Client / Case Dismissed prior to trial

36. 2021-2022: *Coahuila v. Sergio Armando Mitre (MEXICO) - Double Femicide*
Forensic Examination: Crime Scene Analysis / Double Femicide by dual citizen and former pitcher for the New York Yankees
- Reprocessed crime scene; discovered new physical physical evidence; provided expert report and findings; helped develop trial strategy

CRIMINAL: Prosecutorial Client / Defendant convicted

Institutional AFFILIATIONS

1999 – 2000	*Adjunct Lecturer,* Criminology Department Bond University Gold Coast, Australia
2001 – 2010	*Guest Lecturer,* Criminology Department Bond University Gold Coast, Australia
2010	*Adjunct Teaching Fellow,* Criminology Department Bond University Gold Coast, Australia
2003 – 2015	*Adjunct Professor,* Department of Sociology and Criminal Justice Oklahoma City University Oklahoma City, Oklahoma
2015 – 2016	*Affiliate Faculty,* Department of Criminology Regis University Denver, Colorado
2015 – Present	*Director,* The Forensic Criminology Institute Primary Instructor - Professional Diploma Programs Aguascalientes (MEX) / Sitka, Alaska (USA)
2016 – Present	*Professor of Forensic Criminology* Masters Program in Forensic Criminology and Criminal Profiling (Fully Accredited, September 2020) Instituto de Cienca Aplicada Aguascalientes (MEX)
2020 – Present	*Partner,* The Behavioral Sciences Lab

PROFESSIONAL AFFILIATIONS

1998 - Present	*Secretary* and *Board Member,* Forensic Section International Association of Forensic Criminologists / Academy of Behavioral Profiling (IAFC/ABP)
2012 - 2014:	*Forensic Consultant* Unidad de Analysis de la Conducta Criminal, Laboratorio Forense de Ciudad Juarez, Chihuahua, MX (Criminal Behavioral Analysis Unit, Attorney General's Forensic Science Laboratory, Juarez)
2014 - Present:	*Diplomate,* Academy of Behavioral Profiling
2015 - Present:	*Directorate,* Global Forensic Alliance
2019 - 2020:	*Special Forensic Examiner* Crime Scene Analysis and Reconstruction Attorney General's Office, Aguascalientes (MEX)
2020 - Present	*Honorary Member* Asociación Iberoamericana de Derecho, Cultura y Ambiente https://aidca.org/honorificos/
2021	*Co-Chair, SWG - FV* Scientific Working Group on Forensic Victimology Fiscalia General de la Nación (Bogota, DC) & Fundación Internacional y Para Iberoamérica de Administración y Políticas Públicas (FIIAPP / Madrid)

PEER REVIEWER

The following is a list of professional journals, publishers, and organizations that this examiner has been invited to serve as a peer reviewer for, often on multiple manuscripts:

1. Aggression & Violent Behavior; Manuscript Review
2. Behavioral Sciences & the Law; Manuscript Review
3. Children and Youth Services Review
4. Criminal Justice & Behavior; Manuscript Review
5. Elsevier-Academic Press; Textbook proposal reviews
6. Forensic Science International; Manuscript Review
7. Homicide Studies; Manuscript Review
8. The Federal Bureau of Investigation, Investigative Training Unit
(Unit Chief: Karen Gardner); Serial murder research proposal review

9. Journal of Forensic and Legal Medicine; Manuscript Review
10. Journal of Forensic Psychology: Research and Practice; Manuscript Review
11. Psychology, Public Policy, & Law; Manuscript Review
12. Lexington Publishers; Manuscript Review
13. Katholieke Universiteit, Leuven, BE
    National Cold Case Research Proposal
14. Katholieke Universiteit, Leuven, BE
    International Wrongful Conviction and Witness Statement Assessment Proposal
15. Social Sciences & Humanities Open; Manuscript Review

EDITORIAL BOARDS

The following is a list of professional peer reviewed journal editorial boards that this examiner has served on.

1. Journal of Behavioral Profiling: Editor in Chief (1999-2008)
2. Annex Journal of Forensic Science & Criminology: Board of Editors (2013-Present)
3. ARC Journal of Forensic Science: Board of Editors (2018-Present)

PROTOCOLS: RESEARCH & DEVELOPMENT

This sections refers to research and development work related to protocols created in partnership with government entities to satisfy investigative and forensic mandates established by law.

2018 - November
Editorial Research and Development
Querétaro Institute for Women - Querétaro, MX
Criminal & Forensic Investigation: Manual for the Issuance of Forensic Experts with a Gender Perspective in the Matter of Crimes Against Life and Integrity of the Women of the State of Querétaro (trans. Manual para la Emisión de Periciales con Perspectiva de Género en Materia de Delitos contra la Vida e Integridad de las Mujeres del Estado de Querétaro / Instituto Querétano de las Mujeres.

2020 - January
Editorial Research and Development
Attorney Generals Office - Aguascalientes, MX
Criminal & Forensic Investigation: Protocol for the Investigation of Violent Deaths of Women, with a Gender Perspective (trans. Protocolo de Investigación con Perspectiva de Género de Muertes Violentas de Mujeres en el Estado de Aguascalientes)

October 8 - November 11, 2020
Editorial Research and Development

Fiscalia General de la Nación—Bogota, DC &
Fundación Internacional y Para Iberoamérica de Administración y Políticas Públicas (FIIAPP)—Madrid
Criminal & Forensic Investigation: Protocol for Victimological Classification in High Impact Crimes Against Human Rights Defenders and others with special constitutional protections (trans. Protocolo para la Caracterización Victimológica de graves afectaciones contra personas con especial protección constitucional y defensores de derechos humanos)

August, 2022- February, 2023
Editorial Research and Development
Secretariat of Social Welfare of the Presidency of Guatemala;
Corrections Team of the Anti-Narcotics and Law Enforcement Section (INL) of the American Embassy; and
The Forensic Criminology Institute's Behavioral Sciences Lab
Collaborative work between the Secretariat of Social Welfare of the Presidency of Guatemala; The Corrections Team of the Anti-Narcotics and Law Enforcement Section (INL) of the American Embassy; and the Consulting Team of the Behavioral Sciences Lab and the International Academy of Forensic Criminologists. Involved review, adaptation, and international validation of the process of criminal profiling and risk analysis of adolescents in the programs of the Undersecretary for Reinsertion and Re-socialization of Adolescents in Conflict with the Criminal Law — Guatemala.

PUBLISHED WORKS

The following are lists of published, peer-reviewed works. These include textbooks, textbook chapters, journal articles and encyclopedia contributions:

Textbooks

1. Turvey, B. (1999) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis,* London: Academic Press

2. Turvey, B. (2002) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 2nd Ed.,* London: Elsevier Science

3. Savino, J. & Turvey, B. (2004) *Rape Investigation Handbook,* San Diego: Elsevier Science

4. Chisum, W.J. & Turvey, B. (2007) *Crime Reconstruction,* Boston: Elsevier Science

5. Turvey, B. (2008) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 3rd Ed.,* London: Elsevier Science

6. Petherick, W. & Turvey, B. (2009) *Forensic Victimology,* Boston: Elsevier Science

7. Ferguson, C., Petherick, W. & Turvey, B. (2010) *Forensic Criminology,* San Diego: Elsevier Science

8. Turvey, B. (2011) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 4th Ed.,* London: Elsevier Science

9. Chisum, W.J. & Turvey, B. (2012) *Crime Reconstruction, 2nd Ed.,* San Diego: Elsevier Science

10. Savino, J. & Turvey, B. (2012) *Rape Investigation Handbook, 2nd Ed.,* San Diego: Elsevier Science

11. Turvey, B. (2013) *Forensic Fraud: Evaluating Law Enforcement and Forensic Science Cultures in the Context of Examiner Misconduct*, San Diego: Elsevier Science

12. Crowder, S. & Turvey, B. (2013) *Ethical Justice: Applied Issues for Criminal Justice Students and Professionals*, San Diego: Elsevier Science

13. Turvey, B. (2013) *Forensic Victimology, 2nd Ed.,* San Diego: Elsevier Science

14. Cooley, C. & Turvey, B. (2014) *Miscarriages of Justice,* San Diego: Elsevier Science

15. Crowder, S. & Turvey, B. (2015) *Anabolic Steroid Abuse in Law Enforcement: A Forensic Manual for Public Safety Administrators*, San Diego: Elsevier Science

16. Turvey, B. & Esparza, M. (2016) *Behavioral Evidence Analysis: International Forensic Practice and Protocols*, San Diego: Elsevier Science

17. Turvey, B. (2016) *Perfilacion Criminal: Vol. 1, Fundamentos*, Aguascalientes, MX: Forensic Press

18. Turvey, B. (2016) *Perfilacion Criminal: Vol. 2, Contextos*, Aguascalientes, MX: Forensic Press.

19. Turvey, B. (2016) *Perfilacion Criminal: Vol. 3, Practica*, Aguascalientes, MX: Forensic Press.

20. Coronado, A. & Turvey, B. (2016) *Protocols de Investigacion Criminal, Vol. 1*, Aguascalientes, MX: Forensic Press

21. Freeman, J. & Turvey, B. (2016) *Victimologia Forense: Vol. 1,* Aguascalientes, MX: Forensic Press

22. Freeman, J. & Turvey, B. (2017) *Victimologia Forense: Vol. 2*, Aguascalientes, MX: Forensic Press

23. Crowder, S. & Turvey, B. (2017) *Forensic Investigation*, San Diego: Elsevier Science

24. Turvey, B., Coronado, A. & Savino, J. (2017) *False Allegations: Investigative and Forensic Issues in Fraudulent Reports*, San Diego: Elsevier Science

25. Coronado, A. & Turvey, B. (2018) *Psicologia de la Mentira, Vol. 1*, Aguascalientes, MX: Forensic Press

26. Baltazar, V., Coronado, A., & Turvey, B. (Eds., 2022) *Protocol for Victimological Classification in High Impact Crimes Against Human Rights Defenders, and others with special Constitutional protections*, Bogota, DC: Fiscalia General de la Nación (trans. Protocolo para la

Caracterización Victimológica de graves afectaciones contra personas con especial protección constitucional y defensores de derechos humanos)

27. Coronado, A. & Turvey, B. (2022) *Criminal Psychology,* London: Elsevier Science

28. Turvey, B. (2022) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 5th Ed.,* London: Elsevier Science

29. Turvey, B. (In Press) *Forensic Victimology, 3rd Ed.,* San Diego: Elsevier Science

30. Baltazar, V., Coronado, A., & Turvey, B. (Eds., 2023) *The Revised Guide for Selecting Candidates for the Intermediate Housing Program for Youth in Conflict with the Law in Guatemala*, Guatemala City: The Secretariat of Social Welfare of the Presidency of Guatemala.

Textbook Contributions

1. Turvey, B. "Modus Operandi, Motive, and Technology," for Casey, E. (2000) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet,* London: Academic Press

2. Turvey, B. “Professionalizing the Criminal Profiler” for Montet, L. (2001) *Profileurs: Specialization or Professionnalisation?* University Presses of France

3. Turvey, B. "Modus Operandi, Motive, and Technology," for Casey, E. (2004) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet, 2nd Ed.* Boston: Academic Press

4. Turvey, B. "Investigative Reconstruction with Digital Evidence," for Casey, E. (2004) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet, 2nd Ed.* Boston: Academic Press

5. Turvey, B. “Introduction” in Petherick, W. (2005) *Criminal Profile: Into the Mind of the Killer*, London: Modern Books

6. McGrath, M. & Turvey, B. "Criminal Profilers & The Media: Profiling the Beltway Snipers," for Petherick, W. (2005) *Serial Crime,* Boston: Elsevier Science

7. Turvey, B. “An Objective Overview of Autoerotic Fatalities,” in Adler, P. (Ed) (2006) *Constructions of Deviance, Custom Edition,* Mason, OH: Thomson Custom Solutions

8. Davis, B. (2006) *Crime Scene Science: Criminal Profiling*, Cornwall, UK: Ticktock Media, Ltd. – Editorial Consultant

9. Ferguson, C., McGrath, M. & Turvey, B. (2009) “The False Allegation: A Construct of Deviance” in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press

10. McGrath, M. & Turvey, B. (2009) "Criminal Profilers & The Media: Profiling the Beltway Snipers," for Petherick, W. (ed) *Serial Crime, 2nd Ed.,* San Diego: Elsevier Science

11. Turvey, B. (2009) “Homicidal Deviance” in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press

12. Turvey, B. (2009) “Sex Crimes and Deviance” in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press

13. Turvey, B. (2009) “Sexual Deviance” in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press

14. Turvey, B. (2010) “Prologo: Perfiles Criminologicos En El Siglo XXI,” in Serrano, J.J. (Ed) *Manual practico del perfil criminologico*, Valladolid, Spain: Lex Nova.

15. Turvey, B. (2011) "Modus Operandi, Motive, and Technology," for Casey, E. (Ed) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet, 3rd Ed.* San Diego: Academic Press.

16. Turvey, B. (2011) “Victims of Pathological Altruism,” in Oakley, B. (Ed) *Pathological Altruism*, Oxford University Press.

17. Turvey, B. (2012) “Behavioral Evidence: The Necessity of Crime Reconstruction to Criminal Profiling Efforts,” in Fatima, A. and Paulino, N. (Eds) *Profiling, Vitimologia & Ciencias Forenses*, Lisbon, Portugal: Pactor.

18. Turvey, B. (2012) “Preface: Professional Obligations of the Criminal Profiler,” in Konvalina-Simas, T. (Ed) *Profiling Criminal: Introducao a Analise, Comportamental no Contexto Investigativo*, Carcavelos, Portugal: REI dos Livros.

19. Turvey, B. (2013) “Forensic Failures” in Bowers, C.M. (Ed.) *Forensic Testimony: Science, Law, and Expert Evidence*, San Diego: Academic Press.

20. Turvey, B. (2016) “Foreword” in Paulino, M. (Ed.) *Forensic Psychology of Spousal Violence*, San Diego: Academic Press.

21. Turvey, B. (2018) “Criminal Profiling: Experts, Evidence, and Miscarriages of Justice” in Koen, W. and Bowers, C.M. (Eds) *Forensic Science Reform: The Psychology and Sociology of Wrongful Convictions*, San Diego: Elsevier Science.

22. Turvey, B. and Coronado, A. (2018) “Racial Profiling and Miscarriages of Justice” in Koen, W. and Bowers, C.M. (Eds) *Forensic Science Reform: The Psychology and Sociology of Wrongful Convictions*, San Diego: Elsevier Science.

Professional Articles, Journals & Encyclopedia Contributions

1. Baeza, J., Chisum, W.J., Chamberlin, T.M., McGrath, M., Turvey, B. (2000) "Academy of Behavioral Profiling: Criminal Profiling Guidelines," *Journal of Behavioral Profiling*, January, 2000, Vol. 1, No. 1

2. Chisum, W.J., and Turvey, B. (2000) "Evidence Dynamics: Locard's Exchange Principle & Crime Reconstruction," *Journal of Behavioral Profiling*, January, Vol. 1, No. 1

3. Turvey, B. (2000) "Criminal Profiling and the Problem of Forensic Individuation," *Journal of Behavioral Profiling*, May, Vol. 1, No. 2

4. Turvey, B. (2000) "Autoerotic Death," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

5. Turvey, B. (2000) "Criminal Profiling," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

6. Turvey, B. (2000) "Modus Operandi," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

7. Turvey, B. (2000) "Offender Signature," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

8. Baeza, J. and Turvey, B. (2000) "False Reports in Cases of Sexual Assault: Literature Review and Investigative Suggestions," *Journal of Behavioral Profiling*, December, Vol. 1, No. 3

9. Turvey, B. (2000) "Staged Crime Scenes: A preliminary study of 25 cases," *Journal of Behavioral Profiling*, December, Vol. 1, No. 3

10. Turvey, B. (2000) “Deductive Profiling: Comparing applied methodologies between Inductive and Deductive criminal profiling techniques,” *Policja: Kwartalnik Kadry Kierowniczej Policji* (Quarterly of Police Management - Poland), No. 4

11. Turvey, B. (2001) "Mass Killings: A Study of 5 cases," *Journal of Behavioral Profiling*, June, Vol. 2, No. 1

12. Turvey, B. “Sexual Homicide: Research Review and Findings, Part 1,” *Journal of Behavioral Profiling*, December 2001, Vol. 2, No. 2

13. Cooley, C. and Turvey, B. (2002) "Reliability and Validity: Admissibility Standards Relative to Forensic Experts Illustrated by Criminal Profiling Evidence, Testimony, and Judicial Rulings," *Journal of Behavioral Profiling*, June, Vol. 3, No. 1

14. McGrath, M. and Turvey, B. (2003) "Criminal Profilers & the Media: Profiling the Beltway Snipers," *Journal of Behavioral Profiling*, 2003 April, Vol. 4, No. 1

15. Turvey, B. (2003) “Forensic Frauds: A Study of 42 Cases,” *Journal of Behavioral Profiling*, April, Vol. 4, No. 1

16. Turvey, B. (2003) "The Reality of Police-Involved Domestic Violence: Lessons for Law Enforcement Administrators," *Illinois Law Enforcement Executive Forum*, November

17. Turvey, B. (2004) “Staged Burglary: Technical Note & Civics Lesson,” *Journal of Behavioral Profiling*, December, Vol. 5, No. 1

18. Turvey, B. (2006) “Beneath the Numbers: Rape and Homicide Clearance Rates in the United States,” *Journal of Behavioral Profiling*, Vol. 6 (1), May

19. Turvey, B. (2007) “United States v. Gordon E. Thomas, III - A Case Study in the Reliability of Criminal Investigative Analysis,” *Journal of Behavioral Profiling,* 7 (1), Summer

20. Chisum, W.J. and Turvey, B. (2008) “Re: The Commentary “Crime Reconstruction” J. For. Ident. 57 (6), 797-806,” *The Journal of Forensic Identification*, Vol. 58 (2); pp.133-155.

21. Turvey, B. (2011) “Outing the gropers: What the Brooklyn sex attacks tell us,” *New York Post*, October 23.

22. Turvey, B. & Freeman, J. (2012) “Jury Psychology” in Ramachandran, V. (ed) *Encyclopedia of Human Behavior, 2nd Ed*., London: Elsevier Science.

23. Crowder, S. and Turvey, B. (2013) “Hypothesis, Homology, and Heuristic: What the H?” *International Journal of Arts and Sciences*, Vol. 6(3); pp. 627–634.

24. Turvey, B. (2013) "Autoerotic Death," in Houck, M., Saukko, P., & Seigal, J. (Eds.) Encyclopedia of Forensic Science, 2nd Ed., London: Academic Press.

25. Turvey, B. (2013) "Criminal Profiling," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed*., London: Academic Press.

26. Turvey, B. (2013) "Modus Operandi," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed*., London: Academic Press.

27. Turvey, B. (2013) "Offender Signature," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed*., London: Academic Press.

28. Turvey, B. (2014) “Ethics in Forensic Science” in Arrigo, B. and Golson, J. G. (Eds) *Encyclopedia of Criminal Justice Ethics*, Thousand Oaks: Sage Publications.

29. Turvey, B. (2014) “Social Media as Evidence” in Arrigo, B. and Golson, J. G. (Eds) *Encyclopedia of Criminal Justice Ethics*, Thousand Oaks: Sage Publications.

30. Turvey, B. (2015) “Criminal Profiling” in Cautin, R. and Lillienfield, S. (Eds) *Encyclopedia of Clinical Psychology,* New Jersey: Wiley-Blackwell.

PROFESSIONAL DIPLOMAS & CERTIFICATION - Law Enforcement

The following is a selected list of advanced certification training provided by this examiner to government and law enforcement agencies or institutions, through various partnerships, to include *The United Nations*:

12/14/14 - 12/18/14
IAFC / BEA/ Criminal Profiler Certification Training
Host: Unidad de Analysis de la Conducta Criminal
Laboratorio Forense de Ciudad Juarez, Chihuahua, MX
(Criminal Behavioral Analysis Unit, Attorney General’s Forensic Science Laboratory, Juarez)
Location: Region 19 Educational Center, El Paso, TX

01/26/15 - 02/05/15
IAFC / BEA/ Criminal Profiler Certification Training
Behavioral and Psychological Analysis Unit
Hosts: Unidad de Investigacion de la Defensa; Policia National; Dirección de Investigación Criminal e Interpol (DIJIN); & The United Nations
Location: Bogota, Colombia

09/07/15 - 9/11/15
IAFC / BEA/ Criminal Profiler Certification Training

Certifying Organization: Universidad Nacional de Investigación Forense, Diplomado Internacional en Perfilacion Criminal
Location: Juarez, Mexico

2018
Professional Diploma: Forensic Victimology (120 hours)
Instructors: Dr. Stan Crowder & Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute & Georgia Peace Office Standards & Training
Location: North Central Regional Law Enforcement Training Academy, Austell, Georgia (Accredited by Georgia POST)

2018-2019
Professional Diploma: Forensic Victimology (120 hours)
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute & The School of Military Intelligence
Location: The School of Military Intelligence, Guatemala City, Guatemala
(Accredited by the School of Military Intelligence)

05/07/20 - 08/31/20
Professional Diploma: Diplomado en Técnicas de Investigación de Crímenes Cometidos Contra Defensores y Defensoras de Derechos Humanos bajo la aplicación de normas y estándares internacionales (Forensic Investigation of Crimes Committed Against Social Activists and Human Rights Defenders)
Instructors: Dr. Aurelio Coronado and Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute; The United Nations; The Fiscalía General de la Nación (The Attorney General); and The Instituto de Medicina Legal in Bogota DC; and USAID.
Location: Bogota DC, Colombia

08/01 - 09/02/22
Professional Diploma: Criminal Profiling with a Human Rights Perspective (120 hours)
Instructors: Dr. Aurelio Coronado and Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute; National Center for State Courts (NCSC); INL Justice Program, U.S. Embassy, Costa Rica; and The Judicial Investigation Department of The Supreme Court of Justice of Costa Rica (OIJ)
Location: Escuela Judicial, San Jose, Costa Rica

PROFESSIONAL LECTURES & PRESENTATIONS

The following is a selected list of professional programs, presentations, lectures, workshops, and programs provided by this examiner to law enforcement academies and groups, attorney groups, educational institutions, and professional organizations in the

United States and around the world. It is by no means a complete list. Where indicated, these have been authorized for college credit, certified for continuing legal education (CLE), or certified for credit by regional Commissions on Peace Officer Standards and Training (P.O.S.T.):

10/25/22
Workshop: Getting Awaye With Murder — The Challenges of Staged Crime Scenes
Lecture: Reconstructing Staged Crime Scenes — Victimology, Context, and Evidentiary Red Flags
Host: The Alliance for Hope / The Training Institute for Strangulation Prevention
Location: Estes Park, Colorado

09/22- 09/23/22
Conference: First International Conference on Forensic Victimology / "Advanced Trends and Future Challenges in Forensic Victimology"
Lecture: "Forensic Victimology and the Human Rights Perspective"
Host: The National Forensic Science University / The Ministry of Home Affairs
Location: National Forensic Sciences University, Delhi Campus, India (online lecture)

08/04/22
Conference: Criminal Profiling with a Human Rights Perspective
Lecture: "Criminal Profiling and the Human Rights Perspective"
Host: University of Claustro — Chihuahua
Location: Chihuahua, Mexico

08/03/22
Conference: Criminal Psychology and Serial Murder
Lecture: "Serial Murder: Psychosocial Evidence and the Human Rights Perspective"
Host: University of Claustro — Chihuahua
Location: Chihuahua, Mexico

04/01/22
International Convention - Best Practices in Forensic Investigation
Lecture: Crime Scene Analysis, Context Analysis, and Intersectionality
Host: La Asociación de Abogados y Notarios, Libertad y Justicia
Location: Chiquimula City, Guatemala

03/31/22
International Convention - Best Practices in Forensic Investigation
Lecture: Crime Scene Analysis, Context Analysis, and Intersectionality
Host: Centro Regional de Estudios en Desarrollo y Gobernabilidad
Location: Guatemala City, Guatemala

03/30/22

Seminar: Behavioral Evidence Analysis & Crime Reconstruction
Host: Ministerio Público — Dirección De Investigaciones Criminalisticas
Location: Guatemala City, Guatemala

01/26/22
La Importancia de la Prueba Parcial en el Sistema Acusatorio Adversarial
Lecture: Behavioral Evidence Analysis
Host: Proyecto Inocente — Universidad Vasconcelos en Oaxaca
Location: Online

08/04/21
IX Congreso de Criminologia
Lecture: Perfilacion Criminologica
Host: Universidad UniverMilenium
Location: Mexico City, MX

07/08/21
Congreso Internacional de Criminologia, Psicologia, y Psiquiatria Forense 2021
Lecture: Forensic Criminology and the Human Rights Perspective
Host: Tallers Forenses Online
Location: Buenos Aires, Argentina

06/25/21
5th Convención Internacional Buenas prácticas en Psicología Forense
Lecture: Violaciones graves a derechos humanos y poblaciones vulnerables
Host: Insituto Nacional de Ciencias Penales (INACIPE)
Location: Mexico City, MX

06/23/21
4th International Congress of Criminal Justice and Criminal Policy 2021
Lecture: Integrated Forensics and Crime Reconstruction
Host: Autonomous University of Aguascalientes
Location: Aguascalientes, MX

06/04/21
Seminar: Crime Scene Indicators in Cases of Femicide
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO); Instituto de Ciencias Jurídicas y Forenses
Location: Hermosillo, Sonora, MX

06/03/21
Seminar: Crime Scene Indicators in Cases of Femicide
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO); Instituto de Ciencias Jurídicas y Forenses
Location: Navajoa, Sonora, MX

06/03/21
Seminar: Crime Scene Indicators in Cases of Femicide
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO); Instituto de Ciencias Jurídicas y Forenses
Location: Los Mochis, Sinaloa, MX

06/02/21
Seminar: Crime Scene Indicators in Cases of Femicide
Host: State Institute of Penal Sciences and Public Security (Police Academy) - Sinaloa; Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Culiacan, Sinaloa, MX

05/26 - 06/01/21
Training: Criminal Profiling in Cases of Kidnapping and Forced Disappearance
Host: Secretaria de Seguridad y Protección Ciudadana (Federal Secretariat of Security and Civilian Protection); CONASE (Co-ordination Nacional Antisecuestro / Federal Anti-Kidnapping Co-ordination Agency)
Location: Mexico City / Broadcast to Anti-Kidnapping Zones 1-5 on consecutive days.

01/28/21
Seminar: Criminal & Forensic Investigation with a Human Rights Perspective
Host: Superior Institute of Public Security (Police Academy) - Aguascalientes
Location: Aguascalientes, MX

01/18/ - 01/20/21
INTERNATIONAL CYCLE OF CRIMINAL DEFENSE IN THE ACCUSATORY SYSTEM (trans.CICLO INTERNACIONAL DE DEFENSA PENAL EN EL SISTEMA ACUSATORIO)
Lecture: Crime Scene Analysis & Reconstruction
Host: USAID.GOV

11/28/20
Conference: 6th Annual Summit of Forensic Experts
Lecture: Forensic Victimology with a Human Rights Perspective
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Hermosillo, Sonoro, MX
(University Credit)

11/6/20
Webinar: Femicide Investigation and Assessment
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
(University Credit)

11/3/20
Forum: Forensic Investigation of Torture and Application of the Istanbul Protocol (trans. Foro de actualization en investigación forense de tortura y aplicación de protocolo de Estambul)
Host: Instituto Nacional de Ciencias Penales (INACIPE)
(University Credit)

10/9/20
Webinar: Femicide Investigation and Assessment
Host: Asociación Iberoamericana de Derecho, Cultura y Ambiente

08/14/20
4th Annual Convencion Internacional de Buenas Practicas en Psicologia Forense
Lecture: "Criminal Profiling & Crime Scene Analysis Protocols with a Human Rights Perspective"
Hosts: INACIPE, CONVENCIÓN CONSEJO PSICOLOGÍA FORENSE
Location: Aguascalientes, MEX

07/31/20
Lecture: "Crime Scene Analysis and Reconstruction"
Alaska Public Defender Investigator Training
Host: State of Alaska Public Defender's Office
Location: Juneau, Alaska

03/03/20
Seminar: Criminal Profiling and Forensic Victimology
Host: University of Gran Colombia
Location: Bogota DC

02/08/20
Lecture: New Developments in Criminal Profiling
IAFC / ABP Annual Summit, 20th Anniversary
Hosts: Ciencia Aplicada; Forensic Solutions, LLC; and The Forensic Criminology Institute
Location: Sitka, Alaska

11/28 - 11/29/19
Seminar: Criminal Profiling & Crime Scene Analysis
International Forum on Criminal Profiling, Armed Conflict, and Case Prioritization
Hosts: United Nations, Attorney General's Office - Bogota DC
Location: Bogota DC, Colombia

10/27/19
Conference: 5th Annual Summit of Forensic Experts
Lecture: Criminal Profiling and Forensic Victimology
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Hermosillo, Sonoro, MX
(University Credit)

10/26/19
Lecture: Juvenile Victims and Offenders /Systemic Issues
Conference: "ANÁLISIS CRIMINOLÓGICO DE LA DELINCUENCIA JUVENIL Y NUEVAS TENDENCIAS DE CRIMINALIDAD"

Host: Gobierno del Estado Sonora, Instituto Superior de Seguridad Pública del Estado and Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes (SIPINNA)
Location: Hermosillo, Sonora

10/26/19
Seminar: Criminal Profiling & Crime Scene Analysis
Host: Gobierno del Estado Sonora, Instituto Superior de Seguridad Pública del Estado
Location: Sonora, Hermosillo

09/28/19
Seminar: United Nations Femicide Protocols - Crime Scene Indicators
Host: Sergio Arboleda University, Faculty of Psychology
Location: Santa Marta, Colombia
(University Credit)

09/27/19
Seminar: United Nations Femicide Protocols - Crime Scene Indicators
Host: Universidad de la Costa & Fiscalia General de la Nación (Attorney General's Office)
Location: Barranquilla, Colombia
(University Credit)

09/26/19
Conference & Expert Panel: 2nd Congreso Internacional de Criminologia y Victimologia
Lecture: United Nations Femicide Protocols - Crime Scene Indicators
Host: Policia Nacional, Bogota & The Escuela de Postgrados de Policía, Bogota
Location: CESPO / Centro Social De Oficiales De La Policia, Bogota, Colombia

09/24/19
Seminar: Forensic Investigations & The United Nations Femicide Protocols
Host: Konrad Lorenz University, Faculty of Psychology
Location: Bogota, Colombia
(University Credit)

09/23/19
Seminar: United Nations Femicide Protocols / Forensic Victimology
Host: Fiscalia General del Estado Queretero (Attorney General's Office) & INMUJERES (National Institute of Women)
Location: Queretero, MEX

09/19/19
Lecture: Criminal Profiling
Host: INACIPE (Instituto Nacional de Ciencias Penales)
Location: Mexico City, MEX

09/18/19
Seminar: Forensic Criminology & Criminal Profiling
Host: La Universidad Autonoma de Aguascalientes, Faculty of Social Sciences and Humanties
Location: Aguascalientes, MEX
(University Credit)

09/18/19
Lecture: Criminal Investigation and Femicide
Host: Fiscalia General del Estado Aguascalientes (Attorney General's Office)

Location: Aguascalientes, MEX

06/07/19
Conference: 3rd International Convention (Consejo) - Best Practices in Forensic Psychology
Lecture: Psychology and Forensic Criminology
Host: Tribunal Superior Justicia (High Court of Chihuahua)
Location: Chihuahua, MEX

06/05 - 06/06/19
Workshop: Crime Scene Analysis and Femicide Investigation
Host: United States Agency for International Development - PROJUST (Mexico Promoting Justice Project)
Location: Mexico City, MEX

06/04/19
Lecture: Crime Scene Analysis & Criminal Profiling
Host: The Instituto de Ciencas, Juridicas, y Forenses
Location: Tijuana, Baja California

06/03/19
Conference: Jornada Internacional de Ciencas, Juridicas, y Forenses
Lecture: Forensic Investigation and Crime Scene Analysis
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO) and The Instituto de Ciencas, Juridicas, y Forenses
Location: San Luis Rio Colorado, Sonora

05/31/19
Conference: Convenciones Universitarias - 2019
Lecture: Serial Homicide & Criminal Profiling
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Puerto Penasco, Sonora

05/30/19
Conference: Jornada Internacional de Ciencas, Juridicas, y Forenses
Lecture: Crime Scene Analysis & Forensic Science
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Carborca, Sonora

04/28/19
Guest Lecture: Crime Scene Analysis & Forensic Science
Host: Instructor K. Kulick, Santa Clara Law School
Location: Santa Clara University, Charney Hall

02/13/19
Lecture: Forensic Criminology - Essential Protocols
Host: Fiscalia General del Estado Aguascalientes (Attorney General's Office)
Location: Aguascalientes, MEX

02/12/19
Seminar: Forensic Victimology and Criminology
Host: La Universidad Autonoma de Qeretero
Location: Qeretero, MEX
(University Credit)

02/07/19
Seminar: Forensic Psychology - Best Practices
Host: Universidad de Guanajuato
Location: Guanajuato, MEX

02/05/19
Seminar: Forensic Victimology and Criminology
Host: Procuraduria General de Justicia (Office of the Attorney General of Justice), Colima
Location: Colima, MEX

2019
Professional Diploma: Crime Scene Analysis & Criminal Profiling (120 hours)
Instructors: Paul Ciolino, D-ABP, Dr. Aurelio Coronado, and Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute & Prairie State College
Location: Prairie State College, Chicago Heights, Illinois

2018-2019
Professional Diploma: Forensic Victimology (120 hours)
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute & Sergio Arboleda University
Location: Sergio Arboleda University (Dept. of Psychology), Bogota, Colombia
(Accredited by Sergio Arboleda University)

2018-2019
Professional Diploma: Forensic Victimology (120 hours)
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute & Instituto de Cienca Aplicada
Location: Mexico City, MEX
(Accredited by Instituto de Cienca Aplicada, Aguascalientes, MEX)

12/18/18
Seminar: Forensic Science & Forensic Fraud
Host: State Bar Association of Georgia
Location: State Bar Association, Atlanta, Georgia
(CLE)

10/19/18
Conference: 4th Annual Summit of Forensic Experts
Lecture: Forensic Victimology and Forced Disappearances
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Hermosillo, Sonoro, MX
(University Credit)

10/17/18
Lecture: Serial Homicide
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Navajoa, Sonoro, MX
(University Credit)

10/11/18
Conference: 1 Congreso Internacional de Saberes Juridicos

Lecture: Femicide - Investigative and Forensic Protocols
Host: Fiscalia General de la Nación - Barranquilla (Attorney General's Office)
Location: Estelar Santamarta Hotel & Conference Center, Santamarta, Colombia

10/10/18
Seminar: Sex Crimes - Investigative and Forensic Protocols
Host: Fiscalia General de la Nación - Barranquilla (Attorney General's Office)
Location: Universidad de la Costa, Barranquilla, Colombia
(University Credit)

06/01/18
Conference: Consejo - Best Practices in Forensic Psychology
Lecture: Forensic Victimology
Host: Universidad Autonoma de Aguascalientes/ Instituto de Cienca Aplicada
Location: Aguascalientes, MX
(University Credit)

05/31/18
Seminar: Forensic Fraud
Host: Universidad Autonoma de Aguascalientes - School of Law
Location: Aguascalientes, MX
(University Credit)

04/11/18
Seminar: Psychology of Lies
Host: Universidad de Santiago, Cali
Location: Cali, Colombia
(University Credit)

2017
Professional Diploma: Forensic Victimology (120 hours)
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey
Partnership Agreement: The Forensic Criminology Institute & Instituto de Cienca Aplicada
Location: Mexico City, MEX
(Accredited by Instituto de Cienca Aplicada, Aguascalientes, MEX)

10/21/17
Seminar: Criminal Profiling and Violent Crime
Hosts: La Asociación National de Profesionales Forenses (ANPROFOR); La Division de Información Policía National Civil de Guatemala (Guatemalan National Police - Intelligence Div.)
Location: Guatemala City, Guatemala

10/20/17
Conference: International Forum on Criminal Investigation
Lecture: Forensic Protocols in the Investigation of Crimes Against Children.
Hosts: RED Criminology Internacional
Location: Antigua, Guatemala

10/19/17
Conference: International Forum on Criminal Investigation
Lecture: Forensic Protocols in the Investigation of Crimes Against Children.
Hosts: Facultad de Derecho en la Universidad Autónoma de Querétaro, RED Criminology Internacional

Location: Campeche, MEX

10/18/17
Conference: International Forum on Criminal Investigation
Lecture: Forensic Protocols in the Investigation of Crimes Against Children.
Hosts: Facultad de Derecho en la Universidad Autónoma de Querétaro, RED Criminology Internacional
Location: Querétaro, MEX

10/12/17
Conference: 3rd Annual Summit of Forensic Experts
Lecture: Protocols in Forensic Investigation
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)
Location: Hermosillo, Sonoro, MEX
(University Credit)

07/16/17
Conference: “Criminal Profiling and Neurobiology”
Hosts: PROCRIM; El Colegio de Abogados y Notarios de Guatemala; La Universidad de San Carlos de Guatemala; y El Instituto Criminologico de Prevencion de la Violencia
Location: Guatemala City, Guatemala

07/15/17
Conference: “Perfilacion Criminal”
Host: La Division de Información Policía National Civil de Guatemala (Guatemalan National Police - Intelligence Div.)
Location: Guatemala City, Guatemala

07/15/17
Conference: “Perfilacion Criminal”
Hosts: La Asociacion National de Profesionales Forenses (ANPROFOR) & La Dirección de Inteligencia del Estado Mayor del la Defensa Nacional - Guatemala (Guatemalan College of Military Intelligence)
Location: Guatemala City, Guatemala

07/14/17
Workshop: “Criminal Profiling and Forensic Psychology: Theory and Practice”
Hosts: CEUNO - Hermosillo; Casa de Juridica, Suprema Corte, Hermosillo, Mexico
Location: Hermosillo, Mexico

07/13/17
Conference: Semina de las Ciencias Jurídicas y Forenses
Lecture: “Forensic Victimology”
Hosts: CEUNO - Hermosillo; Casa de Juridica, Suprema Corte, Hermosillo, Mexico
Location: Hermosillo, Mexico

06/9/17
Conference: Convencion Internacional de Buenas Practicas en Psicologia Forense
Lecture: “Forensic Victimology: Examining Child Victims and Offenders”
Hosts: The Forensic Criminology Institute & Cienca Aplicada
Location: Guanajuato, Mexico

06/6/17

Workshop: Clínica de Investigación Criminal y Forense de Feminicidio
Host: Casa de Juridica, Suprema Corte, Aguascalientes
Location: Aguascalientes, Mexico

06/03 - 06/04/17
Workshop: Investigacion Criminal y Forense
Hosts: The Forensic Criminology Institute & Cienca Aplicada
Location: San Carlos, Sonora, MEX

04/28/17
XLIV Congreso Nacional de Psicologia, CNEIP
Universidad Autonoma Nayarit
Lecture: “Forensic Criminology and Psychopathy: Forensic Case Studies”
Location: Tepic, Nayarit, Mexico

04/26/17
Expert Round Table Discussion: “Derechos de las Ninas, Ninos, y Adolescents”
Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica
Location: Cd. Obregon, Mexico

04/25/17
Seminar: “Forensic Investigation and Victimology”
Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica
Location: Cd. Obregon, Mexico

04/21/17
Instituto de Formación Profesional - PGJ DF
(Government of CDMX, Professional Training and Certification)
Lecture: “Forensic Investigation”
Location: Mexico City, Mexico

12/3/16
Seminario Internacional en Perfilacion Criminal
Lecture: “Criminal Profiling: Case Studies”
Location: Tuxtepec, Mexico

11/30/16
Facultad de Derecho Los Libertadores University
Lecture: “Linkage Analysis”
Location: Bogota, Colombia

11/30/16
Konrad Lorenz University
Lecture: “Criminal Profiling: Practice and Protocols”
Location: Bogota, Colombia

11/30/16
Universidad La Gran Colombia
Lecture: “Criminal Profiling: Practice and Protocols”
Location: Bogota, Colombia

10/8/16
Facultad de Derecho Los Libertadores University

Lecture: “Forensic Criminology”
Location: Bogota, Colombia

10/6 - 10/7/16
Policia National; Dirección de Investigación Criminal e Interpol (DIJIN) / GUPEC (Criminal Profiling Unit)
Lecture: “Crime Scene Analysis, Serial Murder, and Linkage Analysis”
Location: Bogota, Colombia

10/6 - 10/7/16
XVII Simposio Internacional en Investigación Criminal
Lecture: “Femicide: The United Nations Protocols”
Certifying Organizations: Policia National, Dirección de Investigación Criminal e Interpol (DIJIN); The Colombian Ministry of Justice; and the United Nations
Location: Bogota, Colombia

8/13 - 8/14/16
Workshop: “Advanced Criminal Profiling”
Certifying Organizations: Cienca Aplicada; International Association of Forensic Criminologists
Location: Universidad de la Comunicación, Mexico City, Mexico

8/10/16
Seminar: “Investigación Criminal y Victimologia Forense”
Universidad de Autonoma de Aguascalientes
El Departamento de Psicología
Location: Aguascalientes, Mexico

8/9/16
Seminar: “Protocolos básicos de investigación de la escena de crimen”
Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica
Location: San Luis Potosi, Mexico

8/8/16
Seminar: “Perfilacion Criminal”
CLEU / Fiscalía General del Estado Yucatan
Location: Merida, Mexico

8/3/16
Seminar: “Protocolos básicos de investigación de la escena de crimen”
Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica
Location: Aguascalientes, Mexico

4/9 – 4/10/16
IAFC / ABP Annual Meeting
Lecture: **“**IAFC/ ABP Certification Efforts Worldwide: An Update”
Lecture: “Forensic Case Linkage: Case Study & Expert Testimony”
Location: Kennesaw State University, Georgia
(Georgia POST)

4/7/16
Workshop: Law Enforcement Use of Force
Location: Kennesaw State University, Georgia
(Georgia POST)

3/25 – 26/16
4th Congreso, Internacional Asociación de Investigación Forense (AIIF)
Theme: "Child Homicide Investigation"
Presentation: "Child Homicides: Case Studies"
Location: Cd. Mexico, Mexico

3/24/16
Seminar: "Psicologia de la Mentira" (The Psychology of Lying)
Certifying Organization: Cienca Aplicada; IFICP
Diplomat in Forensic Psychology
Location: Mexico City, Mexico

3/18/16
Análisis de la Evidencia Conductual Criminologia Forense y Perfilacion Criminal
Centro de Estudios Universitarios, Vizcaya de las Americas - Delicias
Location: Cd. Delicias, Mexico

3/17/16
Analisis de Lugar de Intervention y Perfilacion Criminal
Claustro Universitario de Chihuahua
Location: Cd. Chihuahua, Mexico

3/16/16
Analisis de Lugar de Intervention y Perfilacion Criminal
La Universidad Autonoma de Ciudad Juarez
Instituto de Ciencas Biomedica, Maestria en Cienca Forense
(Forensic Science Masters Program)
Location: Cd. Juarez, Mexico

3/16/16
Behavioral Evidence and Experts in el System Penal Adversarial
Fiscalia General del Estado de Chihuahua
(State of Chihuahua Attorney Generals Office)
Location: Cd. Juarez, Mexico

3/15/16
Analisis de Lugar de Intervention y Perfilacion Criminal
Universidad De Durango - Juárez
Criminology Masters Program
Location: Cd. Juarez, Mexico

3/13/16
Seminar Internacional: "Forense de Violencia Sexual"
Certifying Organization: Cienca Applicada; IFICP
Diplomat in Forensic Psychology
Location: Aguascalientes, Mexico

3/11/16
Seminar: "Perfilacion Criminal: Protocols"
Suprema Corte de Justicia de la Nación
Location: Casa de le Cultura Juridica, Aguascalientes, Mexico

11/21/15
Seminar: “Psicologia de la Mentira en la Investigacion Criminal” (The Psychology of Lying in Criminal Investigations)
Certifying Organization: Cienca Applicada
Diplomat in Forensic Psychology
Location: Aguascalientes, Mexico

11/18 - 11/20/15
4th Congreso de InterCLEU, “Criminologia, Delitos Sexuales, y Criminalistica”
Certifying Organization: CLEU University
Presentation: “Applied Criminal Profiling: Sexual Homicides”
Location: Huatulco, Oaxaca, Mexico

10/17/15
II Congreso Internacional de Criminalística y Criminología
Lecture: “Criminal Profiling: International Practice Standards and Professionalization”
Certifying Organization: Escuela Superior Criminalística
Location: Madrid, Spain

10/6 – 10/7/15
The Association of Forensic Quality Assurance Managers (AFQAM), Annual Training Event
Lecture: “Forensic Fraud: Scientific Research and Case Studies”
Location: Pensacola Beach, FL

10/3 – 10/4/15
Workshop: “Perfiliacion Criminal Científica”
Certifying Organization: Asociación Ecuatoriana de Psicologia Juridica y Forense
Certifying Organization: Fiscalia General del Estado (The Attorney General’s Office of Ecuador)
Location: Guayaquil, Ecuador

10/1 - 10/2/15
1er Encuentro Internacional de Colombia y la Direccion de Investigación Criminal e Interpol
Lecture: “Criminal Profiling: International Practice Standards and Professionalization”
Certifying Organizations: Policia National; Dirección de Investigación Criminal e Interpol (DIJIN); The Colombian Ministry of Justice; and the United Nations
Location: Bogota, Colombia

9/26 – 9/27/15
Workshop: “Perfiliacion Criminal Científica”
Certifying Organization: Psicologia Juridica y Forense of Colombia
Location: Bogota, Colombia

6/25 – 6/26/15
Oklahoma Criminal Defense Lawyers Association
Lecture: “Forensic Victimology”
Lecture: “Forensic Science and Crime Scene Investigation”
Location: Oklahoma City, Oklahoma
(CLE)

5/1 – 5/2/15
3rd Congreso Internacional de Investigacion Forense
Theme: “Investigation and Analysis of Homicide Offenses”
Location: Teatro Charles Chaplin, Guadalajara, Jalisco, Mexico

Presentations: “Behavioral Evidence Analysis in Homicide Investigations” & “Forensic Victimology in Homicide Investigations”

4/27 – 4/29/15
IAFC *Sex Crimes Academy*
International Assoc. of Forensic Criminologists
Location: Region 19 Educational Center, El Paso, TX

3/12/15
Oklahoma Indigent Defense System - Capital Trial Division
Seminar: “Forensic Science, Crime Reconstruction, & the Law”
Location: Tulsa, Oklahoma
(CLE)

2/11 - 2/12/15
1st Congreso de Investigacion Forense y Perfilacion Criminal
CLEU University
Dept. of Criminologia y Criminalistica
Presentations: “Profiling Sexual Homicides” & “Serial Homicide Investigation”
Location: Guadalajara, Jalisco, Mexico

2/9 - 2/10/15
Advanced Criminal Profiling course
Dept. of Criminologia
Universidad Vizcaya de las Americas
Location: Tepic, Nayarit, Mexico

11/19 - 11/21/14
XVI Simposio Internacional En Investigacion Criminal
Location: La Escuela de Investigacion Criminal de la Policia National, Bogota, Colombia
Lecture: Crime Reconstruction and Criminal Profiling: Case Studies in Behavioral Evidence Analysis

10/16/14
9th Annual CSI Conference, Criminology Dept., Regis University
Location: Regis University, Denver, CO
Keynote Address: Forensic Victimology and Social Media

9/12 – 9/13/14
International Association of Forensic Criminologists and Academia
Mexicana de Investigadores de Forenses
1st Congreso Internacional de Ciences de la Conducta Criminal
Location: Mexico City, Mexico
Presentations: Crime Reconstruction, Behavioral Evidence Analysis, and Criminal Profiling

9/9/14
Ministerio Publico a Traves de la Unidad de Capacitacion
Host: Fiscales del Ministerio Publico, Unidad de Capacitacion
Location: Guatemala City, Guatemala
Presentation: “Serial Homicide Investigation”

9/8 – 9/10/14
Asociacion de Criminologos y Criminalistas

V Congreso Internacional de Ciences Forenses
Location: Guatemala City, Guatemala
Presentations: Crime Reconstruction, Behavioral Evidence Analysis, Forensic Ethics, and Forensic Fraud

5/2/14
Policia Municipal Juarez
La Academia de Policia de la SSPM
Location: Juarez, Mexico
Lecture: “Forensic Victimology”

4/29/14
Escuela Superior de Psicología de Cd. Juárez, A.C.
XXIX Semana de Psicologia
Location: Juarez, Mexico
Presentation: “Criminal Profiling”
Presentation: “Ethical Justice”

1/9 – 1/11/14
Elgin Community College/ International Assoc. of Forensic Criminologists
IAFC *Sex Crimes Academy*
(College Credit)

11/25 - 11/29/13
International Training Workshop: Criminal Investigation and Forensic Science; Unidad de Investigacion de la Defensa; Policia National; Dirección de Investigación Criminal e Interpol (DIJIN) - Colombia
Host: Direccion de Investigacion Criminal e Interpol
Location: Bogota, Colombia

11/21 - 11/23/13
La Asociacion de Criminologos y Criminalistas de Guatemala
IV Congreso Internacional de Cienses Forenses e Investigacion Criminal
Host: Universidad de Occidente, Guatemala
Location: Guatemala City, Guatemala

11/22/13
The Golan Security Group
Location: Guatemala City, Guatemala
Presentation: “Forensic Science, Crime Reconstruction, and Behavioral Evidence”

11/20/13
Instituto Nacional de Ciencias Forenses de Guatemala (INACIF)
(National Institute of Forensic Science - Guatemala)
Host: Dr. Jorge Nery Cabrera Cabrera, Director, INACIF
Location: Guatemala City, Guatemala
Presentation: “Forensic Science, Crime Reconstruction, and Behavioral Evidence”

11/14 - 11/16/13
Congreso Internacional en Crimologia y Criminalistica Forense
Host: Universidad del Sur
Location: Cancun, Mexico

9/13 - 9/14/13
1st BiNational Conference of the Academia Mexicana De Investigadores Forenses (AMIF) and the International Association of Forensic Criminologists (IAFC 14th Annual Meeting)
Host: Chihuahua Attorney General's Office Crime Lab
Location: Juarez, Mexico
Presentation: “Criminal Profiling - Principles and Practice”

05/23 – 05/24/13
Elgin Community College/ International Assoc. of Forensic Criminologists, Elgin, IL
Workshop: Crime Scene Analysis and Criminal Profiling
(College Credit)

3/15 - 3/16/13
1st International Congress of Criminal Profiling and Forensic Psychology
Location: Congress Unit XXI Century Hospital & The Institute of Forensic Science at Tribunal Superior de Justia del Distrito Federal in Mexico City, Mexico

12/13 – 12/14/12
Kennesaw State University - Paulding Campus
Sponsor: KSU Police Department
Workshop: Forensic Victimology
(Georgia POST Certified)

11/10/12
2nd Congress of the Sociedade Portuguesa de Psiquiatria e Psicologia da Justiça Instituto Superior da Maia (Institute of Maia) in Porto, Portugal
Lecture: Applied Behavioral Evidence Analysis

11/9/12
Instituto Superior da Maia (Institute of Maia)
Criminology Dept., Porto, Portugal
Workshop: Crime Scene Analysis and Criminal Profiling

10/25/12
Korea Creative Content Agency
Seoul, Korea
Lecture: Criminal Profiling & Crime Reconstruction

10/22/12
Korean National Police University
2nd International Seminar: “Changes in policing environment and redefinition of the role of the police”
Lecture: Criminal Profiling & Scientific Investigation
Seoul, Korea
(College Credit)

09/15 – 09/16/12
Academy of Behavioral Profiling/
International Assoc. of Forensic Criminologists, 13th Annual Meeting
Oklahoma City University, Oklahoma City, OK
(College Credit)

09/19 – 09/20/11
Academy of Behavioral Profiling/ Seattle University, Seattle, WA
Workshop: Criminal Profiling Practicum
(College Credit)

09/17 – 09/18/11
Academy of Behavioral Profiling, 12th Annual Meeting,
Seattle University, Seattle, WA
Lecture: Social Network Evidence in Cases of Sexual Assault
Case Study: OR v. Driscoll - False Reports and Sexual Assault
Lecture: Sex Trafficking - A Culture of Rape
Case Study: Staged Sexual Homicide
Lecture: Linkage Analysis & *NJ v. Bruce Sterling*
(College Credit)

04/11/11
Evergreen State College, Olympia, WA
Workshop: Crime Scene Analysis and Criminal Profiling
(College Credit)

04/08 – 04/09/11
Elgin Community College/ Academy of Behavioral Profiling, Elgin, IL
Workshop: Crime Scene Analysis and Criminal Profiling
(College Credit)

04/04/11
Alaska Association of Fire & Arson Investigators, Sitka, Alaska
Lecture: Forensic Science, Crime Reconstruction, & Criminal Profiling

10/18 – 10/19/10
Sponsor: KSU Police Dept./ Cobb County
Kennesaw State University, Kennesaw, GA
Workshop: Crime Scene Analysis and Reconstruction
(POST Certified)

08/09 – 08/10/10
Owens College/ Academy of Behavioral Profiling Toledo, OH
Workshop: Criminal Profiling

08/07 – 08/08/10
Academy of Behavioral Profiling, 11th Annual Meeting
Owens College, Toledo, OH
Lecture: Behavioral Evidence Analysis
Lecture: Serial Rape & Serial Homicide: Case Presentation
Lecture: Linkage Analysis

06/01/10
Crown Office and Prosecutorial Fiscal Service
Glasgow, Scotland
Lecture: Case Linkage: M.O. & Signature Analysis

05/31/10

Scottish Police College
Tulliallan Castle, Kincardine,
Fife, Scotland
Lecture: Case Linkage: M.O. & Signature Analysis

04/07/10
Bemidji State University, Bemidji, MN
Keynote Speaker: 11th Annual Student Scholarship and Creative Achievement Conference

08/10 – 08/11/09
Grossmont College, El Cajon, CA
Workshop: Forensic Victimology Practicum
(College credit)

08/08 – 08/09/09
Academy of Behavioral Profiling, 10th Annual Meeting
Grossmont College
Lecture: Forensic Criminology
Lecture: Behavioral Evidence & Criminal Profiling: An Introduction
Lecture: The NAS Report: Implications for Forensic Examiners
(College credit)

07/10/09
South Carolina Assoc. of Criminal Defense Lawyers
Lecture: The NAS Report
(CLE credit)

03/16 – 04/06/09
Bond University, Gold Coast, Australia
Guest Lecturer: Criminology Dept.

08/11 – 08/12/08
Kennesaw State University, Kennesaw, GA
Workshop: Criminal Profiling Evidence Practicum
(POST Certified)

08/09 – 08/10/08
Academy of Behavioral Profiling, 9th Annual Meeting
Kennesaw State University, Kennesaw, GA
Lecture: Principles of Behavioral Evidence Analysis
Lecture: Forensic Victimology
Round-Table Discussion: Forensic Criminology
(POST Certified)

03/22 – 03/23/08
Bond University, Gold Coast, Australia
Workshop: Behavioral Evidence Practicum

03/14/08
Bond University, Gold Coast, Australia
Faculty Luncheon Lecture Series
Lecture: Forensic Victimology

03/06 – 03/25/08
Bond University, Gold Coast, Australia
Guest Lecturer: Criminology Dept.

2/17/08
California Attorneys For Criminal Justice, Monterey, CA
Presentation: Profiling and Behavioral Evidence

08/11 – 08/12/07
Academy of Behavioral Profiling, 8th Annual Meeting
Lecture: Principles of Behavioral Evidence Analysis
Presentation: Child Sexual Homicide – A Case Study in Victimology

04/19/07
Kern County Bar Association, Indigent Defense Program
Lecture: Crime Reconstruction & Forensic Fraud

03/31 – 04/01/07
Bond University, Gold Coast, Australia
Workshop: Behavioral Evidence Practicum

03/20 – 04/05/07
Bond University, Gold Coast, Australia
Guest Lecturer: Criminology Dept.

02/08 – 02/09/07
Home Team (Police) Academy, Singapore
Behavioral Sciences Programme
Workshop: Criminal Profiling & Behavioral Evidence Analysis

02/06/07
1st Home Team Behavioral Sciences Conference
Home Team (Police) Academy, Singapore
Lecture: Criminal Profiling & Behavioral Evidence Analysis

08/12 – 08/13/06
Academy of Behavioral Profiling, 7th Annual Meeting
Presentation: Body Count - Examining Behavioral Evidence in a
Mass Murder; Wayne Petherick, Mcrim, co-presenter
Presentation: Truth or Consequences - False Reports of Sexual Assault at Trial

05/04/06
Oregon Criminal Defense Lawyers Association
Agate Beach Hotel, Newport, Oregon
Lecture: Forensic Fraud

04/10 – 04/11/06
Bond University, Gold Coast, Australia
Workshop: Arson Reconstruction & Criminal Profiling

04/08 – 04/09/06

Bond University, Gold Coast, Australia
Workshop: Crime Reconstruction & Criminal Profiling

12/19/05
Chinese People's Public Security University, Beijing, China
Lecture: Rape Investigation & Victimology
Presentations: Various case studies

12/18/05
Xi'an Police Bureau, Xi'an, China
Lecture: Criminal Profiling & Crime Reconstruction
Presentations: Various case studies

12/15/05
Chinese People's Public Security University, Beijing, China
Lecture: Criminal Profiling & Crime Reconstruction
Presentations: Various case studies

11/15 – 11/17/05
Forensic Investigative Conference, Un. of Arkansas, CEC
Topics & Workshop: Forensic Science, Criminal Profiling, & Sex Crimes

08/06 – 08/07/05
Academy of Behavioral Profiling, 6th Annual Meeting
Presentation: Behavioral Evidence & Criminal Profiling
Presentation: Crime Reconstruction
Presentation: The Substitution of Criminal Profiler Reports and Testimony for Physical Evidence: Recent Cases and Trends

04/02 – 04/03/05
Bond University, Gold Coast, Australia
Workshop: Sex Crimes Investigation

01/14/05
DePaul University, College of Law, Chicago, Illinois
Presentation: Crime Reconstruction
Presentation: Criminal Profiling

10/9 – 10/10/04
Academy of Behavioral Profiling, 5th Annual Meeting, Las Vegas, NV
Presentation: Forensic Fraud
Presentation: Unusual Behavior in Domestic Homicide

2/15/04
California Attorneys For Criminal Justice, Monterey, CA
Presentation: Behavioral Evidence

12/04/03
Loyola University, New Orleans, Louisiana
Lecture: Forensic Science & Criminal Profiling

10/04/03

Northwest Orthopaedic Group 21st Annual Meeting
Seaside, Oregon
Lecture: Forensic Science and Crime Reconstruction

10/12 – 10/13/02
Academy of Behavioral Profiling, 4th Annual Meeting
Chicago, Illinois
Presentation: Sexual Homicide
Presentation: Serial Murder
Presentation: Linkage Analysis

10/05/02
Northwest Orthopaedic Group 20th Annual Meeting
Seaside, Oregon
Lecture: Forensic Science and Crime Reconstruction

9/26 – 9/29/02
Behavioral Evidence Analysis Conference
Bond University, Gold Coast, Australia
Lecture: Criminal Profiling & Premises Liability
Presentations: Various case studies

9/22/02
Bond University, Gold Coast, Australia
Workshop: Criminal Profiling

8/17/02
Shanghai Police Bureau, Shanghai, China
Lecture: Criminal Profiling & Criminal Investigation
Presentations: Various case studies

8/14 – 8/15/02
Hangzhou Police Bureau, Hangzhou, China
Lecture: Criminal Profiling & Criminal Investigation
Lecture: Applied Behavioral Evidence Analysis techniques
Presentations: Various case studies

8/12/02
Wuhan Police Bureau, Wuhan, China
Lecture: Criminal Profiling & Criminal Investigation
Presentations: Various case studies

8/11/02
Chinese People's Police Security University, Beijing, China
Lecture: Criminal Profiling & Criminal Investigation

8/09/02
Beijing Police Bureau, Beijing, China
Lecture: Criminal Profiling & Criminal Investigation: Applied Behavioral Evidence Analysis techniques
Presentations: Various case studies

4/12/02
KENNESAW STATE UNIVERSITY, Marietta, GA
Lecture: Criminal Profiling & Sexual Homicide Investigation

12/15 – 12/16/01
ACADEMY OF BEHAVIORAL PROFILING, 3RD ANNUAL MEETING
East Rutherford, NJ
Presentation: M.O. & Signature Analysis
Presentation: Criminal Profiling & Premises Liability

5/24/01
SOUTH PUGET SOUND COMMUNITY COLLEGE, Olympia, WA
Lecture: Criminal Profiling & Serial Homicide Investigation

3/14 – 3/15/01
GREATER ST. LOUIS MAJOR CASE SQUAD / SOUTHWESTERN ILLINOIS LAW ENFORCEMENT COMMISSION, Collinsville, Ill
Seminar: Criminal Profiling & Cold Case Investigations

10/7/00
ACADEMY OF BEHAVIORAL PROFILING, 2ND ANNUAL MEETING
Las Vegas, NV
Presentation: Profiling Testimony in Court in a Dismemberment Case
Presentation: Criminal Profiling in the Marilyn R. Sheppard Homicide

3/17/00
PACIFIC NORTHWEST ASSOCIATION OF INVESTIGATORS
Vancouver, WA
Presentation: Criminal Profiling & Crime Reconstruction

2/19/00
CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE, Monterey, CA
Plenary Session: Forensics and Mitigation

1/13 – 1/16/00
CENTER FOR APPLIED PSYCHOLOGY & CRIMINOLOGY
Bond University, Gold Coast, Australia
Short Course: Behavioral Evidence Analysis

12/3/99
MILWAUKEE PUBLIC DEFENDER'S OFFICE, Milwaukee, WI
Presentation: Crime Reconstruction: A Legal Primer

10/20/99
TRI-COUNTY INVESTIGATORS ASSOCIATION
Ventura, CA
Presentation: Sexual Homicide Investigation

10/9/99
ACADEMY OF BEHAVIORAL PROFILING, 1ST ANNUAL MEETING
Monterey, CA
Paper: Getting Back to Gross: Criminal Profiling & Crime Reconstruction
Presentation: The West Memphis case: A Case Study in Criminal Profiling

7/1/99
BAY AREA CRIME ANALYSTS ASSOCIATION
Antioch Police Dept., Antioch, CA
Presentation: Behavioral Evidence Analysis

2/19/99
AMERICAN ACADEMY OF FORENSIC SCIENCES (AAFS) SCIENTIFIC SESSIONS - GENERAL SECTION, Orlando, FL
Paper: Psychological Crime Scene Tape: The Investigative Use of Rapist Motivational Typologies
Paper: Recognizing Sadism: The Importance of Reconstruction and Wound Pattern Analysis in Criminal Profiling

2/16/99
AAFS SPECIAL SESSION: *YOUNG FORENSIC SCIENTISTS FORUM*
Orlando, FL
Presentation: Career tracks in the forensic sciences

2/15/99
AAFS WORKSHOP: *THE INTERNET FOR FORENSIC SCIENTISTS*
Orlando, FL
Presentations: Professional use of email; Online forensic science educational models

1/19 – 1/22/99
University of California, San Diego
School of Medicine, Department of Psychiatry, Addiction Technology Transfer Center, San Diego, CA
Topic: Mixing of Sex Offenders in Custodial Drug Treatment
Therapeutic Community Units: Problems and Potential Solutions- A Gathering of Leading Experts

5/26 – 5/27/98
LOS ANGELES POLICE ACADEMY MAGNET SCHOOL
Monroe High School and San Pedro High School in CA
Workshops: Careers in Forensic Science; Computer and Internet Crime

5/09/98
CALIFORNIA ASSOCIATION OF CRIMINALISTS
SEMI-ANNUAL TRAINING SEMINAR: Held in Monterey, CA
Presentation: Criminal profiling and interpreting sadism in the crime scene from physical evidence

3/11/98
CALIFORNIA ASSOCIATION OF CRIMINALISTS
DINNER MEETING: Held in Hayward, CA
Presentation: Forensic science education online; Criminal Profiling techniques

2/24/98
NORTHERN ILLINOIS UNIVERSITY
DEKALB, ILLINOIS, NIU CAMPUS, SOC. / CRIM. DEPT.
Presentation: Criminal Profiling & Rape Homicide Investigation

Report D – Kathy Pezdek, Ph.D.

Claremont Graduate University

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April 9, 2023

To: Orrick, Herrington & Sutcliffe LLP
From: Kathy Pezdek, Ph.D.
Re: Eyewitness Identification in the Matter of People v. Kevin Cooper

Orrick has asked me to review and respond to the undated report that Mitchell L. Eisen, Ph.D. submitted in connection with a report that the special counsel submitted in the Kevin Cooper matter.

My Background and Qualifications

I am professor in Claremont Graduate University's Department of Psychology. My research has explored numerous aspects of applied cognitive psychology, primarily topics related to law and psychology that apply to both adults and children. These topics include eyewitness memory, the suggestibility of memory, lineup techniques, and autobiographical memory. I have an extensive record of published scientific research on these topics. My teaching interests include applied cognitive psychology, law and psychology, memory and cognition, statistics, and research design and methodology.

I received an MA and Ph.D. in Psychology from the University of Massachusetts, Amherst. I am an elected Fellow of the Association for Psychological Science (APS) and the Psychonomic Society, and I have served as the North American editor of Applied Cognitive Psychology. I have also served on the editorial boards for the Journal of Applied Psychology (2002–2009); Journal of Applied Research in Memory & Cognition (2011–present); Legal and Criminological Psychology (2005–present); Journal of Trauma & Dissociation (2014–present); Applied Cognitive Psychology (1993–2011); and Child Development (1984–1985, 1987–1991).

I also frequently serve as an expert witness in the area of eyewitness memory and identification. Over the past 25-years, I have testified as an expert witness in this field in more than 300 cases including federal, state, and superior court cases. I also frequently offer continuation education courses to attorneys and law enforcement agencies. A true and correct copy of my CV is attached hereto.

Analysis of Dr. Eisen's Report

In Dr. Eisen's report in the matter of *People v. Kevin Cooper*, he essentially agreed with everything that I said in my declaration dated September 25, 2013 (a copy attached), except for several key points, points that are, in fact, fundamental to his conclusion. Whereas in my declaration I stated that Josh's initial account of what the perpetrators looked like was likely to be his most accurate account, Dr. Eisen a) claimed that Josh's initial account was unreliable (*see* his paragraph #25) and b) offered no support for his claim that Josh never saw the perpetrators (*see* his paragraph #19). In fact, Dr.

Eisen states in paragraph #5 of his report that Josh "never stated that he **saw** the suspects the night of the attack." The undisputed evidence in this case contradicts this statement, and this too is a critical error that undermines the credibility and reliability of Dr. Eisen's report. I consider this to be an eyewitness case for the reasons specified below.

Dr. Eisen's claim in paragraph #25 that Josh's initial account is unreliable is inconsistent with the fact that in his initial interview (that was with Mr. Gamundoy on June 5, 1983, within 12 to 14 hours of the incident), Josh indicated that a) there were 3 to 4 people, b) they were male, c) they were white, d) they were not Black and did not have dark skin like Gamundoy, an Indigenous Hawaiian, who said he was often mistaken as being Latino. I do not think that Josh had a detailed memory of the perpetrators, and I would not have trusted his ability to pick one out of a photographic lineup, but that is not the issue here. The issue is whether the information that he ***did*** actually report on June 5, 1983, within 12 to 14 hours of the incident, was accurate. Brief as it is, I have no reason to doubt the accuracy of Josh's description of the perpetrators in his initial interview on June 5, 1983, and this description does not point to Kevin Cooper as a perpetrator in this brutal crime. In a taped interview on Dec. 1, 1983, Dr. Lorna Forbes asked why Josh changed his original statement of three killers and he replied: "*I really thought it was them, but after a while I saw on television that it was Kevin Cooper.*"

Further, Dr. Eisen's opinion appears to have been influenced by the fact that he knew there was DNA evidence in this case (although he is not an expert on DNA evidence and there is no indication that he even reviewed any DNA evidence), and he had the biased belief that the DNA evidence trumped the eyewitness evidence. In fact, this other evidence is irrelevant to the integrity of the eyewitness evidence and should not have been considered by Dr. Eisen. Indeed, Dr. Eisen concedes that my expert opinion is correct when he writes "it is very likely that the change in Joshua Ryan's memory reports was driven by suggestion from the investigators, who likely convinced the boy that the crime was not committed by three Mexican men, but rather a single black male."

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California at Claremont, California on April 9, 2023.

Kathy Pezdek, Ph.D.

Dr. Pezdek's Website: https://www.cgu.edu/people/kathy-pezdek/

VITA

KATHY PEZDEK, Ph.D.

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EDUCATION

- Ph.D., Psychology, University of Massachusetts, Amherst, 1975
- M.A., Psychology, University of Massachusetts, Amherst, 1972
- B.S., Psychology, University of Virginia, Fredericksburg, 1971

PROFESSIONAL ASSOCIATIONS

- Association for Psychological Science, Elected APS Fellow, 1999; APS Fellows Committee, 2014 – 2017
- The Psychonomic Society, Elected Fellow
  Society of Women in Cognitive Science, 2016 Outstanding Mentor Award
- American Psychology - Law Society, APA Division 41
- Society for Applied Research in Memory and Cognition;
  President, 2000-2006
  Elected Governing Board Member, 1994-present
  Publications Committee Chair, 2009 - 2013

EDITORIAL EXPERIENCE

- North American Editor of *Applied Cognitive Psychology* (1995-2000)
- Member of the Editorial Board for:
  - *Journal of Experimental Psychology: Applied* (2022 - present)
  - *Journal of Applied Research in Memory & Cognition* (2011 - present)
  - *Journal of Applied Psychology* (2002 – 2009)
  - *Legal and Criminological Psychology* (2005 - present)
  - *Journal of Trauma & Dissociation* (2014 - present)
  - *Applied Cognitive Psychology* (1993 - 2011)
  - *Child Development* (1984-1985), (1987-1991)

GENERAL RESEARCH INTERESTS

Eyewitness Memory
Suggestibility of Memory
Visual Memory
Autobiographical Memory

GENERAL TEACHING INTERESTS

Statistics & Research Methodology
Memory
Psychology & Law
Applied Cognitive Psychology

PUBLICATIONS (All Copies Available: *https://www.cgu.edu/people/kathy-pezdek/*

Journal Articles

Pezdek, K., & Lerer, T. (2023). Let's go to the tape: Science-based standards for non-eyewitness identifications in a surveillance world. *Criminal Law Bulletin*. *59*(1), 1-59.

Pezdek, K., & Reisberg, D. (2022). Psychological myths about evidence in the legal system: How should scientists respond? *Journal of Applied Research in Memory and Cognition*, *11*(2), 143-156. https://doi.org/10.1037/mac0000037

Pezdek, K., Shapland, T., & Barragan, J. (2022). Memory outcomes of police officers viewing their body-worn camera video. *Journal of Applied Research in Memory and Cognition*. *11*(3), 392-404. https://doi.org/10.1037/mac0000013

Pezdek, K., Abed, E., & Cormia, A. (2021). Elevated stress impairs the accuracy of eyewitness memory but not the confidence–accuracy relationship. *Journal of Experimental Psychology: Applied, 27*(1), 158 - 169. https://doi.org/10.1037/xap0000316

Cormia, A., Shapland, T., Rasheed, A., & Pezdek, K. (2020). Laypeople's beliefs about the effects of common estimator variables on memory. *Memory*. *30*(6), 733 – 743. https://doi.org/10.1080/09658211.2020.1868527

Pezdek, K., Abed, E., & Reisberg, D. (2020). Marijuana impairs the accuracy of eyewitness memory and the confidence–accuracy relationship too. *Journal of Applied Research in Memory and Cognition*, *9*(1), 60-67. https://doi.org/10.1016/j.jarmac.2019.11.005

Fenn, E., Ramsay, N., Kantner, J., Pezdek, K., & Abed, E. (2019) Nonprobative photos increase truth, like, and share judgments in a simulated social media environment. *Journal of Applied Research in Memory & Cognition, 8*(2), 131-138. https://doi.org/10.1016/j.jarmac.2019.04.005

Merson, B., & Pezdek, K. (2019). Target-related autobiographical memories affect dietary intake intentions. *Memory*, *27*(10), 1438-1450, DOI: 10.1080/09658211.2019.1674335

Nguyen, T.B., Abed, E., and Pezdek, K. (2018). Postdictive confidence (but not predictive confidence) predicts eyewitness memory accuracy. *Cognitive Research: Principles & Implications*. 3:32 https://doi.org/10.1186/s41235-018-0125-4

Wade, K. A., Garry, M., & Pezdek, K. (2018). Deconstructing rich false memories of committing crime: Commentary on Shaw and Porter (2015). *Psychological Science, 29*(3), 471–476. https://doi.org/10.1177/0956797617703667

Nguyen, T.B., & Pezdek, K. (2017). Memory for disguised same- and cross-race faces: The eyes have it. *Visual Cognition, 25*(7-8), 762-769. doi: 10.1080/13506285.2017.1329762

Abed, E., Fenn, E., & Pezdek, K. (2017). Photographs elevate truth judgments about less well-known people (but not yourself). *Journal of Applied Research in Memory and Cognition, 6*(2), 203-209. doi: 10.1016/j.jarmac.2017.01.007

Pezdek, K., & Blandón-Gitlin, I. (2017). It is just harder to construct memories for false autobiographical events. *Applied Cognitive Psychology, 31*(1), 42-44. doi: 10.1002/acp.3269

Nguyen, T. B., Pezdek, K., & Wixted, J. T. (2017). Evidence for a confidence–accuracy relationship in memory for same- and cross-race faces. *The Quarterly Journal of Experimental Psychology, 70*(12), 2518 – 2534. https://doi.org/10.1080/17470218.2016.1246578

Marsh, B. U., Pezdek, K. & Ozery, D. H. (2016). The cross-race effect in face recognition memory by bicultural individuals. *Acta Psychologica, 169,* 38-44. doi:10.1016/j.actpsy.2016.05.003

Ho, M. R., & Pezdek, K. (2016). Post-encoding cognitive processes in the cross-race effect: Categorization and individuation during face recognition. *Psychonomic Bulletin & Review*, *23*, 771-780, doi: 10.3758/s13423-015-0945-x

Merson, B., & Pezdek, K. (2016). Response inhibition and interference suppression in restrained eating. *Journal of Applied Research in Memory & Cognition, 3*(5), 345-351. doi: 10.1016/j.jarmac.2016.07.004

Merson, B., & Pezdek, K. (2016). A meta-analysis of children's self-reports of dietary intake. *Psychology and Health, 32*(2), 186-203. doi: 10.1080/08870446.2016.1250274

Marsh, B. U., Kanaya, T., & Pezdek, K. (2015). The language dependent recall effect influences the number of items in autobiographical memory reports. *Journal of Cognitive Psychology, 27(7),* 829-843. doi: 10.1080/20445911.2015.1046876

Blandón-Gitlin, I., Pezdek, K., Saldivar, S., & Steelman, E. (2014). Oxytocin eliminates the own-race bias in face recognition memory. *Brain Research*, *1580,* 180-187. doi:10.1016/j.brainres.2013.07.015

Marsh, B. U, Pezdek, K., & Lam, S. T. (2014). Imagination perspective affects ratings of the likelihood of occurrence of autobiographical memories. *Acta Psychologica, 150*, 114-119. doi: 10.1016/j.actpsy.2014.05.006

McGuire, M., & Pezdek, K. (2014). Birds of a feather get misidentified together: High entitativity decreases recognition accuracy for groups of other-race faces. *Legal and Criminological Psychology*. doi:10.1111/lcrp.12066

Pezdek, K., & Stolzenberg, S. (2014). Are individuals' familiarity judgments diagnostic of prior contact? *Psychology, Crime, & Law, 20*(4), 302-314. doi:10.1080/1068316X.2013.772181

Pezdek, K., & O'Brien, M. (2014). Plea bargaining and appraisals of eyewitness evidence by prosecutors and defense attorneys. *Psychology, Crime, & Law, 20*(3), 222-241. doi:10.1080/1068316X.2013.770855

Fenn, E., Newman, E.J., Pezdek, K., & Garry, M. (2013). The effect of nonprobative photographs on truthiness persists over time. *Acta Psychologica*, *144*, 207-211. doi://dx.doi.org/10.1016/j.actpsy.2013.06.004

Stolzenberg, S., & Pezdek, K. (2012). Interviewing child witnesses: The effect of forced confabulation on event memory. *Journal of Experimental Child Psychology, 114*(1), 77-88. doi:10.1016/j.jecp.2012.09.006

Pezdek, K., O'Brien, M., & Wasson, C. (2011). Cross-race (but not same-race) face identification is impaired by presenting faces in a group rather than individually. *Law and Human Behavior, 36*(6), 488-495. doi:10.1037/h0093933

Pezdek, K., & Salim, R. (2011). Physiological, psychological and behavioral consequences of activating autobiographical memories. *Journal of Experimental Social Psychology, 47*(6), 1214-1218. doi:10.1016/j.jesp.2011.05.004

Gombos, V., Pezdek, K., & Haymond, K. (2011). Forced confabulation affects memory sensitivity as well as response bias. *Memory & Cognition, 40*(1), 127-134. doi:10.3758/s13421-011-0129-5

Pezdek, K., Avila-Mora, E., & Sperry, K. (2010). Does trial presentation medium matter in jury simulation research? Evaluating the effectiveness of eyewitness expert testimony. *Applied Cognitive Psychology, 24*(5)*,* 673-690. doi:10.1002/acp.1578

Pezdek, K., & Freyd, J. J. (2009). The fallacy of generalizing from egg salad in false belief research. *Analyses of Social Issues and Public Policy*, *9*(1), 177-183. doi:10.1111/j.15302415.2009.01178.x

Pezdek, K. (2009). Grading student papers: Reducing faculty workload while improving feedback to students. *APS Observer, 22*(9).

Pezdek, K., Lam, S. T., & Sperry, K. (2009). Forced confabulation more strongly influences event memory if suggestions are other-generated than self-generated. *Legal and Criminological Psychology, 14*(2), 241-252. doi:10.1348/135532508X344773

Blandón-Gitlin, I., Pezdek, K., Lindsay, S.D., & Hagan, L. (2009). Criteria-based content analysis of true and suggested accounts of events. *Applied Cognitive Psychology, 23*(7), 901-917. doi:10.1002/acp.1504

Pezdek, K., & Blandón-Gitlin, I. (2008). Planting false memories for childhood sexual abuse only happens to emotionally disturbed people… not me or my friends. *Applied Cognitive Psychology, 23*(2), 162-169. doi:10.1002/acp.1466

Kleider, H.M., Pezdek, K., Goldinger, S.D., & Kirk, A. (2008). Schema-driven source misattribution errors: Remembering the expected from a witnessed event. *Applied Cognitive Psychology, 22*(1), 1-20. doi:10.1002/acp.1361

Goodman, G.S., Sayfan, L., Lee, J.S., Sandhei, M., Walle-Olsen, A., Magnussen, S., Pezdek, K., & Arrdeondo, P. (2007). The development of memory for own- and other-race faces. *Journal of Experimental Child Psychology, 98*(4), 233-242. doi:10.1016/j.jecp.2007.08.004

Pezdek, K., Sperry, K., & Owens, S., (2007). Interviewing witnesses: The effect of forced confabulation on event memory. *Law and Human Behavior, 31*(5), 463-478. doi:10.1007/s10979-006-9081-5

Pezdek, K., Blandón-Gitlin, I., Lam, S., Hart, R.E. & Schooler, J. (2007). Is knowing believing? The role of event plausibility and background knowledge in planting false beliefs about the personal past. *Memory & Cognition, 34*, 1628-1635.

Pezdek, K. (2007). It's just not good science. *Consciousness and Cognition, 16*(1), 29-30. doi:10.1016/j.concog.2006.05.006

Pezdek, K. & Lam, S. (2007). What research paradigms have cognitive psychologists used to study "False memory," and what are the implications of these choices? *Consciousness and Cognition, 16*(1), 2 –17. doi:10.1016/j.concog.2005.06.006

Pezdek, K., Blandón-Gitlin, I. & Gabbay, P. (2006). Imagination and memory: Does imagining implausible events lead to false autobiographical memories? *Psychonomic Bulletin & Review, 13*(5), 764-769. doi:10.3758/BF03193994

Freyd, J.J., Putnam, F.W., Lyon, T.D., Becher-Blease, K.A., Cheit, R.E., Siegel, N.B. & Pezdek, K. (2005). The science of child sexual abuse. *Science*, *308*, 501. doi:10.1126/science.1108066

Pezdek, K. & Blandón-Gitlin, I. (2005). When is an intervening lineup most likely to affect eyewitness identification accuracy? *Legal and Criminological Psychology*, *10*(2), 247-263. doi:10.1348/135532505X49846

Blandón-Gitlin, I., Pezdek, K, Rogers, M. & Brodie, L. (2005). Detecting deception in children: An experimental study of the effect of event familiarity on CBCA ratings. *Law and Human Behavior, 29*(2), 187-197. doi:10.1007/s10979-005-2417-8

Pezdek, K., et al. (2004). Detecting deception in children: Event familiarity affects criterion based content analysis ratings. *Journal of Applied Psychology, 89*(1), 119-126. doi:10.1037/0021-9010.89.1.119

Pezdek, K. (2003). Event memory and autobiographical memory for the events of September 11, 2001. *Applied Cognitive Psychology, 17*(9), 1033-1045. doi:10.1002/acp.984

Pezdek. K., Blandón-Gitlin, I., & Moore, C. (2003). Children's face recognition memory: More evidence for the cross-race effect. *Journal of Applied Psychology, 88*(4), 760-763. doi:10.1037/0021-9010.88.4.760

Pezdek, K., Berry, T., & Renno, P.A. (2002). Children's mathematical achievement: The role of parents' perceptions and their involvement in homework. *Journal of Educational Psychology, 94*(4)*,* 771-777. doi:10.1037/0022-0663.94.4.771

Pezdek, K. (2002). Teaching psychology in the context of a university-community partnership*. Teaching of Psychology, 29*(2), 157-159.

Pezdek, K., & Eddy, R. M. (2001). Imagination inflation: A statistical artifact of regression toward the mean. *Memory and Cognition, 29*(5), 707-718. doi:10.3758/BF03200473

Hinz, T., & Pezdek, K. (2001). The effect of exposure to multiple lineups on face identification accuracy. *Law and Human Behavior, 25*(2), 185-198. doi:10.1023/A:1005697431830

Pezdek, K. (2001). A cognitive analysis of the recovered memory/false memory debate. *Journal of Aggression, Maltreatment, and Trauma, 4* (2). [Reprinted in J. J. Freyd & A. P. DePrince (Eds.). *Trauma and Cognitive Science*. Haworth Press: San Diego, CA.]

Finger, K. & Pezdek, K. (1999). The effect of the cognitive interview on face identification accuracy: Release from verbal overshadowing*. Journal of Applied Psychology, 84*(3), 340348. doi:10.1037/0021-9010.84.3.340

Pezdek, K., & Hodge, D. (1999). Planting false childhood memories in children: The role of event plausibility. *Child Development, 70*(4), 887-895. doi:10.1111/1467-8624.00064

Underwood, J., & Pezdek, K. (1998). Memory suggestibility as an example of the sleeper effect. *Psychonomic Bulletin & Review, 5*(3), 449-453. doi:10.3758/BF03208820

Arrigo, J. M., & Pezdek, K. (1997). Lessons from the study of psychogenic amnesia. *Current Directions in Psychological Science, 6*, 148-152. [Reprinted in Oltmanns, T. F. & Emery, R. E. (Eds.).(2004). *Current directions in abnormal psychology*. Upper Saddle River, NJ: Pearson Education, Inc.

Pezdek, K., Finger, K., & Hodge, D. (1997). Planting false childhood memories: The role of event plausibility. *Psychological Science, 8*(6), 437-441. doi: 10.1111/j.14679280.1997.tb00457.x

Pezdek, K., & Roe, C. (1997). The suggestibility of children's memory for being touched: Planting, erasing, and changing memories. *Law and Human Behavior, 21*, 95-106. doi: 10.1023/A:1024870127516

Pezdek, K., & Roe, C. (1995). The effect of memory trace strength on suggestibility. *Journal of Experimental Child Psychology, 60*, 116-128. doi:10.1006/jecp.1995.1034

Pezdek, K., & Roe, C. (1994). Memory for childhood events: How suggestible is it? *Consciousness and Cognition, 3*, 374-387. doi:10.1006/ccog.1994.1021

Pezdek, K. (1994). The illusion of illusory memory. *Applied Cognitive Psychology, 8*, 339350. doi:10.1002/acp.2350080404

Pezdek, K. (1994). Avoiding false claims of child sexual abuse: Empty promises. *Family Relations, 43*, 258-260. [Reprinted in Baker, R. A. (Ed.). (1998). *Child sexual abuse and false memory syndrome*. Amherst, NY: Prometheus Books.]

Pezdek, K., & Prull, M. (1993). Fallacies in memory for conversations: Reflections on Clarence Thomas, Anita Hill, and the like. *Applied Cognitive Psychology, 7*, 299-310. doi: 10.1002/acp.2350070404

Pezdek, K., & Greene, J. (1993). Testing eyewitness memory: Developing a measure that is more resistant to suggestibility. *Law and Human Behavior, 17*(3), 361-369. doi:10.1007/BF01044514

Holst, V. F., & Pezdek, K. (1992). Scripts for typical crimes and their effects on memory for eyewitness testimony. *Applied Cognitive Psychology, 6*(7), 573-587. doi:10.1002/acp.2350060702

Reynolds, J. K., & Pezdek, K. (1992). Face recognition memory: The effects of exposure duration and encoding instructions. *Applied Cognitive Psychology, 6*(4), 279-292. doi:10.1002/acp.2350060402

Pezdek, K. et al. (1989). Memory for real world scenes: The role of consistency with schema expectation. *Journal of Experimental Psychology: Learning, Memory and Cognition, 15*(4), 587-595. doi:10.1037/0278-7393.15.4.587

Pezdek, K. et al. (1988). Picture memory: Recognizing added and deleted details. *Journal of Experimental Psychology: Learning, Memory and Cognition, 14*(3), 468-476. doi:10.1037/0278-7393.14.3.468

Pezdek, K., Simon, S., Stoeckert, J., & Kieley, J. (1987). Individual differences in television comprehension. *Memory & Cognition, 15*(5), 428-435. doi:10.3758/BF03197732

Pezdek, K. (1987). Eyewitness identification: The elusive threads of memory. *Connections, 2*, 13-17.

Pezdek, K. (1987). Memory for pictures: A life-span study of the role of visual detail. *Child Development, 58*(3), 807-815. doi:10.2307/1130218

Pezdek, K., Roman, Z., & Sobolik, K. G. (1986). Spatial memory for objects and words. *Journal of Experimental Psychology: Learning, Memory, and Cognition, 12*(6), 530-537. doi:10.1037/0278-7393.12.4.530

Pezdek, K. (1985). Debunking some myths regarding cognitive processing of television. *Television and Children, 8*(4), 41-46.

Pezdek, K., Lehrer, A., & Simon, S. (1984). The relationship between reading and cognitive processing of television and radio. *Child Development, 55*(6), 2072-2082. doi:10.2307/1129780

Runco, M. A., & Pezdek, K. (1984). The effect of television and radio on children's creativity. *Human Communication Research, 11*, 109-120. doi:10.1111/j.1468-2958.1984.tb00040.x

Pezdek, K., & Stevens, E. (1984). Children's memory for auditory and visual information on television. *Developmental Psychology, 20*(2), 212-218. doi:10.1037/0012-1649.20.2.212

Pezdek, K., & Hartman, E. F. (1983). Children's television viewing: Attention and comprehension of auditory versus visual information. *Child Development, 54*(4), 1015-1023. doi:10.2307/1129905

Pezdek, K. (1983). Memory for items and their spatial locations by young and elderly adults. *Developmental Psychology, 19*(6), 895-900. doi:10.1037/0012-1649.19.6.895

Evans, G. W., Smith, C., & Pezdek, K. (1982). Cognitive maps and urban form. *Journal of the American Planning Association, 48*(2), 232-244. doi:10.1080/01944368208976543

Pezdek, K., & Chen, H-C. (1982). Developmental differences in the role of detail in picture recognition memory. *Journal of Experimental Child Psychology, 33*(2), 207-215. doi:10.1016/0022-0965(82)90016-9

Pezdek, K., & Miceli, L. (1982). Life-span differences in memory integration as a function of processing time. *Developmental Psychology, 18*(3), 485-490. doi:10.1037/00121649.18.3.485

Pezdek, K. (1980). Life-span differences in semantic integration of pictures and sentences in memory. *Child Development, 51*, 720-729. doi:10.2307/1129457

Evans, G. W., & Pezdek, K. (1980). Cognitive mapping: Knowledge of real world distance and location information. *Journal of Experimental Psychology: Human Learning and Memory, 6*, 13-24. doi:10.1037/0278-7393.6.1.13

Pezdek, K., & Evans, G. W. (1979). Visual and verbal memory for objects and their spatial locations. *Journal of Experimental Psychology: Human Learning and Memory, 5*(4), 360-373. doi:10.1037/0278-7393.5.4.360

Pezdek, K. (1978). Recognition memory for related pictures. *Memory & Cognition, 6*, 64-69. doi:10.3758/BF03197429

Kantorowitz, D., Walters, J., & Pezdek, K. (1978). Positive and negative self-monitoring and the control of smoking behavior. *Journal of Consulting and Clinical Psychology, 46*(5), 148-150. doi:10.1037/0022-006X.46.5.1148

Pezdek, K. (1977). Cross-modality semantic integration of sentence and picture memory. *Journal of Experimental Psychology: Human Learning and Memory, 3*(5), 515-524. doi:10.1037/0278-7393.3.5.515

Pezdek, K., & Royer, J. M. (l974). The role of comprehension in learning concrete and abstract sentences. *Journal of Verbal Learning and Verbal Behavior, 13*(5), 551-558. doi:10.1016/S0022-5371(74)80008-3

Myers, J. L., Pezdek, K., & Coulson, D. (1973). Effects of prose organization upon free recall. *Journal of Educational Psychology, 65*(3), 313-320. doi:10.1037/h0035507

Books

Costanzo, M., Krauss, D., & Pezdek, K. (Eds.) (2007). *Expert psychological testimony for the courts*. Mahwah, NJ: Erlbaum.

Donaldson, S., Berger, D. & Pezdek, K. (Eds.). (2006). *Applied psychology: New frontiers and rewarding careers.* Mahwah, NJ: Erlbaum.

Pezdek, K., & Banks, W. P. (Eds.). (1996). *The recovered memory/false memory debate*. San Diego: Academic Press.

Berger, D., Pezdek, K., & Banks, W. P. (Eds.) (1987). *Applications of cognitive psychology: Problem solving, education and computing*. Hillsdale, NJ: Erlbaum.

Chapters & Encyclopedia Entries

Pezdek, K. (2022). Psychological research on the use of Body-Worn Cameras. In M. K. Miller & B. H. Bornstein (Eds.), *Advances in psychology and law*, Vol. 6. (pp. 39 – 62). Springer.

Barlow, M. R., Pezdek, K., Blandón-Gitlin, I. (2017). Trauma and memory. In Cook, J. Dalenberg, C., & Gold, S. (Eds.) *American Psychological Association Handbook on Trauma and Psychology*. Vol. 1, (pp. 307-331). Washington, DC, US: American Psychological Association. doi.org/10.1037/0000019-016

DePrince, A.P, Brown, L.S., Cheit, R.E., Freyd, J.J., Gold, S.N., Pezdek, K. & Quina, K. (2012). Motivated forgetting and misremembering: Perspectives from Betrayal Trauma Theory. In Belli, R. F. (Ed.), *True and False Recovered Memories: Toward a Reconciliation of the Debate (Nebraska Symposium on Motivation 58)* (pp. 193-243). New York: Springer.

Pezdek, K. (2011). Fallible eyewitness memory and identification. In B. Cutler (Ed.), *Conviction of the Innocent: Lessons from Psychological Research.* Washington, DC: APA Press.

Davies, G. & Pezdek, K. (2010). Children as witnesses. In G. Towl, & D. Crighton, (Eds.) *Textbook on forensic psychology.* Oxford: Wiley-Blackwell.

Pezdek, K. (2009). Content, form and ethical issues concerning expert psychological testimony on eyewitness identification. In B.L. Cutler (Ed.), *Expert testimony on the psychology of eyewitness identification* (pp. 29-50). New York: Oxford University Press.

Blandón-Gitlin, I., & Pezdek, K. (2009). Children's memory in forensic contexts: Suggestibility, false memory, and individual differences. In B.L. Bottoms, C. J. Najdowski, & G. S. Goodman (Eds.). *Children as victims, witnesses, and offenders: Psychological science and the law* (pp. 57-80). New York: Guilford Press.

Pezdek, K. (2008). Forced Confabulation. In B. L. Cutler (Ed.) *Encyclopedia of Psychology and Law* (pp. 324-325), Thousand Oaks, CA: SAGE Publications.

Pezdek, K. (2008). Post-Event Information. In B. L. Cutler (Ed.) *Encyclopedia of Psychology and Law* (pp. 607-609), Thousand Oaks, CA: SAGE Publications.

Pezdek, K. & Freyd, J.J. (2008). False Memory. In C. M. Renzetti & J. L. Edleson (Eds.), *Encyclopedia of Interpersonal Violence*, Vol. 1, pp 236-237. Thousand Oaks, CA: Sage Publications.

Pezdek, K. (2007). Expert Testimony on Eyewitness Memory and Identification. In M. Costanzo, D. Krauss, & K. Pezdek (Eds.), *Expert Psychological Testimony for the Courts* (pp. 99-117). Mahwah, NJ: Erlbaum.

Pezdek, K., Deffenbacher, K. A., Lam, S., & Hoffman, R. R. (2006). Cognitive Psychology: Applications and Careers. In S. Donaldson, D. Berger, & K. Pezdek (Eds.), *Applied psychology: New frontiers and rewarding careers.* Mahwah, NJ: Erlbaum.

Pezdek, K. (2006). *Memory for the Events of September 11, 2001.* In Nilsson, L.-G. and Ohta, N. (Eds.), *Memory & Society: Psychological Perspectives*. New York: Routledge and Psychology Press.

Pezdek, K., & Hinz, T. (2002). The construction of false events in memory. In H. Westcott, G. Davies & R. Bull (Eds.), *Children's testimony: A handbook of psychological research and forensic practice.* London: Wiley.

Pezdek, K., & Taylor, J. (2002). Memory for traumatic events by children and adults. In M. L. Eisen, G. S. Goodman, & J. A. Quas (Eds.), *Memory and suggestibility in the forensic interview* (pp. 165-183). Mahwah, NJ: Lawrence Erlbaum and Associates.

Pezdek, K., & Taylor, J. (1999). Discriminating between accounts of true and false events. In D. F. Bjorklund (Ed.), *Research and theory in false-memory creation in children and adults.* Mahwah, NJ: Lawrence Erlbaum and Associates.

Arrigo, J. M., & Pezdek, K. (1998). Textbook models of multiple personality--Source, bias, and social consequence. In S. J. Lynn, & K. McConkey (Eds.), *Truth in memory* (pp. 372393). New York: Guilford Press.

Pezdek, K., & Gauvain, M. (1990). Memory for pictures: Developmental trends. In T. Husen & T. N. Postlethwaite (Eds.), *International Encyclopedia of Education* (pp. 416419). Oxford: Pergamon Press.

Pezdek, K. (1987). Television comprehension as an example of applied cognitive psychology. In D. Berger, K. Pezdek, & W. P. Banks (Eds.), *Applications of cognitive psychology: Problem solving, education and computing*. Hillsdale, NJ: Erlbaum.

Pezdek, K. (1986). Comprehension: It's even more complex than we thought. In J. H. Danks, I. Kurcz, & G. W. Shugar (Eds.), *Knowledge and language*. Amsterdam: North-Holland.

Pezdek, K. (1980). Arguments for a constructive approach to comprehension and memory. In F. B. Murray (Ed.), *Reading and understanding*. Newark, DE: International Reading Association.

GRANT RELATED ACTIVITY

National Science Foundation, Program in Law and Social Sciences (2018 – 2021). "*Cognitive Consequences of Viewing Body-Worn Camera Video Footage.*" $ 251,810.

Fletcher Jones Foundation (2018 - 2019). "Does Eyewitness Confidence Predict Eyewitness Accuracy?" $7,947.

Fletcher Jones Foundation (2016 - 2017). "Is Memory for One's Original Perception of an Event Biased by Viewing a Video of the Event?" $8,000.

National Institute of Justice, Office of Justice Programs (2010-2012). "How Accurately Do Eyewitnesses Determine if a Person is Familiar and How Does this Affect Plea Bargaining Decisions by Prosecution and Defense Attorneys?" $225,130.

Fletcher Jones Foundation (2009-2010). "How Accurately Can Eyewitnesses Determine if a Person is Familiar?" $6,650.

BLAIS Challenge Fund (2009-2010). "Promoting Cross-Campus Research," $9,000.

Fletcher Jones Foundation (2008-2009). "***More*** Methodological Considerations in Evaluating the Effectiveness of Eyewitness Expert Testimony," $7,000.

Fletcher Jones Foundation (2007-2008). "Methodological Considerations in Evaluating the Effectiveness of Eyewitness Expert Testimony," $7,975.

Fletcher Jones Foundation (2006-2007). "Forced Confabulation: Does Post Event Guessing during Police Interrogation Suggestively Influence Eyewitness Memory?" $6,000.

Fletcher Jones Foundation (2003 – 2004). *"Improving Jurors' Ability to Evaluate the Reliability of Eyewitness Evidence,"* $7,225.

National Science Foundation, Law & Social Sciences Program (2001 – 2004). *"Discriminating Between Children's Accounts of True and False Events,"* $229,807.

National Science Foundation, Law & Social Sciences Program (2000-2003). "*The Suggestive Influence of Viewing an Intervening Lineup on Eyewitness Memory Accuracy,"* $180,000.

Fletcher Jones Foundation (2002), *"Eyewitness Memory for the Events of 9/11,"* $5,000.

Haynes Foundation (2000). *"Discriminating between Children's Accounts of True and False Events,"* $10,000.

Fletcher Jones Foundation (1998). "*The Suggestibility of Memory in Old Age*," $7,900.

Haynes Foundation (1995). *"Curtailing Crime and Increasing Conviction Rates in Eyewitness Cases,"* $8,000.

National Institute of Education (1981-1983). *"Television Viewing: Processing and Memory for Auditorily and Visually Presented Information,"* $122,000.

Spencer Foundation (1976-1977). *"Developmental Changes in Semantic Integration of Sentences and Pictures,"* $10,000. (Grant also accepted for funding by NIE).

National Academy of Sciences visiting scientist award, The Institute of Psychology, Jagiellonian University, Cracow, Poland, (1984).

RECENT ONLINE & OP-ED PIECES

Pezdek, K. (2022, January/February). Four myths about eyewitness memory. *Sheriff & Deputy Magazine. 74*(1). *50-52.* (See page 50 @ this link: https://nsa.ygsclicbook.com/pubs/sheriffdeputy/2022/JanFeb/live/index.html)

Pezdek, K. (2015). Should cops get to review the video before they report? *The Marshall Project*. https://www.themarshallproject.org/2015/08/13/should-cops-get-to-review-the-video-before-they-report

DECLARATION OF KATHY PEZDEK, PH.D.

I, Kathy Pezdek, Ph.D., declare as follows:

1. I am a Professor in the Department of Psychology at Claremont Graduate University in Claremont, California, where I have been employed since 1981. I received my B.S. degree in psychology from the University of Virginia in 1971; my M.A. degree in psychology from University of Massachusetts, Amherst, in 1972; and my Ph.D. degree in psychology from University of Massachusetts, Amherst, in 1975. My focus of study at each institution was experimental psychology, specifically, cognitive psychology.

2. First as a graduate student, and then as part of my employment with Claremont Graduate University, I have studied human memory and the factors that affect the accuracy of memory. Specifically, I have conducted scientific research and experiments relating to eyewitness memory, the suggestibility of memory, visual memory, and autobiographical memory.

3. I have edited four books: *Expert Psychological Testimony for the Courts* (2007); *Applied Psychology: New Frontiers and Rewarding Careers* (2006); *The Recovered Memory/False Memory Debate* (1996); and *Applications of Cognitive Psychology: Problem Solving, Education and Computing* (1987). I have authored and co-authored numerous scholarly scientific articles in peer-reviewed journals publishing my findings from numerous eyewitness memory experiments conducted over the past 35 years. A copy of my Vita, documenting my record of publications, is attached to this Declaration.

4. I have been a member of the Editorial Board for the *Journal of Applied Psychology*, and am currently on the Editorial Board for the *Journal of Applied Research in Memory and Cognition* and *Legal and Criminological Psychology*. From 1995 to 2000, I served as North American Editor of *Applied Cognitive Psychology*. I am also a Fellow of the Association for Psychological Science. In the course of my career, I have received numerous research grants, all relating to eyewitness memory. Two of these grants were funded by the National Science Foundation's Program in Law and Social Sciences, and I recently completed a grant-funded project from the National Institute of Justice to study how attorneys' plea bargaining decisions are affected by their assessments of the strength of eyewitness evidence.

IN THE MATTER OF *PEOPLE V. KEVIN COOPER*

5. I have been asked by Mr. Cooper's current counsel, Katie C. DeWitt, to review information pertaining to the eyewitness statements by Josh Ryen, the surviving witness in the incident that occurred the night of June 4, 1983, for the purpose of determining what aspects of Josh Ryen's memory of the perpetrators would be considered reliable. I understand that an Expert Witness on Eyewitness Memory did not testify in Mr. Cooper's trial. I was provided with the following materials provided to me pertaining to the eyewitness memory of Josh Ryen: (a) a case summary of Kevin Cooper, Petitioner-Appellant, v. Jill Brown, California State Prison at San Quentin, Respondent-Appellant, No. 05-99004 [a true and correct copy is attached hereto as Exhibit A]; (b) SBSD Detective Woods' handwritten from his interview of social worker Donald Gamundoy who questioned Josh Ryen about the identity of the assailants upon Josh's arrival at Loma Linda Hospital Emergency Room on June 5, 1983 (Gamundoy's I-V with Ryen – 6/5/1983) [a true and correct copy is attached hereto as Exhibit B]; (c) SBSD Detective Woods' police report based on his interview of Donald Gamundoy on January

5, 1984 [a true and correct copy is attached hereto as Exhibit C]; (d) excerpts from Donald Gamundoy's trial testimony [a true and correct copy is attached hereto as Exhibit D]; (e) SBSD Deputy Sharp's trial testimony based on his two interviews with Josh Ryen at the Loma Linda hospital, the first taking place immediately after Josh's arrival and the second occurring later in the afternoon of June 5, 1983, after Josh's CT scan [a true and correct copy is attached hereto as Exhibit E]; (f) SBSD Deputy Sharp's police report based on Sharp's two interviews of Josh Ryen [a true and correct copy is attached hereto as Exhibit F]; (g); SBSD Detective Woods' police report based on his interview of Loma Linda Hospital chief staff psychologist, Dr. Gerry Hoyle, regarding Dr. Hoyle's observations of Detective O'Campo's interview of Josh Ryen on June 14, 1983 [a true and correct copy is attached hereto as Exhibit G]; (h) Dr. Hoyle's handwritten notes based on his observation of Detective O'Campo's interview with Josh Ryen on June 14, 1983 [a true and correct copy is attached hereto as Exhibit H]; (i) excerpts from Dr. Hoyle's testimony at Mr. Cooper's pretrial hearing relating to Detective O'Campo's interview of Josh Ryen on June 14, 1983 [a true and correct copy is attached hereto as Exhibit I]; (j) police report generated by SBSD Deputy O'Campo on May 24, 1984 regarding a statement made by Josh Ryen on June 15, 1983 to SBSD Deputy Luis Simo where, upon seeing Kevin Cooper's photograph on his hospital room television set, Ryen told Deputy Simo that Mr. Cooper did not commit the murders [a true and correct copy is attached hereto as Exhibit J]; (k) excerpts from trial testimony of Josh Ryen's maternal grandmother Dr. Mary Howell where she described how sometime after June 15, 1983, but before Josh Ryen was discharged from Loma Linda Hospital, Mr. Cooper's picture appeared on the television screen in Josh's hospital room prompting Dr. Howell to ask Josh if he had ever seen Kevin Cooper to which Josh responded that he had not [a true and correct copy is attached hereto as Exhibit K]; (l) statement made by Josh Ryen to his paternal uncle Richard Ryen, in which he expressed doubt that Mr. Cooper committed the murders [a true and correct copy is attached hereto as Exhibit L]; (m) portions of the

transcript of Dr. Forbes' interview with Josh Ryen in December, 1983 [a true and correct copy is attached hereto as Exhibit M]; (n) excerpts from transcript of Josh Ryen's December 1984 video-taped interview conducted by prosecution and defense counsel [a true and correct copy is attached hereto as Exhibit N]; (o) excerpts from Deputy Simo's testimony at Mr. Cooper's pretrial hearing where Deputy Simo testified that while he was supervising Josh Ryen in his Loma Linda Hospital room, Josh stated that the murders were committed by 3 Mexicans, not Mr. Cooper [a true and correct copy is attached hereto as Exhibit O]; (p) excerpts from SBSD Dettective Hector O'Campo's trial testimony, who interviewed Josh following the murders [a true and correct copy is attached hereto as Exhibit P], (q) excerpts from Emergency Room Nurse Calvin Fischer's trial testimony, who witnessed Donald Gamundoy's interview of Josh Ryen immediately after his arrival to Loma Linda Hospital on June 5, 1983 [a true and correct copy is attached hereto as Exhibit Q]; and (r) police report generated by Detective O'Campo after his June 14, 1983 Interview of Josh Ryen.

6. In reviewing these materials, I identified three specific factors that suggest that the early eyewitness memory accounts of Josh Ryen exculpating Mr. Cooper were likely to be correct. First, in the hours, days, and weeks following the attacks, Josh Ryen consistently described his attackers in the plural as 3 or 4 men, not a single man as asserted at trial. Second, during this same time frame, Josh Ryen consistently identified these men as being White or Hispanic, not Black like Mr. Cooper. Finally, upon seeing Mr. Cooper's picture on television, Josh Ryen indicated on more than one occasion that he did not recognize Mr. Cooper and that Mr. Cooper did not commit the crimes. Had I been called to testify in this matter in Mr. Cooper's trial, I could and would have testified in accordance with this declaration. A discussion of the relevant factors follows.

TIME DELAY

7. One of the most established findings in psychology is the fact that memory declines with the passage of time. In 1885, Ebbinghaus tested his memory on lists of items he presented to himself. He discovered that his memory faded over the first 24 hours, and that the reliability of his recall continued to decline thereafter. This finding is referred to as "Ebbinghaus' Forgetting Curve." In a number of scientifically reliable studies over the past century, it has been reported that after a significant time delay (a) the accuracy of all types of memory declines and (b) as memory declines, it becomes more vulnerable to suggestive influences.

8. A related research study discovered that the weaker the strength of information input into the memory, the quicker it dissipates, an effect known as "Jost's Law." Thus, memories that are not initially perceived and encoded very clearly decline more rapidly over time than memories that are initially perceived and encoded more accurately.

9. In this case, clinical social worker Donald Gamundoy was the first person to interview Josh Ryen. The interview took place on June 5, 1983, within twelve to fourteen hours of the incident. The interview took place in the Loma Linda Hospital Emergency Room. Before Mr. Gamundoy interviewed Josh, Josh's consciousness level was checked by hospital staff. Hospital staff determined that Josh exhibited the highest level of consciousness possible for a trauma patient. (Exhibit Q at 100 R.T. 6229:6-17.) Due to his injuries, Josh was unable to speak[1], and as a result, Mr. Gamundoy employed several non-

[1] When asked whether Josh Ryen was able to speak when he arrived at the Loma Linda Hospital Emergency Room, Mr. Gamundoy responded, "Verbally, no." (Exhibit D at 99 R.T. 5921:7-8 [Donald Gamundoy].)

verbal communication methods to interview Josh. (Exhibit C; Exhibit D at 99 R.T. 5921.) Using non-verbal communication techniques, Josh identified himself to Mr. Gamundoy and accurately provided Mr. Gamundoy with his age and home telephone number.

10. Mr. Gamundoy first tried to interview Josh using an eye blinking method. (Exhibit D at 99.R.T. 5921:14-16.) Mr. Gamundoy instructed Josh to blink his eye for an affirmative answer. (Exhbit D at 99 R.T. 5921:16.) To signal a negative response, Josh was directed to refrain from blinking. (Exhibit D.) Josh was given no direction as to how to respond if he did not know an answer to one of Mr. Gamundoy's questions. (Exhibit D.) Mr. Gamundoy testified at Mr. Cooper's trial that he quickly abandoned the eye blink method as it proved to be inadequate. (Exhibit D at 99 R.T. 5921:22-23.) Mr. Gamundoy explained that the eye blink method was unsuccessful, "because when I didn't ask questions I would watch him and he would blink my way, so I couldn't tell if he was tired or had something in his eye or dryness of his eyes. So I decided to, you know, change it." (Exhibit D at 99 R.T. 5921:23-26 [Donald Gamundoy].)

11. Mr. Gamundoy then provided Josh with pen and paper and asked Josh to write out answers to questions posed by Mr. Gamundoy. (Exhibit D at 99 R.T. 5921-22: 27-2.) While Josh appeared to understand Mr. Gamundoy's questions, due to Josh's decreased level of dexterity, his written responses were "illegible." (Exhibit D at 99 R.T. 5922:9 [Donald Gamundoy].) Accordingly, this method also proved ineffective. (Exhibit D at 99 R.T. 5922:7-9.)

12. Finally, Mr. Gamundoy created a chart with numbers and letters. Mr. Gamundoy used to this chart to ask Josh about the identity of the assailants. "I got a

blank sheet of paper. Placed it on a clipboard, and I wrote out the letters "A" to "Z", numbers "1" through "0", and the words "yes" and "no." (Exhibit D at 99 R.T. 5922: 11-13 [Donald Gamundoy].) Mr. Gamundoy instructed Josh to respond to his questions by pointing to the numbers and letters on the chart[2]. Using the chart, Josh communicated the number of attackers, the gender of the attackers and their ethnicity. Specifically, Josh asserted the following facts to Mr. Gamundoy: (a) the attackers were 3-4 people[3], (b) they were males[4], and (c) the attackers were white[5]. (Exhibit C.) Mr. Gamundoy specifically asked Josh if the assailants were Black. Josh responded "No." (Exhibit D at 99 R.T.

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[2] "I told him that I was going to ask him some questions and I wanted him to point to the letters and numbers." (Exhibit D at 99 R.T. 5923:1-5 [Donald Gamundoy].) Mr. Gamundoy first asked Josh "what his name was." (Exhibit D at 99 R.T. 5923:11 [Donald Gamundoy].) "He pointed to the 'J', the 'O', the 'S' and the 'H.'" (Exhibit D at 99 R.T. 5923"13-14.) Donald Gamundoy also asked Josh to use the chart to spell his last name. (Exhibit D at 99 R.T. 5923-24.) Josh complied and used the chart to provide Mr. Gamundoy with the correct spelling of his last name. (Exhibit D at 99 R.T. 5924.) Josh also used the chart to indicate that his true given name was Joshua and to provide Mr. Gamundoy with his date of birth, his address and his phone number. (Exhibit D at 99 R.T. 5924-27.)

[3] "Q. Did you ask Josh how many people attacked him? A. Yes. Q. How did he respond? A. By pointing again to the numbers on the sheet. Q. Which number did he point to? A. He pointed to "3", "4."" (Exhibit D at 99 R.T. 5928:12-17.)

[4] "Q. Did you ask Josh whether the attackers were male or female? A. Yes, I did. Q. How did you do that? A. I asked him if they were male. Q. And what did he point to on the chart? A. He pointed to "yes."" (Exhibit D at 99 R.T. 5928:18-24.)

[5] "I asked him if – if they were white....He pointed to "yes."" (Exhibit D at 99 R.T. 5929: 23-25 [Donald Gamundoy].) Mr. Gamundoy also asked Josh if the assailants looked like Mr. Gamundoy who is of Hawaiian descent and often confused for being Mexican or Spanish. (Exhibit D at 99 R.T. 5930:5-18.) Emergency Room nurse Calvin Fischer witnessed Mr. Gamundoy's questioning of Josh Ryen and testified at trial that Josh communicated to Mr. Gamundoy that the attackers were not dark and certainly not African American. (Exhibit Q at100 R.T. 6231:24-28 [Calvin Fischer] ("I recall that he at one point had pointed to his – to his own skin color. He is dark complected [sic] – excuse me – and asked Joshua if the person, that in essence if the person that had done it was of a dark skin color, and Josh's reply was a negative response."))

5929:1-3 [Donald Gamundoy] ("A. I asked him if they were Black. Q. What did he point to? A. He pointed to 'No.'").) Following this interview, Mr. Gamundoy had no further contact with Josh Ryen. (Exhibit D at 99 R.T. 5933:16-18.)

13. Immediately following the interview with Donald Gamundoy, Deputy Sharp questioned Josh Ryen. (Exhibit D at 99 R.T. 5932-33, 5966-67; Exhibit E at 5977-81.) Deputy Sharp's first interview with Josh Ryen began at approximately 2:30 p.m. and lasted about fifteen minutes. (Exhibit E at 99 R.T. 6007:12-15, 6016:20-21; Exhibit F.) To gather information from Josh, Deputy Sharp instructed Josh to respond to his questions by using a system of hand squeezes. (Exhibit E at 99 R.T. 6008:9-10, 6008-9:27-6009:2 [Deputy Dale Sharp] ("I told Josh that I was going to ask him some questions, and that if the answers to the questions were yes, he was to squeeze my hand; if they were no, he was not to squeeze it.").)

14. Deputy Sharp began by telling Josh "we were going to use the hand squeeze method, and I would have set the scene something similar to, 'How many people were in your house last night?'" (Exhibit E at 99 R.T. 6010:28-6011:2.) Using this system, Deputy Sharp asked Josh several questions to elicit the number of attackers, the attackers' gender and the attackers' race[6]. (Exhibit E at 99 R.T. 6010:11-18, 6017:18-26.) Squeezing Deputy Sharp's hand, Josh communicated that at the time of the attack, "there were three white male adult subjects in the residence and he had been asleep." (Exhibit E at 99 R.T. 6010:16-18 [Deputy Dale Sharp].)

[6] Sharp testified, "Well, it would have been several questions. It would have been, "Were the people in your house males?" His answer. "Were they white?" I would have gotten a yes answer. "Were you asleep" or "had you been asleep?" I would have gotten a yes answer." (Exhibit E at 99 R.T. 6013:10-14.)

15. It took Deputy Sharp approximately fifteen minutes to elicit the aforementioned details from Josh using the hand squeeze method. Afterward, Josh was taken for a CT scan, which lasted approximately one hour. (Exhibit E at 99 R.T. 6018-19:28-2.) Once the CT scan was complete, Deputy Sharp resumed questioning Josh. (Exhibit F.) Deputy Sharp's second interview with Josh lasted approximately forty-five minutes. (Exhibit E at 99 R.T. 6019:25-26.) Once again, Deputy Sharp employed the hand-squeeze method to question Josh. (Exhibit E at 99 R.T. 6020:19-24; Exhibit F.) Using the hand-squeeze method, Josh described three Mexican men who had stopped at the house during the late afternoon on June 4, 1983; Josh presumed that the purpose of their visit was to ask his father for directions. (Exhibit E at 99 R.T. 6030:26-27, 6031:4-11; Exhibit F.) Josh provided Deputy Sharp with detailed descriptions of the three Mexican men[7]; Josh also described their vehicle as an older model Chevy Impala. (Exhibit E at 99 R.T. 6022-29; Exhibit F.) Deputy Sharp then asked him if these were the men who were in the house when things went crazy to which Josh responded affirmatively with a squeeze of his hand. (Exhibit E at 99 R.T. 6035-36.)

16. From June 6 to June 14, Detective O'Campo visited Josh a total of 20 times. (Exhibit P at 100 R.T. 6077-82.) Detective O'Campo's purpose in meeting with Josh was to develop a rapport with the young boy[8] before conducting a police interview

[7] Sharp testified, "Suspect No. 1, five foot eight, slim build, long shoulder-length black hair, just above the shoulders, wearing Levi's, white T-shirt, possibly aged 18 to 20, Mexican male. Suspect No. 2, five nine, slim build, dark hair, short, wearing Levi's and a blue short sleaved [sic] shirt, 18 to 20 years, Mexican male. Suspect No. 3, five eleven, slim build, dark hair, short, wearing Levi's, red long-sleaved [sic] shirt, aged 18 to 20, Mexican male." (Exhibit E at 99 R.T. 6029:8-16.)

[8] "Q. Was one of the main reasons that you were having contact with Josh on that day was to develop a rapport with the youngster? A. Yes, sir that's one of the reasons." (Exhibit P at 100 R.T. 6080:21-24 [Detective Hector O'Campo].)

with Josh regarding the murders. Despite repeated contact with Detective O'Campo, who had convinced himself of Mr. Cooper's guilt[9], Josh continued to maintain that there were three attackers, that the attackers were male and that the attackers were either Caucasian or Hispanic. (Exhibit D at 99 R.T. 5928-5929; Exhibit H; Exhibit O at 50 R.T. 4117-18.) Throughout this period, Josh never once stated that there had only been a single male attacker. Josh never once stated that the assailant was of African American descent or that the assailant bore any of Mr. Cooper's physical characteristics. Detective O'Campo conducted the first official police interview of Josh Ryen on June 14, 1983. By this time, Josh was able to communicate verbally. (Exhibit P at 100 R.T. 6099-15-17.) The interview took place in Josh's hospital room in the pediatric unit of the Loma Linda Hospital. (Exhibit H.) The interview lasted approximately two hours. (Exhibit H; Exhibit P at 100 R.T. 6099:20-21) Present at the interview were Josh, Detective O'Campo and Loma Linda staff psychologist Dr. Jerry Hoyle. According to Detective O'Campo, Dr. Hoyle attended the interview "to record and take notes of his [Josh's] reactions, his responses, and the emotional effect it was having on him." (Exhibit P at 100 R.T. 6102:8-12.) During the interview, Josh and Detective O'Campo sat together on Josh's bed while Dr. Hoyle sat in a nearby chair.

17. Following his interview with Josh, Detective O'Campo wrote a report. Detective O'Campo's report made no mention of multiple male attackers. However, Dr. Hoyle's therapeutic notes[10] show that Josh mentioned "attackers" in the plural at least 6

[9] Detective O'Campo became "convinced in his own mind" that Mr. Cooper had committed the murders. He formed this belief no later than June 9, 1983. (Exhibit P at 100 R.T. 6095-96:27-2.)

[10] Dr. Hoyle stated that his "only reason for being present during that interview was to record and take notes of his [Josh's] reactions, his responses, and the emotional effect it

times during this interview, and Josh consistently maintained that multiple White or Hispanic males were responsible for the murders by referring to his attackers *in the plural*. (Exhibit H ["The 3 Mexicans chase us around the house," "tried to fight 'em of – tripped 'em up," "they came and hit me," "they…hit me," and "thinks 3 Mexicans"].) Dr. Hoyle quoted Josh telling Detective O'Campo during their June 14, 1983 interview that "they snuck up behind me and hit me." (Exhibit H.) Further, during his February 6, 1984 interview with Detective Woods, Dr. Hoyle explained that Josh used the word "they" when "talking about the number of suspects." (Exhibit G.)

18. In the various encounters described above, Josh consistently stated that there were multiple assailants, who were possibly of White or Hispanic descent. This is especially significant from a cognitive point of view that Josh could describe each of the three men in detail. It also serves to undercut the notion that a single male subject of African American descent, namely Kevin Cooper, committed the Ryen/Hughes murders.

19. Based on the cognitive principles regarding the effect of time delay on the *accuracy of memory*, the early accounts by Josh Ryen, detailed above – each closer in time to the actual event and less likely to have been suggestively influenced – are more likely to be accurate than are his subsequent accounts relayed in December 1983 and December of 1984.

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was having on him." (Exhibit G; Exhibit P at 100 R.T. 6102:8-12 [Detective O'Campo] ["I think his [Dr. Hoyle's] concern was to have firsthand information as to what happened so that he would know what he's dealing with insofar as treating Josh].) Dr. Hoyle's careful notes are further demonstrated by his direct quotes of certain statements by Josh. (Exhibit I at 34 R.T. 2171:17-19)

SUGGESTIBILITY OF MEMORY

20. People do not passively absorb information into memory; memory does not work like a camera or video recorder. The "memory as camera" model implies that when testifying, an eyewitness simply "plays back" their mental film of an event and "reads off of the film" the details of the event. The "memory as camera" model of memory is incorrect and far too simple.

21. A wealth of scientific research has demonstrated that because memory is malleable, memory for an event can change even after it is encoded. Several factors contribute to the reconstruction of information in memory. Post-event information—including, but not limited to media exposure, conversations with investigators, and even self-suggestion—has been shown to suggestively influence event memory. I and other eyewitness memory experts have conducted numerous studies that reveal that memory for an event can be influenced by post-event suggestion and have identified the conditions under which this is most likely to occur. Post-event suggestion is most likely to occur (a) with increasing time delay, when the original memory begins to fade and (b) with multiple interviews. These are conditions relevant to understanding the changes in Josh Ryen's memory, and which accounts are more likely to be true. .

22. Suggestibility is a major factor likely to have influenced Josh Ryen's account of his memory for the perpetrators as this information was conveyed in both the December 1983 interview with Dr. Lorna Forbes and in the December 9, 1984 interview with the prosecutor and defense counsel. The video-tape of this interview was presented to the jury along with the December 1, 1983 audio recording of the interview with Dr. Lorna Forbes. Josh Ryen did not testify in person at the trial.

23. Consistent with the scientific research summarized above in the discussion of the role of time delay, the facts as conveyed in the December 1, 1983, audio interview 6-months after the incident, were more consistent with Josh Ryen's accounts in the earlier interviews. The facts as conveyed in the December 9, 1984 interview, 18 months after the incident, are more inconsistent with Josh Ryen's accounts in the earlier interviews. For example, in December of 1983 Josh recalled being awakened by his mother's screams.[11] (Exhibit M at page 2, 16-18.) This is consistent with the account that he gave to Detective O'Campo on June 14, 1983, wherein he stated that "he was awakened by his mother's screams." (Exhibit R at page 4.) However, by the December 1984 interview, Josh stated could no longer recall who screamed[12]. (Exhibit N at 4956:11-14.)

SUGGESTIVE INFLUENCE OF MEDIA EXPOSURE AND POLICE CONTACTS

24. A major source of post-event suggestion can occur as a result of the contaminating effect of related media exposure. If an eyewitness views a picture of a suspect, for example on television, this can plant information in the eyewitness's memory so that thereafter, his memory for the observed event is likely to include information actually acquired from the media source and not the observed event.

25. In the present case, on at least two separate occasions, Josh Ryen saw Mr. Cooper's picture on television and both times initially volunteered that Mr. Cooper was not the perpetrator. The first occasion was in the hospital with Deputy Simo on June 15, 1983. (Exhibit J.) On this occasion, while Deputy Simo and Josh played the UNO card

[11] Josh noted in the December 1983 interview that "When I heard my mom screaming I walked in there" (Exhibit M at page 2.)

[12] "Q. And what caused you to wake up again? A. Uh, scream. Q. Could you recognize the voice of the scream? A. No." (Exhibit N at 4956:11-14.)

game in Josh's hospital room, Kevin Cooper's picture appeared on the television screen. (Exhibit J.) Upon seeing Mr. Cooper's picture, without provocation, Josh told Deputy Simo "that was not the guy that did it. Three Mexicans did it." (Exhibit J.)[13]

26. On a second occasion, several days after telling Deputy Simo that Mr. Cooper did not commit the murders, Josh asserted to his maternal grandmother, Dr. Mary Howell, that he had never seen Mr. Cooper. (Exhibit K at 102 R.T. 6543.) Dr. Howell testified that while she and Josh were in Josh's hospital room, Mr. Cooper's photograph once again appeared on the television screen. Upon seeing Mr. Cooper's picture, Dr. Howell asked Josh if he had ever seen the man on the television before [Mr. Cooper]. He told her that he had not[14]. (Exhibit K at 102 R.T. 6543:2-18.) Accounts relaying Josh's memory while Josh was still being treated for his wounds are likely to reflect Josh's true memory as they occurred closer in time to the incident.

27. Nonetheless, after seeing Mr. Cooper's picture on these occasions, Josh is likely to have been suggestively influenced to believe that in fact, Mr. Cooper was the perpetrator. This suggestive change in memory is most likely to occur (a) when the

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[13] "Q. On that particular evening on the news, did Kevin Cooper's picture appear on the screen? A. Yes, it did. Q. When Kevin Cooper's picture appeared on the screen, did he make a comment? A. Yes he did. Q. What did Josh say? A. He stated that that was not the guy who did it. The three Mexicans did it.... Q. When Josh said that's not the guy who did it, was Kevin Cooper's picture on the television screen? A. Yes, it was." (Exhibit O at 50 R.T. 4117-18:14-13 [Deputy Simo].)

[14] "Q. At some time while Josh was in the hospital, were you in the room when Kevin Cooper's picture was shown on the television? A. That was near the end, yes. Q. Did – when Kevin Cooper's – well, when the television was shown, did it first show a picture of Josh? A. Yes. Josh was in the bathroom then. Q. Okay, and then – A. I was waiting. I was on his bed, sitting on his bed waiting for him to come out. Q. When he came out, what was on the television screen? Do you recall? A. Cooper's picture. At that point in time, did you ask Joshua any questions? A. I just asked him if he ever saw that man. Q. What did Josh say? A. Right at that moment, Josh said no." (Exhibit K at 73 R.T. 6543:2-18 [Dr. Howell].)

observer is a child, and Josh was 8 years old at the time of the incident, and (b) when the suggestive source was a credible and authoritative one, in this case seeing the suspect on television.

28. Likewise, at the end of July 1983 while staying with his paternal uncle, Richard Ryen, Josh was again exposed to Mr. Cooper's picture on television. (Exhibit L.) After watching a news report regarding Mr. Cooper's capture, Josh continued to express doubt regarding Mr. Cooper's guilt, asking whether the police were sure that Kevin was "the right one." (Exhibit L.) Richard[15] responded, "Well, they're very positive that Kevin Cooper is the man they were looking for." (Exhibit L.) In fact, in his interview with Dr. Forbes, Josh said that although he originally thought the attackers were three men, "after a while I saw on television that is was Cooper." (Exhibit M at page 26.) Clearly the televised information presented a credible and authoritative source of information to Josh that influenced his beliefs about the events of June 4, 1983 and apparently suggestively tainted his memory for these events as well. (Exhibits K, L & O.)

29. Likewise, repeated contact with individuals in positions of authority, such as Sheriff's investigators would also have a suggestive effect on memory. In this case, within the first ten days of the murders, Detective O'Campo had contact with Josh at least twenty times. (Exhibit P at 100 R.T. 6081:24-27 .) As previously stated, Detective O'Campo was convinced of Mr. Cooper's guilt and misreported Josh's repeated description of the attackers as multiple White or Hispanic males, further demonstrating O'Campo's bias. (Exhibit H.) Detective O'Campo's firm beliefs regarding the identity

[15] During this exchange, Josh referred to Mr. Ryen as "Dad," further demonstrating that the information indicating Mr. Cooper committed the crimes came from multiple authoritative sources. (Exhibit L.)

of the assailant, if relayed to Josh by Detective O'Campo himself or through other sources (such as media reports, other investigators, etc.), could have suggestively influenced Josh's recollections as relayed in the December 1983 and December 1984 statements even if they did not alter his June 14, 1983 formal interview.

30. Moreover, ongoing sheriff department or prosecution contact with Josh (for example, because of preparation for trial) as well as public statements of the sheriff department or prosecution could further suggestively affect his memory. Such contact is shown, for example, in the arrest of Kevin Cooper and the statement of Richard Ryen in response to Josh's doubt regarding Mr. Cooper's guilt that the police were positive "that Kevin Cooper is the man they were looking for." (Exhibit L at page 81.) The authoritative force within this incident is two-fold. First, the police sought out and arrested Kevin Cooper for the crime, thus indicating the belief of law enforcement that Mr. Cooper committed the murders. Second, Richard Ryen, who had assumed a parental role over Josh, reinforced that arrest by affirming that the police had "the man they were looking for." (*Id.*)

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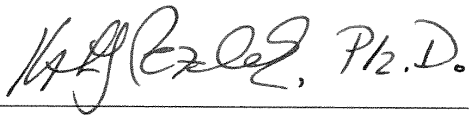
CONCLUSION

31. In sum, it is my conclusion that the above-specified factors affirm the early eyewitness memory accounts of Josh Ryen and cast significant doubt on the reliability of his later memory accounts. Specifically, based on the early accounts of Josh Ryen, the attackers were more likely 3-4 White or Hispanic men, not a single Black man, specifically, not Kevin Cooper. Had I been called to testify in this matter regarding these factors, my testimony would have informed the jury of the aforementioned issues regarding these identifications.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States and the State of California at Claremont, California on September 25, 2013.



Dr. Kathy Pezdek, Ph.D

Professor, Department of Psychology

Claremont Graduate University

Appendix 1

APPENDIX 1

Hello Mark,

Gregonis was intricately involved with evidence collection and processing, and while we don't know the full extent of other evidence that may have been either intentionally or unintentionally altered or destroyed, the key pieces of evidence Mr. Cooper and his team believe Gregonis fabricated or altered are:

- Tampering with and providing false testimony concerning blood drop A-41
- Tampering with Mr. Cooper's blood sample VV-2
- Tampering or fabricating evidence related to cigarette butt V-12
- False testimony concerning A-3

Please find some additional information on these items below.

A-41 (and VV-2). A-41 is covered extensively in Mr. Cooper's petition for executive clemency but we have provided some excepts and explanations from the petition below:

- Gregonis waited to conduct testing until he had at least a partial blood type profile on Mr. Cooper from the testing of semen found at the Lease house, as well as information received from Pennsylvania authorities. 93 R.T. 4488, 4550; Clemency Petition ("Clem. Pet.") at 67, 98.
- Gregonis delayed conducting some of the most sensitive tests of A-41 until after Mr. Cooper had been arrested on July 31, 1983 and SBSD had taken a vial of his blood (vial VV-2). 56 R.T. 4852; 93 R.T. 4428–29; Clem. Pet. at 67, 98.
- **In violation of standard forensic practice, Gregonis did not conduct "blind" testing of A-41. Instead, he placed the samples A-41 and VV-2 (Mr. Cooper's blood) side-by-side on the same slide when he performed his tests. 93 R.T. 4488, 4526, 4550, 4557; Clem. Pet. at 67, 98. He initially denied doing so, and falsely represented under oath that he had tested the samples blind. ER 761.**
- **Although Gregonis originally found that both Mr. Cooper's blood sample and the blood in A-41 had an erythrocyte acid phosphatase ("EAP") enzyme of "B," Gregonis subsequently learned that Mr. Cooper's EAP was not "B" but in fact "rB." In order to tie his test results to Mr. Cooper, Gregonis altered his testing records to show that A-41 had an EAP result of rB so that A-41 would match Mr. Cooper's EAP type. 93 R.T. 4429-31, 4444;**

Clem. Pet. at 67–68, 99. Gregonis initially lied about these alterations under oath. 93 R.T. 4493–95; Clem. Pet. at 67–68, 99.

- Prior to trial, Gregonis used a large percentage of the already limited A-41 sample on duplicative testing (56 R.T. 4851–52, 4854), failed to take steps to accurately document the tests that he did perform so that they could be verified (56 R.T. 4819, 4841, 4847–48; 57 R.T. 4913–15), and ran tests that had a small likelihood of excluding Cooper as a suspect (56 R.T. 4856–58, 4863–65). Clem. Pet. at 68, 99. He did his original testing without consulting Mr. Cooper's expert, Dr. Ed Blake, or having him present.
- **Gregonis testified several times that "all the usable blood had been consumed in the analysis." 93 R.T. 4547–48. But later, he testified, "At some point in time, just out of curiousity [sic] sake, I did open the pillbox and saw a very small quantity of blood remaining." 93 R.T. 4547–48. On October 17, 1984, the parties tested those remaining small specks of blood and again the results were inconclusive. 93 R.T. 4442–45. Gregonis testified at Mr. Cooper's trial that in that October testing, the SBSD had processed and discarded the remaining portions of the chips with blood on them. ER 722–23.**
- **In August 1999, at a time Mr. Cooper was pursuing DNA testing through the habeas corpus hearings in state and federal court, Gregonis checked the A-41 container out of the SBSD evidence locker for more than 24 hours. ER 1629, 2650–54. He said he did so at the request of Mr. Kochis, for the alleged purpose of verifying that A-41 still existed, even though both men had testified on numerous occasions that A-41 had been exhausted.** Clem. Pet. at 86, n.148 **When Gregonis removed A-41 from the SBSD evidence locker in 1999, A-41 was kept within feet of VV-2, Mr. Cooper's blood sample, which was not subject to evidentiary controls. Gregonis signed his initials across the seal of the glassine envelope with the container of A-41, following SBSD protocol to indicate he examined the evidence inside. Although he admitted removing the sample and placing it on the same lab table as VV-2, the vial of Mr. Cooper's blood, he denied under oath that he opened the glassine envelope. , 100; June 23, 2003, ERT 103, 106–07, 113, 117, 118–19, 133–34. A photograph of Gregonis' initials on the seal of the glassine envelope containing A-41 proves that in August 1999, he opened the envelope containing A-41 is included in the Clemency Petition.**

V-12

- **July 12, 1984:** At pretrial motions, under questioning by DA Kochis, Daniel Gregonis repeatedly stated that cigarette butt V-12 had been "completely exhausted" in the testing conducted by Brian Wraxall; according to Gregonis, this was the reason why the defense could not conduct independent testing of V-12. (57 R.T. 4947-48, 5018). When Brian Wraxell examined V-12 on July 5, 1984, it measured 4 mm long. See Ex. 95 from Cooper Application to File a Successor Petition for Writ of Habeas Corpus cited in *Cooper v. Woodford*, 357 F. 3d 1019, attached below.
- **December 5, 1984: Even though five months earlier, the prosecution had repeatedly said that V-12 had been "completely consumed" during pre-trial testing, the prosecution introduced V-12 as trial exhibit 584 on December 5, 1984. (93 R.T. 4471). On that day, Mr. Gregonis testified that the exhibit was now just a small roll of cigarette paper since the cigarette butt had been separated and the tobacco taken out of the rolling paper. (93 R.T. 4472).**
- **Before trial, the prosecution's expert, Brian Wraxall, had analyzed and tested V-12 and V-17 (70 R.T. 6342). At trial, Daniel Gregonis testified that Wraxall had concluded after testing that anybody in the world could have smoked those two cigarette butts. (93 R.T. 4501).**
- **Prior to DNA testing in 2002:** the partially smoked, hand- rolled cigarette butt which the prosecution recovered from Mr. Cooper's car impounded on June 20, 1983, labeled QQ, inexplicably disappeared from evidence prior to the 2002 DNA testing. (*Cooper*, 565 F.3d at 618; 6/23/2003 ERT 122-23; Clem. Pet. Ex. 88 [Photo of QQ in car]; Ex. 89 [Photo of QQ-2.jpg]).
- **Later in 2001-2002:** when the State sent V-12 to a DOJ lab for DNA testing, it was significantly larger than what was tested in 1984; it now measured 7 mm by 7 mm square and appeared to have been refolded. (*Cooper*, 565 F.3d at 618; Clem. Pet. Ex. 87 [Handwritten notes re Cigarette Paper (ER 1670-72)]).

A-3

- Although A-3 was listed in the Crime Lab report as "one blood-soaked" piece of nylon rope, the serological tests SBSD criminalist Daniel Gregonis performed did not reliably establish the presence of blood and certainly did not connect the rope to any of the victims or Mr. Cooper.
- On July 11, 1984 (at the "Hitch" hearing) Gregonis testified that he got incomplete results from serological tests he performed on A-3. (Vol. 56, p. 4885). He gave possible reasons for the tests being inconclusive, such as that the rope was found on black top or cement and might have had been degraded

by sun. He also stated that nylon rope "for some reason, inhibits or degrades the enzymes." (Vol. 56 at 4885). Gregonis testified that for this reason all he could conclude was that A-3 was a "mixed sample." His lab notes (attached as "Gregonis Lab notes A-3 J-9"), confirm that the results were inconclusive and do not support a conclusion that the substance noted on the rope when it was collected was blood. While referring to his notes, he described the rope as being "seven foot eight inches long," but when asked, he did not remember whether it had a substance on it that looked like blood. (See Gregonis Lab notes A-3 J-9, sheet stamped 04683; Vol 56, pp.4886- 4887).

- At trial, on December 5, 1984, under questioning by John Kochis, Gregonis testified that it was a "mixed stain" revealing a number of enzymes (Vol. 93, 4404). It is significant that although Gregonis did not testify that it was a **blood** stain, Mr. Kochis elicited testimony that it was "possibly" "consistent" with blood of more than one victim being mixed on the rope (*Id.* 4405). In other words, although the tests did not show the presence of blood of any one person, Gregonis could not rule out that it was not a mixture of enzymes (possibly blood) from more than one human being. (*Id.* 4404).

Appendix 2

WITNESSES THAT SPECIAL COUNSEL FAILED TO BUT SHOULD HAVE INTERVIEWED AS PART OF HIS INNOCENCE INVESTIGATION

1) **Michael Darnell**: Mr. Darnell spent much of the day with Lee Furrow on June 4, 1983, from the late morning (*see* Furrow statement to Teresa Monteleone that Mr. Darnell was in the Roper-Furrow house taking a shower) until after 11:30 pm (statement of Becky Darnell Schepleng that Darnell arrived with Furrow as the concert was ending). Mr. Darnell may have gone off with Furrow or with Becky Darnell as the concert was ending. Becky Darnell said her son (with Mr. Darnell) said never to ask Mr. Darnell about what happened that day because he will never talk about it.

2) **Josh Ryen**: The only living survivor. Mr. Ryen could potentially share why his story changed so dramatically over time as to who the murderers were.

3) **Jan Martinez**: Lee Furrow implicated her as an accomplice in the killings. *See* Katie Kellison declaration. She was the Roper-Furrow drug supplier from San Diego County (Spring Valley/La Mesa area), according to Becky Schepleng. She was working on a horse ranch in Chino Hills at the time of the killings according to Diana Roper. Roper told SBSD (Eckley or Stalnaker) that she could ID a photo if there was one Ms. Martinez who may have worked for the Ryens. The SBSD never pursued this lead.

4) **Germaine Cooke**: Witness who said she saw the Ryen car the afternoon of June 5 with three men inside; two of them had longish blond/light brown hair, just as witnesses in the Canyon Corral Bar identified the men with blood on their clothes.

5) **Lea Jo DeStefano and Elisa Renata Aráuz-DeStefano**: Daughter and stepdaughter of Lee Furrow, who believe Mr. Cooper is innocent and that Furrow is "guilty of multiple murders and remains a threat to us and our mother." They wrote a letter to Gov. Newson asking that he re-open Kevin Cooper's case "and allow justice to prevail."

6) **Susan Dunn**: Friend of Diana Roper and her mother Katie Kellison. In a 2015 declaration, she states she heard Diana Roper twice say Mr. Cooper was innocent: 1) in 2002 at Roper's house to her mother, Katie Kellison; and 2) in 2003 when she drove Roper home from the hospital two days before she died, reportedly of "natural causes." She said Roper insisted Furrow was guilty and obviously Roper would have direct and personal knowledge about that.

7) **Kenna Koon Brubaker**: Related (possibly through his daughter) to Kenneth Koon who was married to Diana Roper after she broke up with Furrow. Koon was the cellmate of Anthony Wisely, to whom Koon detailed events on the night of the killings. He listed Diana Roper as an emergency contact.

8) **David Stockwell**: The SBSD criminalist who is believed to have planted the cigarettes in the Ryen station wagon, and who retrieved A-41 from the Ryen home.

9) **Teresa Monteleone**: Diana Roper's friend and neighbor who was present when Diana Roper and Karee Kellison confronted Furrow soon after the killings about his possible central role in the murders.

10) **Dr. Gary Siuzdak:** The 9th Circuit ordered Judge Marilyn Huff in 2004 to have the tan t-shirt tested for EDTA, to determine if Kevin Cooper's blood had been planted on the shirt. Dr. Gary Siuzdak was the expert from the Scripps Research Institute's Center for Mass Spectrometry in La Jolla who was identified by Attorney General Bill Lockyer's deputy Holly Wilkins to examine the tan t-shirt for EDTA. Ms. Wilkins signed a letter on the stationary of the Office of the Attorney General, dated August 24, 2004, that was titled Notice of Lodgment of CV of Dr. Gary Siuzdak. Ms. Wilkins was the state prosecutor in the post-conviction hearing before United States District Court Judge Huff. The evidence was blind tested and Dr. Siuzdak had found elevated levels of EDTA in the blood spot on the shirt and sent a report of that finding to Judge Huff. However, three weeks later, Dr, Siuzdak wrote to Judge Huff asking that his report be rescinded due to an EDTA contamination in his lab. Judge Huff agreed but denied defense counsel's request to have the shirt tested elsewhere or to show proof of EDTA contamination in the lab. Dr. Suizdak is still with the Scripps Research Institute and Holly Wilkins is still in the Attorney General's office.

Exhibit 1

Declaration of Jetalyn Kahloah Doxey

I, Jetalyn Kahloah Doxey, declare as follows:

1. In 1985, I was selected as a juror for the trial of Kevin Cooper. I remained on the jury for the entire five month duration of the trial and voted for his conviction on four counts of murder, one count of attempted murder, and one count of escape from prison. Our deliberations extended over a week before we were able to reach those verdicts. Following his conviction, in the penalty phase of the trial the entire jury voted for the death penalty due to the seriousness of the crimes. I had lingering doubts about his guilt, as did some of the other jurors, but we set those doubts aside in order to arrive at a unanimous verdict in both phases based upon the evidence presented to us.

2. Throughout our deliberations during the guilt phase of the trial, we realized that some of the law enforcement officers conducting the investigation hid or destroyed evidence which, thus, was never presented to us. I was also suspicious that officers fabricated some of the evidence and also claimed to have "lost" other items of evidence as well. It also appeared to some of us on the jury that some of the officers then lied under oath about what they did, or did not do, during the investigation. Again, lacking any evidence to support our concerns, we set aside those concerns and voted for the death penalty for Mr. Cooper.

3. I now regret the above two decisions.

4. Had I known at the time of our deliberations the information recently provided to me as set forth below in this declaration, or had there been just one more piece of evidence of Mr. Cooper's innocence during the trial, I would have recognized that there was reasonable doubt about Mr. Cooper's guilt, and I would have voted "not guilty", as well as not voting for the death penalty.

5. My concerns over these issues have been on my mind since the trial back in 1985. In particular, one area of concern was the fact that it was clear to me, and some of the other jurors, that many items of evidence which may have contained biological residue or fingerprints were never tested, though it seemed obvious these items could have contained evidence of the identity of the killer(s) of the Ryen family. I was also deeply concerned, and to this day am still angry, that the jury was not shown any photographs of Jessica Ryen's hand holding long strands of hair and that those hairs apparently were never tested to determine to whom the hair

belonged. I have since learned that such photographs had been taken by the officers, though, to the best of my recollection, we never saw them.

6. I also had, and still have, concerns about tennis shoe prints that were allegedly found in blood on a bed sheet in the master bedroom. Other tennis shoe prints were also found on the cover to the in-ground hot tub just outside the Ryen house near the master bedroom, and I have a recollection that one may have been found inside the nearby house in which Kevin Cooper had hidden after his escape from prison. The shoe prints were identified to us by the prosecutor as being identical to the prison's brand of shoes, and having the same tread design as the prison shoes. Those shoes were represented to us as being sold exclusively to prisons to be worn by the inmates. I recall that the representative of that tennis shoe company testified in the trial that this particular style was not available to the general public in retail stores, but were sold only to prisons. This suggested to us that they were of the type worn by Kevin Cooper during and after his escape from the prison located just a couple of miles from the Ryen house.

7. Subsequent investigation, of which I have since been informed, has revealed that the Chino prison warden made some private inquiries about the tennis shoes with their manufacturer and her staff and was told that the type of shoes in question in this case were not shoes supplied exclusively to prisons but were also available on the retail market and available to anyone to purchase. The warden passed this information along to the Sheriff's Department and to the prosecution, but it was never introduced at the Cooper trial nor was the defense team even told about this development. Those shoe prints, however, were never directly linked to Kevin Cooper for the jury.

8. Adding to those serious doubts I had at the time would have been additional information I have learned post-trial that the Sheriff's Department Crime Lab already had one or two pairs of this brand of tennis shoe on hand in the lab before the purported bloody shoe prints were ever discovered as described above. I have also been informed that a Reserve Deputy Sheriff, who in his regular employment worked at the Chino prison, had responded to the murder scene to help with the investigation, and while there a day or so into the crime scene investigation, was asked by one of the detectives to go to the prison and obtain samples of inmate shoes that Kevin Cooper would have been wearing, which the reserve deputy did and turned over to the detective. I have also been told that, at the same time, this reserve deputy also was asked to obtain an example of the type of jacket normally worn by inmates, which he complied with by

getting a regular green inmate uniform jacket from the prison, which he also turned over to the detective.

9. I have also recently been told that one of the correctional officer supervisors at the prison was driving into the prison a couple of days before the murders and actually saw Kevin Cooper outside the prison walking away from it. This supervisor reported that Cooper was wearing a brown prison jacket, not a green one. For me, this now creates some serious doubt about the viability and credibility of the green prison jacket button that was found in plain view on the floor of the bedroom in the house where Cooper had been hiding. I recall that there was testimony at the trial that the first officers who walked through that hide-out house after the murders were discovered, had not seen the green jacket button later found on that floor a day or two later, nor had they seen a leather hatchet sheath nearby. Both the button and the sheath were discovered a day or two later in the hide-out home – both in full view of anyone working through that room.

10. I have also just learned that a small, unmeasured quantity of prison smoking tobacco, along with some cigarette butts, were also found in the closet of that bedroom where Cooper had been sleeping, but were never logged in as evidence by the investigators.

11. Six or seven days later, on June 11th, the Ryen station wagon was found abandoned in a church parking lot in Long Beach, it was determined that it had only been there for a day or two.

12. When the car was found by a passer-by at the church on the morning of June 11, it was determined from people in the area that the vehicle had not been parked there for more than a couple of days. We learned during the trial that Cooper had checked into a hotel in Tijuana, Mexico, on the afternoon of Sunday, June 5th. This raises the very provocative question of who parked the Ryen station wagon on the church parking lot on, or just a day or two before it was found on June 11th. The evidence and trial testimony has convinced me that it was not Kevin Cooper.

13. The police reports of an initial visual search of the station wagon in the church parking lot, and a subsequent more detailed second inventory search of the vehicle once it was impounded and processed for evidence back at the Sheriff's Department, did not mention any loose tobacco or cigarette butts. A later undated handwritten and unsigned report listed both, describing loose tobacco found in the car. We were told during the trial that the loose tobacco particles found in the station wagon were "consistent" with the prison-issue tobacco called Role-Right. I am aware that some of this loose tobacco was found on the small portion of the tight

space of the car's floorboard between the front passenger seat and the front passenger door. I realize that is a very unusual place to find loose tobacco in a car, and the fact that it was not seen during the first two searches of the car, certainly implies to me that there is a possibility that this loose tobacco may have been a portion of the same tobacco found in the closet where Cooper hid in Chino Hills, which had remained unaccounted for until these particles were allegedly discovered in the station wagon. I do recognize, however, that it also could have fallen out of the pocket of one of the actual killers of the Ryens who sat in that front passenger seat during the getaway after the killings, but certainly not by a lone person who would have been driving the vehicle from the left front side of that seat behind the steering wheel.

14. I have also been told that luminol testing of the interior of the station wagon back at the Sheriff's Department the day after it was recovered detected positive results for blood in the following three interior areas of the vehicle: (1) on the lower portion of the front driver's side door and the driver's seat headrest, (2) the front seat on the passenger-side, and (3) the rear passenger seat on the passenger side of the vehicle. It appears to me that the locations of these three separate locations of blood inside the car strongly suggest to me that there were three separate individuals with blood on them were in those locations in the vehicle when the blood was deposited in each area.

15. I recall from the trial that luminol testing had also been done in the shower of the house where Kevin Cooper had hidden after his escape, and that the testing revealed indications of human blood in a broad swath from two feet above the shower pan to five feet above it. Surprising was the fact that no positive indications of blood were found in the shower floor pan nor in the drain – both places that blood would have naturally flowed if being washed off of a person in the shower. What we were not told during the trial, but now I have learned, was that luminol also reacts to bleach in the same manner as it reacts to blood residue. We were also not told that Kathy Bilbia, the most recent former occupant of that house, had moved out of it the day before Kevin Cooper arrived at the house. She reportedly told the sheriff's investigators that she had cleaned that shower with bleach the day she moved out – one day before Cooper's arrival there.

16. Because of the remaining doubts I had then, and still have, I wrote a letter to Governor Arnold Schwarzenegger in January, 2004, asking that he grant clemency to Mr. Cooper. In that letter, I set forth some of the reasons for my remaining doubts, which I have incorporated into this declaration. I know that several other jurors also wrote to the Governor similarly

encouraging him to grant clemency because too much continued to bother them about this case, including:

A. I remember that the police lost evidence from their evidence room which they had found at the crime scene. In particular, a rug that had blood and teeth on it was reportedly lost.

B. The police also lied on the witness stand about their work on the case. Specifically, one officer got on the stand and denied under oath that he had been in a room of the house where Mr. Cooper had hidden after escaping from Chino State Prison. A hatchet sheath and a green button from a prison jacket appeared on the floor in plain sight in this room -- after an initial search of the house failed to discover them. A subsequent search a few days later found the button and the sheath in plain sight on the carpet in that room, in locations where the initial search could not have overlooked them. One of the police detectives denied ever being in the room where the button and sheath were subsequently discovered in a second search, yet his fingerprints were found in the closet of that room.

C. A single blood drop, identified as item A-41 at trial, was found on a wall in the hallway of the Ryen house. In initial tests, it did not match Mr. Cooper's unusual blood-type. When the defense attorney for Mr. Cooper wanted to have the drop re-tested, the police claimed that the blood drop had been consumed during the initial testing. I have a recollection that after Mr. Cooper was arrested, the police crime lab re-tested the blood drop, which had now surprisingly re-appeared in sufficient volume for such re-testing, and identified A-41 as Mr. Cooper's blood-type.

D. The jury was told about a tan t-shirt with blood spots on it had been found down the street from a country bar not far from the Ryen's home. This t-shirt was found to have blood on it which was later identified as the same blood type as both Doug Ryen, the father, and Kevin Cooper. I am concerned that the police did very little investigation or testing surrounding this tan t-shirt prior to trial.

E. I am also concerned that there did not seem to be any significant efforts made by the police to identify, locate, and investigate other possible suspects. To me

this was very sloppy police investigation, or was done intentionally to not deter them from charging Cooper as the sole perpetrator of the Ryen murders.

17. On January 16, 2016, I met with Thomas R. Parker, a retired FBI Agent, who identified himself to me as a police homicide investigations consultant to Mr. Cooper's defense team, and he related to me a number of facts of the case that have come to light after the trial, including:

A. I have now been made aware that the crime lab person who tested for the blood type on the tan t-shirt, misidentified it as being the same as Cooper's blood-type, but when it was discovered he had erred in that determination, he changed his report to reflect the correct blood-type. The jury was not told of this.

B. I have also recently learned that the day prior to the tan t-shirt being found, a woman who lived in the area spotted a blue shirt with blood on it at the side of the road leading away from the country bar, and reported it to the sheriff's office. A deputy came out and picked up the shirt, which he booked into evidence. That blue shirt later disappeared without ever being tested for blood. I have been told that the prosecution claimed that the blue shirt never existed and was being confused with the tan t-shirt found the next day.

C. I've recently been told that the finding of the blue shirt is the reason another search was conducted the next day which discovered the tan t-shirt discarded on the other side of the same roadway. The fact that these two shirts were found separately over two days in close proximity to each other but on opposite sides of the road, indicates to me that they were most likely discarded by two separate individuals. The fact that one of them disappeared with the police claiming it never existed, seems very suspicious to me and tends to indicate that the police did not want anyone to gain the impression that more than one individual was involved in the Ryen murders.

D. I also learned that three white men were seen before and after the murders in the country bar with blood on their clothes during their second visit to the bar just before it closed, and in the same time period as the estimated time of the Ryen murders.

E. I've been told that a pair of blood-stained coveralls were left by a convicted murderer, Lee Furrow, at his girlfriend's home in Mentone, California, about two

hours after the estimated time of the Ryen murders. The girlfriend's home is about 45 minutes driving time from the Ryen home. According to the girlfriend, and her younger sister who was also present, Furrow seemed to be in a hurry to change clothes and leave. He had arrived at the house in what appeared to be a station wagon similar to the Ryens' station wagon, which had been stolen from the Ryen residence by the murderers. While at his girlfriend's home, at least two other people could be seen in the station wagon in which Furrow had arrived. After changing clothes, Furrow grabbed one of his guns and left.

F. Furrow fits the general description of one of the three white males seen twice in the country bar near the scene of the murders. I've also seen a black and white photograph of Furrow taken in the mid-to-late1970s when he was in prison after being convicted of an earlier murder. I noticed that his hair color and length at that time seems to be similar to that of the loose hairs found clasped in Jessica Ryen's hand when her body was found.

G. After learning of the murders later that morning, the girlfriend called the San Bernardino Sheriff's Office to report the bloody coveralls. They were ultimately picked up by a sheriff's deputy and logged into evidence, as reflected in the sheriff's office records.

H. A year later, the girlfriend checked on the coveralls' status, and was told by the deputy sheriff who originally picked them up at the girlfriend's house, that the coveralls had never been examined nor the blood spots on them tested, and they had subsequently been thrown away by that same deputy. This deputy had claimed that he did so on his own volition, but it was later determined that he had lied about that and had actually been ordered to do so by a supervisor.

I. I have been informed that Furrow had lived in the Long Beach area earlier in his life, and that his alleged step-mother lived in close proximity to the church parking lot where the Ryen station wagon was discovered several days after the murders.

18. I've also been told that if sufficient investigation of Furrow and any possible connection he might have had to the Ryen murders had been conducted by SBSD, it would have been discovered that Furrow had served five years in prison for the murder in the mid-1970s of a 17-

year old girl named Mary Sue Kitts, who was strangled to death and her body cut up into pieces and thrown into a river or lake in the mountains east of Fresno. Kitts was a girlfriend of Roger Allen, who was the son of a notorious criminal in the Fresno area named Clarence Ray Allen, upon whose orders Furrow had killed Kitts. Furrow was a member of Allen's gang of thieves, burglars, and killers who did Allen's bidding. Clarence Ray Allen apparently thought that Kitts had been a "snitch" to the police on Allen's activities. Allen ultimately was convicted of that murder and sent to prison, as was Furrow.

19. I've further been told that Clarence Ray Allen, while in prison for the Kitts murder, ordered the killing of a young man in Sanger, California, named Byron Schletewitz. Byron had testified against Allen during the trial for the murder of Kitts. Allen, while imprisoned for the Kitts murder, had arranged for Schletewitz to be killed by another prison inmate who was about to be released. When the murder of Byron occurred, several of Byron's young friends were also shot and killed. The investigation of those murders revealed that Allen had ordered the killings and had made other arrangements from behind prison walls to help the actual killer carry out the orders from Allen. The killer was soon caught and confessed to the murders and told police that Allen had set up the whole murder scenario from inside prison. Allen was subsequently convicted of the murders and sentenced to the death penalty,

20. Investigation post-trial by the earlier defense investigator revealed that Clarence Ray Allen raised and exhibited show horses, including Arabians, as did the Ryens. Relatives of the Ryens advised the defense investigator that Peggy Ryen had some type of confrontation with an unknown person over the sale of a horse, and is believed to have had to repossess same. Former acquaintances of Allen have stated to that defense investigator that Allen had been involved in some major disagreement over purchasing a horse, which was thereafter repossessed.

21. I'm also informed that current investigation has discovered that Peggy Ryen (nee Peggy Howell) had owned a blue Mustang convertible with a white canvas top sometime in the early 1970s. According to Lillian Shaffer, Peggy Ryen's sister, Peggy only had this car for a very few years, but its disposition was unknown to her. Lillian Shaffer provided color photographs of Peggy Ryen (nee Howell) both sitting in and standing by this vehicle back at the time she owned it. I have seen those photographs.

22. I've learned that in the late 1970's or early 1980's, exact date unknown, a blue Mustang convertible was found abandoned in an orchard north of San Luis Obispo, not far from the San

Luis Obispo County fairgrounds at Paso Robles. These fairgrounds are where almost all horse shows are held in that region, and it is thus believed to be where Peggy Ryen's encounter with Clarence Allen occurred ad discussed later in my declaration. The Mustang had obviously been there for some time as evidenced by its deterioration. The finders of the Mustang ultimately gained possession of it as the "salvage" owner. This took place only after the true owner could not be found. When these individuals refurbished the Mustang, the body shop found a dog's license tag deep inside of a dismantled window well (where it had apparently fallen), indicating that the dog to which it belonged was owned by Peggy Howell (Peggy Ryen's maiden name).

23. I've been shown a recent book written about the murders ordered by Clarence Ray Allen. The book is by former California Appellate Judge James Ardaiz. Earlier in his career, Ardaiz had been the Assistant District Attorney who prosecuted Allen for the killings of both Schlewtewitz and the Kitts girl. Ardaiz also prosecuted Lee Furrow for his role in the Kitts murder, to which Furrow confessed and negotiated a plea arrangement, pleading guilty to Second Degree Murder, and testifying against Allen, in return for five years in prison. The book, "Hands Through Stone: How Clarence Ray Allen Masterminded Murder From Behind Folsom's Prison Walls", goes into significant detail about these killing and the relationship between Furrow and Allen.

24. Most interesting to me, though, is that in his book (pages 339 – 340), Ardaiz recounts a telephone conversation he had with an anonymous woman who called him in his office the day after Allen was convicted of the murder of Mary Sue Kitts. Ardaiz wrote about it as follows:

(1) *"But there is one more thing about which I will never be sure. The morning after the verdict for the murder of Mary Sue Kitts, I walked into my office and sat at my desk. The phone rang. I picked it up and caught the hesitation in the woman's voice at the other end. She asked if I was the Allen prosecutor and if I would talk to her about something she needed to tell somebody. You often get calls like this after a big case, from people who want to share their conspiracy theories with you. But occasionally there is someone who really does something to say. I always give them a few minutes. You never know what's coming and you can't tell much by the voice, except in this case the woman sounded frightened. I could tell that almost immediately."*

(2) *"She wouldn't give me her name, but she did tell me she was a medical professional. She wanted to tell me something that had happened to her involving Clarence Allen. She needed someone to listen to her, to believe her. She said that she showed horses, and several years earlier she had been to a horse show near San Luis Obispo, California, on the Central Coast. For some reason, she had to go to Allen's trailer and give him some papers. She knocked on the door and then walked in without waiting for an answer. She saw Allen kneeling on the floor, shirtless. There was a rifle on the floor in front of him. He was wearing a headband and had a string of blue beads around his neck. She said he looked at her in a way that simply scared her to death. He stood up and told her that if she ever told anyone what she had seen he would kill her, that he had killed before . She ran out of the trailer and never went back. She never told anyone what she had seen. But it had haunted her to the point that she wasn't sure any more what was reality and what was fantasy. She needed reassurance she wasn't crazy.*

(3) *"What she wanted to know was whether I believed her and would she be safe now? I told her she would be safe and I told her I believed her, just as I had told Bryon* [Schletewitz, one of Allen's earlier murder victims] *that he would be safe and that I believed him. I hung up the phone and took a deep breath. I didn't tell her that I believed her just to get rid of her. I believed her because there was something that very few people knew. Allen had told some of the people he kept around him – his gang – that he was a hired killer, He told them that he was part Choctaw Indian and that when he was going to kill somebody, he would go through a ritual where he would kneel and pray to his ancestors. He told them that his Indian spirit would take over his body and he would become one with the stealth of an Indian warrior. When I had heard this story, I laughed. However, there was one other thing that I knew about Clarence Allen that nobody, except a few people steeped in the investigation, knew. When he went through that ritual, he wore a headband and a string of blue beads."*

(4) *"Three years later, I walked through a small room in Fran's Market awash in blood."*

25. Earlier in this same book, at page 196, Ardaiz wrote the following pertaining to his cross-examination of Carl Mayfield, a member of Clarence Allen's gang, during Allen's murder trial:

(1) *"There was one more thing I wanted the jury to be absolutely aware of. 'Did Mr. Allen ever say anything to you about people who talked about him?"*

(2) [Mayfield]: *"Yes, sir. He said there were several ways that they could be taken care of."*

(3) *"What did he say about taking care of people?"*

(4) [Mayfield]: *"He said that if he was ever locked up, and people were ready to testify against him, he had other people that would be watching his back, and they would take care of the situation."*

26. I recall that I had, and still have, many other concerns about the police investigation of the murders based upon what we, the jury, were presented with as evidence during the trial. I do also recall that, in my opinion, and that of some of the other jurors, the police handling of the crime scene was disastrous and seemingly incompetent. In fact it was so bad, that I also seriously question the skill and credibility of the prosecutor, who had to have been aware of most, if not all, of the obvious police misfeasance and possible malfeasance in this case. I was, however, able to put aside those concerns at the time of our deliberations, and I voted "guilty" on Mr. Cooper, and also voted for the death penalty for him. I now seriously regret those decisions, due to my still lingering concerns and doubts over what I have learned after the trial, as I have described earlier in this declaration. I do not believe that Kevin Cooper should be executed until all of the lingering questions about his guilt can be resolved. In my opinion, that has not occurred, and he is deserving of clemency and afforded a new trial to clear up all of these questions and faulty investigation.

28. The foregoing is true and correct to the best of my knowledge and recollection on this date as reflected by my signature below on the date indicated:

Jetalyn K. Doxley Date: 3-21-16

JETALYN KAHLOAH DOXLEY

Exhibit 2

Appendix D

Appendix A to Defendant Kevin Cooper's Memorandum of Points and Authorities in Support of Motion for Post-Conviction Discovery and For Examination of Physical Evidence Filed April 7, 2005 *

DISCOVERY REQUESTS[304]

1. Documents[305] reflecting or relating to Detective Derek Pacifico's investigation of any relevant files at SBSD relating to any contacts between persons at CIM Chino and SBSD, including the documents he reviewed pursuant to his investigation of the gym shoes.

The tennis shoes allegedly worn by Defendant the night of the murders were key evidence in the prosecution's case. The prosecution argued in both its opening and closing statements at trial that one of the shoeprints found at the Ryen and Lease houses was from a type of shoe sold only to prisons and not sold at retail stores. (84 RT 10/18/84 at 2280-81; 106 RT 12/5/95 at 7749.) One of Defendant's *Brady* claims is based on the prosecution's suppression at trial of material, exculpatory evidence regarding the availability of a particular type of tennis shoe. In her January 30, 2004 declaration, the warden of CIM Chino, Midge Carroll, stated that she told one of the lead SBSD detectives investigating the Ryen/Hughes murders that the shoeprint was created by a tennis shoe not available only to prisons but available in retail stores. (Declaration of Madge Carroll dated 1/30/04 ¶ 3.) Warden Carroll's declaration was corroborated by her June 2, 2004 testimony in the habeas proceeding (RT 6/2/04 at 102:11-

[304] The Requests are a listing of discovery that Defendant has determined to request at this time. There is additional information that Defendant believes has not been provided, and to which he is entitled. Therefore, Defendant's discovery request currently focuses on what Defendant believes are the most pressing areas of information, but Defendant reserves the right to request additional discovery at a later date.

[305] For the purposes of this request, "documents" includes all information, records, notes, reports, test data, diagrams, messages, transcriptions, statements or other oral, written, typed or visual information, whether or not acknowledged or signed by the person giving the information, and however recorded or preserved, including by way of photograph, digital recording, electronic computer files, videotape, audiotape, telephone answering machine message, wiretap, surveillance tape and/or security tape. "Documents" also include charts, printouts, analyses, graphs, diagrams, drawings, slides, transparencies, reprints, exemplars, tests, test materials and all other similar items. "Recordings" includes all film, videotape, and audiotape.

* Certain evidence cited herein has not been submitted with the clemency petition nor has this particular Appendix been live-linked. However, Mr. Cooper will make this evidence and live-linking available upon request.

106:1), the June 2, 2004 testimony of Stride Rite sales representative Don P. Luck (RT 6/2/04 at 236:19-23), and Exhibit 68 of the State's answer, a Pro Keds sales catalogue indicating that the shoe that purportedly could have created the shoeprint in question was available for general retail in at least 1981.

In an attempt to rebut Carroll's declaration and testimony, at the June 3, 2004 evidentiary hearing, the State called SBSD Detective Derek Pacifico to testify that he had reviewed "all" files relating to contacts between (i) Midge Carroll, and (2) SBSD officials and representatives, relating to the shoe issue. Pacifico stated that, based upon his review of the file, he saw no writing to show that Carroll had ever called SBSD to relay this information. (RT 6/3/04 at 46-47].) Yet, despite his alleged thorough review of the SBSD files, Pacifico was only able to name two investigators who had worked on the Ryen/Hughes case in 1983. (*Id.* at 49.) Pacifico also conceded that he had not actual spoken in person, or on the telephone, with a single person actually involved in the investigation of the case in 1983-84. (*Id.* at 49-50.) In short, Pacifico's testimony was wholly unreliable.

Accordingly, Defendant requests production of the documents reviewed by Mr. Pacifico upon which he based his testimony and any other SBSD files relating to any contacts between CIM Chino and SBSD.

2. Documents reflecting or relating to William Baird's investigation of the Ryen/Hughes murders and the identity and source of the gym shoe in his office.

One of only two pieces of evidence purportedly linking Defendant to the Ryen house was a shoeprint found on a bed sheet, designated A-8, by William Baird, former criminalist at SBSD. Baird was in fact the only criminalist who analyzed the relevant shoeprint evidence during the investigation of the Ryen/Hughes murders. Notably, this shoeprint was never spotted on the sheet while at the crime scene, but was only detected by Mr. Baird after the sheet was packaged and shipped to his office. (46 RT 6/18/84 at 3703.) Baird also admits to having a tennis shoe in his office at the time he received the bed sheet that could have created the print in question. (94 RT 12/11/84 at 4793.)

Defendant requests production of any documents reflecting or relating to Baird's investigation of the Ryen/Hughes murders and the identity and source of the gym shoe in his office.

3. Documents reflecting or relating to (1) interviews that Detectives Pacifico and Mahoney, or any other SBSD representatives, conducted in connection with investigation of the make, model, sale, availability, distribution, or chain of custody of the tennis shoes purportedly worn by Defendant in the Ryen and Lease houses, and (2) any investigation, from June 4, 1983 to the present date, of the make, model, sale, availability, distribution, or chain of custody of the tennis shoe that purportedly were worn by defendant at the Ryen and Lease houses.

Since Defendant's stay of execution was granted, at least two SBSD detectives, Derek Pacifico and Don Mahoney, conducted interviews with individuals, including but not limited to former warden Midge Carroll, former Stride Rite sales representative Don P. Luck, Charles Kraus, Thomas Hornung, Robert Bales, and inmate James Taylor, in connection with investigation of the make, model, sale, availability, distribution, or chain of custody of the tennis shoes that purportedly were worn by Defendant at the Ryen and Lease houses. Defendant was not aware of the extent and nature of these contacts, and in some cases the very existence of any contacts between SBSD and these witnesses, until being served with a stack of 100 separate exhibits (thousands of pages) submitted in support of the State's answer filed with the federal court on May 3, 2004. This information is material to the proof of Defendant's habeas claims, including Defendant's actual innocence claim and Defendant's *Brady* claims.

Defendant therefore requests the production of any documents reflecting or relating to (1) the interviews conducted by Detectives Pacifico and Mahoney, or any other SBSD representatives, in connection with investigation of the make, model, sale, availability, distribution, or chain of custody of the tennis shoes that purportedly created the shoeprints purportedly found at the Ryen and Lease houses, and (2) any investigation, from June 4, 1983 to the present date, of the make, model, sale, availability, distribution, or chain of custody of these tennis shoes.

4. Examination of cigarette butts found, stored, or tested, including but not limited to V-12, V-17, and QQ.

Like other evidence in the case, law enforcement testified that the cigarette butt designated as V-12, that was allegedly found in the Ryen station wagon and later purportedly linked to Defendant in DNA testing conducted in 2002, was consumed during pretrial proceedings, only to reappear inexplicably during trial. (47 RT 7/12/84 at 4947, Testimony of Daniel Gregonis; 91 RT 11/28/84 at 4291, Testimony of David Stockwell.) V-12 was first tested by San Bernardino County criminalist Daniel Gregonis, and then sent to Mr. Wraxall, the State's expert, for further testing. (57 RT 7/12/84 at 4947, Gregonis Testimony.) Ed Blake, the defense's forensic expert, was also involved in the Wraxall examination (they share office space and frequently work together). (*Id.* at 5018.) Blake's notes showed that V-12 was approximately 4 millimeters long. (Handwritten Laboratory Notes dated 7/5/84.) Wraxall's notes showed that he was given a cigarette butt approximately 1 cm in length and 5 millimeters in height to test. Wraxall has explained that his measurement was derived from spreading out the cigarette paper and laying it flat, as the drawing and photograph in his notes appears to show. Mr. Wraxall's notes reflect, and his subsequent interview verifies, that he placed the entire amount in a saline solution for testing. (Grele Decl. ¶ 6.) At pretrial proceedings, Mr. Gregonis testified that V-12 had been entirely consumed by Mr. Wraxall's testing. (57 RT 7/12/84 at 4947, Gregonis Testimony.)

Inexplicably, at trial, SBSD criminalist David Stockwell opened the canister containing V-12 and identified tobacco and paper from the hand-rolled cigarettes. (91 RT 11/28/84 at 4291, Stockwell Testimony.) It was not explained how this paper could reappear. However, because the saliva testing on V-12 and V-17, another cigarette butt purportedly recovered from the Ryen station wagon, was inconclusive at the time of trial and in fact supported the defense (Mr. Wraxall found indications that would only be present by a secretor, which Mr. Cooper was not, but could not conclude it was a secretor because of the small sample

size), trial counsel had no reason to question how something that had been previously consumed could now be present. (93 RT 12/5/84 at 4501-02, Gregonis Testimony.)

Most troubling was the examination of V-12 in 2001. When the exhibit that was identified as the paper from the cigarette butt labeled V-12 was turned over to the California Department of Justice, it measured 7 mm long, a 75% increase, and appeared to have been refolded. (Handwritten DOJ Laboratory Notes dated 7/6/01.) Even more disturbing, QQ, the cigarette butt that was from Defendant's car and that is similar to what was tested as V-12 in 2001, is no longer in the evidence bag it was once in. (Inventory conducted by Officer Garcia pursuant to Court Order issued by Judge Kennedy.) To compound these facts, cigarette butts that were in the ashtray in the Lease house, where Defendant stayed for two days, turned up missing, as did cigarette butts originally described as being in the Ryen station wagon's ashtray. (97 RT 12/19/84 at 5403, Testimony of Kevin Cooper; Declaration in Support of Arrest Warrant dated 6/9/83; SBSD Reported dated 6/25/83 by Officer Swanland; SBSD Report of Ryen station wagon dated 6/16/83 by Detective Michael Hall.) A subject of Defendant's claims is that the cigarette butts from the Lease house were moved to the Ryens' car.

Whether V-12 and V-17 were ever in the Ryens' station wagon in the first place itself is highly doubtful. Michael Hall, the Sheriff's detective who did a thorough search of the Ryens' car at the site where it was originally found in Long Beach, found no cigarette butts where V-12 and V-17 were purportedly later found. (SBSD Report of Ryen station wagon dated 6/16/83 by Detective Michael Hall.) SBSD criminalists Stockwell and Ogino later purportedly found V-12 and V-17 in the Ryens' car, at locations where Hall had earlier found other small items, but not the cigarettes. (Handwritten list of contents of Ryen station wagon, undated; Evid. Hearing of David Stockwell 6/24/03 at 227.) Stockwell and Ogino's report did not show the times, dates and persons responsible for gathering this evidence. The only documentation of the results of Stockwell and Ogino's search is a handwritten, undated and unsigned note. (Handwritten list of contents of Rye station wagon, undated.)

Defendant therefore requests permission to examine the cigarette butts found, stored, or tested in connection with the Ryen/Hughes murders, including but not limited to V-12, V-17, and QQ. Defendant believes this physical evidence is currently in the possession of the SBSD Crime Lab or the California Department of Justice DNA Laboratory.

5. Documents reflecting or relating to the destruction of bloodstained coveralls.

On December 1, 1983, in the midst of the preliminary hearing, SBSD detective Frederick Eckley destroyed a pair of bloody coveralls found by Diana Roper that were linked to a third party suspect, including perhaps one of the men in the Canyon Corral Bar. The Disposition Report was not disclosed by the State. It was discovered by Petition in late November 1998. Before the Disposition Report was discovered, Deputy Eckley testified twice at trial that he alone made the decision to destroy the coveralls without consulting anyone. Eckley wrote on the Disposition Report that the coveralls were destroyed because they had "no value" and that the report that these items possibly belonged to the suspect was "unfounded." Contrary to Deputy Eckley's sworn testimony, the destruction of the coveralls was approved by a sheriff's deputy named Ken Schreckengost ("KS"). This report shows that Eckley did not destroy the coveralls on his own initiative, but that he did so after consultation with a deputy in the homicide division or with his supervisor.

Within the last several weeks, and after months of efforts, Defendant's counsel has finally located and interviewed "KS." (Declaration of Joseph P. Soldis dated February 22, 2005 ["Soldis Decl."] ¶ 3.) KS has stated that he would not have authorized destruction of any evidence with blood on it if it were not first tested. This was SBSD's strict policy and practice. (*Id.* ¶ 11.) KS also referred to a green form that would reflect what testing was done on the coveralls. (*Id.* ¶ 11.) Mr. Eckley, a retired sheriff's detective, has also been located. (*Id.* ¶ 16.) However, when questions were put to him, he declined to talk without an attorney. (*Id.* ¶¶ 18-20.)

In light of this recently obtained information, Defendant requests production of all documents reflecting or relating to the custody and alleged destruction of the bloodstained coveralls.

6. The custody and handling of the T-shirt during its storage at the SBSD Crime Laboratory, including but not limited to custody by SBSD criminalist Daniel Gregonis and former SBSD criminalist William Baird.

Both parties agree that the subject T-shirt has a varied substrate with an unknown history. An important part of the "unknown history" of the T-shirt is that its chain of custody both pre- and post-trial, has never been established. A "few release and receipt of evidence logs" show gaps in the custody of the T-shirt. Its whereabouts are unaccounted for during the period November 28, 1983 through April 15, 1984. Given the importance, yet uncertainties about the history of the T-shirt, its chain of custody must be determined.[306] In addition, pictures of the T-shirt taken by the SBSD after it was found have never been produced and should be.

Accordingly, Defendant requests the production of all documents reflecting custody of the T-shirt, including but not limited to documents created by San Bernardino criminalists, e.g., SBSD criminalist Daniel Gregonis and former SBSD criminalist William Baird, both of whom worked for the SBSD Crime Laboratory from June 1983, when the T-shirt was first discovered, through the completion of Defendant's trial.[307]

7. Documents reflecting or relating to the blue shirt found by Laurel Epler and taken by SBSD Detective Scott Field.

During Deputy Chief Rodney Ray Hoops' testimony before the district court on June 29, 2004, the State submitted Exhibit UUU-2, a Sheriff's Dispatch Log indicating that on June 6, 1983, "597-2195 Laurel Epler" reported finding "a blue shirt that possibly had blood on it" near Glenridge and Peyton about one quarter mile from the Canyon Corral Bar. The log

[306] The beige T-shirt also was found with an orange colored towel. The towel was entered into a sheriff's evidence log. The disposition of the towel also is unknown.

[307] Mr. Gregonis continues to work as an SBSD criminalist. Mr. Baird was forced to leave his position as an SBSD criminalist after being caught using and stealing heroin from the SBSD evidence locker.

shows that this evidence was picked up by Deputy Field. UUU-2 indicates that the assigned deputy was Scott Field. On August 13, 2004, John Kochis, one of two prosecuting attorneys in Defendant's criminal case in state court, testified that "I don't believe there ever was a blue shirt." (RT 8/13/04 at 198.) Kochis based this speculation on the fact that he had never heard anything about a blue shirt. (*Id.* at 199.)

However, on August 26, 2004, Laurel Epler, the woman who found and reported the blue shirt, testified before this Court regarding the incident. The State resisted Ms. Epler testifying and represented to the Court that Ms. Epler should not be called to testify in part because she had "no independent recollection of having reported the shirt" and "is not going to be able to provide any information that will inform this Court regarding the entry in the Sheriff's Dispatch Log regarding the 'blue' shirt." (State's *Ex Parte* Request *Re* Witness Epler dated August 20, 2004 at 2:1-4.) It now is clear why the State resisted hearing Ms. Epler's testimony. Ms. Epler testified that she found the blue shirt, notified the sheriffs office and that the blue shirt was picked up by Detective Scott Field.[308] Further, she described Detective Field with sufficient detail so that her identification of him can be verified. Her eyewitness testimony completely undermines the speculation of Mr. Kochis.

In light of this newly discovered information, Defendant requests production of all documents reflecting or relating to the custody and apparent destruction of the blue shirt found by Laurel Epler and recovered by SBSD Detective Scott Field.

8. Examination of A-41 — the blood drop discovered at the crime scene, and "UU" — the surrounding blood spots.

The State's sole evidence that Defendant was present in the victims' house was a single spot of blood located near the baseboard on a hallway wall in the Ryens' house, designated as Trial Exhibit A-41. (89 RT 11/19/84 at 3511-12, Stockwell Testimony.) More precisely, this drop was later described as a mixture of the blood of Defendant and one of the

[308] Mr. Field is deceased.

victims. (California Department of Justice, Physical Evidence Report 6/4/02.) However, the evidence that A-41 was subject to tampering prior to or during trial is substantial.

At trial, Gregonis testified falsely that he subjected A-41 to blind testing, and that at the time he first tested A-41, he was not aware of the theory that Defendant was suspected to be responsible for the crimes. (93 RT 12/6/84 at 4557, Gregonis Testimony.) Gregonis' statement that he was unaware that Defendant was the primary suspect at the time of his testing is belied by his own notes. (*Id.* at 4604-06, 4557, 4550.) His notes reflect that Gregonis only tested A-41 for enzymes that he knew matched Defendant. (*Id.)* He had this knowledge from testing of semen found on a blanket in the Lease house (10 RT 11/20/83 at 54-57), and from his communications with Pennsylvania authorities (93 RT 12/5/84 at 4488), well before Defendant was arrested and his blood obtained. When Gregonis conducted additional testing, he used an improper testing method by placing A-41 side-by-side with Defendant's sample. (*Id.* at 4557.) He lied about using this method until confronted by counsel during trial. (*Id.*)

When Gregonis initially read the results of testing on A-41, he found an enzyme that did not match Defendant (*id.*), so he altered Defendant's profile to reflect the presence of this enzyme. (11 RT 11/29/83 at 64-65.) He then reported that A-41 matched Defendant. (93 RT 12/5/84 at 4494-95.) Gregonis subsequently "reevaluated" his initial work when he learned that A-41 contained a different enzyme than he initially believed. (11 RT 11/29l83 at 64-65.) When confronted with this discrepancy, Gregonis *altered* his original laboratory notes in an attempt to hide his initial interpretation that exonerated Defendant. He then lied about altering his notes at trial until confronted with the truth. (*Id.*)

Gregonis testified at the preliminary hearing and at trial that he had consumed all of A-41 in testing, but twice later the sample was "found." (*Id.* at 4527-28.) Each time, without notifying the defense so as to prevent subsequent testing, Gregonis consumed more. (56 RT 7/11/84 at 4851-54.) He initially lied about this under oath, but had to change his testimony when confronted with the truth. (*Id.* at 4827-29.)

Gregonis failed to maintain adequate records of his testing that would have enabled his results to be verified. (93 RT 12/5/84 at 4492-96.) This was contrary to standard laboratory procedures. His photographs were intentionally **(?)** of poor quality, and he deliberately failed to adequately describe the tests in his notes. (*Id.*)

After trial, A-41 was stored in the same evidence bag as Defendant's blood sample and saliva sample. (RT 6/23/03 at 84-87, Evidentiary Hearing Testimony of Kelley Risheh; *id.* at 93-95, Evidentiary Hearing Testimony of Melody Moreno.)

When A-41 was tested for use at trial in 1985 and purportedly consumed, it consisted of loose chips in a metal tin (chips of plasterboard from the wall where State agents claim to have found and removed the blood drop later denominated as A-41). The white plaster chips extracted supposedly had been used up and discarded. However, when examined in 1998 by defense counsel, A-41 consisted of one capped vial with white chips, and a tin with a smaller vial inside containing a single paint chip. (SBSD Lab Report dated 8/1/83; Evidence Property Tracking System Log dated 9/19/00; photos of A-41.) Gregonis then examined A-41 in 1999, but never documented what he did with A-41 when he checked it out of the evidence locker for twenty-four hours. Gregonis also lied about opening the glassine envelope that contained A-41 in 1999. (RT 6/23/03 at RT 84-87, Risheh Testimony; *id.* at 93-95, Moreno Testimony; *id.* at 106-13, Gregonis Testimony; photos of sealed A-41 and wax-taped A-41.)

In 2001, when A-41 was sent to the Department of Justice lab in Berkeley, California, it consisted of a vial containing white flakes with a cap that was loosened, and a metal tin. When the tin was opened, there was an empty vial inside. Loose within the tin was a paint chip. The label on the glassine envelope containing A-41 indicated that Gregonis had opened the envelope in 1999. (Handwritten notes of S. Myers dated 7/6/01, 6/15/02; photos of A-41 tin.)

While A-41 is the only spot of non-victim blood found in the Ryen house, the prosecution possesses other information regarding blood samples in the vicinity of A-41 that has been withheld from the defense. Certain blood evidence close in proximity to A-41 was never

collected by sheriff's investigators. Other evidence, such as blood from the hallway, was collected and tested. These samples were small blood spots, given the designation "UU," found near A-41. These spots were not consistent with Defendant's blood. Defendant's counsel has obtained information that the prosecution instructed its expert Dr. Wraxall to cease testing UU after initial testing results were inconsistent with Defendant's blood. (Grele Decl. ¶ 7.) The defense was never given access to these spots to perform their own testing. Nor was Defendant ever provided with the State's complete tests results.

In light of the issues, Defendant requests permission to examine A-41 and the UU series, in order to determine whether A-41 may have been tampered with or contaminated, and whether UU was attributable to a person other than Defendant.

9. Documents reflecting or referring to any instruction on behalf of law enforcement, including but not limited to the SBSD, including its Crime Lab, or the San Bernardino District Attorney's office, not to pursue evidence that pointed to someone other than Defendant as the assailant in the Ryen/Hughes murders, including but not limited to instructions given to Brian Wraxall not to test the UU series of blood samples.

Small blood spots, given the designation "UU," were found within a one-foot radius of A-41, the only drop of blood allegedly from Defendant found in the victims' home. Defendant alleges that "UU" was checked out by SBSD Sergeant Billy Arthur for testing by one of the State's criminalist, Brian Wraxall. (Petition ¶ 77.) Mr. Wraxall's notes state that tests on some of the spots excluded Defendant because Defendant had a particular enzyme type that did not match the enzyme type in the spots Mr. Wraxall tested from the UU series. When it became evident that the UU series would exculpate Defendant, Mr. Wraxall was instructed immediately to stop the testing. Thus, the remaining blood spots, at least one of which was very close to A-41, have never been tested. If they were tested by someone other than Mr. Wraxall, those tests were never revealed to the defense. In his statement to John Grele, one of counsel for Defendant, Wraxall himself confirms that he was ordered to stop testing the UU series. (Declaration of John R Grele dated 2/22/05 in support of motion for further evidentiary hearing ["Grele Decl."] ¶ 7.)

Defendant requests the production of all documents reflecting or referring to any instruction by the SBSD, including its Crime Lab, or the San Bernardino District Attorney's office, not to pursue evidence that tended to point to someone other than Defendant as the assailant in the Ryen/Hughes murders. This information includes, but is not limited to, documents reflecting, referring to the instructions given to Brian Wraxall not to test the UU series of blood samples.

10. The daily logs and documents reflecting or relating to the daily logs from June 1, 1983 through July 31, 1983, including the underlying blue sheets, radio logs and dispatch recordings for that period.

The State's witnesses' testimony regarding the daily logs and the underlying primary documents (blue sheets, radio logs and radio recordings), from which the daily log is prepared, is incomplete and unclear. In Mr. Kochis' July 23, 2004 declaration he describes with great precision how all documents produced to Defendant had a handwritten number typically in the lower right-hand corner. (State's Notice of Lodgment of Declaration of John P. Kochis Re Trial Discovery Re Information from CIM Counselor Donnie Eddings with attached Kochis Declaration dated June 23, 2004 ["Kochis Decl."] ¶ 5(b).) In addition, Mr. Kochis described a system, apparently also implemented by Mr. Kottmeier, the co-prosecutor that reflects the date and numbers on the documents produced. (*Id.* at ¶¶ 5(c), 6.) The State included one such primitive and handwritten page that purportedly reflected this type of production log. (*Id.* ¶ 9, Ex. B.) The complete production log, which cannot be particularly long, has never been introduced. This is not just a matter of discovery, but the subject of evidence at trial.

Subsequent to Mr. Kochis' July 23, 2004 declaration, the State apparently recognized that his declaration contained a gaping hole. The daily logs did not bear any production number as they should according to Mr. Kochis' declaration. So, on August 13, 2004, Mr. Kochis was called to the stand to attempt to belatedly explain why the daily logs did not bear document production numbers. According to Mr. Kochis, they were produced by the sheriff's office pursuant to subpoena duces tecum. (Kochis RT 8/13/04 at 182-84.) Mr. Kochis

is not a competent witness to testify about the production of the daily logs unless, of course, he was involved in their production. There is no testimony that he had any role in their production. If the logs were produced by the sheriff's office and, according to Mr. Kochis, without any involvement by the district attorney, then the person(s) who gathered and produced the logs is the only one competent to testify.

In addition to the daily logs, SBSD dispatchers Nancy Simendich and Debra Holman described the primary documents underlying the daily logs, including the blue sheets (the primary paper used to record information telephoned to the dispatchers), radio logs, which contain more detailed information than the daily logs, and dispatch recordings. (Simendich RT 8/13/04 at 21-22, 40, 43, 47-58; Holman RT 8/13/04 at 82-83.) Defendant has not been provided with the actual blue sheets from which the daily logs are generated. All the State provided was a blank form of a blue sheet showing the type of information maintained on it. (Simendich RT 8/13/04 at 76, Ex. YYYY; Holman RT 8/13/04 at 92.)

The State relies on testimony from Defendant's trial attorney David Negus at a September 2, 1983 hearing on a motion to quash, as evidence that Mr. Negus received the daily logs. (State's Opposition to Motion for Evidentiary Hearing at 16 n.10.) But Mr. Negus cannot know if he received all daily logs. They contain no handwritten numbers as originally sworn to by Mr. Kochis. Like Mr. Kochis, Mr. Negus would testify that he never heard of a blue shirt being picked up and, like Mr. Kochis, he never saw a daily log entry to that effect.

In addition to the partial evidence regarding daily logs and related materials, Paul Ingels, a private investigator for the defense, was called by the State, with less than 24 hours notice to Defendant's counsel, to testify regarding documents he claims to have provided to prior counsel for Defendant. Mr. Ingels' involvement post-dates Defendant's only other federal *habeas* petition that was heard on the merits. With the recent transcription of Mr. Ingels' testimony, Defendant can now scrutinize exactly what Mr. Ingels claims to have known and related to Defendant's former counsel, Messrs. Robert Amidon and William McGuigan, and what documents he provided and when. According to Mr. Ingels, an unspecified number of

documents were first produced by him in fall 2003 or winter 2004 to Mr. Amidon for delivery to Defendant's new and current counsel. (Ingels RT 8/13/04 at 133-134, 163.) The daily logs and underlying documents and the "Ingels documents" relate to Defendant's constitutional rights under *Brady* and his claims of destruction of evidence and of actual innocence.

In light of this information, Defendant requests production of all documents reflecting or relating to the daily logs from June 1, 1983 through July 31, 1983, including the underlying blue sheets, radio log and dispatcher recordings for that period.

11. Documents reflecting or relating to discussions between SBSD officials, the District Attorney and Joshua Ryen.

From the outset of the investigation of this case, the likelihood of multiple perpetrators has never been satisfactorily negated. The sole eyewitness to the murders, Joshua Ryen, communicated to San Bernardino sheriffs shortly after the crime that there were several perpetrators. Don Gamundoy, a clinical social worker in the emergency room at Loma Linda University Medical Center, was the first person to communicate at the hospital with Joshua Ryen. (99 RT at 5918, 5921, Testimony of Donald Gamundoy.) Joshua Ryen told Gamundoy that (1) either three or four people were responsible for the attack; (2) they were male; (3) they were not black and did not look like Gamundoy, who was often mistaken for Hispanic; and (4) they were Caucasian. (*Id.* at 5928-29.) Calvin Fischer, a registered nurse assigned to the emergency room, took notes and confirmed Gamundoy's recollections that Joshua Ryen was alert and able to communicate and that he held up three fingers to indicate the number of attackers. (SBSD Interview of Calvin J. Fischer 1/9/84; R. Forbush interview of Calvin J. Fischer 10/12/83 at 2, 12; 100 RT at 6232, Testimony of Calvin Fischer.) Joshua Ryen's subsequent conversations with law enforcement confirmed this information. (R. Forbush interview of Mary Howell 10/27/83 at 2-3.)

Joshua Ryen later viewed photographs of Defendant on television while Joshua Ryen was still in the hospital and well before Defendant's arrest. Joshua Ryen also saw the television coverage of Defendant at the time of his arrest. Pictures of Defendant on each

occasion showed him with his hair combed out in an afro hairstyle. On June 14, 1983, while still in the hospital and the first time Joshua Ryen viewed Defendant's photograph on television, he spontaneously remarked to his grandmother, Dr. Mary Howell, that the man on television was not the person who committed the murders. (106 RT at 7703-04, Testimony of Mary Howell.)[309]

Joshua Ryen's subsequent descriptions of his attackers represented errant memory, influenced by the relationships formed with law enforcement, including preparation for his videotaped statements shown at trial, the repetitious questioning, his repeated viewing of Defendant on television, and the subsequent details of the capture of Defendant as well as discussions with relatives, law enforcement and therapists. Yet because Defendant has not been afforded full discovery, subpoena power and access to critical law enforcement records, confidential records of therapists and mental health professionals, or personnel who wrote these reports, Defendant is unable to provide further specificity regarding this claim.

Defendant requests the production of all documents reflecting or relating to all discussions between SBSD officials or the District Attorney's Office, on the one hand, and Joshua Ryen, on the other hand.

12. Documents prepared in connection with audits conducted in 1985 and 1986 of the San Bernardino County Sheriff's Department Crime Laboratory.

The trial judge was harshly critical of the investigation and forensic work in connection with the Ryen/Hughes murders for which Defendant was convicted. Indeed, he observed that, without any criminology experience all, he could have done a better job. (63 RT 7/25/85 at 5622:16-20.) Defendant is informed that in 1985 and 1986, inspections and audits were conducted of the practices of the San Bernardino County Sheriff's Department ("SBSD") Crime Laboratory. Such audits may corroborate and highlight the sloppy and unreliable practices of the SBSD laboratory that were exposed at trial and are at issue in claims in the

[309] Following the receipt of information from his uncle and police officers, Joshua Ryen's subsequent descriptions of his attackers changed dramatically. Because Defendant has not been afforded full discovery, subpoena power and access to either critical law enforcement records, confidential records of therapists and mental health professionals, or personnel who wrote these reports, Defendant is unable to provide further specificity.

current habeas proceeding. Defendant requests production of these audit reports and any documents created as part of the investigation and preparation of the reports.

13. Documents created in connection with (1) any SBSD contact since February 9, 2004, with any individuals in connection with any investigation of activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders, (2) documents reflecting or relating to Detective Wilson's communications with other members of SBSD, including but not limited to Sergeant Arthur, relating to the events at the Canyon Corral Bar, and (3) documents created in connection with any investigation, from June 4, 1983 to the present date, of any activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders.

On the evening of the Ryen/Hughes Murders, June 4, 1983, three suspicious men, who were not bar regulars, were seen in the Canyon Corral Bar, located less than one mile from the murder scene. Christine Slonaker and Mary Mellon Wolfe, two bar patrons that night, independently and without speaking to one another, came forward only days before Defendant's scheduled execution, and unequivocally told Defendant's counsel that these suspicious men not only acted bizarrely, but also had blood on their clothing. The men approached near where Slonaker, Wolfe and a third woman with them were sitting and attempted to engage them in conversation. Slonaker and Wolfe had the best opportunity to view the men in question, making their independent and mutually corroborating recollections that the men were covered in blood particularly credible. For her part, Slonaker previously had worked as a phlebotomist. This information is directly relevant to Defendant's actual innocence claim, as it strongly points to the culpability of third parties as the true perpetrators of the crimes for which Defendant was convicted.

Slonaker stated in her declaration that, shortly after the incident at the bar that night, a police officer was seen entering the bar. (Declaration of Christine Slonaker dated February 7, 2004 ¶ 11.) If it exists, no police report regarding the investigation that night has ever been turned over to Defendant, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Since Defendant's stay of execution was granted, at least three SBSD law enforcement officials, Detectives Michael Gilliam and Derek Pacifico and Sergeant Patrick

Cavenaugh, have contacted at least nine witnesses in connection with investigation of activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders: Edward Lelko, Shirley Killian, Virginia Mansfield, Kathleen Royals, Linda Paulk, Pamela Smith, Lester Land, Mary Wolfe, and Christine Slonaker. Defendant was not aware of the substance of these contacts, and in some cases the very existence of any contacts between SBSD and these witnesses, until being served with a stack of 100 exhibits (thousands of pages) submitted in support of State's answer, filed within the federal court on May 3, 2004. However, this information is material to the development of Defendant's habeas claims, including Defendant's actual innocence claim, and Defendant's *Brady* claims.

On August 25, 2004, two additional witnesses testified as to events occurring at the Canyon Corral bar on the night of the Ryen/Hughes murders - Al Ward and Randy Mansfield. Al Ward was subpoenaed by the State, which thought he was a bartender at the Canyon Corral Bar identified in prior testimony by other bar employees and regular patrons. State's counsel provided Defendant's counsel with contact information that allowed Defendant's counsel to meet with Mr. Ward at the last minute - on the night immediately prior to Mr. Ward's scheduled testimony.

When Defendant's counsel interviewed Mr. Ward on the night of August 24, 2004, Defendant's counsel immediately determined that the individual who had been subpoenaed to testify was in fact not the former bartender at the Canyon Corral Bar. At the outset of the evidentiary hearing on August 25, 2004, Defendant's counsel notified the Court that the person who was subpoenaed to testify was not Al Ward, the bartender.[310] (RT 8/25/04 at 1:5-13.) Nonetheless, the Al Ward who was subpoenaed provided important information supporting Defendant's claims.

The other witness on August 25, 2004 was Randy Mansfield, who was a regular patron of the Canyon Corral Bar, the son of its manager Shirley Killian and then boyfriend of bar

[310] The State's representatives both subpoenaed Mr. Ward and spoke with him well prior to his testimony and were plainly aware that Al Ward was not the right person. Inexplicably, the State chose not to disclose that fact.

employee Virginia McNeil. When Defendant's counsel asked Mr. Mansfield what the race was of the "Al Ward" who bartended at the Canyon Corral Bar, Mr. Mansfield quickly responded that Mr. Ward was "white." The "Al Ward" the State subpoenaed to testify on August 25, 2004 was African-American.

On July 23, 2004, Lance Stark, a long time regular patron at the Canyon Corral Bar, corroborated the material facts testified to by Ms. Slonaker and Ms. Wolfe regarding the events at the bar on the night of the murders. Mr. Stark testified before the district court that he saw two men approach several ladies sitting at the bar on the evening of June 4, 1983. (Reporter's Transcript ["RT"] 7/23/04 at 20-21, 28.) Moreover, Mr. Stark testified that one of the men had light hair and was wearing a light T-shirt and coveralls. (*Id.* at 23-24.) Mr. Stark's testimony corroborated that of Ms. Slonaker and Ms. Wolfe in material respects and further establishes Defendant's claims that the three men at the bar, one of whom was wearing a light T-shirt, were likely the actual perpetrators of the Ryen/Hughes murders. At a minimum, these facts, if presented to the jury, would establish a reasonable doubt that Defendant was guilty.

At the August 26, 2004 hearing, Detective Tim Wilson of the SBSD testified that he was made aware, most likely within a week, perhaps two weeks, of the information that three male strangers with blood on them were seen at the bar late the night of the murders. (RT 8/26/04 at 77-78.) He also testified that he provided this information to Sergeant Arthur, who was in charge of the Ryen/Hughes murder investigation. (*Id.* at 70.) The prosecution's failure to disclose this information to the defense is a basis for Defendant's claim of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Accordingly, Defendant therefore requests the production of all documents created in connection with (1) any SBSD contact since February 9, 2004, with any individuals, including but not limited to those individuals discussed above, in connection with investigation of the activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders, (2) documents reflecting or relating to Detective Wilson's communications with other members of SBSD, including but not limited to Sergeant Arthur, relating to the events at the Canyon Corral

Bar, and (3) documents created in connection with *any* investigation by or on behalf of law enforcement , from June 4, 1983 to the present date, of any activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders.

14. Documents in the possession of the DEA, Riverside County Sheriff's Office, or SBSD, relating to Mr. Ruiz's connection to, or knowledge of the Ryen/Hughes murders, including the investigation of those murders.

On August 6, 2004, Albert Anthony Ruiz testified before the district court that he previously worked as a confidential informant for the Riverside Sheriff's Department, Drug Enforcement Agency ("DEA") or the federal DEA.[311] (RT 8/6/04 at 77, 108.) He also testified that he worked directly with police officers and was deputized by Riverside sheriffs. (*Id.* at 111, 133.) Ruiz's opinion that the Ryen/Hughes murders were a "hit" on the Ryen family was based directly on information that had been provided to him by someone he knew who worked in law enforcement. (*Id.* at 80.) Mr. Ruiz further testified that his life would be jeopardized if he answered counsel's question of whether the drug trafficking matters for which he served as an informant extended geographically beyond the boundaries of Riverside County. (*Id.* at 109-no.) He also warned that his life would be jeopardized if he answered counsel's question of whether the Ryen/Hughes murders were connected to drug trafficking. (*Id.* at 134.)

On August 13, 2004, former San Bernardino County radio dispatchers Nancy Simendich and Debra Holman both testified in district court that, in connection with the Cooper investigation, the SBSD sought assistance from law enforcement agencies across the state of California, as well as outside of California. Simendich testified that requests for information "would go anywhere any law enforcement agency in [California]", including Riverside County. (RT 8/13/04 at 51.) Both Simendich and Holman testified that requests also were sent to the Phoenix and Flagstaff, Arizona Sheriff's Offices. (*Id.* at 49-50, 121.) Holman testified that the SBSD worked cooperatively with Riverside County in their past investigations. (*Id.* at 127.)

[311] The federal district court severely restricted the examination of Mr. Ruiz, allowing him to testify only as to information received from law enforcement officials within San Bernardino County. (RT 8/6/04 at 139-143.)

Their testimony establishes that there was an ongoing exchange of information between multiple law enforcement agencies inside and outside California, both in connection with the Ryen/Hughes murders, and in connection with other criminal investigations. They were all part of a multi-jurisdictional law enforcement team. In addition, San Bernardino and Riverside counties were and are part of an Inland County Narcotics Enforcement Team ("IRNET") which is a coordinated multijurisdictional task force involving federal, state and local agencies.

If a federal or state law enforcement agency had information indicating that the Ryen/Hughes murders were a "hit" relating to drug trafficking, the prosecution was obligated under *Brady* to disclose this evidence to the defense.[312] Furthermore, there exists a direct nexus between (1) Mr. Ruiz's role as a confidential drug trafficking informant for the DEA and Riverside County, which neighbors San Bernardino County, (2) the strong likelihood that Mr. Ruiz was informing on drug trafficking activities beyond the borders of Riverside County, and (3) Mr. Ruiz's opinion, based on inside information he acquired as a drug trafficking informant, that the Ryen/Hughes murders were a drug "hit" on the wrong family. The nature and extent of Mr. Ruiz's work as a confidential informant for the Riverside County Sheriff's Office and/or DEA, and the source of his opinion that the Ryen/Hughes murders were a drug "hit" gone wrong, is unquestionably relevant to Defendant's claim that the prosecution failed to disclose potentially exculpatory evidence in this case.

Defendant requests production of any documents in the possession of the DEA, Riverside County Sheriff's Office, SBSD, or San Bernardino District Attorney's Office relating to Mr. Ruiz's connection to, or knowledge of, the Ryen/Hughes murders.

---

[312] In *Brady v. Maryland*, 373 U.S. at 104, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." The duty extends not only to information relevant to guilt, but also to evidence that would tend to impeach the prosecution's witnesses. See *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154 (1972). Evidence is material if there is a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682. A "reasonable probability" is a probability "sufficient to undermine confidence in the outcome." *Id.*

15. Documents reflecting or relating to the investigation undertaken on behalf of law enforcement, including but not limited to the SBSD, including its Crime Lab, the San Bernardino District Attorney's Office, the California Attorney General's Office, the Riverside County Sheriff's Department, the Drug Enforcement Agency, and the California Department of Justice since February 9, 2004 regarding Defendant, the Ryen/Hughes murders, or the averments in the Petition.

Prior to February 9, 2004, the date the Ninth Circuit Court of Appeals granted Defendant's application to file a successor habeas petition, counsel for Defendant and persons working on their behalf were freely communicating with certain witnesses, including former California Institute for Men at Chino ("CIM") inmate James Taylor and former shoe company executive Michael Dewey Newberry, who possess information relevant to Defendant's claims for habeas relief. Investigators working on Defendant's behalf extensively interviewed Mr. Taylor, who freely shared information relating to his former testimony and recollection of certain events relevant to Defendant's habeas claims, and Mr. Newberry, who promptly responded to Defendant's investigator's attempt to contact him.

However, since approximately mid-March of 2004, Defendant's counsel began experiencing new and unusual difficulty speaking with several important witnesses. Mr. Taylor expressly refused to speak to Defendant's attorneys despite repeated attempts by Defendant's attorneys and investigators to contact Mr. Taylor. (Declaration of Norman C. Hile in Support of Defendant's Memorandum of Points and Authorities in Support of Motion for Discovery in Support of Petition for Writ of Habeas Corpus dated May 10, 2004 ["Hile Decl."] ¶ 12.) Defendant subsequently learned that in the intervening time, investigators working on behalf of the State had spoken at length with Mr. Taylor. (Hile Decl. ¶ 13.) Defendant's counsel does not know whether State investigators have contacted at least one other important witness, Michael Dewey Newberry. However, Defendant's counsel's attempts to contact Mr. Newberry have been completely unsuccessful, despite the fact that Mr. Newberry responded within one day to an earlier attempt to contact him on February 9, 2004. (Hile Decl. ¶ 14.)

During the course of the habeas proceedings, a newly discovered witness was told by someone driving an all white Crown Victoria Ford automobile with a computer screen extending on an arm from the dashboard, that it would be in his best interests not to talk to Defendant's attorneys in the habeas proceeding. (Declaration of Lance Stark dated June 2004 ¶ 11) Mr. Stark's testimony corroborated important claims in Defendant's petition regarding three men at the Canyon Corral Bar the night of the murders. Very recently, Ken Schreckengost, a former SBSD deputy who authorized destruction of coveralls with blood on them, refused to continue talking to Defendant's investigator after Mr. Schreckengost spoke with an attorney in the San Bernardino District Attorney's Office. (Supplemental Declaration of Joseph P. Soldis dated March 17, 2005 ¶ 4.)

The State's investigation has significantly hindered Defendant's ability to fully discover and explore all of the facts that relate to many of the issues raised in his habeas petition. Since the State and Respondent in the habeas proceeding initiated their investigations and made disclosed and undisclosed contacts with witnesses, the witnesses have refused to respond at all to Defendant's counsel's investigators' requests to speak, expressly stated their unwillingness to speak to Defendant's counsel or his investigators, or delayed responses to Defendant's counsel's requests to speak. Defendant has been prevented from preparing a full investigation and presentation of the facts in support of his habeas claim.

On May 3, 2004, the State submitted one hundred exhibits (thousands of pages) in support of its Answer to Defendant's Petition for Writ of Habeas Corpus. These exhibits included transcripts of interviews of numerous witnesses whom the State interviewed without Defendant's knowledge in connection with this Defendant or the Ryen/Hughes murders, including but not limited to Midge Carroll, former warden of CIM; James Taylor, former prisoner at CIM; Don Luck, a former shoe company executive who provided key corroborative testimony that the gym shoes were *not* issued only from state prisons regarding the shoe prints found at the crime scene; Christine Slonaker and Mary Mellon-Wolfe, witnesses at the Canyon

Corral Bar the night of the murders; and Lee Furrow, Kenneth Koon, and Michael Darnell, potential third-party perpetrators.

Defendant therefore requests the production of all documents reflecting or relating to any investigation on behalf of law enforcement, including but not limited to the SBSD, including its Crime Lab, the San Bernardino District Attorney's Office, the San Diego Attorney General's Office, the Riverside County Sheriff's Department, the Drug Enforcement Agency, and the California Department of Justice, since February 9, 2004 regarding Defendant, the Ryen/Hughes murders, or the averments in the Petition.

16. Examination of physical evidence, including but not limited to the T-shirt designated Exhibit 169, and documents reflecting or relating to all forensic testing ordered by the district court to date in connection with Defendant's habeas petition, including but not limited to physical evidence in the possession of Dr. Gary Siuzdak and/or Scripps Research Institute, Dr. Lewis Maddox and/or Orchid Cellmark, and Mr. Steven Myers and/or the California Department of Justice.

In connection with the issues discussed in request 13(a), (b), and (c), the Court should also allow Defendant's expert to examine all of the physical evidence in the possession of or generated by Dr. Gary Siuzdak and/or Scripps Research Institute, Dr. Lewis Maddox and/or Orchid Cellmark, and Mr. Steven Myers and/or the California Department of Justice. This includes examination of the T-shirt designated Trial Exhibit 169. The T-shirt is currently in the possession of the California Department of Justice.

17. Documents reflecting or relating to all forensic testing ordered by the district court to date in connection with Defendant's habeas petition, including but not limited to documents in the possession of Dr. Gary Siuzdak and/or Scripps Research Institute, Dr. Lewis Maddox and/or Orchid Cellmark, and Mr. Steven Myers and/or the California Department of Justice.

a. <u>Dr. Gary Siuzdak</u>

On October 5, 2004, Dr. Gary Siuzdak of Scripps Research Institute, located in La Jolla, California, reported EDTA testing results which supported Defendant's allegations of tampering. Pursuant to the federal court's Amended EDTA Testing Order filed September 7, 2004, Dr. Siuzdak's obligations were as follows:

> 7.1 Upon receipt of the coded vials, Dr. Siuzdak and Dr. Ballard, or their designees, shall each document, photograph, and log the evidence and perform EDTA testing as described below. Dr. Siuzdak and Dr. Ballard, or their designees, shall each document their testing procedure as they perform the EDTA tests.
>
> . . . .
>
> 7.6 Dr. Siuzdak and Dr. Ballard shall maintain the remainder, if any, of the testing materials and the raw data in their possession until further order by the Court.

On October 27, 2004, approximately a month after reporting his results, Dr. Siuzdak wrote to the federal court and unilaterally withdrew the EDTA testing results that he obtained. (Letter from Gary Siuzdak to Judge Marilyn Huff dated 10/27/04.) Dr. Siuzdak belatedly, but without any explanation, claimed that the samples were somehow contaminated in his laboratory. (*Id.*)

In a February 11, 2005 order, the district court denied Defendant's request for discovery to take Dr. Siuzdak's deposition and for production of the materials he was to maintain. Instead, the Court ordered that Dr. Siuzdak's testing "protocol" be provided to Defendant's counsel to see if that might answer the mystery of the alleged contamination. But the purported protocol that was produced is no protocol at all and was of no assistance. As Defendant's expert, Dr. Kevin Ballard, stated, the Siuzdak "protocol" is not really a protocol and sheds no light on the possible cause of the alleged contamination. (Declaration of Dr. Kevin Ballard in Support of Defendant's Further Motion for Evidentiary Hearing dated March 23, 2005 ¶ 5.) Nothing in the record evidences the source of contamination, the extent of it or how it may have occurred. (*Id.* ¶ 6.)

In light of the issues and the failure of the "protocol" to be of assistance, Defendant requests production of all documents generated by Dr. Siuzdak and/or Scripps Research Institute in connection with his testing of the samples, including but not limited to test data, bench notes, correspondence and other documents reflecting or relating to the alleged contamination.

b. Dr. Lewis Maddox

In connection with the recent EDTA testing[313] conducted on the T-shirt, Defendant was not permitted to have an expert present during the examination of the T-shirt. The preparation and selection of T-shirt stains for EDTA testing is a critical phase of the testing process. This examination was done at Orchid Cellmark in Germantown, Maryland, under the supervision of Dr. Lewis Maddox and in the presence of the Attorney General's expert, Mr. Steven Myers.

Defendant requests production of all documents generated by Dr. Maddox and/or Orchid Cellmark in connection with the selection and preparation of the T-shirt samples.

c. Steven Myers

According to Steven Myers' bench notes in January 2002, the area immediately surrounding the T-shirt cut-out designated in 2002 as 6G was probably the best available subject stain for DNA and anticoagulant testing. (Declaration of David T. Alexander in Support of Defendant's Further Motion for Evidentiary Hearing dated February 22, 2005 ["Alexander 2/22/05 Decl. ¶ 2, Ex. A.) The initial protocol for EDTA testing called for the testing of the area denoted as 6G. After inspecting the T-shirt at Orchid Cellmark's facilities, Mr. Myers notified the Court that cut-out 6G had been completely consumed in prior testing.[314] He did not inform the Court that a stain immediately adjacent to 6G was a strong candidate for the testing ordered by the Court. As Mr. Myers' January 28, 2002 bench notes disclose, he did not, nor could he, actually perform a presumptive blood test on the cut-out 6G. According to his bench notes, cut-out 6G already had been completely consumed in the DNA testing. (Alexander 2/22/05 Decl. ¶ 2, Ex. A [Bench Notes of Steven Myers dated January 9, 2002].) Instead, Myers' bench notes show that the presumptive blood test for 6G was performed on "the stain, sampled at the top

[313] Defendant notes that EDTA testing is a separate and distinct process from DNA testing, and does not fall under the purview of California Penal Code Section 1405.

[314] On January 9, 2002, Mr. Myers sampled 6G for DNA testing. (Alexander 2/22/05 Decl. ¶ 2, Ex. A [Bench Notes of Steven Myers dated January 9, 2002].) On January 19, 2002 during that DNA testing, Mr. Myers consumed the cut-out designated 6G in DNA testing. (*Id.* 113, Ex. B.) On January 28, 2002, Mr. Myers wrote that he conducted a presumptive blood test on areas near the top edge of 6G. (*Id.* ¶4, Ex. C [Bench Notes of Steven Myers dated January 28, 2002].)

edge of where DOJ-6G was taken," and that section of the T-shirt tested positive for blood. (*Id.*, Ex. C.)

In short, Mr. Myers conducted a presumptive blood test on a section of the T-shirt just above 6G that was not DNA tested but was consumed in prior testing. Mr. Myers obtained a positive result on the stain, indicating the presence of blood on that section of the T-shirt. He then assumed that the cut-out 6G, the section of the T-shirt that was consumed in prior testing, also was blood, based on the positive presumptive blood test he obtained for the T-shirt stain above the 6G cut-out.

The district court previously determined that 6G should be tested for EDTA primarily because, according to Mr. Myers' prior test results, 6G may be the only stain that contained only Defendant's blood. Although cut-out 6G no longer exists, it is clear that the section of the T-shirt immediately above cut-out 6G remains intact and suitable for EDTA testing. A photograph of cut-out 6G was taken by the California Department of Justice on September 14, 2004. (Alexander 2/22/05 Decl. ¶ 5, Ex. D.) The 6G cut-out is the large cut-out at the top right of the photograph. (*Id.)* While, based on Mr. Myers' presumptive blood test conducted on January 19, 2002 the immediate area above 6G contains blood, this area of the T-shirt has never been tested for DNA. Defendant's experts have not been permitted to examine the actual T-shirt to verify this crucial information.

For these reasons, Defendant requests production of all documents maintained by Mr. Myers or the California Department of Justice Laboratory in connection with his examination of the T-shirt for the purpose of EDTA testing and DNA testing conducted in 2004.

Exhibit 3

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November 22, 2021

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Re: Investigation into Kevin Cooper's Claim of Innocent

Dear Counsel:

We are aware of the joint investigation conducted by the New York Conviction Integrity Program and defense counsel that led to the exoneration of Muhammad A. Aziz and Khalil Islam, who were convicted of the murder of Malcolm X. In connection with that matter, the NYPD and FBI turned over materials related to their investigations that had not previously been produced, and the defense likewise shared their investigative files.

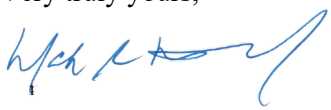
In the matter of Kevin Cooper, we have thus far received only discovery materials that were produced to the Cooper defense team in connection with Cooper's 1984 trial, and certain selected materials from the current legal team representing Mr. Cooper. In order fully to investigate Mr. Cooper's claims of innocence, we want to review all materials in the possession of the San Bernardino Sheriffs' Department and District Attorneys' Office that relate to the investigation and case against Mr. Cooper that were not previously produced. And, from Mr. Cooper's current defense team, we would like to receive production of all their investigative files.

We would like to know your respective positions on our requests. We are able to serve subpoenas to obtain those requested materials. Before we so do, however, we are willing to discuss alternative arrangements if either side would like to do so.

sf-4435231

Thank you.

Very truly yours,



Mark R. McDonald

sf-4435231

Exhibit 4

orrick

To Independent Investigation Team

From Cooper Team

Date January 4, 2022

Re Priority Document Request List for Independent Investigation

I. Documents Related to Physical Evidence

A. **Documents related to the Pro-Ked shoes and shoe prints**, including: (1) documents from SBSD or SBCDA files relating to SBSD Detective Derek's Pacifico, Detective Mahoney, or any other SBSD representative's investigation of the Pro-Ked shoes, including any contacts between SBSD and CIM Chino, documents Pacifico reviewed in connection with his testimony during the 2004 evidentiary hearing, and documents related to the aforementioned testimony; (2) documents relating to the investigation from June 4, 1983 to the present date of the make, model, sale, availability, distribution, or chain of custody of the tennis shoes purportedly worn by Cooper in the Ryen and Lease houses; and (3) Documents from SBSD or SBCDA files reflecting or relating to SBSD Dep. William Baird's investigation of the Ryen/Hughes murders and the identity and source of any gym shoes in his office.

B. **Documents related to any articles of clothing related to the murders**, including (1) SBSD or SBCDA files reflecting or relating to the SBSD's handling and destruction of bloodstained coveralls received by the SBSD from Diana Roper on June 9, 1983, including a list of all SBSD personnel assigned to the Yucaipa substation from June 9, 1983 through December 1983, and b) the personnel file of Capt. Mike Stodelle and any SBSD report or document related to the Ryen/Hughes murders in which Stodelle is mentioned; (2) Documents from SBSD or SBCDA files reflecting or relating to the chain of custody and handling of the tan t-shirt found near the Canyon Corral Bar in June 7, 1983; and (3) Documents from SBSD or SBCDA files reflecting or relating to the blue short sleeve shirt found by Laurel Epler and taken into custody by SBSD Detective Scott Field on June 6, 1983, and the SBSD Daily Log of that day.

C. **Documents related to blood drop A-41 and Kevin Cooper's claims of evidence tampering**, including (1) documents reflecting or relating to the examination of blood drop A-41 (the blood drop recovered from the hallway of the Ryen home) and blood drops "UU" (the surrounding blood spots); (2) Documents from SBSD or SBCDA files reflecting or relating to the storage of A-41 by the SBSD; (3) Documents from SBSD or SBCDA files reflecting or

relating to the storage, preservation, or whereabouts of the second vial of blood taken from Mr. Cooper when he was arrested in July 1983; (4) Any SBSD or SBCDA records relating to any incident in which a finding was made by any law enforcement agency or oversight agency of dishonesty by Criminologist Daniel J. Gregonis directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by Daniel J. Gregonis; and (5) Documents from SBSD or SBCDA files reflecting or relating to forensic testing ordered by the district court in 2004-2005 in connection with Defendant's habeas petition, including but not limited to physical evidence in the possession of Dr. Gary Suizdak and/or Scripps Research Institute, Dr. Lewis Maddox and/or Orchid Cellmark, and Mr. Steven Myers and/or the California Department of Justice.

D. **Documents related to cigarette butts found by SBSD as part of its investigation**, including documents from SBSD or SBCDA files reflecting or relating to the cigarette butts the SBSD found, stored, or tested in the Ryen car, Cooper's abandoned car found in an LAPD impound lot, or at the Lease house, including but not limited to V-12, V-17, and QQ.

E. **Documents relating to Luminol testing of the shower in the Lease house**, including the results of all the tests conducted including any tests conducted, including after the first test was obtained showing a "positive" result.

F. The SBSD personnel files of Daniel J.Gregonis, Craig Ogino, Hector O'Campo, David Stockwell, Tim Wilson and Mike Stodelle.

II. Documents Related to Alternative Suspects

A. Documents related to Eugene Lee Furrow, including Documents from SBSD or SBCDA files reflecting or relating or referencing Eugene Lee Furrow from June 5, 1983 to the present, including records of his phone calls to any third persons or to the SBSD. This includes but is not limited to records of SBSD detectives requesting phone records from the home of Theresa Monteleone (Theresa or Teresa Sanders, Teresa Montellone) and any visits by law enforcement to her residence; documents relating to a charge of Assault with Intent to Commit Rape that occurred on July 5,1985 in San Bernardino County; and any conversations with attorneys or prosecutors regarding Furrow's prior criminal cases in state and federal court.

B. **Documents related to Joshua Ryen's initial description of suspects**, including: (1) Documents from SBSD or SBCDA files reflecting or relating to discussions between or among SBSD personnel, the District Attorney's Office, and Joshua Ryen (including specifically discussions relating to Joshua Ryen's description of the suspects); (2) the SBSD or SBCDA Report from June 15, 1983 documenting a conversation where Joshua Ryen saw a news report and photo of Cooper on TV and told Dep. Luis Simo, "that's not the guy that did it," and any SBSD or SBCDA records that reflect that Simo conveyed this statement by Joshua Ryen to SBSD Dep. O'Campo; (3) any notes taken during or after any interview of Joshua Ryen by SBSD personnel or any records referring to the destruction of interview notes or accounts or conversations about their existence.

C. **Documents related to SBSD awareness of other suspects and/or failure to investigate them**, including (1) Documents from SBSD or SBCDA files reflecting or relating to SBSD's failure to follow proper procedure during the investigation of the Ryen-Hughes murder, failure to preserve witness interviews, failure to preserve the Ryen bedroom crime scene; (2) Documents from SBSD or SBCDA files reflecting or referring to any instruction by law enforcement, including but not limited to the SBSD, including its Crime Lab or the San Bernardino District Attorney's office, not to pursue evidence that pointed to any individual as one of the assailants in the Ryen/Hughes murders, including but not limited to instructions given by anyone to Brian Wraxall to discontinue testing the UU series of blood samples; (3) Documents from SBSD or SBCDA files created in connection with (a) any SBSD or SBCDA contact with any individuals in connection with any investigation of activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders, (b) documents reflecting or relating to SBSD Detective Wilson's communications with other members of SBSD, including but not limited to Sergeant Billy Arthur, relating to the events at the Canyon Corral Bar at the time of the Ryen-Hughes murders, and (c) documents created in connection with any investigation, from June 4, 1983 to the present date, of any activities at the Canyon Corral Bar on the night of the Ryen/Hughes murders; (4) Documents from SBSD or SBCDA files or in the possession of the DEA, Riverside County Sheriff's Office, or SBSD, relating to Mr. Albert Anthony Ruiz's connection to, or knowledge of the Ryen/Hughes murders, including the investigation of those murders; and (5) The SBSD daily logs and all documents reflecting or relating to the daily logs from June 1, 1983 through July 31, 1983, including the underlying blue sheets, radio logs and dispatch recordings for that period.

III. Documents Related to SBSD Misconduct

A. **Documents** prepared in connection with and reflecting the results of any audits of the San Bernardino County Sheriff's Department Crime from 1983 to the present;

B. **Any SBSD records** relating to any incident in which a finding was made by any law enforcement agency or oversight agency of dishonesty by Sheriff Floyd Tidwell directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by Sheriff Floyd Tidwell;

C. **Any SBSD records** relating to any incident in which a finding was made by any law enforcement agency or oversight agency of dishonesty by SBSD Criminalist Daniel Gregonis directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by SBSD Criminalist Daniel Gregonis.

D. **Any SBSD records** relating to any incident in which a finding was made by any law enforcement agency or oversight agency of dishonesty by Deputy William Baird directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by Deputy William Baird.

E. **Any SBSD records** relating to any incident in which a finding was made by any law enforcement agency or oversight agency of dishonesty by Assistant Sheriff Mike Stodelle directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by Mike Stodelle at any rank from deputy to assistant sheriff.

Exhibit 5

VIA EMAIL

orrick

Memo

To Mark McDonald

From Elspeth Farmer

Date December 6, 2021

Re Sightings of a Green Chevy

The SBSD did not pursue the multiple, concrete leads on all possible suspects in their investigation of Ryen-Hughes murders. The SBSD issued a criminal bulletin on June 7, 1983, based on eyewitness statements, including by lone survivor Josh Ryen, describing the suspected killers as three white men—perhaps one was "Mexican"— and the color of the shirts they wore and the car they were driving. No one reported seeing a Black man.

When the SBSD became aware of a Black escapee from a nearby prison, Kevin Cooper, they immediately focused on him to the exclusion of following other leads. Cooper had been in a vacant home near the crime scene not far from the prison. He left behind butts from cigarettes he rolled from prison-issue tobacco and cigarette papers. He left fingerprints throughout the home, and phone records of calls he made. Pressure to solve the horrific crime, combined with Cooper's race and prior record and his presence near the Ryen home, led to tunnel vision that dominated the sheriff's investigation and led to gross misconduct. That myopic view led investigators to completely ignore the witness statements and evidence that within days of the murders pointed to convicted murderer Lee Furrow as one of the killers.

Police reports and court and interview transcripts reveals evidence to support the theory that the two other men were with Furrow, one of whom drove a green Chevy with black pinstripes and a torn vinyl roof and may have been named "Jack". The car was seen by several witnesses during the week before the killings until June 5, 1983. Here is a brief summary of the facts:

- During the week before the murders, an older model green Chevy Vega or Chevelle with black pinstripes and a torn vinyl roof was noticed by Diana Roper's sister, Karee Kellison, parked on the street where Roper and Furrow lived. Two men sat in the car watching the house during that time. Roper's friend Teresa Monteleone also noticed the parked car. (Teresa Sanders Monteleone interview with Ron Forbush)

- On the day of the murders, two of Roper's friends independently saw a green Chevy parked in the Roper-Furrow yard.

- Richard Sibbitt also described a green Chevy appearing at the Lang-Lease property down the road from the Ryens' home the afternoon of the murders; this car was also seen in the neighborhood of the Ryen home by witnesses the day of the murders.

- The manager of a horse farm near the Ryens saw three men in a '70s model, faded or light green Chevy drive toward the Ryen home around 5:30-6 PM on June 4.

- One witness said a green “Chevy or Buick” sped away from the Ryen home around 8:45 PM June 4. After the murders, Diana Roper opened a trunk containing Debbie Glasgow’s possessions and found a letter written to Glasgow and Furrow from someone in Arizona. The letter referred to “Jack” and his “new” green car with a torn vinyl roof.

- The driver of a large horse transport van parked on the Ryens’ road saw two vehicles leaving the area one of which was a “tan over green Chevy” seen at about 12:05 AM June 5.

Chronology of Sightings

June 4, 1983

- Richard Sibbitt, an employee of Roger Lang, told defense investigator Ron Forbush that during the afternoon of Saturday, June 4, 1983, while at the Lang property on Old Ranch Road near the Ryens’ property, he was approached by two “Mexican”-looking men driving a lime green Chevy Vega with black pinstripes. Sibbitt said, “I seen these Mexicans” in a lime green Chevy Vega with black stripes. “They were looking for employment. One of them spoke very fluent English, the other one could speak nothing, no English at all...They had pulled into the parking lot on Arabian Hills [Lease's property] ...” Sibbitt told Forbush the English speaker said they were ranch hands experienced with horses. Sibbitt told them he was not the owner and that they needed to talk to Larry Lease. Sibbitt pointed to where Lease was but did not see whether they went to talk to Lease. Forbush asked if there was anything suspicious about them. Sibbitt said they were “undesirable looking" and that one of them was "hippie-looking...A big mustachio-type ...The real long one that's real furry...and curly, bushy hair. Not an Afro, but it was a natural Afro-type..." This description fits Furrow because of the hair and mustache. (See Furrow photos below from 1983 provided by Diana Roper to Erin Moriarty).

  (see Forbush interview of Richard and Karan (cq) Sibbitt on 09/29/83).

June 4, 1983

- Marc Wollard, the farm manager for Edwards/Hughes Arabian Horse Farms (unrelated to Christopher Hughes’ family), lived at the Edwards family ranch. He said that at around 5:30-6 p.m. on June 4, he saw three men in a ’70s model faded or light green Chevy drive toward the Ryen home. The dark-haired man in the back seat looked “Mexican.” (Note: Josh Ryen said the three men looking for work pulled up as they were getting ready to leave for the barbecue around 6:30 p.m.). Wollard did not see when the green car left the area because he went inside his residence on the Edwards’ property.
  (see Dep. Robert S. Hall report of Marc Wollard on 06/08/83).

June 4, 1983

- On June 9, 1983 Danette Hughes, a neighbor at 2927 Old English Road, told SBSD Deputy Wilson that on June 4 she saw a Buick or Chevrolet headed toward Payton Avenue away from the Ryen home. (Refer to Sheriff’s Department report page numbered 418.) She told Ron Forbush that on June 4 at about 8:45 PM, she saw a large green car, traveling about fifty miles an

hour coming from “up the road” from where the Ryens lived (i.e. driving away from the Ryens’ home). She stated that she was sitting on a couch in her residence looking out front since she was watching the mare who was about foal. Her husband, James Hughes, said he saw the Ryens return home about 9 PM.

- Wayne Scott Dutton, a driver for Harmony Hills Farms in Scottsdale AZ, who had been delivering horses to farms in the area, had parked his horse transport truck on Old English Road on the night of June 4, 1983. He saw two vehicles leaving the area. One was “a white over tan Volkswagen convertible” driving east at 11:30 PM and the second vehicle, a newer model “tan over green Chevy,” was also driving east on Old English Road “at approximately 0005 (cq) hours…He did observe driving it (cq) but could not give a description.”

DANETTE HUGHES—RON FORBUSH INTERVIEW 09/22/83
DANETTE HUGHES—DEP. WILSON INTERVIEW 06/09/83
JAMES HUGHES—DEP. WILSON INTERVIEW 06/09/83
WAYNE SCOTT DUTTON—DEP. K. HOOPS INTERVIEW 06/05/83

June 4, 1983

- Diana Roper told Ron Forbush in May 1984 ,“That afternoon while I was at the US Festival and he [Furrow] was there, two girlfriends of mine when [went] to my house and there was a car sitting there. Like a Chevelle, an older one, a big car. An ugly, greenish-colored paint job and the vinyl roof was messed up on it. And that car was seen in my driveway. One of my girlfriends went to the house and knocked, Lee would not let her in the house…She went there, she saw Jan [Martinez] there and this car was there. And he told her, you know, she couldn't come in, that there was people there. And she noticed things weren't right, and she left. And another girlfriend of mine went and the same thing.” (See, Diana Roper Interview with Forbush, 05/18/84, Page 5)

- On May 16, 1984, 11 months after the killings, Roper gave a lengthy interview to SBSD officer James Stalnaker implicating Furrow. She described the bloody coveralls he wore home and the fact that Furrow’s hatchet was missing. The following day, May 17, Furrow was interviewed by Stalnaker and was asked about the coveralls. Furrow denied they were his and furiously confronted Diana at her neighbor Teresa Monteleone’s house later that day. Diana’s sister Karee was also present. Roper was frightened and led Furrow to think that she had told Stalnaker about the coveralls 11 months earlier, when she turned them in, and they were just getting around to talking to her.

She related this conversation with Furrow to Forbush on May 18. The quotes below are taken from her interview with Forbush[p. 17] and are her recollection of what Kellison and Furrow said:

- Roper: You know they found the coveralls in the closet.

- Furrow**:** “Well, I don't know nothing about them.”

- Kellison: “You know what, Lee, what are you lying for? I saw you come in that night, that morning, next morning, in them coveralls…I saw you Lee….And you know that car that

dropped you off that night?" [The night of the murders]."

- Furrow: "Yeh."
  Kellison: "The guy was driving it, the one that had the long black hair before…you know what…it sure is funny he's the one that was sitting at the end of your street [in the green car] for the whole week Debbie was here. I know Lee…I saw that guy and I remember what he looks like…I'll never forget his face." …

- Roper described the car to which Kellison referred: "It was a, like a dull green '68, '66 like an Oldsmobile or an older Chevy that had a vinyl top. [Kellison] said the vinyl top was kind of torn on it. It was kind of a shitty looking car… And the guy that brought him home was the same guy she had seen in the car. You know, the times that she'd seen them parked down the street."
  (See Roper-Forbush, 05/18/84, Page 17.)

In the section below, Roper describes finding letters to Debbie Glasgow and a marriage certificate of Furrow and Glasgow in the room where Glasgow had been staying at Roper's house. The documents were left behind when Glasgow left after the murders. She said that one of the letters addressed to both Glasgow and Furrow referred to a green car.

- Roper: "This Debbie girl that was staying there, she always had to leave and go make phone calls. She had some friends in Arizona. She never called them by their names, and he called it the animal house in Tucson. They were biker tramps. Scuzzy looking people. She wrote them some letters, and her letters were just really weird…I opened them, and I read them. The pastor [now deceased] of my church where I go had them now, he's keeping them cause I went to him with these a year ago.

  'She received a letter from them… And it was from them, addressed to my house, and it was to Debbie and Lee. 'You know,' it said. 'How are you guys doing? We got pictures back from the Yuma run. Really had a good time. What have you two been doing? You been cutting around on your bike?' And at the very bottom it says 'P.S.,' and I think it said, 'Jack got a new car, ha, ha. It's a green, I forget what type of car…and the vinyl roof is messed up on it.'

  That's why that car has been so, you know, such a big thing to me, my sister, [and] Teresa [Monteleone]. Cause we know what we read, we know what we saw. If it has nothing to do with that, it's really strange that it all tied in at that particular time.'"

Possible Timeline

Blood stains were found on three seats of the Ryens' car so we assume that three people drove away from the Ryen home in the station wagon since. How did they arrive at the house and what happened to the car(s) that drove them there? Here is one possible scenario (times are estimates):
Sightings of the green Chevy that was in the Roper yard the afternoon of June 4 (Roper statement):

- It was driven in late afternoon to Chino Hills to case the neighborhood, including the possibility of dogs.

- It stopped at the Lang residence, and its occupants encountered Richard Sibbitt. They pretended to be looking for work. (See Sibbitt statement).

- They drove to the Ryen home around 6:00-6:30 PM as the Ryens were leaving for the barbecue. (Marc Wollard and Josh Ryen statements.)

- They drove away from the Ryens' house at approximately 8:45 PM. (See Danette Hughes statement.)

- They spent some time at the Canyon Corral Bar and then asked if there was a nearby place to shoot pool. (See Kathy Royal's statement.)

- They went to the second bar to shoot pool. (See Mary Risi statement.)

- Someone drove Furrow and Michael Darnell to the US concert just before 11:00 PM. (See Becky Darnell Schepleng statement.) Glasgow left concert with Furrow. Mike Darnell went home with his wife, Becky, Diana Roper, and her sister Karee Kellison. (See Schepleng statement; Kellison statement.)

- Someone drove Furrow and Glasgow, possibly Martinez, and one or two others to the Ryens' home to commit the murders. (See Nikki Giberson declaration.)

- One person, possibly Martinez, drove away in the Chevy. (See Wayne Scott Dutton statement to Dep. Hoops.)

Witness Paula Leonard testified to seeing four people in the Ryen car (102 R.T. 6603) as it came down the road after the killings. Three people drove away in the Ryen car and returned to the Canyon Corral Bar just after midnight. (See Shirley Killian statement.) Karee Kellison described the car that brought Glasgow and Furrow home about 3:00 AM the morning of June 5 as resembling the Ryen station wagon and said it departed with two people inside.

NOTE: Below are photos of Furrow that Roper said were taken around the time of the killings. They are relevant, since Josh said that during the attacks he was looking at the back of the man standing over his mother who had big hair. And Sibbitt said one of the men who came looking for work wore a Fu Manchu mustache and had bushy hair.

EUGENE LELAND FURROW

Exhibit 6

SECOND DECLARATION OF JAMES D. CAMERON

I, JAMES D. CAMERON, hereby voluntarily declare:

I have been advised of the identity of THOMAS R. PARKER as a retired Special Agent of the Federal Bureau of Investigation (FBI) and a California State Licensed Private Investigator by his display of official credentials from both entities. I have been further advised by Mr. Parker that I was being interviewed relative to an individual known as LEE FURROW and his possible involvement in the murders of the Ryen family and a neighbor boy on the night of June 4 - 5, 1983, in Chino Hills, California. I hereby declare the following:

I have previously provided a declaration dated June 30, 2019, on this matter to an individual who identified himself as PAUL INGELS and who claimed to be a private investigator in California and who also advised that he had been involved in the defense investigation for the attorneys representing KEVIN COOPER. I am aware that MR. COOPER was subsequently arrested, tried, and convicted of the Ryen case murders and received the death penalty, but questions regarding his actual guilt have existed over the years since his conviction.

Several months ago, my father (JAMES H. CAMERON) and I watched a television news program "48 Hours" about the Cooper Case and saw Ingels on that program. This program caught the attention of my father and I after seeing that LEE FURROW was a suspect in those killings. It caught our attention due to the fact that my father and I have both known Furrow for several years, having worked together on various construction projects. As a result, we did some research on the internet and learned much more about Furrow's background including his murder of MARY SUE KITTS back in the1970s when he was part of a criminal gang headed by CLARENCE RAY ALLEN. We also learned other information about his suspected involvement in the Ryen murders. I have provided basic information about our work relationship in my prior declaration and am re-confirming that information herein. I am now voluntarily also providing additional information about Furrow pursuant to Mr. Parker's interview with my father and I on this date. Furrow is a very charismatic individual and likes to brag about himself. He would tell all kinds of stories about his supposed past criminal exploits, and liked to drop names of people he claimed he knew in the drug business and other criminal activities, which names I no longer recall.

I am aware of him having previously worked for an individual named BILL POLLAK (phonetic) who owned a construction company in ~~Habersham,~~ HAVERTOWN, Pennsylvania. I am also aware that Pollak and Furrow parted ways over some differences they had between them, however, I do not know the details of those differences.

I am also aware that Furrow had some sort of relationship with Beatty (phonetic) Lumber Company in this area and used to solicit construction work through that business. I know that he bought lumber through Beatty as well.

Furrow has a young man named ROBERT ("ROB") SHEETZ who idolizes him. Rob is approximately twenty-five (25) years old and lives with his parents in Sharon Hill, Pennsylvania. There is possibly a family relationship between Rob and Furrow, but I do not know any details of that or even if it is true. I am aware of the fact that Rob has a criminal record and knows the whole story about the murders involving Furrow. He is also into drugs and provides cocaine to Furrow. Rob functions essentially as a "helper" to Furrow on various construction jobs and seems to idolize him. If contacted about Furrow, Rob would lie to cover for him.

I have met Furrow's wife, Rene', on just a few occasions and it is clear that she is into drugs with him, however, I don't have any other information about her.

While Furrow was working with my father and I, he would often boast of his past criminal activities as a drug dealer including bringing drugs from Mexico back into the United States, as a member or associate of the Hells Angels outlaw motorcycle gang, and other criminal activities. On one occasion, approximately two years ago, the three of us went to lunch together at Sava's Pizza on Race Street in Philadelphia, when he just blurted out that he had "killed a person" and stated that he had gone to prison for that killing. Shortly thereafter, while we were on a job together, Furrow told us that after he got out of prison for that murder, he murdered an entire family. I have provided details of that information in my earlier declaration. I vividly recall that he said that "we butchered all of them" and in doing so referred to "he and his ~~guys~~ "boys". He also told us that the murdered family had dogs and they had to kill the dogs before killing the family. I recall asking him if the people deserved to die, and he replied "yes". He did not provide any more details of these murders and we did not ask him any further questions about same.

Recalling what Furrow had told us of the murders he had committed, we saw the "48 Hours" program involving the Ryen murders and the conviction of Kevin Cooper, as stated above, we

JC

researched Furrow on the internet and discovered that the murders he was talking about were those of Mary Sue Kitts and those in Ryen case. At that time, Furrow was off work with an injured shoulder from a prior job. When we were told by our boss that Furrow was asking to come back to work, my father and I decided to tell him what we had discovered about Furrow and the murders. Our boss made the decision not to allow Furrow to come back and terminated him from the job. This is set forth in my prior declaration.

As stated in my prior declaration, Furrow had a very bad temper which would frequently "explode" on the job. I described an incident over a broken bathtub on a job where Furrow had lost his temper and threatened the young man who had dropped the tub, angrily shouting he would "twist his head off" over the incident, and even said "I will kill you". Another individual who worked with us on that job was PETER HARTMAN who also overheard Furrow's threats.

If so requested, I am willing to testify in a court of law or other legal proceeding to the foregoing information in this declaration and my prior one because the information I have provided is true and correct to the best of my knowledge. No promises, rewards, threats, or coercion have been used to cause me to provide the information contained in these declarations.

I declare under the penalty of perjury that this declaration, and my prior one, is true and correct and I am initialing the other pages and signing this one to certify that fact.

Executed at FOLCROFT TOWNSHIP, PA

James Cameron Date: 8-1-19

JAMES D. CAMERON

Witnessed:

Thomas R. Parker Date: 8-1-19

THOMAS R. PARKER

SECOND DECLARATION OF JAMES H. CAMERON

I, JAMES H. CAMERON, hereby voluntarily declare:

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J.H.C.

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J.H.C.

Recalling what Furrow had told us of the murders he had committed, we saw the "48 Hours" program involving the Ryen murders and the conviction of Kevin Cooper, we researched Furrow on the internet and discovered that the murders he was talking about were those of Mary Sue Kitts and those in Ryen case. At that time, Furrow was off work with an injured shoulder from a prior job. When we were told by our boss that Furrow was asking to come back to work, my son and I decided to tell him what we had discovered about Furrow and the murders. Our boss made the decision not to allow Furrow to come back and terminated him from the job. This is set forth in my prior declaration.

As stated in my prior declaration, Furrow had a very bad temper which would frequently "explode" on the job. I described an incident over a broken bathtub on a job where Furrow had lost his temper and threatened the young man who had dropped the tub angrily saying he would "twist his head off" over the incident, and even said "I will kill you". Another individual who worked with us on that job was PETER HARTMAN who also overheard Furrow's threats.

If so requested, I am willing to testify in a court of law or other legal proceeding to the foregoing information in this declaration and in my prior one, because the information I have provided in both is true and correct to the best of my knowledge. No promises, rewards, threats, or coercion have been used to cause me to provide the information contained in these declarations.

I declare under the penalty of perjury that this declaration, and my prior one, is true and correct and I am initialing each of the other pages and am signing this one to certify that fact.

Executed at Folcroft Township, PA.

James H. Cameron Date: 8-1-19

JAMES H. CAMERON

Witnessed:

Thomas R. Parker Date: 8/1/19

THOMAS R. PARKER

Exhibit 7

DECLARATION

KE

I, KAREE KELLISON, (also known as Karee Emanuel, and Karee Curry), hereby make this voluntary declaration to THOMAS R. PARKER whom I know to be a former Assistant Special Agent in Charge of the of the Los Angeles Office of the Federal Bureau of Investigation (FBI). I am providing the following information in the form of a signed declaration at this time because I am willing to testify under oath to the information contained herein in conjunction with any future court proceeding, if so required by court order or subpoena, and on the condition that my identity as the source of this information is kept confidential and not publicly released or acknowledged until such time as it is required by a court order or subpoena. I also request that the original and/or any copy of this declaration wherein my name is exposed, be maintained in a sealed and secure condition, and that its contents remain confidential, unless otherwise required for disclosure by court order.

I make these conditions as I am in great fear of LEE FURROW because of his prior homicide conviction and prison sentence, his past history as a former member of a murderous gang led by an executed multiple killer named CLARENCE RAY ALLEN, the criminal role of FURROW in the RYEN murders as described in this declaration, and my knowledge of his vicious beatings of other women with whom I am acquainted. I confirm that no promises, threats, or coercion have been used to cause me to make this statement and I do so freely and voluntarily, but with the fears of FURROW I have expressed above clearly present in my mind.

By my signature at the end of this declaration, I authorize former FBI Agent THOMAS R. PARKER, or KEVIN COOPER'S attorney, NORMAN HILE, to use copies of this declaration for any lawful purpose connected to, or arising from, the KEVIN COOPER matter, and from which

KE

my name, along with any other information herein which might tend to identify me, has been redacted. K.E

I have known an individual by the name of LELAND EUGENE FURROW, also known as LEE FURROW, "JOKER", and EUGENE LELAND FURROW, for in excess of thirty-five (35) years, and am aware of the fact that he was previously convicted of having a principal role in the planning of, and participating in, the killing of a teen-aged girl in the mid-to-late 1970s and was sentenced to state prison after pleading guilty to that crime. I have previously provided information about my connections to FURROW to the San Bernardino County Sheriff's Department during their investigation of what is commonly known as the RYEN murders in Chino Hills, California, in June, 1983.

In order to provide the proper legal foundation and context to FURROW'S confession in my presence, the following information is important:

On or about DATES I CANNOT SPECIFICALLY ~~and at~~ RECALL BUT OVER 25 years AGO, Possibly between 1983 AND A FEW YEARS LATER, But AROUND THE TIME THAT FURROW ASKED TO SEE A MINISTER TO TAKE THE DEVIL OUT OF HIM. (SEE PAGE 2-A) FURROW has stated in my presence that he had caused and participated in the murders of DOUGLAS RYEN, PEGGY RYEN, JESSICA RYEN, and a neighbor boy named CHRIS HUGHES, along with the attempted murder of their son, JOSHUA RYEN, in Chino Hills, California, in June, 1983. He further stated in my presence that he was accompanied and assisted in these murders by two other individuals named DEBRA GLASGOW and JAN MARTINEZ, whom I knew to be friends of FURROW at that time. K.E K.E K.E

PAGE 2-A OF DECLARATION

THE MAIN PART OF THE CONVERSATION HE AND I HAD ABOUT THE RYEN MURDERS WAS SPREAD OUT OVER A FEW YEARS. IT WAS DISCUSSED BETWEEN US, INITIALLY, AT THE HOUSE OF MY COUSIN, DEBBIE BALL, IN MENTONE, BUT CONTINUED IN BITS AND PIECES OVER THE NEXT FEW YEARS IN DIFFERENT LOCATIONS. DURING ALL OF THAT AND OUR DISCUSSIONS, IT WAS CLEAR HE DID THE RYEN MURDERS WITH DEBBIE GLASGOW AND JAN MARTINEZ. IT WAS ALSO CLEAR THROUGHOUT THOSE CONVERSATIONS THAT HE KNEW THAT I KNEW HE DID THEM, ESPECIALLY AFTER WE TOOK HIM TO SEE THE MINISTER.

Harold Emanuel

FURROW also stated in my presence over this lengthy time period that the murders were done because THE RYENS HAD A DEAL WITH JAN MARTINEZ FOR HER TO RECEIVE A HORSE FROM THEM, BUT THE DEAL FELL APART AND SHE NEVER GOT THE HORSE, AND WAS VERY ANGRY, AND WITH FURROW, WANTED TO GET EVEN WITH THEM.

Out of great fear for my life and that of my children and family, I had withheld that information until now, and though I am still in mortal fear of FURROW, I have been told of and have personally accepted the fact that a human life, that of KEVIN COOPER, is in immediate jeopardy due to his wrongful conviction and potentially imminent execution for the killings of three members of the RYEN family and the visiting neighbor child, CHRIS HUGHES, and the attempted murder of JOSH RYEN, the youngest RYEN child. I use the term "wrongful conviction" here because I know from FURROW's confession in my presence to the murders of the RYENS and of the HUGHES boy, and the attempted murder of JOSH RYEN, that COOPER is innocent of those murders. He does not deserve to be executed for a crime he did not commit, but which was committed by FURROW, GLASGOW, and MARTINEZ. I know that as a human being it is time for me to step forward, and it is also my legal duty as a citizen, to provide the information contained in this declaration.

Based upon my personally hearing FURROW'S confession as described above, and the other information in this declaration, I am totally convinced that he is the perpetrator of those crimes. While I recall that FURROW named the foregoing two women as his co-perpetrators while other potential witnesses have given statements to the police suggesting that three men may have been the perpetrators, I wish to point out that DEBBIE GLASGOW had the physical characteristics of a somewhat overweight male, and usually wore clothing more closely attributed to a male appearance rather than that normally associated with a female appearance. Her normal style of dress included male-style shirts – sometimes including men's t-shirts – along with jeans

or other male-style pants, and she frequently wore tennis shoes. I do not know how JAN MARTINEZ looked back at that time, nor how she normally dressed.

I wish to provide additional information in this declaration which I also feel is extremely important. I have personal and direct knowledge of the fact that DEBBIE GLASGOW and some other members of her immediate family regularly practiced cult-like rituals and activities, including some of a Satanic nature. I have been told about, and have been shown, a police photograph of the RYEN crime scene that seems to suggest, as the process has been described to me, that MRS. RYEN'S deceased and naked body appears to have been "staged" or "arranged" by someone after she was killed by placing it into a crucifixion-type pose on the floor similar to one of Jesus on a cross including arms outstretched to the sides of the body at 90 degree angles and a leg bent at the knee, rather than in a more natural position into which a dying or otherwise unconscious person would or could have fallen or collapsed without human interference.

I am also personally aware of the fact that shortly after the RYEN murders, FURROW asked DIANA ROPER, with whom he lived at the time, if she would accompany him while he drove a friend home to San Diego. That friend was named JAN MARTINEZ, and DIANA personally stated in my presence that, while driving to San Diego, the three of them began discussing horses and DIANA mentioned that she would love to have a horse someday. As related by DIANA to me at that time, MARTINEZ told DIANA that she (MARTINEZ) could get her a horse, but that it would be "hot" (i.e. stolen). DIANA never described that conversation to me beyond that specific point, but I personally know that DIANA never acquired any horses.

(SEE ATTACHED PAGE 4-A)

I further recall that on the night of the RYEN murders, FURROW was supposed to meet DIANA at the US Festival, but she told me that he did not do so. I don't recall the time, but sometime during that evening while we were at the US Festival, I saw FURROW there at a distance. I was surprised to see him with DEBBIE GLASGOW since she was DIANA's best friend.

PAGE 4-A OF DECLARATION

I MET JAN MARTINEZ ONE TIME IN SAN DIEGO WHEN I WAS THERE WITH DIANA AND JOKER. I RECALL THAT SHE HAD SHORT LIGHT BROWN HAIR, AND WAS MEDIUM HEIGHT, AND NORMAL BODY SIZE. OTHER THEN THAT, I DON'T KNOW ANYTHING MORE ABOUT HER.

Kareem (21) Emmanuel

KE

FURROW was wearing dark pants, possibly Levi's, and a tan t-shirt which DIANA had left for him at their house for him to wear to the Festival. I also recall seeing that DEBBIE was wearing a blue shirt at that time. That tan t-shirt appears identical to the one I have been shown in police photos of the tan t-shirt found at the side of the road near the Canyon Corral Bar shortly after the murders.

In the middle of that night, FURROW and DEBBIE arrived at DIANA's house in Mentone around 3:00am or 4:00am. They came into the house and I saw that FURROW was wearing some type of coveralls which appeared to have blood spots and streaks all over them. He was not wearing the tan t-shirt that DIANA had bought for him and which I had seen him wearing earlier in the evening. I don't recall what DEBBIE was wearing because I was focused on FURROW and the sound of a car in the driveway. I looked to see what it was and noticed that it was a white, or light-colored station wagon with wood paneling on the side and a luggage rack on top. There was at least one other person, and possibly two, seated in the car. After FURROW took off the coveralls and put on other clothing, he and DEBBIE left the house and left the area on his motorcycle. I noticed that the station wagon also left at about the same time.

I also recall personally hearing, not long after the RYEN/HUGHES murders, FURROW asking DIANA and I to take him to see a minister because he had done "something really bad" and needed "to get the devil out of him". He further stated in that same context that what he had done related to "a horse deal that had gone bad". He did not give any further description of the situation to which that related.

I also wish to state herein that I know from personal observation that FURROW consistently wore solid color, short-sleeved t-shirts with a "cigarette-pack pocket" on the left breast area of the shirts, and which were of the type commonly known as the "Fruit of the Loom" style.

KE

This declaration consists of this page, and 5+2 other pages which I have initialed. I am now signing this final page, and thereby declaring under a possible penalty of perjury that the information contained herein is truthful and accurate to the best of my knowledge and belief.

DECLARANT:

Karen D. Emanuel (Kellison) Date: 5-6-18

WITNESSED BY:

Thomas R. Parker Date: 5-6-18

Bill D Kellison Date: 5-6-18

Exhibit 8

FILE #PVC_THE_CAMERONS_INTV1_220914
JIM CAMERON SR., JIM CAMERON JR.
THE PEOPLE VS. KEVIN COOPER
CARLSON FILMS

11:22:13 BEGIN FILE #220914RD01_INTV - The Camerons 4

INTERVIEWER: Slate.

11:22:16 JIM CAMERON SR.: All right, my name's Jim Cameron. J-I-M C-A-M-E-R-O-N. I'm a carpenter with my own business. And this is my son, James.

11:22:26 JIM CAMERON JR.: I'm also Jim Cameron, same spelling. Um I'm also a carpenter, and he's pretty much teaching me everything I know.

INTERVIEWER: Who's better at this?

11:22:35 JIM CAMERON JR.: Uh I'm better at some stuff, he's pretty much the guy who has all the knowledge though.

JIM CAMERON SR.: I'll agree with that.

INTERVIEWER: Do you feel like you could fill his shoes in the near future and take over the company?

11:22:49 JIM CAMERON JR.: Near future, not as fast. Like uh I would say no, not as quick as him when it comes to just running the job, and scheduling, and all that. But yeah I, I mean I could probably handle most tasks that come our way.

INTERVIEWER: Who's better at drywall?

11:23:02 JIM CAMERON SR.: He's, he's angling for a raise is what he's doing.

JIM CAMERON JR.: Yeah. Better at drywall? I don't know. I think, I think we both hate it.

11:23:09 JIM CAMERON SR.: We're both pretty good at it.

JIM CAMERON JR.: We both hate it. [LAUGHS]

JIM CAMERON SR.: We both don't like it but we're both good at it.

INTERVIEWER: Do you actually write him a check?

11:23:19 JIM CAMERON SR.: Yes.

INTERVIEWER: How does that feel?

11:23:22 JIM CAMERON SR.: Feels good. Yeah.

INTERVIEWER: Doesn't it feel better to give your son money than somebody else?

11:23:25 JIM CAMERON SR.: Yeah, absolutely. Yeah.

INTERVIEWER: Keep it in the family, right?

11:23:28 JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: Yeah, it feels good. It feels good he's gonna do this for a living. He's gonna do okay with it.

11:23:32 JIM CAMERON JR.: Maybe. You never know.

INTERVIEWER: It's an honest day's living, right?

11:23:35 JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: Yes, it is.

INTERVIEWER: Why have you been working around the clock?

11:23:41 JIM CAMERON SR.: Um we just have a lot of work, a ton of work. And uh we're just trying to build a bigger company. And I want to retire. [LAUGHS] So I'm gonna do this and get out of it.

INTERVIEWER: What do you want to do when you retire?

11:23:59 JIM CAMERON SR.: I'm going to tour the country. I'm gonna trailer a bike and uh probably head out West first and uh, and check out California, go up the Coast, and uh head into Canada. And uh wherever it takes me from there.

INTERVIEWER: What's the number one thing you want to see?

11:24:18 JIM CAMERON SR.: I want to see redwood trees, to be honest with you.

JIM CAMERON JR.: Go through that tunnel that goes through the tree. That thing's awesome.

11:24:24 JIM CAMERON SR.: [TALKS OVER] Yeah, I want to see the, the forest like that, to be real honest with you. Um I want to see everything really. I just want to get out there and, and check out the country.

INTERVIEWER: Have you had the opportunity to travel much?

11:24:36 JIM CAMERON SR.: No. No, I've been to Florida and Jersey. That's it.

INTERVIEWER: Two states?

11:24:34 JIM CAMERON JR.: Virgin Islands.

JIM CAMERON SR.: Oh, the Virgin Islands, yeah. That was awesome, and St. Thomas.

INTERVIEWER: And how about you?

11:24:50 JIM CAMERON JR.: Uh I've pretty much just been New York, New Jersey, uh a little bit of Virginia, um but nothing, nothing too long or permanent or semi-permanent. So just, you know, two weeks here in a stated, that's about it.

INTERVIEWER: You were born and raised in Philadelphia?

11:25:07 JIM CAMERON JR.: Mm-hmm.

INTERVIEWER: You too?

11:25:09 JIM CAMERON SR.: Yeah. Yeah.

INTERVIEWER: What do you and don't you like about Philly?

11:25:15 JIM CAMERON SR.: Well, I don't like the crime, and the violence, and the, and the, the shootings right now. It's, it's off the charts. But Philly's got a lot of good restaurants. Uh the culture's pretty cool.

JIM CAMERON JR.: [TALKS OVER] Yeah, if you, if you want food here, the food's the best.

JIM CAMERON SR.: Yeah, it's uh--

11:25:27 JIM CAMERON JR.: [TALKS OVER] Soft pretzels, the rolls, the cheesesteaks, pizza.

JIM CAMERON SR.: It's a nice city, I mean it really is a decent city.

INTERVIEWER: When did your experience with Lee Furrow start?

11:26:52 JIM CAMERON JR.: Uh I'm gonna see Lee Furrow started in, let's see, I'm, I'm gonna say 2016 or 2017, right, right around there. Um I'm gonna, I'm gonna say early, or late 2016, early 2017 is when he showed up. And um uh he worked with us for a year-and-a-half?

JIM CAMERON SR.: Something like that, yeah. Yup.

11:27:14 JIM CAMERON JR.: Yeah, about a year-and-a-half. So 20-, end of 2016 to pretty much the end of 2018 I'm gonna say, or um beginning of 2018.

JIM CAMERON SR.: I'm thinking that's pretty accurate.

JIM CAMERON JR.: Yeah.

INTERVIEWER: What kind of employee was he?

11:27:28 JIM CAMERON JR.: He was a construction worker. Lee Furrow was a construction worker, ol-, older guy, knew some stuff, uh knew, knew a lot actually. He was, he was, would you say--

JIM CAMERON SR.: I'd say he was pretty good, yeah, pretty professional carpenter.

11:27:38 JIM CAMERON JR.: [TALKS OVER] Yeah, pretty, pretty skilled. Um when he wanted to work and when he could work. He--

JIM CAMERON SR.: Right.

11:27:43 JIM CAMERON JR.: --had some illness, illnesses with um his heart and old age, and he had a ripped apart shoulder. So he, he had some harder time working in, in uh the properties we were working in, so.

INTERVIEWER: Was he a hard worker? Was he dependable?

11:28:14 JIM CAMERON SR.: Uh Lee Furrow would, yeah he would come to work. And uh in the beginning, he was pretty adamant, pretty steady. And as he caught on that he could hide and, you know, he just kinda fell into what a lot of the guys there fell into, is did as little as possible to get a paycheck.

11:28:33 JIM CAMERON JR.: Yeah, Lee was hired by my former, our former employer before we started our own company. And um at that place, it was kind of dysfunctional, the, the company itself. So he, he was able to get away with a lot. But uh--

JIM CAMERON SR.: A lot of people were there. Yeah.

11:28:47 JIM CAMERON JR.: [TALKS OVER] Yeah. So when he caught on to what was going on, he was able to uh pretty much just do nothing. Like I mean I'm, I'm not gonna say he didn't do anything, but he, he could get away with a lot--

JIM CAMERON SR.: It's true. Yeah.

11:28:59 JIM CAMERON JR.: --uh in terms of that. And uh that's partially because of, you know, ripped apart shoulder, 65, and he had a, a heart condition where uh I, I believe he would literally like start dying when it was very hot out.

11:29:12 JIM CAMERON SR.: Yeah, we tried to take care of him um as far as [CLEARS THROAT]

helping him out with getting him on the first floor jobs--

JIM CAMERON JR.: Airconditioning.

11:29:19 JIM CAMERON SR.: --getting him an air conditioner, getting a fan for him, that kinda stuff.

JIM CAMERON JR.: Yeah, so he didn't keel over on the job.

11:29:24 JIM CAMERON SR.: But um yeah we were worried about his health, [LAUGHS] I guess. So, so uh we, we gave him the, the easier jobs, uh but not the three-story flights of steps you gotta haul material up to and stuff.

JIM CAMERON JR.: Yeah.

11:29:37 JIM CAMERON SR.: 'Cause what we were doing was um uh residential living for a college. And uh a lot of these apartments were getting re-, total rehabs, new bathrooms, new kitchens, carpet, paint, and all that. So some of the third, they were older houses, and some of the houses had three and four stories. We tried to keep him down on the, on the first and second floor.

INTERVIEWER: How did the Lee Furrow and Kevin Cooper thing come about?

11:30:15 JIM CAMERON SR.: Well as, [CLEARS THROAT] as we worked together, I guess uh we got friendly, we became frie-, friendly enough. And we, we were sharing, we kinda grew up in the same '70 kinda thing and the environment with the doing some of the uh smoking weed and doing all that, then we're talking about past stuff, chasing girls, all.

JIM CAMERON JR.: Some, yeah, some--

11:30:36 JIM CAMERON SR.: So we kinda got friendly and uh he ended up, he ended up telling me uh that he was in prison for, and he had committed murder.

JIM CAMERON JR.: Yeah, he went to San Quentin for murder. Lee went to, I, I think it, I think you guys were talking about bikers originally, like uh, uh One Percenters biker gangs.

JIM CAMERON SR.: Yeah.

11:30:56 JIM CAMERON JR.: And he said he was um, he said he was a Hells Angel and that he was in the Hells Angels. And uh--

JIM CAMERON SR.: Or he was--

11:31:03 JIM CAMERON JR.: --Lee Furrow did time, I think five years, in San Quentin for killing somebody. That was the initial rundown of how we found out that he murdered somebody. And he didn't specify who and any details in that, that regard. But uh yeah, that, that's kinda how we found out that Lee was involved with Kevin Cooper. That was, that was the initial thing.

11:31:27 And um he uh, he, he mentioned this, this person that he killed and we just assumed it was a biker brawl, or a bar fight, or something like that, something i-, within the lifestyle. And uh we later found out he uh, he actually killed a little girl. Uh what was her name? Mary Sue Kitts.

JIM CAMERON SR.: [TALKS OVER] Mary Sue Kitts.

11:31:45 JIM CAMERON JR.: Yeah, Mary Sue Kitts. She uh, he strangled her after she wouldn't eat a cyanide pill that he was trying to give her. And um yeah that's, that's--

JIM CAMERON SR.: [TALKS OVER] Yeah, nice guy.

11:31:55 JIM CAMERON JR.: --that's when we found out Lee wasn't worth the air conditioning uh and the first floor jobs and all that.

JIM CAMERON SR.: That's right.

JIM CAMERON JR.: He was kind of a, kind of a piece of crap. So um--

JIM CAMERON SR.: Yes he was.

11:32:06 JIM CAMERON JR.: --the uh, that, that's kinda how we found out what kinda person Lee was and, and what he's done. And um did you want me to keep going into?

INTERVIEWER: Yeah.

11:32:19 JIM CAMERON SR.: Well basically, like we never really shared our true feelings about the dude to him.

JIM CAMERON JR.: No, we, we kinda just left it under the rug.

11:32:26 JIM CAMERON SR.: We left it, let it go, I kept my mouth shut, let him have his job, and uh [CLEARS THROAT] and, and didn't do anything about it at that point. And uh I think the Kevin Cooper thing, I, I'm trying to, I'm trying to--

11:32:42 JIM CAMERON JR.: So I'm, I'm gonna say that he, he told us that he killed somebody and we found out about who he killed um and did five years for. And Lee, I'm gonna say Lee didn't mention the family thing, uh the, the family, w-, his, his statement to us when um, until after he was laid off for he had a rotator cuff surgery.

11:33:10 So he had, he had to go-, do surgery, and uh he was on um unemployment comp, and he didn't come to work. So after the year-and-a-half, two years that he worked with us, he, he did the surgery, he didn't work with us. And then uh we were working on a, another job, a property, and he, he told us that 48 Hours was coming after him again. And uh--

JIM CAMERON SR.: He did say that, yeah.

11:33:35 JIM CAMERON JR.: Um he mentioned that he uh, th-, there was two separate times he did that.

JIM CAMERON SR.: Well, he mentioned the 48 Hours thing at the house, 65--

JIM CAMERON JR.: Yeah, was that--

JIM CAMERON SR.: --34th, 34th Street, building 65.

JIM CAMERON JR.: Yeah, what, what, was it, was it the family first?

11:33:51 JIM CAMERON SR.: [TALKS OVER] And then [CLEARS THROAT] we ended up, when he came back, he did come back to work for a little bit, and we were at the Lexington, it's a building on Powelton Avenue. We were all just hanging out, um just me and my son, and this other kid. What was his name, Bob? What was Ro-, what was, Rob.

JIM CAMERON JR.: Oh, Rob, yeah.

11:34:11 JIM CAMERON SR.: [TALKS OVER] Rob. Rob Sheets. He just comes out of the blue, he said, "Me and my bros back in the day--

JIM CAMERON JR.: [TALKS OVER] Did a hit.

11:34:19 JIM CAMERON SR.: --we did a hit, we killed a whole f-, we butchered a whole family." He said, "We even did the pets."

JIM CAMERON JR.: "We even killed the pets."

JIM CAMERON SR.: And I just looked at Jimmy, like, "Yeah, yeah, that's--

JIM CAMERON JR.: That's wonderful.

JIM CAMERON SR.: --like really good." So I mean I wish I could offer you more than that.

11:34:31 JIM CAMERON JR.: Yeah, we played it off as uh like, you know, "Yeah, we've, we've heard stuff like that. You know, we're, we're around s-, uh that kind of people that the, you know, this is what bikers do." But I mean I really haven't heard too many bikers slaughtering families. So um yeah, that, that was pretty much the comment he made. It was uh, you know, "We did a hit on, me and my boys did a hit on a family, and uh we butchered 'em and even killed the pets too." And that's--

11:34:56 JIM CAMERON SR.: Lee was the kinda guy that I believe, and I'm not a psychologist or psychiatrist, but he reminded me of somebody that was holding onto like this grandiose thing.

JIM CAMERON JR.: Mentality, persona.

11:35:10 JIM CAMERON SR.: Yeah, like it was like he was like a legend in his own mind and this was part of his--

JIM CAMERON JR.: [TALKS OVER] Kinda thing, yeah.

JIM CAMERON SR.: --being. This is what made him Lee, you know what I mean. And it, he was a weird dude.

JIM CAMERON JR.: Yeah um--

11:35:22 JIM CAMERON SR.: And the more he bragged about his criminal activity, and his runnin' drugs, and going to Mexico and buying drugs and bringin' 'em back, and his hanging with the Hells Angel, it was all, it was just a bunch of, you know, weird stuff. Um--

JIM CAMERON JR.: Or just flat out lies or, I mean he, I think he tried to build himself a--

11:35:41 JIM CAMERON SR.: [TALKS OVER] I don't, I don't know what he was into as a young man, but this is the persona he was trying to portray with us.

JIM CAMERON JR.: Yeah.

11:35:48 JIM CAMERON SR.: And like um I said before, um I don't know the original reason he told me that he had murdered someone and went to jail was to intimidate me to keep me from fi-, getting him fired. Because he was, he was a good carpenter, but he was--

JIM CAMERON JR.: Just couldn't do it.

11:36:06 JIM CAMERON SR.: --he was uh physically unable. So and I wasn't gonna fire somebody for that, you know, just baby him is what we did in the be-, in the beginning.

JIM CAMERON JR.: [TALKS OVER] Until we found out.

11:36:16 JIM CAMERON SR.: And then when we found out what was going on really--

JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: --I just kinda like just walked away and you're on your own.

JIM CAMERON JR.: Yeah.

INTERVIEWER: Can you tell me that story again without the killing of the pets?

11:36:44 JIM CAMERON JR.: Lee Furrow said that he uh, he did a hit with him and his boys, he uh, he killed a whole family, he butchered them. And uh that, that was outside the Lexington. And um, and I don't really know why he mentioned that he killed a family. It doesn't sound

like something bikers would just, you know, go and do a hit on a family. But I guess uh, I guess that was his persona or whatever. That good?

INTERVIEWER: Can you tell us that?

11:37:15 JIM CAMERON SR.: [TALKS OVER] Yeah I don't think, I honestly don't, he did, yeah Lee Furrow did say that he butchered a whole family, him and his bros butchered a whole family.

JIM CAMERON JR.: Did a hit.

11:37:23 JIM CAMERON SR.: And uh I mean that's, that's pretty much all I can tell ya. Um--

INTERVIEWER: How did it come up?

11:37:41 JIM CAMERON SR.: He kinda like just, just said it.

11:37:44 JIM CAMERON JR.: Yeah um i-, i-, this, you gotta remember, this was probably like s-, six years ago that this, this happened, this statement, uh five to six years ago. So the actual details are a little blurry. We got it down to the building um and, and who was there. I believe it was the porch job where we were doing the beam, and uh Rob, Tom, um Lee, you and me were all sittin' on it. Uh it might have been uh well uh it was probably break. It was probably we got break, came back, we were all chillin' out, eatin', uh eatin' 7-Eleven stuff.
11:38:18 Uh he liked [TALKS OVER] apple fritters or whatever. He, he, he would always get apple fritters. I, I thought they were good. We'd have uh some coffee and th-, that's, that's kinda how the, the s-, stage was set. But like how it came about--

JIM CAMERON SR.: Yeah I don't remember.

11:38:33 JIM CAMERON JR.: --butchering a family, uh we're not sure how that went down. I know we were talking about how Rob just went to California, and how he also got jumped at

Temple um in Philadelphia.

JIM CAMERON SR.: Yeah, I can't remember the details on that.

11:38:47 JIM CAMERON JR.: So yeah, I mean that's, that's literally all I can remember. I, I got a pretty good like uh memory when it comes to stuff like that, but that's, that's as much as I can get for you. I'm not sure what led up to him [TALKS OVER] actually saying like, "Oh yeah, I, I killed a family, I did a hit." So I mean, you know, that's not just idle conversation. But yeah, I, I agree with you, that's kinda, kinda strange just to just pop in.

JIM CAMERON SR.: [TALKS OVER] I don't re-, I can't remember what we were talking about. I honestly don't.

11:39:11 JIM CAMERON JR.: I remember we were talking about California 'cause Rob just came back. He was on some game, or game show, or America's Got Talent. Remember the, remember the fat dude who could eat marshmallows?

JIM CAMERON SR.: [TALKS OVER] Yeah, yeah, yeah, yeah, he was catching bread from 100 feet away.

11:39:21 JIM CAMERON JR.: [TALKS OVER] Yeah, he was, he was like, he was like hittin', hittin' a marshmallow with a golf club from 100 yards, and the, the friggin'--

JIM CAMERON SR.: The kid was catchin' it.

11:39:27 JIM CAMERON JR.: --the other kid was catching it in his mouth. And it's, it's like they didn't, obviously they didn't make it to America's Got Talent, they got cut. But um I mean yeah, that, that's, that was the conversa-, like that's what I remember from the conversation. America's Got Talent, they went to California--

11:39:41 JIM CAMERON SR.: It's kinda like what he, when he, when he mentioned he was in San

Quentin. It just came out of nowhere.

JIM CAMERON JR.: Yeah, yeah, it was, it was we were gone to lunch then.

11:39:48 JIM CAMERON SR.: "I was in jail." "Uh you were in jail?"

JIM CAMERON JR.: "I did, I did some hard time in San Quentin."

JIM CAMERON SR.: Okay. That's cool.

JIM CAMERON JR.: "Okay. You, what'd you do?" "Ah, you know, I murdered someone."

JIM CAMERON SR.: "I did a murder." All right, okay. He was a bi-, he hung around.

JIM CAMERON JR.: Stuff happens.

11:39:57 JIM CAMERON SR.: He was a hang arounder. He was in the bike club, whatever he was. I don't think he was in a bike club 'cause he didn't have tattoos and he didn't, he didn't have the right--

JIM CAMERON JR.: He did ride a bike though.

JIM CAMERON SR.: --the right get-up for it.

JIM CAMERON JR.: Not, not in Philly, but like, you know, from the '48 showing.

11:40:10 JIM CAMERON SR.: Yeah, I just, he popped out with some stuff, man. That's all.

JIM CAMERON JR.: Yeah, it was weird. It was really weird.

INTERVIEWER: What do you think motivated him to do that?

11:40:28 JIM CAMERON SR.: Uh well initially, the first time, I think he was trying to intimidate me. That's the only thing I got. Like why would this guy share this with me? We're working at a college. He knows if he shares this with me, it's a possibility I'm gonna have to he-, let him g-, not me let him go, but my, go to my boss and say, "Look, this guy's a felon, he's mu-, for murder." Uh I think he was trying to like shut me down, scare me.

11:40:54 JIM CAMERON JR.: Or maybe he wanted to get fired and get unemployment comp. Uh who, who knows? This guy is, it wa-, he, he was a strange guy when it came to that.

JIM CAMERON SR.: [TALKS OVER] You don't, you don't get unemployment when you get fired, but i-, that's besides the point. I, I honestly believe--

JIM CAMERON JR.: Oh, okay.

11:41:04 JIM CAMERON SR.: --that was the initial thing was to intimidate me--

JIM CAMERON JR.: [TALKS OVER] I thought you did.

JIM CAMERON SR.: --and to keep me from um going to my boss, Ed, and, and having him fired.

JC: Yeah not--

INTERVIEWER: Did it work? Did he intimidate you?

11:41:18 JIM CAMERON SR.: No.

JIM CAMERON JR.: No.

INTERVIEWER: Tell me that.

11:41:20 JIM CAMERON SR.: Um no, he didn't, Lee never intimidated me. Um--

JIM CAMERON JR.: [TALKS OVER] Maybe he was--

11:41:25 JIM CAMERON SR.: --you know, like I said, like I said to you before, uh when I first, when I was first told that he was in, that he told me he was, that Lee told me he was in prison, I um, I assumed it was a, a bar fight, a, a, a brawl between two biker clubs, 'cause he kept mentioning the Hells Angels and all this stuff. So I just assume it was uh, it was something along them lines.

11:41:53 When I found out it was a little girl and he chopped her up and threw her in the river, which is just horrendous, that's kinda when I, I kept my mouth shut, and uh--

JIM CAMERON JR.: Puttin' on as friendly.

11:42:05 JIM CAMERON SR.: --let him work there, and just kinda stayed a little bit away from him. So I tried to get away. Me and him went and worked our own jobs.

JIM CAMERON JR.: Yeah.

11:42:12 JIM CAMERON SR.: Stayed off his stuff. And uh I, you know, I th-, I really believed at least that mindset was uh that he was this big gangster and he was going to impress people for whatever reason, that, that his history is, was an impressive thing. And uh--

JIM CAMERON JR.: Yeah, like, "I've killed someone, watch out."

11:42:36 JIM CAMERON SR.: And he's telling us his little crimes he's did in his life, his drug dealing, and--

JIM CAMERON JR.: Running to Mexico uh--

JIM CAMERON SR.: To buy--

JIM CAMERON JR.: --trafficking dope.

JIM CAMERON SR.: Trafficking dope and all that kinda stuff.

INTERVIEWER: What did you ultimately do with the information that he provided?

11:42:51 JIM CAMERON SR.: I, I ultimate-, ultimately at the very end of this, I told my boss, Ed, that Lee had a murder charge and did some time in San Quentin. Around that time was when like 48 Hours was, was happening, 'cause Lee was gonna come back from his shoulder surgery.

JIM CAMERON JR.: Yeah.

11:43:07 JIM CAMERON SR.: So I said, and Ed's like, "Well, why didn't you tell me?" And I was like, "Well, he's 68 years old now. He seems harmless, you know." But um--

JIM CAMERON JR.: There was also a little bit of grievances between us and our ex-boss.

JIM CAMERON SR.: Yeah, okay.

JIM CAMERON JR.: Um that was, that was part of it.

JIM CAMERON SR.: [TALKS OVER] I wasn't gonna bring that into it but--

11:43:23 JIM CAMERON JR.: Uh yeah I mean it, that, you just tell 'em what's up. Uh, uh--

JIM CAMERON SR.: Yeah.

JIM CAMERON JR.: The um, the grievances, you know--

11:43:29 JIM CAMERON SR.: It's not a grievance anymore, but there for a while, me and Ed weren't getting along.

JIM CAMERON JR.: So he didn't watch out for--

JIM CAMERON SR.: So I didn't--

JIM CAMERON JR.: --we didn't watch out for our boss.

11:43:35 JIM CAMERON SR.: [TALKS OVER] He had told me at one point, my old boss, "Mind your own business. Mind your own f-in bus-." So what's what I did, I mind my own business.

JIM CAMERON JR.: Yeah. And [INDISTINCT]

11:43:42 JIM CAMERON SR.: [TALKS OVER] So he asked me, "Why would you tell me that Lee did this, and you knew this for, you know, a year?" And I said, "Because you told me to mind my own business, and that's what I did."

JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: So--

INTERVIEWER: Did Lee ultimately get fired because of the information?

11:43:56 JIM CAMERON SR.: [TALKS OVER] Yeah he, yeah.

JIM CAMERON JR.: [TALKS OVER] Yeah, per-, not literally, like flat out you're fired but uh when he came back, he, he was hunting for, you know--

INTERVIEWER: Can you start again and say Lee?

11:44:07 JIM CAMERON JR.: Um so when Lee Furrow wanted to come back to work, um he wasn't ultimately fired. It, it was more so like just an un-, un-

JIM CAMERON SR.: [TALKS OVER] There was not, not enough work here for you.

11:44:16 JIM CAMERON JR.: --unsaid thing. Yeah, it was um, when he, he was trying to come back initially, it was, "Oh, we, I don't have enough work, things are slowing down." And that's how my ex-boss used to just operate. He, he would just--

JIM CAMERON SR.: Ignore you. [LAUGHS]

11:44:28 JIM CAMERON JR.: --not, not straight up tell you what's going on. So um--

JIM CAMERON SR.: That's pretty much Ed would do that shit. [LAUGHS]

11:44:32 JIM CAMERON JR.: Uh eventually after like months of hounding Ed, uh I believe Lee came down, and Ed's like, "Yeah, we're, we're gonna, yeah we got work at this, this other building, but, you know, we, we have to do background checks if you come back in. Like they want background checks if we're gonna be a vendor." So he's like, "Oh, they do background checks?" And he's like, "Yeah and you're, you're not clear. Like your, your background's not good, good for the work that we're doing." And then Lee of course was aggravated and he--

11:45:03 JIM CAMERON SR.: [TALKS OVER] That's when he approached me and asked me, he, what he said, "Oh, you got a big mouth" or something. I said, "Whatever, dude."

JIM CAMERON JR.: Yeah, he, he pretty much--

JIM CAMERON SR.: It is what it is.

11:45:11 JIM CAMERON JR.: --tried flexing a little bit and we, you know, we didn't really care, so.

JIM CAMERON SR.: It's uh--

JIM CAMERON JR.: Um but like I mean--

JIM CAMERON SR.: That was the end of it. So he was out of there.

11:45:19 JIM CAMERON JR.: I mean to be honest, like I think Lee was trying to intimidate you and all that, but it, it just, it's not--

JIM CAMERON SR.: So we don't have a ton of stuff to talk other than that con-, those conversations.

11:45:32 JIM CAMERON JR.: Well, we could talk about um--

JIM CAMERON SR.: Could talk about Tom, him going after Tom.

JIM CAMERON JR.: Yeah, do you want a, do you want a background on Tom uh with, with Lee, and that, that event?

INTERVIEWER: Can you talk about his drug use?

11:45:52 JIM CAMERON SR.: [TALKS OVER] Well yeah they were constantly stoned and bonin' it up.

INTERVIEWER: Start again.

11:45:56 JIM CAMERON JR.: Um Lee Furrow and his partner were constantly getting high on the job. They would, they would smoke cannabis and, and uh, and that's, that was their thing.

And he, he also drank. Um uh he drank hard liquor and he would occasionally do cocaine, uh which could have caused him to have a stroke. He came in work one day and he mentioned--

JIM CAMERON SR.: [TALKS OVER] Oh yeah, he did have something going on.

11:46:19 JIM CAMERON JR.: Yeah, he came into work one day and he mentioned that he might have had a stroke 'cause he had some weird physical event when he was sleeping in his bed one, one night or something like that. I'm not exactly sure the, the uh details but probably was a stroke, knowing him. He, I don't think his heart's too strong. I mean before, he like, if, if it was 90 degree weather, uh he would have like a hard time breathing and you could like, I've, I've watched him literally almost like drop down, like drop dead from hot weather. So cocaine use and a bad heart doesn't mix well.

INTERVIEWER: What do you think about his drug use?

11:46:59 JIM CAMERON SR.: Well, at 68 with a bad heart, it's uh, you know, not, not too good. So Lee would get this kid, Bobby, to get him, younger kid, to get him bags of coke and snort 'em up. So at 68, that's uh--

JIM CAMERON JR.: Rough.

11:47:14 JIM CAMERON SR.: --it's yeah, it's pretty rough. I think uh, I, I, I wouldn't call Lee like a hardcore drug addict or anything, but he was doing coke, and he's smoking weed, and shit like that. I mean it's, I, I left that behind a long time ago. [LAUGHS] So that's, you know what I mean. It's like uh yeah, it's uh, it's just some-, it's just another part of his life that he didn't get rid of.

JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: It, you know, it's uh--

INTERVIEWER: Talk about his violent or intimidating nature.

11:47:57 JIM CAMERON SR.: Well, you, you were there when uh--

11:47:59 JIM CAMERON JR.: Actually I w-, I wasn't there. Um I mean you've, you've already heard that the uh, he tried to intimidate him for whatever reason with, with, "You know, I'm a murderer, you know, watch out." Uh if that, if that was his reason behind it, um very possible.

JIM CAMERON SR.: How about when Van, when Van separated? Come off as a little kid.

11:48:16 JIM CAMERON JR.: [TALKS OVER] And you got, yeah, yeah, so I mean he had, he had this whole persona thing um with that. But there was one time he actually did show some unchecked rage, I would call it. Uh they were working on the third floor and these kids were bringing up the bathtub or the sh-, the shower kit. And they were bringing up the shower kit and there was another young worker with us, Tom. And he uh, he was uh, he was also angry. He, he, that was kind of his attitude. He was an angry kid.

11:48:52 Uh he was 110 pounds and go screw yourself. So that was hi-, that was kinda his personality. And uh you know, they're bringing up this tub in these tight corridor stairs in these old buildings, and it's, it's a pain in the ass. So you know, the kid's getting pissed off, frustrated. And uh he eventually just slams the tub right on the ground, 'cause like he tapped the tub on the wall, and Lee's like, "Hey, hey, man, watch, wa-, you know, watch what you're doing with my shower," uh you know, par-, just joking around at first.

11:49:18 And then Lee got, or uh Tom got pissed off at Lee, and he slammed the tub on the ground. He said, "You carry your own f-in shower up." You, you want me to use actual curse words and all that if?

INTERVIEWER: Yeah, fine.

11:49:29 JIM CAMERON JR.: Yeah, "You carry your own fuckin' shower up, old man." And Lee

responded with, "What the fuck did you just say to me?" And he said, "You heard what," Tom responded with, "You heard what I said, you old prick." And he wa-, he left. He said, "You carry up your own fuckin' shower kit, shower pan." And um so Tom's leaving the building. My uh, my friend Peter, he, he's like, you know, looking at Lee.

11:49:56 And uh you got two plumbers there, and one of 'em was Van, Van Wells. And uh Lee runs down the steps. He's bookin' it. Like if he, if he was younger, he probably would have jumped down the stairs. So he's running down the steps. He looks like a football player running through the frickin' uh the tires at, at practice. That's how he's running down the steps. He's, he's like bookin' it. And he's, he's hot, he's red as red can be. And he said--

JIM CAMERON SR.: Yeah, he was dying. [LAUGHS]

11:50:24 JIM CAMERON JR.: Yeah. He was probably having a frickin' ready to keel over.

JIM CAMERON SR.: He was ready to drop dead.

11:50:29 JIM CAMERON JR.: He said um, "I'll twist your fuckin' head off." And since, you know, he strangled a little girl, that just brings that much more uh a-, you know, aspect behind those words. So he's, he's--

JIM CAMERON SR.: Unbelievable.

11:50:45 JIM CAMERON JR.: --hot. And what happened after, you know, Tom leaves, Lee is, is chasing after him. And Van gets in front of him, the plumber gets in front of him. And this dude, he's been to jail, he's been to prison. So he, he's, he knows to stay out of people's business. He does not get involved in anybody's business. Um so he usually just lets people do their thing. He stays out of it.

11:51:12 Uh the fact that he got involved and got in between Lee and Tom is a pretty significant event. Um that says a lot. It says what Lee was feeling at that moment. I didn't see him personally, but I did see him afterwards at break. And uh Van's like, "Yeah man, he, he, he wanted to hurt Tom." Of course Tom's there and he's like, "Yeah, I'll f-, I'll fuckin' curb stomp that

old prick," not--

11:51:39 JIM CAMERON SR.: The reason I'm laughin' is because Tom is 105 pounds, 10.

JIM CAMERON JR.: [TALKS OVER] And 10 pounds. Yeah, he's, he's a smaller guy.

JIM CAMERON SR.: Yeah, and he's got the attitude of a gorilla.

JIM CAMERON JR.: Yeah. He's--

11:51:48 JIM CAMERON SR.: [LAUGHS] So it's, it's funny that he's, while he's telling the story and I'm thinking of Tom.

11:51:53 JIM CAMERON JR.: So we're, we're all, we're all about to get break. Van mentioned that he's pissed off. Tom said he'll curb stomp him. Ed comes up, our uh, our ex-boss, and, you know, "All right, what's going on?" And, and Lee--

JIM CAMERON SR.: [TALKS OVER] When Lee came back to the shop, he was still infuriated.

11:52:07 JIM CAMERON JR.: [TALKS OVER] Oh yeah, he was still pissed off. He was still red. I mean it probably just happened maybe 15, 20 minutes ago. But the fact that he's still wanting to hurt this kid, um--

JIM CAMERON SR.: Little kid.

11:52:17 JIM CAMERON JR.: Yeah, I mean you, you gotta remember, 110 pounds, 5'8", he's, you, you--

JIM CAMERON SR.: [TALKS OVER] Yeah, little, little kid.

11:52:23 JIM CAMERON JR.: He's already strangled somebody that's 110 pounds, 5'8". You know, what's, what's it gonna take and he's gonna probably do it again? So I mean this kid I don't think realized--

JIM CAMERON SR.: [TALKS OVER] Yeah he was, he was very angry.

11:52:34 JIM CAMERON JR.: --what kinda danger he was in, which is funny uh 'cau-, and we told him afterwards, like, "Yo, you don't mess with this guy. He's, he's not wrapped too tight." Um--

JIM CAMERON SR.: Yeah, yeah he's, he's got a screw loose.

11:52:45 JIM CAMERON JR.: He, he was getting pissed off and, you know, I, I told my boss, I said, "Oh don't worry, Ed, I'm a deterrent. I'll get winner." And uh, uh I basically looked at Lee, like, you know, you don't touch him because I'll, I'll hurt you.

JIM CAMERON SR.: Stuff him in a dumpster.

11:53:02 JIM CAMERON JR.: Yeah, head first.

JIM CAMERON SR.: Yeah. So yeah, so--

11:53:04 JIM CAMERON JR.: Um so that's how that story went down.

JIM CAMERON SR.: We seen that anger part of it, and then just all the stories. He's, there's something real wrong with him.

INTERVIEWER: Did he lay a hand on this guy?

11:53:14 JIM CAMERON JR.: Nope. No, no, he didn't touch him. Um--

JIM CAMERON SR.: He couldn't get to him.

11:53:18 JIM CAMERON SR.: Yeah, he was a little slower in his old age, so he uh couldn't get Tom but--

INTERVIEWER: What do you want to see happen? Why come forward and talk?

11:53:32 JIM CAMERON SR.: Well, i-, you know, after getting involved with this, and, and getting the--

JIM CAMERON JR.: Watching 48 is, is what did it for me.

11:53:40 JIM CAMERON SR.: [TALKS OVER] --and, and just getting involved and talking to different people involved, and, and le-, and learning about Kevin Cooper's plight, um uh and learning the facts about the murders, um yeah it's pretty obvious to me that uh Kevin Cooper is, is innocent, and was railroaded, and done, done wrong, done big time wrong. And he needs to get out and, and enjoy what's left of his life, you know, the, the e-, the end. Well, I'm 63, I think Kevin's around my age.

JIM CAMERON JR.: Yeah.

11:54:14 JIM CAMERON SR.: So you know, we don't have that much li-, much longer to go here. It'd be nice to see the man get out of prison. Um I've looked into a lot of the facts of this case. Um I'm not, you know, I'm not a criminal lawyer, or attorney, or I'm not a cop, but it's pretty obvious to me that there was a whole lot wrong with this, a whole lot wrong with what went on. And um just like to see the man get out, out of jail. I really, really would.
11:54:47 It's uh, you know, it's uh, I can't imagine being in there for 40 years, and uh being uh an innocent guy just sittin' in there. So--

INTERVIEWER: Do you want to ultimately see justice be done?

11:55:03 JIM CAMERON SR.: I don't think real justice could be done in this case, unless you lock Furrow up, because I believe he did it. And uh what do you do with the District Attorney? What do you do with the court system?

JIM CAMERON JR.: The Sheriff.

11:55:16 JIM CAMERON SR.: [TALKS OVER] What do you do with the judge, the Sheriff? What do you do? That's where the justice lies. What, what happens to them? Because they knowingly, I believe they knowingly set this man up and put him in prison. And it's, it, it pisses you off is what it does. So I don't think there's ever gonna be justice other than, you know, uh get Kevin outta there and uh, and give him some money for all those years they stole from him.

JIM CAMERON JR.: Change his family's lineage.

11:55:50 END FILE #220914RD01_INTV - The Camerons 4

11:55:55 BEGIN FILE #220914RD01_INTV - The Camerons 5

INTERVIEWER: Would having Kevin walk and Lee Furrow go to prison be a piece of justice?

11:56:06 JIM CAMERON SR.: I said last night to Jimmy I would like to see Kevin Cooper walking out that cell as Lee's bumping into him as he's coming in.

JIM CAMERON JR.: [TALKS OVER] I think that would be, yeah.

JIM CAMERON SR.: That's what I'd like to see. And Kevin can shut the door.

JIM CAMERON JR.: Yup.

11:56:20 JIM CAMERON SR.: That's what, I would love to s-, I would love that to happen. And then he can wait, not knowing when his death date is. Try that. I can't imagine what that must feel like. So that man's owed a lot. And there's no way there, to, t-, in my mind to ever get true ju-, justice for him. There's too many people that'd have to get locked up, and some would have to be brought back from the dead.

JIM CAMERON JR.: Yeah.

11:56:44 JIM CAMERON SR.: I think the, the one cop is dead now. So I mean that's my opinion, you know.

INTERVIEWER: What do you think? Do you share a similar opinion?

11:56:54 JIM CAMERON JR.: Uh I couldn't say it any better myself. I, I think same, same kinda deal. I, I wanted to um, I think 48's what did it for me, is why I was like, "All right, we, we have some information, maybe we should s-, you know, speak up, and, and talk to somebody on the legal team."

11:57:13 So you know, watching 48 and how they presented the evidence, and um explained like a lot of the evidence was either tampered with or uh planted, or what i-, however uh um, however solid the case against Kevin Cooper was, uh like uh I can't even see how they got him in prison uh wi-, with, with what they have. It, it makes no sense to me.

11:57:40 I, I don't think he uh, I don't think he did it. I don't understand how they got him in prison um to begin with. I don't understand how it's not a mistrial. And I don't understand why they didn't investigate Lee Furrow when you have all this evidence pointing towards him. So um I'm in the same boat. I would love to see, and have it videotaped too, so I can enjoy it, um Kevin Cooper walking out and closing the door behind Lee.

JIM CAMERON SR.: [LAUGHS] Me too.

11:58:06 JIM CAMERON JR.: Uh 'cause honestly, I, I think Lee killed that family. Um most of the evidence points towards him, and all the evidence that pointed towards Cooper was, there's

evidence that that evidence should have been thrown out. So um I'd like to see Kevin Cooper walk out, sooner than later, and hopefully have like a briefcase full of money [LAUGHS] handed to--

JIM CAMERON SR.: Yeah.

11:58:30 JIM CAMERON JR.: --towards him and an apology from the entire state of California. 'Cause uh he, he deserves it. Forty years of his life, you're, you're never gonna be able to compensate 40 years of time on death row--

JIM CAMERON SR.: [TALKS OVER] I agree.

11:58:42 JIM CAMERON JR.: --and having everyone call you a person who slaughtered a family. Uh it, it's just--

JIM CAMERON SR.: Yeah.

JIM CAMERON JR.: --it go-, it goes well beyond uh--

JIM CAMERON SR.: It's bad.

11:58:53 JIM CAMERON JR.: --anything imaginable. I don't know how you compensate for that. But I'm hoping like a million a year would be close. I would start at that.

JIM CAMERON SR.: It'll help.

11:59:02 JIM CAMERON JR.: It would help him enjoy the last little bit of years.

INTERVIEWER: Based on what you know, do you think Lee Furrow committed those murders?

11:59:20 JIM CAMERON SR.: Yes.

INTERVIEWER: Tell me that.

11:59:23 JIM CAMERON SR.: Lee Furrow I believe committed the murders.

INTERVIEWER: Why?

11:59:28 JIM CAMERON SR.: Um well, first he said he did, tol-, he, he said he killed a family, he butchered a family to me.

JIM CAMERON JR.: He did a hit too, especially. You gotta remember that. It was sanctioned.

11:59:36 JIM CAMERON SR.: [TALKS OVER] Um I looked into the evidence that I'm able to obt-, obtain, and uh it, it points to him. Um the car, the three bloody seats in the car, the 140 stab wounds with three different weapons, uh, um the prison shirt, um--

JIM CAMERON JR.: The fact the car was parked a half mile away from his mother hou-, mother or mother-in-law's house.

12:00:01 JIM CAMERON SR.: [TALKS OVER] Yeah, his car was uh, Kevin Cooper ran to Mexico, which was in the opposite dire-, uh direction the car was found--

JIM CAMERON JR.: Yeah.

12:00:07 JIM CAMERON SR.: --which the car was also found near his, Lee's relative's house. Uh off the top of my head, um there's other stuff, but uh yeah there's a whole lot of information that points to Lee. And um the, also the, the thing with, with Clarence, Clarence Allen.

JIM CAMERON JR.: Clarence Ray Allen.

12:00:28 JIM CAMERON SR.: The thing with the horse, the horses he bought from, from the homeowners that were, the homeowner that was, was murdered in the family w-, um some kinda tainted deal went down.

JIM CAMERON JR.: Yeah, basically the Ryen family--

JIM CAMERON SR.: That's, was that Lee's, was that Lee's associate?

12:00:42 JIM CAMERON JR.: [TALKS OVER] Yeah, Clarence Ray Allen was Lee's stepfather, as he said. And uh the Ryen family were horse breeders. They sold him Arabian horses.

JIM CAMERON SR.: Yeah, something like that.

JIM CAMERON JR.: And apparently they didn't mate, and he couldn't make money off of that if they don't have--

12:00:56 JIM CAMERON SR.: So you got that. It's just there's too much, there's too many coincidences. There's too much stuff that just meshed together that points to him.

JIM CAMERON JR.: [TALKS OVER] To point towards Lee, yeah.

12:01:05 JIM CAMERON SR.: And then why would a man say he did that? Why, why would somebody say, "I butchered a family"? Lee, Lee sat there and said, "I butchered a family with my bros."

JIM CAMERON JR.: Yeah.

12:01:18 JIM CAMERON SR.: It's like okay, like what am I supposed to respond to that too? It's like it was, I believe he did it.

JIM CAMERON JR.: Yeah.

12:01:25 JIM CAMERON SR.: I mean and make a long story short, I, I ne-, I really believe he did it. I think uh you got the co-, the bloody coveralls, you got the, I think there was a bar thing where s-, they went into a bar--

JIM CAMERON JR.: Yeah.

12:01:36 JIM CAMERON SR.: --and there was three bloody people in a bar. The waitress thought it was paint. Uh the, um the station wagon with the three bloody seats, the uh, what else?

12:01:47 JIM CAMERON JR.: Three weapons.

JIM CAMERON SR.: Three weapons with one guy, hundred--

JIM CAMERON JR.: The motive. The motive with the horses.

JIM CAMERON SR.: There's that motive was there with the horses.

INTERVIEWER: What would Kevin Cooper's motive be for committing these murders?

12:02:05 JIM CAMERON JR.: I can't think of one.

JIM CAMERON SR.: Oh, I would think moving forward and getting away is what I'd be doing, and not stopping to do any kinda murders. Running, you know. Um--

INTERVIEWER: Say that again but use Kevin Cooper's name.

12:02:28 JIM CAMERON SR.: I don't believe that Kevin Cooper had a reason to commit those murders at all. Um there was a station wagon in the driveway with keys in it. If he needed to run, he, he was on the run. And so uh I'm thinking if he was up there and there was a station

wagon with keys in it, he would have took it and ran. That's what he was doing, he was trying to run away. He wasn't looking to butcher a family. Um I believe there was money still in the house. So--

JIM CAMERON JR.: You would have took that.

12:02:57 JIM CAMERON SR.: --wouldn't you have taken the money too? There's just a whole lot of things not pointing to him. [TALKS OVER] There, everything points to Lee.

INTERVIEWER: Say that again.

12:03:06 JIM CAMERON SR.: Ever-, uh, uh I don't think there's a whole lot that points to Kevin Cooper. I look at everything pointing at Lee. And uh, and that's why I got involved with this.

JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: Because I believe he did it. I honestly do.

INTERVIEWER: Why didn't you want to talk to me today?

12:03:24 JIM CAMERON SR.: Well, the, the one re-, I, uh retribution maybe from Lee.

INTERVIEWER: Say that again.

12:03:32 JIM CAMERON SR.: Well, um if Lee Furrow were to get angry and, and come my way. Um he's an old man but anybody can squeeze a trigger. Um that's one thing. Um that's really probably the only, the only reason that was, was keeping me from doing this.

INTERVIEWER: Your lawyer said not to do this, is that right?

12:03:56 JIM CAMERON SR.: My lawy-, my lawyer said not to do it, basically just to stay anonymous, let what I've done so far run through the court system. I don't need any more publicity any-, uh in any which way. Um and basically he was looking out for what's this man really capable of. Um could he be, you know, come back to have a, have a, an attack of anger or whatever goes through his head, and, and inflict harm on me. I think that's what my lawyer was trying to keep me safe.

INTERVIEWER: Can you handle yourself if he comes after you?

12:04:30 JIM CAMERON SR.: Um I have my bodyguard here, [LAUGHS] with, with a permit to carry. So and he's always with me, so I'm good that way. And yeah, I, I, you know, I know I can run faster than him. [LAUGHS]

12:04:43 JIM CAMERON JR.: Yeah, he's got about a good 30 seconds before his heart explodes, so I'm thinkin', I'm thinkin' we'll be all right that way.

JIM CAMERON SR.: Yeah, we'll be fi-, we'll be fine.

12:04:50 JIM CAMERON JR.: But as long as he doesn't have a gun, then I think we're good. If he has a gun, well--

JIM CAMERON SR.: Then it's a shootout.

JIM CAMERON JR.: Yeah. But--

12:04:57 JIM CAMERON SR.: We, we just, yeah, uh no, I'm not worried about it. I'm uh--

JIM CAMERON JR.: We're not gonna lose sleep over it but--

12:05:02 JIM CAMERON SR.: I thought about it. Believe me, I thought about it. The man's twisted, obviously. Um but no, I'm not worried about it not, not to do this.

JIM CAMERON JR.: This is worth it.

JIM CAMERON SR.: Yeah.

INTERVIEWER: What ultimately made you decide to do this?

12:05:17 JIM CAMERON SR.: Um public awareness is nice. Uh I think that the more the public sees what really can happen to somebody is a good education for all of us.

JIM CAMERON JR.: Yeah.

12:05:29 JIM CAMERON SR.: And uh if this helps Kevin Cooper get out of jail, awesome.

JIM CAMERON JR.: Yeah, without a doubt.

JIM CAMERON SR.: That's why we're doing this.

JIM CAMERON JR.: That was my only reason.

12:05:37 JIM CAMERON SR.: And if this puts Lee in jail, that's a added bonus.

JIM CAMERON JR.: [TALKS OVER] That's a bonus.

JIM CAMERON SR.: [LAUGHS] So look out for that too.

JIM CAMERON JR.: Yeah.

INTERVIEWER: Where are we? What are you doing here?

12:05:57 JIM CAMERON SR.: So this, this is a renovation of a, a large house for college students for

the University of Penn. Um this is the kinda work we do. We build new ho-, homes also uh out of the ground. Um this is what I've done my whole life, and this is what he's done for the last seven years. So when I, when I go, and I do my travelin', it's gonna be his business, and my buddy, Shawn's business. So that's what we're here doing, working, working on.

INTERVIEWER: Was there an aha moment for you guys when you put the pieces together about Lee?

12:07:04 JIM CAMERON JR.: Well, he, he was, he was referring to how the, how we figured out or come to the uh the conclusion that the people that Lee has killed or the comments of that Lee said about killing people, how we figured out that it was 48, I'm assuming.

JIM CAMERON SR.: It was the 48 Hours show.

JIM CAMERON JR.: Yeah, but um he--

INTERVIEWER: Say that without saying 48 Hours.

12:07:39 JIM CAMERON JR.: [TALKS OVER] So the initial, the initial conversation that they had about, "Hey, I did time in San Quentin for murder, I killed somebody" um was enough t-, for my father to start searching the internet to see who he actually killed and how that story actually happened, like well, who, who did he kill, what went down, uh right? Isn't that--

12:07:58 JIM CAMERON SR.: That was for s-, that was for Mary Sue Kitts. I wanted to see--

JIM CAMERON JR.: [TALKS OVER] Yeah. So that's how we found about Mary Sue Kitts.

JIM CAMERON SR.: --I wanted to see who he, who he killed.

JIM CAMERON JR.: Yeah, and then--

JIM CAMERON SR.: And why.

12:08:05 JIM CAMERON JR.: --for the family, um this has been an issue with the uh other people we've talked to, is um with the family, we're not too certain on the, the culmination of events, but I, I'm pretty certain now, after talking to multiple people, uh he mentioned he did a hit on a family, uh and afterwards we watched 48 Hours from, was it Shawn who told us or?

JIM CAMERON SR.: Well, we watched some TV show.

12:08:35 JIM CAMERON JR.: Oh, that's right. Yeah, we watched, we watched a, a TV show, but didn't somebody tell us, or did we discover it ourselves? Or did Lee say it?

JIM CAMERON SR.: Uh Lee, remember Lee had said, "48 Hours is coming after me"?

12:08:48 JIM CAMERON JR.: Yeah, so somebody--

JIM CAMERON SR.: [TALKS OVER] That's how we knew about 48 Hours.

JIM CAMERON JR.: Yeah, "The TV show is coming after me again for--"

12:08:51 JIM CAMERON SR.: And I'm like, "What? 48 Hours is coming after you?" He goes, "Yeah, yeah, 48 Hours wants to, wants to come after, or wants to interview me, or they're coming after me or something."

12:08:59 JIM CAMERON JR.: "So they're doing another episode, the TV show is doing another episode on me again." Um and I, I think that's how we found uh the first episode.

JIM CAMERON SR.: [TALKS OVER] Yeah, we went and looked up the first episode. That's how we found out.

12:09:08 JIM CAMERON JR.: [TALKS OVER] And um that's how we started getting uh the history behind--

JIM CAMERON SR.: I remember that day when he was ra-, he ran up the steps all--

JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: --all like, like jogging up the steps uh--

12:09:16 JIM CAMERON JR.: [TALKS OVER] 65, right? Yeah, it's 'cause he was six months off, he was relaxed.

JIM CAMERON SR.: Yeah, saying how 48 Hours is coming after him is what he was saying.

JIM CAMERON JR.: Yeah.

12:09:24 JIM CAMERON SR.: And I'm like, "What?" He goes, "Yeah, they, they want to interview me." And I'm thinkin' ah we gotta go on the computer. Computers are awesome. [LAUGHS] So you can find--

JIM CAMERON JR.: [TALKS OVER] Yeah. They help out a lot when finding murders.

12:09:36 JIM CAMERON SR.: So I found the first 48 Hours and watched that. And I was just like ah, there's the family. There's the family that he talked about butchering.

JIM CAMERON JR.: Yeah.

12:09:47 JIM CAMERON SR.: And uh [CLEARS THROAT] we'd been following it ever since. And then that's when I called um Ingels.

JIM CAMERON JR.: Yeah.

JIM CAMERON SR.: Called Paul Ingels and s-, all's I wanted to do with him was say, "Look, yo," 'cause he seemed like he, that show made him like he was like actively on that case.

JIM CAMERON JR.: Yeah, that was, he was the guy.

12:10:07 JIM CAMERON SR.: And uh, and I know I keep mentioning that and I'm sorry, but um i-, that he was actively, I, I just, it, it, it looked like he was like following him ev-, on a daily basis, or a weekly basis, keeping track. That's what, so I'm thinking well he's really after this dude. I think he did this. I'm gonna call this guy up and say, "Look, this is what he told me, and you're on the right, you're on the right track."

JIM CAMERON JR.: [TALKS OVER] Does it help? Yeah, or does it help?

12:10:30 JIM CAMERON SR.: Is what I told him. I said, "You are definitely on the right track." And then that's when he called me back and set up the interview with me, and flew from wherever he lives, I think he's in Cali too, down to Philly.

INTERVIEWER: What ended up happening with that?

12:10:46 JIM CAMERON SR.: With Paul Ingels? So we met at a diner. [CLEARS THROAT] And we basically shared our information with him. I believe we signed a release or--

JIM CAMERON JR.: De-, for a deposition or like, yeah.

12:10:56 JIM CAMERON SR.: [TALKS OVER] For a deposition. Um and, and that was that. And several months later, um in the meantime, Tom Parker, I talked with Tom Parker. We, I also met with Tom. Very nice gentleman, by the way. Um and he had told me about Paul Ingels

giving them a, a bill for coming out and seeing me and my son.

12:11:25 So he charged, whoever got the information, I forget the attorneys, uh whoever got that information was billed, I think the number was around 10,000 dollars, for our information. He sol-, basically sold our information. Um--

JIM CAMERON JR.: [TALKS OVER] And uh Tom Parker came down and wanted to c-, cooperate that, what we said, and, and get our deposition also.

12:11:45 JIM CAMERON SR.: [TALKS OVER] Yeah, so then Tom came down. He, he kinda shared that info about Paul. Paul had called me after all this went on. Tom came, Paul sold the stuff, Tom came. Uh Paul called me back. He wanted me to go, uh let him go on 48 Hours. I said, "No, you can't go on 48, 48 Hours." Should I be talking about 48 Hours again?

JIM CAMERON JR.: Well, we uh, we, we basically didn't want to do it for anonymity.

12:12:07 JIM CAMERON SR.: [TALKS OVER] I said, "No," I said, "No, I, I, I won't let you use anything we said." I mentioned the fact that he sold our deposition. Like, you know, you're a lowlife, basically. And uh he told me that he had recor-, I told him that I had recorded the whole conversation with him. He said, "Well, I'll, I'll have you charged for wiretapping laws." I said, "Well, you go ahead and do that and I'll make sure that you're plastered all over the TV for what you did."

12:12:37 So nothing ever happened to that. He never called me back. He was never back on that TV show. And uh that's basically how all that transpired, why I was cont-, why I was contacted by Tom Parker. It went through Paul Ingels. Paul Ingels went back, sold the info. Tom Parker liked what he saw. He came and interviewed us, at the same diner actually.

JIM CAMERON JR.: Yeah.

12:13:00 JIM CAMERON SR.: And uh, and that's how that, that kinda, that's how I got involved in this basically.

JIM CAMERON JR.: Yeah.

INTERVIEWER: Did Morrison & Foerster interview you?

12:13:13 JIM CAMERON SR.: Well, they called us over the phone.

INTERVIEWER: Start again.

12:13:19 JIM CAMERON SR.: Morrison & Foerster contacted us over the telephone. We gave--

JIM CAMERON JR.: [TALKS OVER] Separate interviews.

JIM CAMERON SR.: --statements over the phone.

12:13:25 JIM CAMERON JR.: We had, yeah we had separate interviews with, with Morrison & Foerster. They were curious about--

JIM CAMERON SR.: That's right.

12:13:30 JIM CAMERON JR.: --what we said, what went down, timeline of events, um uh and just basically the, the character of Lee. And, and basically what we said here is what we said to them, which was--

JIM CAMERON SR.: Pretty much.

12:13:43 JIM CAMERON JR.: --um we gave 'em a, a basis of timeline and what kinda character Lee is, and is he capable of murder, all that stuff.

INTERVIEWER: What do you think is going to happen with the independent investigation?

12:14:28 JIM CAMERON JR.: I honestly have no idea what Morrison & Foerster is gonna come down to, uh what, what their decision is. Um I would say any logical independent investigation, if they have all the evidence that 48 has produced, or uh, uh they, they will uh, I would hope they would side with uh releasing Kevin Cooper on, on charges that he didn't commit, um and exonerate him of any charges, and, and uh even push for recommendation of civil lawsuit, 'cause uh it's pretty bad.

12:15:02 Um but honestly, the way the justice system works and how government is, and politics, uh you know, I have no idea. I could, couldn't tell ya.

12:15:13 JIM CAMERON SR.: Yeah, I, I agree with him as far as how our government works. They don't like to be wrong.

JIM CAMERON JR.: Never.

JIM CAMERON SR.: Um yeah, they have to be right. So uh I think any, anybody with an IQ of uh, uh average or better can see what's--

JIM CAMERON JR.: What happened.

12:15:29 JIM CAMERON SR.: --what's going on, and what really happened. Um I, I don't see how you could not come out with the uh Kevin Cooper being framed, and being uh, i-, i-, it's uh, it's, they're obviously gonna have more, privy to more uh information than I have, and I can see it from a mile away that this man was set up. So--

JIM CAMERON JR.: Based off the information we got--

12:15:57 JIM CAMERON SR.: [TALKS OVER] --I don't know how you, how they can not. It would be embarrassing not to say that, that they, this man was framed.

INTERVIEWER: Do you think race played a factor in this?

12:16:10 JIM CAMERON SR.: Absolutely.

INTERVIEWER: Can you tell me that?

12:16:17 JIM CAMERON JR.: Didn't they have like a hanging doll?

JIM CAMERON SR.: I j-, well that's the town. The town went crazy. But um uh how can I explain this without? Um--

INTERVIEWER: It was a different time.

12:16:35 JIM CAMERON SR.: It was a white, it was dom-, predominantly a white area. Um uh I, I, without incriminating my race, um [LAUGHS] you know what I mean, um that, that era of people, that age group, uh which I was raised by, World War II guys, right, I mean that's how I was raised.

12:17:02 Um I'm, I'm gonna be honest, I think a lot of us were raised like that. Um it took my kids actually um and a couple black people that I ended up being really good friends with um to change my attitude and how I was taught. I think we were taught to be racist by generation to generation. I think now it's started to work itself out.

12:17:31 Um yeah I, I mean I don't have any proof that it was racist, but I'm gonna lean towards that. Let's put it that way. Um I mean it's just, it's just how it was, and how it still is. And you know, it's probably gonna be like that for a long, a lo-, a lot longer. Um yeah he was, that was a big part of it, that he was black, sure.

JIM CAMERON JR.: I'm gonna say that--

JIM CAMERON SR.: My feelings.

JIM CAMERON JR.: I'm gonna say my feelings. Um uh 1960s at the time, right?

INTERVIEWER: 1980s.

12:18:11 JIM CAMERON JR.: 1980s? Okay.

INTERVIEWER: 1983 is when the murder took place.

12:18:14 JIM CAMERON JR.: Okay. Uh I'm gonna say personally that uh 1980s, uh black guy just escapes from prison, I, I mean even if it was a white guy, I, I think there was just public outcry and outrage, and they, they wanted something done as fast as possible. And uh, uh I think they were under the gun and stressin' out, and they d-, they seen this guy, and they, they framed him to try to appease the public. Like I don't think they had a clue who, who actually did it um at the time.

12:18:44 And uh the fact that he was black was probably just the bonus. I-, I mean honestly, that's, that's how a lot of people are, and were, and--

JIM CAMERON SR.: And still are.

JIM CAMERON JR.: --it's, it's messed up. But I mean--

JIM CAMERON SR.: And they're still like that.

12:19:00 JIM CAMERON JR.: --it's uh, I don't, I don't think it was the main reason, no. I don't think it was like a, a [hurricane corridor?] or any of that. It was uh, it was just the convenience of having somebody who escaped prison who just so happened to be next door during the murders. And the fact that they couldn't get him means that they had to add some fuel to the fire, so to speak, and, and try to frame him.

12:19:27 I, I think that, that's how that went down. And the fact that he was black was just gonna help their case. Um is that how that went down? I have no idea. Uh but I could see it. And um yeah.

INTERVIEWER: Anything else you guys want to add?

12:19:50 JIM CAMERON SR.: [TALKS OVER] Good luck, good luck, Kevin Cooper is all I gotta--

JIM CAMERON JR.: [TALKS OVER] Philly's the best city.

INTERVIEWER: Say that.

12:19:54 JIM CAMERON SR.: Good luck, Kevin Cooper. My, you know, my prayers are for ya and I want to see you get out.

JIM CAMERON JR.: Yeah, we, we're hoping you get out and you uh, you get some kind of compensation for this.

JIM CAMERON SR.: Absolutely.

12:20:09 JIM CAMERON JR.: And I hope you don't have any bias towards white people [LAUGHS] if you're uh gonna get out and be like, "Oh, these friggin' assholes locked me up for the rest of my life, these fuckin' pieces of shit." But [LAUGHS] honestly, um uh Lee, if you want to stop by, I got a .45 for ya.

JIM CAMERON SR.: [LAUGHS]

JIM CAMERON JR.: And that's it.

JIM CAMERON SR.: Oh shit.

INTERVIEWER: What is your opinion about the death penalty?

12:20:42 JIM CAMERON SR.: Uh nah. I, I don't think so.

12:20:47 JIM CAMERON JR.: I'm gonna s-, have to say a hard no until, until you have 100 percent without a doubt concrete evidence. And that person has to have no remorse, for, like for, for

me to say yeah just kill him. Because I mean if you have somebody who did something heinous, like slaughter a family, and they don't give a shit, i-, they're an animal, you gotta put 'em down.

12:21:13 Uh why even pay, why even pay for somebody who isn't gonna suffer in prison with what they've done, and, and try to find some kind of uh rehabilitation, uh re-enlightening uh moment for them to be some, some kinda benefit towar-, towards the world?

INTERVIEWER: So based on what you just said, Kevin Cooper should have been executed?

12:21:36 JIM CAMERON JR.: No, no, 'cause there's not 100 percent concrete proof that he committed the murders.

JIM CAMERON SR.: As far as the government, they're saying it is.

JIM CAMERON JR.: Yeah, um that's what I'm saying. You, you would--

JIM CAMERON SR.: That's why I'm saying that--

12:21:46 JIM CAMERON JR.: I'm gonna have to say a hard no. That's why I said uh I'm a hard no uh in-, unless there is undeniable. And you would even have to have like other people, other organizations look into it. Like I wouldn't, I wouldn't just trust the government's word. You seen what happened to Kevin Cooper. So I mean I'm just, I'm just saying like, you know, un-, uh, unrealistic terms for it to actually be reasonable, in my opinion. Uh that's how far I'd go with that. So no, a hard no.

INTERVIEWER: Do you know that it costs more for someone to be on death row and executed than life imprisonment?

12:22:33 JIM CAMERON SR.: [TALKS OVER] I didn't know that. Wow.

JIM CAMERON JR.: Well yeah, it's because they keep 'em alive for like 25 years.

INTERVIEWER: It's the appellate process.

12:22:48 JIM CAMERON SR.: So he'll run it through to the very end.

JIM CAMERON JR.: Yup.

JIM CAMERON SR.: Every uh goes back and back and back. I got you.

JIM CAMERON JR.: [TALKS OVER] The retrials and all the costs of--

JIM CAMERON SR.: Yeah, I can see that.

JIM CAMERON JR.: Yeah, yeah, I see it.

INTERVIEWER: Should we be playing God?

12:22:59 JIM CAMERON SR.: No.

INTERVIEWER: Can you answer that?

12:23:04 JIM CAMERON SR.: Well, I, I don't think we should play God with anybody's life.

JIM CAMERON JR.: I don't, I don't think so either.

JIM CAMERON SR.: Uh we got, uh ge-, I think keeping 'em in prison was where, where you, what you do.

JIM CAMERON JR.: That's where the unrealistic terms--

12:23:15 JIM CAMERON SR.: [TALKS OVER] And they can die a natural death in there. I don't believe in the death penalty. I just--

JIM CAMERON JR.: Unless we got like, you know, a death race going on or something, like a TV show.

JIM CAMERON SR.: [TALKS OVER] I just, I just don't believe in it. I think uh yeah, I think, I think it needs to be abolished.

12:23:33 JIM CAMERON JR.: Yeah, I don't agree with it either, unless like I said, you have unrealistic terms, unrealistic knowledge of, that this guy doesn't feel remorse, and that y-, you, you would need to be God to be able to do what I'm talking about. So no.

12:23:53 END FILE #PVC_THE_CAMERONS_INTV1_220914

Exhibit 9

SHERIFF'S DEPARTMENT

County of San Bernardino
California

CA 03600

1211029-82
REPORT AREA

SECTION	CRIME	CLASSIFICATION
PC 187	MURDER	MULTIPLE

M'S NAME — LAST NAME	FIRST NAME	MIDDLE NAME	(FIRM NAME IF BUSINESS)
RYEN			

ESS	☐ RESIDENCE	☐ BUSINESS	PHONE
			( )

ADDITIONAL INFORMATION:

On 6-9-83 at approx. 1700 hrs., I was contacted by Diane FURROW (KELLISON) 1345 Agate, Mentone, CA, 794-5708, DOB 5-4-57.

She advised me that she had found a pair of green coveralls in her closet with blood stains, horse sweat and horse hair. She said the horse hair is from an Arabian horse.

She said that she had cleaned her house and doesn't know where these coveralls came from. She suspects that her estranged husband, Lee FURROW, a paroled convict, possibly put the coveralls in the closet. Lee FURROW was paroled approx. 3 years ago for PC 187, strangulation of a female (gang related).

She said that if her husband is not responsible for the coveralls, a friend of his, probably is.

She also said that for the past four months, she has had contact with an unknown female from the Chino area. This female was attempting to sell her and her husband a stolen Arabian horse. With this female were four of her male friends, whom she believes are connected with some sort of gang or mafia.

She further suspects that the bloody coveralls are from the Chino murders and has further information regarding that incident and/or possible suspect/s. She would tell me no further information until being contacted by the Homicide Division.

Later that night, I talked with Greg BENGE at the West End Substation and told him of the above information. He requested that I tag the coveralls (OPT #A56829) and forward him a supplemental information report. He advised that the report should be directed to Sgt. ARTHUR of the Homicide Division.

ING OFFICERS	DATE	REVIEWED BY	TYPED BY	ROUTED BY	DATE
E. EDKLEY, Deputy E-0167	6-10-83		ksg		

		☐ ED/PD	☐ Other	REMARKS
ES ☐ NC	☐ Detective	☐ CII	☐ Other	
40: Rev. 3/83	☑ Dist. Atty.	☐ Patrol		

2418

Exhibit 194

Exhibit 10

Memo

To Morrison & Foerster

From Orrick Team

Date July 6, 2021

Re Kevin Cooper Innocence Investigation: Alternative Suspects

From the moment the Ryen-Hughes murders were discovered, it was apparent that they were committed by multiple attackers. How could a single assailant overcome five people, one of whom (Doug Ryen) was a strong, ex-Military Policeman, and another of whom (Peggy Ryen) had the mental and physical strength to control and train Arabian horses? And how could a single attacker simultaneously gain the upper hand on both Doug and Peggy Ryen when each had loaded weapons within reach of their bedsides? And how could a single attacker wield three or four different weapons to inflict 144 wounds on the victims in the space of a few minutes? And why would a single attacker, if he were just escaped from prison, leave in plain sight at the crime scene cash, credit cards and other valuables? The answers to these questions have to be, as shown below, that the Ryens and Christopher Hughes were not murdered by Kevin Cooper, but instead by a number of assailants, one of whom was Lee Furrow.

I. FROM THE OUTSET, THE EVIDENCE SHOWED THAT THE RYEN/HUGHES MURDERS WERE COMMITTED BY MULTIPLE PEOPLE.

The San Bernardino County District Attorney's Office ("SBCDA") put forth a single killer theory at trial. However, the evidence does not support it.

- Shortly after the murders were discovered on June 5, 1983, the surviving victim Josh Ryen was airlifted to the Loma Linda Medical Center. There Josh was unable to speak due to his grave injuries. In the emergency room, clinical social worker Don Gamundoy wrote the letters of the alphabet, numerals 1-0, and "yes" and "no" using paper and clipboard. (99 R.T. 5922). Josh touched letters and numbers and accurately provided his name, birthdate, and phone number. He touched "3" and "4" then "3" for the number of attackers and "yes," that they were white (99 R.T. 5929). When asked, "Were they Black"? Josh pointed to "no" (99 R.T. 5929). He indicated he did not know the attackers but that he had seen them before the attack (99 R.T. 5932).

- San Bernardino County Sheriff's ("SBSD") Deputy Dale Sharp was in the emergency room part of this time and observed Josh's answers to Gamundoy's questions. Dep. Sharp interviewed Josh next, and he used a system of hand squeezes for Josh to indicate "yes" or "no." Before surgery, Josh responded that the attackers might be three white men. After surgery, Dep. Sharp asked Josh if there had been anybody around the house who didn't belong there. Josh responded that there were three Mexican men wearing a white T-shirt, a blue short-sleeve shirt and a red long-sleeved shirt (99 R.T. 6029) who had come to the house earlier in the evening in a Chevy

Impala and had spoken to his father (99 R.T. 6025, 6026). (A ranch hand working nearby reported to the SBSD that he also saw a green Chevy drive up to the Ryen house at that time. (See Section III below).

- Meanwhile, none of the witnesses the SBSD was interviewing mentioned seeing a Black person in any scenario. Four witnesses saw the Ryen station wagon in the area of the Ryen home and on the road from their house just after midnight with up to four people in the car. None were identified as Black.

- On June 5, 1983, the day the bodies were found, a young woman and her grandmother were nearly hit by a station wagon being driven by three white men in the vicinity of Chino and Pomona. The men were driving erratically and looked so dirty and unfit for the car that the grandmother wrote down the license plate number. On returning home, the young woman saw a TV report of the Ryen-Hughes murders that provided the plate number of the family car. She immediately realized this was the car she and her grandmother had just seen. A few days later, she and her grandmother sent an anonymous letter describing what they had seen and the matching plate number to the Chino Police Department. The defense does not know whether the Chino PD or SBSD ever received it (Declaration of Jane Doe).

- Witnesses from the Canyon Corral Bar, which was close to the crime scene, reported seeing three unknown white men there earlier in the evening of June 4 and again soon after the killings. One witness testified at the 2004 evidentiary hearing that she saw and told one of the men that he had blood splattered on his coveralls and skin.

- The SBSD issued a statewide Criminal Bulletin on June 7 describing the suspects as three white or Mexican males wearing a white [tan] t-shirt, a blue short-sleeve shirt and a red long-sleeve shirt and driving the Ryen family station wagon. The Criminal Bulletin provided the car's description and license plate number.

- When the Ryens' station wagon was eventually discovered on June 11, SBSD criminalists found blood on three seats, once again pointing to multiple killers.

- Dr. Irving Root, pathologist from San Bernardino County Coroner's Office, who examined the bodies of the victims, initially concluded more than one killer was involved because it would have been impossible for a single person to inflict 144 separate wounds on five victims, while wielding three to four different weapons (91 R.T. 3974). In an attempt to overcome this evidence, the prosecution argued in closing, without having introduced any supporting evidence, that Mr. Cooper is ambidextrous; he is not.

As soon as the SBSD learned Mr. Cooper had been in the area of the Ryen home, they abandoned leads pointing to multiple killers and ignored statements by Josh and other eyewitnesses. Instead, they focused all their attention on one suspect - a Black man who had walked away from a nearby minimum-security prison through a hole in the fence**.** Within a week of the murders, after destroying the crime scene, the SBSD announced there was only one killer and ignored all incoming evidence of multiple killers, even though Josh continued to provide information that cast doubt on whether the SBSD was on the right track:

- On June 6, 1983, Josh was interviewed by SBSD Detective O'Campo. Josh confirmed his original statements to Gamundoy and Sharp that there were three attackers, and one was a Mexican wearing a red shirt. Nurse Linda Headley witnessed this conversation and testified about it at trial (ER 1302 RT 5973-75.) Detective O'Campo lied under oath when he testified that he did not take notes of the June 6 interview; he later testified that he destroyed his notes after typing a summary report. He had already developed a bias, later testifying he believed by June 6 or 7, 1983 that Mr. Cooper was guilty (1/15/85 R.T. 6423-24). Detective O'Campo also testified that he did not interview Josh before June 14, however Nurse Headley's testimony showed testimony in this regard was also false. Finally, O'Campo testified to conducting "scant" interviews with Josh, only later to admit that he had spoken to Josh approximately 20 times during Josh's hospital stay.

- On June 14, 1983, Detective O'Campo interviewed Josh again with Dr. Jerry Hoyle, a psychologist, present during the interview (34 R.T. 2171). Josh spoke of assailants in the plural at least six times. Dr. Hoyle wrote "they" in his notes, reflecting Josh's references to multiple assailants. Detective O'Campo wrote "he," which conveyed a single suspect, rather than "they." As in prior interviews of Josh, Detective O'Campo did not record this interview.

- On June 15, when Josh saw a TV news report from his hospital bed displaying a photo of Mr. Cooper as the suspected killer, and having recovered the ability to speak, he told SBSD Deputy Luis Simo, who was with him in the room, "He's not the guy who did it" (101 R.T. 6402). Deputy Simo testified that soon thereafter, he called SBSD Detective Hector O'Campo to report what Josh had said but that O'Campo was dismissive of the information (101 R.T. 6404 -05). Detective O'Campo failed to do anything with the information (Clemency Petition page 83, fn. 142) and Mr. Cooper's counsel has never seen any SBSD report documenting what Simo told O'Campo.

- During the first week of August 1983, Josh saw a newspaper article reporting Mr. Cooper's arrest for murdering the boy's family and friend. Josh asked his uncle, Dick Ryen, "Are you sure they have the right guy?" (73 R.T. 6592-93).

- Several weeks later, Josh was with his grandmother, Mary Howell, and again saw a photo of Mr. Cooper on television. Dr. Howell asked Josh if he knew who that person was or if he had seen him before. Josh told his grandmother "No." In an interview for *48 Hours* with Erin Moriarty that aired on August 10, 2004, Dr. Howell stated: "I am still looking for the truth...the killers are still out there somewhere." Dr. Howell is deceased.

- In an audiotaped interview with psychiatrist Lorna Forbes, describing one of the killers standing over his mother, Josh stated, "I saw his back and a puff of hair." It is undisputed that Mr. Cooper's hair was in braids at the time of the murders (Clemency Petition, p. 83, fn. 144).

- Dr. Forbes asked Josh about his previous statement that there were three killers. He responded, "I really thought it was them, but after a while I saw on television that it was Cooper" (12/13/84 95 RT 4991-92) [From 2009 Daily Journal 565 F.3d 581].

- The massive media coverage portraying Mr. Cooper as the killer, along with suggestive questioning by SBSD deputies who had gained the trust of eight-year-old Josh, led the

child to alter his account of events to align with the SBSD's narrative—that Kevin Cooper killed his family.

II. THE EVIDENCE SHOWS THAT LEE FURROW IS ONE OF THE KILLERS OF THE RYENS AND CHRISTOPHER HUGHES.

On June 9, 1983, after learning about the killings from news reports, Lee Furrow's girlfriend and housemate, Diana Roper, contacted an SBSD deputy at the Yucaipa substation because she believed Furrow was one of the killers. The facts supporting her belief are included below:

- Furrow returned to their home around 3:00 AM on June 5 wearing bloody coveralls that had Arabian horse hair on the leg area below the knees [Eckley to Forbush; transcript of recorded interview 05/26/84]. Roper gave the coveralls to SBSD Deputy Rick Eckley, who wrote a report and called the homicide division - he knew that Cooper was being "hotly sought after" and believed Diana Roper to be a reliable source based on previous contact with her. He and a supervisor tried for three months to get the SBSD homicide division to pick them up, but to no avail. Another supervisor approved discarding them in December during Mr. Cooper's preliminary hearing (Clemency petition Ex. 1 [*Cooper,* 565 F.3d at 625]).

- Furrow arrived home in the early morning hours of June 5 in a car matching the description of the Ryen station wagon [See Section III regarding green Chevy]. On that day, Furrow had been wearing a t-shirt that perfectly matched the description of the bloody tan t-shirt recovered by the SBSD near the Canyon Corral Bar; however, he was not wearing it when he returned home. One of the three men acting strangely in the Canyon Corral Bar, according to a witness interviewed after the killings, was described by a bar employee as wearing a light-colored t-shirt.

- Furrow's hatchet—which matched the one recovered by the SBSD—was missing from the tool-storage area of the Roper home.

- Furrow was a convicted killer who had been released recently from prison.

The SBSD's knowledge of Lee Furrow's likely involvement is corroborated by Teresa Sanders Monteleone, a close friend and neighbor of Diana Roper in Mentone.

- Monteleone told defense investigators that Furrow made two calls to his lawyer from Monteleone's house pertaining to the murders (Investigator Reports of Forbush-1984 and Ingels - 1998). Furrow's first call was within a day or two after the killings during which Monteleone overheard Furrow tell his lawyer he was afraid he would be picked up for the crime. We know from Diana Roper that Furrow altered his appearance the day after the killings by cutting off his long hair, beard and Fu-Manchu moustache and that the media had reported one victim/witness had survived.

- A few days later, law enforcement came to Monteleone's house and asked her about Furrow's use of her phone. A person she described as a "detective" showed her a copy of her phone records with Furrow's attorney's number in the list of placed calls as part of their questioning. The defense has never seen any SBSD report about this visit.

- Eleven months later, on May 17, five months before the Cooper trial began, Furrow made a second call to his attorney from Monteleone's house [Forbush interview 1994; Ingels interview 1998]. This was right after Roper contacted the SBSD and Mr. Cooper's counsel, David Negus, to ask what had happened to the blood-spattered coveralls she had turned over to Deputy Eckley on June 9, 1983. This call from Roper was how Negus learned about the existence of a pair of bloody coveralls possibly related to the killings. Roper was shocked when Detective James Stalnaker told her they had been destroyed without being tested. In 1998, a defense investigator discovered that Eckley's supervisor, SBSD Deputy Ken Schreckengost authorized disposal of the coveralls (Clemency Petition, p. 85; *Cooper*, 565 F.3d. at 625).

After he learned that Roper had also called Negus about the coveralls, Detective Stalnaker set up a meeting with her for 2:00 PM on May 16. He then called Furrow's attorney to arrange for Furrow to meet with him the following day, May 17. According to Dep. Eckley, Roper's call and visit was a bombshell. Ten days later, Deputy Eckley told defense investigator Forbush, "I know the Kellisons [Diana and her father] were all up here… I know that the sergeants and the lieutenants and the captains were all in here talking about it" [transcript of Forbush Interview of Eckley, May 26, 1984]. Stalnaker and lead homicide detective Sergeant Billy Arthur conferred and at this point, they both knew there was evidence pointing to suspects other than Cooper, and that critical physical evidence had been destroyed by the SBSD. (Forbush Interview of Eckley, May 26, 1984).

The next day, Detectives Stalnaker and Arthur briefly interviewed Furrow. After a mere 20 minutes of questioning, they told Furrow that submitting to a polygraph would be unnecessary and ended the interview despite learning from Roper the previous day that Furrow was desperate to leave town. They knew that Furrow was a convicted murderer and a drug dealer, and that there was significant evidence of multiple attackers, nevertheless, the SBSD determined to stay the course and pursue Kevin Cooper as the sole suspect.

III. LEE FURROW IS CONNECTED TO A GREEN CHEVY THAT WAS SEEN AT THE ROPER-FURROW HOUSE, AND LATER IN THE RYEN NEIGHBORHOOD, AND ARRIVING AND LEAVING THE RYEN HOME BEFORE AND AFTER THE MURDERS. TWO MEN IN THE CAR WERE LIKELY FURROW'S ACCOMPLICES.

- In the week preceding the murders, Diana Roper's sister noticed an older model green Chevy with black pinstripes and a torn vinyl roof parked down the street from the Roper-Furrow residence with two men inside watching the house.

- Two of Roper's friends separately saw the same car on June 4, 1983, the day of the murders, parked at the Roper-Furrow residence. Furrow was inside the house, as was Jan Martinez, a Furrow acquaintance he named as an "accomplice" in one of his confessions. When one of the friends inquired who was in the shower, Furrow said it was Mike Darnell, another friend of Roper and Furrow, who accompanied Furrow to the concert that night.

- Also on June 4, Ryen acquaintance Richard Sibbitt, while working on a nearby property, was approached by two "Mexican-looking" men driving a lime green Chevy with black

pinstripes, asking for work. One of the men matched Furrow's physical description, specifically, as Sibbitt said, he had a Fu-Manchu mustache and bushy hair.

- On June 8, a farm manager for a nearby Arabian Horse Farm, told a sheriff's deputy that on June 4 at about 5:30 to 6:00 PM he saw three men in a "'70s model faded or light green Chevy" drive toward the Ryen home. He said the passenger in the back seat looked Mexican; the other two he could not see well enough. (Marc Wollard-Dep. Robert S. Hall Interview on 06/08/83). This is at the same time Josh Ryen said a Chevy with three people drove up to his home.

- Josh Ryen told Deputy Dale Sharp (99 R.T. 6025-6035) that around 6:00 PM on the evening of June 4, as the Ryens were preparing to leave for a barbecue, three men Josh thought were Mexican drove up to the house in a Chevy, and they spoke with his father. (Sharp testified that Josh told him the color of the car but he did not disclose it and defense counsel Negus failed to follow up and ask Sharp for the color).

- A Ryen neighbor reported that on June 4 at 8:45 PM, they saw a large green Chevy or Buick speed away from the Ryen residence at about 50 miles an hour. The Ryens arrived home between 9:00 and 9:30 PM.

- There is evidence of a connection between the owner of the green car, Furrow and Glasgow. Diana Roper told a Cooper investigator that, after the killings she found a letter addressed to Furrow and Glasgow (who were married at some point) from a friend of theirs in Arizona that said, "P.S... Jack got a new car, ha, ha. It's a green--I forgot what type of car…and the vinyl roof is messed up on it."

IV. LEE FURROW HAS BRAGGED ABOUT HIS ROLE IN THE RYEN/HUGHES MURDERS.

As detailed in Declaration #1, Lee Furrow said he participated in the Ryen/Hughes murders and that the motive had to do with a horse deal that went awry. (See Section VI below). Furrow told the declarant that Jan Martinez and Debra Glasgow were his accomplices, friends of his at the time of the murders. The declarant said that Debbie Glasgow was wearing a blue shirt at the concert. The declarant stated that Furrow said the Ryens had a deal with Jan Martinez to sell her a horse, but the deal fell through, that Martinez was very angry and, with Furrow, wanted to get even. At approximately 3:00 – 4:00 AM, shortly after the killings, Declarant #1 observed Furrow and Glasgow return to Roper's residence; Furrow was wearing blood-splattered coveralls. The declarant said they were dropped off in a white or light-color station wagon with wood paneling on the side and a luggage rack on top.

Declarants #2 and #3 worked with Furrow from early 2016 to mid-2017 in Pennsylvania. They described Furrow frequently boasting of his past criminal activities including Furrow stating that he "murdered an entire family." Furrow also stated that "he and his boys" "butchered" the family and they had to kill the family's dogs before killing the family.

V. THE RYENS' STATION WAGON WAS FOUND NEAR LEE FURROW'S STEPMOTHER'S HOME.

The prosecution's notion that Mr. Cooper committed the murders to steal the Ryens' station wagon is negated by a simple examination of geography and the established timeline of his travel. On June 5, Mr. Cooper traveled to Tijuana, located 125 miles southeast of the Ryen home, whereas the station wagon was discovered in a church parking lot in Long Beach, 45 miles west of the Ryen home. Moreover, the church parking lot where the station wagon was found was just a few minutes' drive from the home of Lee Furrow's stepmother. The fact that Lee Furrow was familiar with this area provides a plausible explanation for the location of the abandoned car. As stated earlier, SBSD criminalists found blood on three seats of the station wagon, once again pointing to multiple killers.

VI. A MOTIVE FOR THESE MURDERS: A HORSE DEAL GONE AWRY.

While the SBSD focused solely on making a case against Kevin Cooper, they ignored evidence of alternate suspects who had a strong motive for committing the murders. The Ryens' owned an Arabian stud horse named Tutal (nicknamed "The Boy"). This horse was valued at $250,000 in 1983 because of his ancestry as a half full-blooded Arabian. As discussed above, Declarant #1 stated:

> *"Furrow stated in my presence that the murders were done because the Ryens had a deal with Jan Martinez for her to receive a horse from them, but the deal fell apart and she never got the horse and was very angry, and with Furrow, wanted to get even with them."*

- A review of the events surrounding the murders suggest that the murders were connected to a horse deal that went awry. On June 5, 1983, a neighbor of the Ryens informed SBSD Deputy Phil Danna that during the late evening hours on June 4, a large horse van with "Harmony Hills" on its side was parked in front of his residence near the Ryen home. Another neighbor told a Cooper investigator that Harmony Hills vans were used to transport horses to and from Scottsdale, AZ and said the driver's last name might be "Dutton." There is no evidence that the SBSD followed up on the presence of this van.

- On June 6, 1983, Danae Chris Johnson, a friend of the Ryens who had visited them several weeks prior, told SBSD Deputy Dale Sharp that "approximately three weeks ago, the Ryens had to repossess a horse from a lady that lived in the San Dimas area. The lady was quite upset over losing the horse." Johnson could have been referring to the horse deal that fell through with Jan Martinez of San Diego, who Furrow stated wanted to "get even."

- On June 8, 1983, Deborah Sterns, a Ryen family friend, told SBSD Detectives Robert Hall and Steve Moran that she had information about a $250,000 horse transaction that had gone wrong involving Doug Ryen and four men from a "horse syndicate" in Scottsdale, AZ. Sterns informed the detectives that Doug Ryen kept detailed records of all transactions involving his horses, and this offer to purchase "The Boy" would likely have been recorded. Once again, the SBSD failed to investigate leads that had a solid motive. They could have reviewed the horse files and sought to identify the potential purchasers but they did not.

- On June 9, 1983, Diana Roper informed SBSD Deputy Eckley that Jan Martinez had offered to sell her a stolen Arabian horse. This same day, Roper also informed Eckley that she believed the matted horse hair on Furrow's coveralls was from an Arabian horse. She told these same facts to Detective Stalnaker on May 16, 1984.

The SBSD could have investigated the information witnesses provided to them regarding the Scottsdale "syndicate" that lost the horse sale, the Harmony Hills horse van from Scottsdale seen the night of the killings near the Ryen home, the Arabian horse hair matted on Furrow's bloody coveralls, and the controversy surrounding the potential sale of Tutal. But on June 9, Sheriff Floyd Tidwell announced in a press conference that Kevin Cooper was the lone suspect in the Ryen/Hughes murders, ending any further investigation of this motive and alternative suspects for the murders.

Exhibit 11

Via Email

Memo

To Mark McDonald, Special Counsel

From Kevin Cooper Legal Defense Team

Date October 27, 2021

Re Essential Documents related to alternative suspects and relevant Timeline of Case

We are sending a documents folder and a timeline. These documents lay out the essential facts of the Ryen-Hughes' murder investigation pertaining to alternative suspects, particularly, Lee Furrow. These documents establish the facts described in the Alternative Suspects memo (July 9, 2021). The timeline is a guide to assist in synthesizing the material.

The folder contains defense work-product documents that have never been released, as well as SBSD deputy reports, interview reports and transcripts of interviews obtained to date. These documents reveal how the San Bernardino Sheriff's department deliberately ignored key evidence and failed to investigate the likely involvement of convicted murderer Lee Furrow in the Ryen-Hughes' killings. The SBSD not only neglected to follow strong leads but at the time of Mr. Cooper's preliminary hearing, it destroyed the bloody coveralls incriminating Furrow. In May 1984, while intense preliminary hearing proceedings were underway in Judge Garner's courtroom, this destruction of critical evidence was exposed. The SBSD homicide investigators learned of additional evidence from reliable sources that Lee Furrow was, at a minimum, involved in the killings. Instead of arresting him or fully investigating his involvement or having him submit to a polygraph test, the lead SBSD detective, Sergeant Billy Arthur, interviewed Furrow for a mere twenty minutes and then excused him, knowing that Furrow was rushing to leave town and that numerous people had reported his bizarre and incriminating behavior including shortly after the murders.

TIMELINE OF EVIDENCE RE: ALTERNATIVE SUSPECTS IN COOPER CASE

June 1983 to 2005

1983

June 4 - Murders

June 5 – Early morning (around 3 a.m.), Eugene Lee Furrow ("Furrow") returns to Diana Roper's house. Seen by Nikol "Nikki" Giberson, Karee Kellison and Diana Roper.

June 6 – Laura Epler finds a blue shirt with blood on it not far from the Canyon Corral Bar; it is picked up by SBSD Deputy Field and logged into evidence.

June 7 – Lead homicide detective Sgt. Billy Arthur orders a search of the area around the Canyon Corral Bar near where the blue shirt was found. A tan t-shirt and orange towel are found and retrieved by Deputy Field.

June 9

- Sheriff Floyd Tidwell holds a press conference naming Cooper as the sole suspect.
- Around 4 p.m., Roper's father, Bill Kellison, calls the Yucaipa substation about the coveralls and asks for Dep. Rick Eckley (see transcript of Forbush-Eckley interview).
- Around 5 p.m., Eckley arrives at Roper's house. She directs him to the walk-in closet; he finds the coveralls with a packet of cookies. Eckley and Bill Kellison inspect the coveralls; Eckley describes them as bloody and covered in animal hair. Roper tells Eckley she suspects Furrow participated in the murders and that she has information she will only give to someone from homicide. Eckley calls the on-duty supervisor Sgt. Mike Stodelle, who joins him at Roper's house and views the evidence. Eckley returns to the Yucaipa substation with the coveralls and cookies. At the direction of the on-duty supervisor, Sgt. Greg Benge from homicide, Eckley tags the coveralls with the Ryen case number and sends a report to Sgt. Arthur. (Sgt. Benge happened to be on duty at the West End substation that day). He also gives the report to Sgt. Stodelle (see transcript of Forbush-Eckley interview) who tells Sgt. Arthur about the coveralls. Sgt. Arthur then requests that they be tagged with the Ryen case number and states that homicide would "be in contact" with the substation about the evidence. (See testimony of Sgt. Arthur at preliminary motions hearing [Vol. 36 (2371- 2484, p. 2399].

June 10

- Eckley's one-page SBSD report with the heading "ADDITIONAL INFORMATION" is typed by the SBSD on June 10. Private investigator Paul Ingels believed the evidence sheet was missing. (See his November 21, 1998 letter to attorney David Bernstein, p. 10 in electronic folder of Ingels's correspondence). Stodelle tells Arthur about the content of Eckley's report when the coveralls are recovered. (See Arthur's testimony (Vol 36 p. 2399).

Eckley's report states that Lee Furrow was convicted of "strangulation of a female (gang-related)"; (Furrow had been out of prison for just a year (released on June 12, 1982). *Cooper v. Brown*, 565 F.3rd 581, 586 (9th Cir. 2009) (Fletcher, J., dissenting).

Within days after the murders (see Ingels's interviews of Teresa Sanders Monteleone and Diana Roper dated September 5, 1998):

- Furrow shows up at the home of Teresa Sanders Monteleone to use her phone to make a call to his lawyer; Diana and Karee are also present.
- Furrow had cut his hair short and had shaved off his sideburns and "Fu-Manchu" moustache.
- Roper tells Furrow she turned in the coveralls to the sheriff's department.
- Roper and Karee Kellison confront Furrow about the murders, and he seems very scared.
- While Furrow calls his lawyer, and both Monteleone and Roper overhear him say he is afraid he will be arrested for the murders.

According to Monteleone, a detective came by her house a few days later with her phone records asking about Furrow calling his lawyer. (See Transcript of Ingels-Monteleone 1998 interview and his September 8, 1998 report, p.1, to the attorneys). **The defense has never seen any SBSD report of the detectives' contact with Monteleone.**

June and July – Eckley tries numerous times to reach homicide about the coveralls; he testifies to this at Cooper's trial on Jan. 16, 1985.

Nov. 9

- Preliminary hearing related to the prosecution of Cooper begins.

Dec. 1

- The day before the Cooper defense starts its presentation, Eckley destroys the coveralls by discarding them in a trash dumpster behind the Yucaipa substation, without the blood being tested to see if it matched any of the victims.

1984

May 14

Defense attorney David Negus brings an evidentiary motion for sanctions (a "Hitch" motion) due to prosecution mishandling of and failure to preserve evidence. (Vol. 31). (See People v. Hitch, 12 Cal. 3d 641, 527 P.2d 361, 117 Cal. Rptr. 9 (1974). Under Hitch, whether or not to exclude evidence turns on intentionality of the government's actions. From this point on, the issue of destruction of evidence is at the center of the case.

May 15

- Roper reads a newspaper article referring to testimony of Det. Hector O'Campo during the ongoing evidentiary hearing, that Josh Ryen, the sole survivor of the attack, said three

white men committed the murders. She calls the SBSD homicide department, speaks to Det. James Stalnaker, and asks him what happened to the coveralls. Stalnaker arranges to meet her at the Yucaipa substation the next day at 2 p.m. According to Eckley, Roper's call is what got the issue of the bloody coveralls out in the open.

May 16

- Before Roper and her father, Bill Kellison, go to the Yucaipa substation to meet with Stalnaker, Furrow flags down Roper as she is driving in Mentone. He gets into her car and breaks down crying. He tells her he needs $300 to leave town and that he cannot wait for his paycheck to be processed. She does not give him the money.
- Roper is interviewed that afternoon by Det. Stalnaker, who writes an 11-page report of the interview. As reflected in Stalnaker's report, Roper implicates Furrow in the murders in great detail.
- (Stalnaker goes to the Yucaipa substation and reviews the evidence ledger and talks to Deputy Eckley who tells him the coveralls are destroyed).

May 17

- Diana Roper calls defense lawyer David Negus and tells him about the coveralls.

- Furrow shows up at the home of Teresa Sanders Monteleone looking for Diana Roper to get the phone number of his lawyer, Chuck Mason (see SBSD interview of Furrow). Diana Roper is there. Roper and Monteleone overhear Furrow's phone call in which he tells the lawyer that SBSD detectives want to talk to him about a "187" and some "overalls." According to Roper, he tells his lawyer that he heard two detectives were out looking for him about a "187"; Furrow then asks his lawyer if he "could call to find out what was going on." (See transcription of Forbush-Roper interview, p. 15). After hanging up, he tells Roper he needs money. Furrow's attorney calls Det. Stalnaker who tells him Roper had told the SBSD about Furrow and the coveralls. The lawyer calls Furrow back and Furrow agrees he will go speak to the SBSD later that day. (Stalnaker-Roper phone call transcript 05-17-84; Stalnaker-Furrow Interview Report 05-17-84).
- After hanging up with Mason, Furrow confronts Roper about having talked to the SBSD the day before. (See transcription of Forbush's 05-24-84 interview of Teresa Sanders Monteleone). He then leaves.
- Roper calls Det. Stalnaker. She is upset that Stalnaker told the lawyer that she had talked to the SBSD the day before. She also tells him that Furrow is scared; she refers Furrow's prior murder conviction which Stalnaker acknowledges. Roper and Stalnaker agree they will make Furrow believe that all the conversations with Roper and SBSD were from June 1983. Stalnaker then tells Roper that the coveralls were destroyed six months earlier. She is shocked. (See Stalnaker-Roper phone call transcript 05-17-84).
- Furrow is interviewed at the San Bernardino homicide department in the late afternoon.
- Detectives Stalnaker and Arthur interview Furrow for only 20 minutes. Stalnaker writes a five-page summary report that omits the fact that Det. Arthur asks Furrow to take a lie detector test but then, a few minutes later, Arthur and Stalnaker tell Furrow that the

polygraph will be unnecessary. The interview is tape-recorded (there are two transcripts - an SBSD document and a professional transcript).

May 18

- Cooper defense investigator Ron Forbush interviews Diana Roper at her home in Mentone. (See Forbush-Roper interview transcript). He goes to see her because she had called defense attorney David Negus the day before. She repeats much of what she told Stalnaker about the coveralls. She also tells him the following:
- - The night before the US Festival, Furrow called her and said that he was being followed by two men in a car and that she should get out of the house. She stayed.
- - Two friends saw an older green Chevy parked in her driveway the afternoon of the killings while Furrow was home.
- - Karee Kellison said the driver of the car that brought Furrow home the night of the murders was one of two men who had been sitting in a green Chevy parked on Roper's street in the week before the killings. In 1998, Kellison describes the car as being "a station wagon, kind of brown in color". (See declaration of Karee Kellison 11-15-98). In 2018 she describes it as a "white, or light-colored station wagon with wood paneling on the side". (See declaration of Karee Kellison 05-06-2018).
- - Furrow called his lawyer, Chuck Mason, from Monteleone's house the day before (May 17) and Mason contacted the SBSD to find out what they wanted; that Karee confronted Furrow about seeing him come in late the night of the murders, the coveralls and the people in the car (Forbush-Roper interview transcript, p. 17); and that Roper called the SBSD homicide division and they told her they never got the coveralls.
- - Clarence Ray Allen had a "hit" placed on Furrow for testifying against him, and Furrow knew it.
- (Another witness, Bryon Schletewitz, who had testified against Allen and was on the hit list had already been killed. See *Hands Through Stone: How Clarence Ray Allen Masterminded Murder from Behind Folsom's Walls* by James A. Ardaiz, 2012).

May 24

- Forbush interviews Monteleone. She says Furrow came to her house to call his lawyer. Monteleone says that Furrow was around at the time of the killings and then took off.

May 26

- At 1:47 p.m., Cooper defense investigator Ron Forbush interviews Det. Rick Eckley at the Yucaipa substation. The conversation is recorded and conducted with Sgt. Yackey present. [(Sgt.Yackey had "signed off" on the coverall disposition report in December 1984) See Transcript of Evidentiary Hearing before the Hon. Marilyn L. Huff, June 3, 2004. (Vol 42, p. 142)].
- Eckley describes the coveralls (forest green, moderate amount of blood, hair from the knees down "all over the legs of it"). Says "looked like blood to me;" they were "heavily splattered" with blood. The blood was dry. Cookies were placed on top of the coveralls.

- Eckley states he knew "Mr. Cooper was being hotly sought after" so he called a supervisor, Sgt. Mike Stodelle, to ask what to do and who to contact in homicide. Said he trusted the Kellison/Roper family's information. He wrote a report, left word at homicide to call him back, placed the coveralls and the cookies in evidence. He never got a response from homicide.
- Eckley says he is the person in charge of the evidence/property officer for the station.
- Eckley tells Forbush that shortly after the Kellisons had been to the station (on May 16), Stalnaker approached Eckley to ask for the evidence ledger. The ledger is where any movement of evidence is recorded. Stalnaker was looking in the evidence book for notations about the coveralls
- At that point, Eckley told Stalnaker that he (Eckley) had destroyed the coveralls.
- He says that "the sergeants and the lieutenants and the captains were all in here talking about it."
- Eckley tells Forbush that Sergeant Arthur called him at home that night, told him that he had Eckley's report and asked him "what had happened."

May 29

Captain Donald Myers, the Command of the Specialized Detective Division testifies as a witness in the ongoing Hitch hearing. (Vol 35, p. 2211). Meyer states that if a substation notifies homicide that it has evidence, such as clothing of a suspect, homicide will send a person or a team over to pick it up. Myers further states that once homicide knows of the existence of an item of evidence, it is homicide's responsibility to have it "picked up and accounted for."(Vol. 35, p. 2237).

May 30

Sgt. Bill Arthur testifies. [See Vol. 36 (2371- 2484)].

- Defense attorney Negus asks Sgt. Arthur when he heard that the Yucaipa substation had possession of bloody coveralls from a possible suspect (p. 2395). Arthur confirms that he got a message from Sgt. Stodelle when the coveralls were recovered (p. 2399), that he asked they be labeled with the Ryen case number and said, "that we [homicide]would be in contact" with Yucaipa. (p. 2399). Sgt. Arthur says it was "just an oversight" that he never followed up on the coveralls. (p. 2400).
- Arthur says he has "no answer" for why he didn't have the coveralls transferred to the crime lab. Says he "wasn't aware at that time that it had great impact on this particular case."
- Admits he "neglected" to have the coveralls transferred to the crime lab even though homicide had clothing belonging to other suspects transported to the crime lab for testing. (p. 2398)

May 31

- Det. Woods (from homicide) calls Eckley. The call is recorded without Eckley's knowledge and Woods writes a report. Eckley was at the DA's office in Redlands when he talked to Woods on the phone. On the tape (played by Negus at the June 11 hearing), Woods says to Eckley: "If it's any consolation to you, we did contact this Lee character and I can't remember his last name. And we talked to Diana again, and that's blown out of the water."

June 11

- Eckley testifies at hearing. (Vol 42, p. 3180) Says he destroyed the coveralls even though this high-publicity murder case had not yet gone to trial. He said he did it on his own and he believed they had no value to the case. He also says he was later told by a supervisor that he shouldn't have talked to defense investigator Forbush without someone from the DA's office or homicide present. [Note: Sergeant Yackey was there].
- Negus plays the portion of the call with Det. Woods (p. 3202) in which Dep. Eckley says that Stalnaker came out at the Yucaipa substation after the Kellisons were there and that Stalnaker copied the evidence book that showed when the coveralls were destroyed. This is consistent with what Eckley told Forbush in the May 26 interview.

October 23

- The trial begins.

January 16, 1985

Eckley testifies at the trial that he did not talk to Det. Stalnaker and that he did not show him the ledger book which recorded the destruction of the coveralls. This is the opposite of what he told investigator Forbush in the recorded interview of May 26, 1984 and contradicts his testimony on June 11, 1984. On both prior occasions, Eckley said that he talked to Det. Stalnaker and told him that he had destroyed the coveralls.

December 1998

Cooper defense investigator Paul Ingels discovers the SBSD property disposition report ("SBSD coverall disposition report") dated December 1, 1983. The form is signed by Deputy Eckley and is initialed by a "K.S." (Deputy Ken Schreckengost); it shows that, contrary to Deputy Eckley's testimony at trial (102 R.T., 6550-6554), he did not act alone but that the destruction of the coveralls was approved by a senior SBSD deputy.
A second supervisor, Sgt. Gary Yackey also initialed the report.

April 2005

Deputies Eckley and Schreckengost testify on April 1, 2005 at an evidentiary hearing before U.S. District Judge Marilyn L. Huff.

- Schreckengost confirms that the property disposition form lists the evidence as relating to the Ryen-Hughes case which is noted as a "multiple" homicide. He also confirms that under regular procedure, an item of property related to a murder investigation that had blood on it under procedures at the time would have been tested before it could be destroyed.
- Eckley testifies that because he got no response to his report on the coveralls or his inquiries to homicide, he decided they were of no value and destroyed them.
- Eckley states there was a rule was that property relating to a pending trial could not be destroyed until the case was closed. He admits that he violated that rule. (p. 134)
- Eckely also confirms that a second supervising officer, Sgt. Gary Yackey put his initials on the report and thus "signed it off". (p. 142).

Exhibit 12

Cooper Case 03/31/2004
Shirley Killian Interview
H67-83 1211029-02

D.G. Detective Michael (Mike) Gilliam
S.K. Shirley Killian

D.G. Ah today is what Wednesday three thirty one oh four (03/31/2004) and at about zero nine twenty four hours and your last name is Killian
S.K. Yes
D.G. K I L L I A N ah Shirley
S.K. Hmhmm
D.G. and which ah you have a middle name Shirley
S.K. Catherine C A
D.G. C
S.K. T H E R I N E
D.G. And your age
S.K. ah [redacted]
D.G. date of birth
S.K. ah [redacted]
D.G. Okay now you have testified on this case before and everything like that
S.K. hmhmm
D.G. and you know some of the things that have come up we have this woman now I explained to you over the telephone when I talked to you the other day about how um she's saying that there was some people that you know some guy that came in dripping in blood ah first of all did you recognize the name of Mary Mellon or um or Christine Slonaker
S.K. No
D.G. You don't recognize the names and how long did you work there
S.K. five years
D.G. five years and your what was you are you
S.K. I was manager
D.G. You're the manager do you remember that night when I guess the police did the police come in there were three guys that came in or something like that three marines or some thing I guess they were described as marines
S.K. ah there was um well we had a lot of people at that time came over from Orange County
D.G. Hmm
S.K. we didn't know all of 'em
D.G. Hmhmm
S.K. but there was a couple of clean cut shorthaired
D.G. hmhmm
S.K. Guys that ah we asked to leave because they had ah they had enough to drink and we were

D.G. clean cut shorthaired
S.K. yes
D.G. shorthaired
S.K. yes
D.G. Okay and do you remember what they were wearing?
S.K. One had a white tee shirt on as I recall ah possibly blue jeans light color maybe
D.G. both of them have blue jeans? How many how many were there?
S.K. well I'm,
D.G. two three
S.K. I'm gonna say between two and three like I said twenty years ago the one
D.G. Yeah
S.K. that gave me the biggest problems one I remember the most and that was the one that had the white tee shirt on and light blue jeans I think
D.G. Yeah
S.K. and I think one of them had on a light blue shirt but you know I'm not sure anymore
D.G. then what
S.K. but I know whatever they were wearing were clean because what they had on wouldn't be able to hide any blood
D.G. Now did they what kind of problems did they give ya?
S.K. Just rowdy wanted another drink and
D.G. another drink
S.K. and the bartender said no you guys not
D.G. that was it
S.K. yes
D.G. Okay and ah Ed said no
S.K. Yes either I told him to cut them off or he had cut 'em off I don't remember
D.G. Now do you ah did you guys call the police or did the police come in that night
S.K. No
D.G. police never came in that night
S.K. Not on this no
D.G. oh no do you remember them coming in at all that night?
S.K. I don't think it was until the next day after the discovery of the murders
D.G. Okay um this is a drawing that this woman that ah said she seen the people in the blood and everything like that is that kinda like an accurate description of the of the bar that you know
S.K. Yes
D.G. that's good
S.K. yeah pretty much

D.G. And where there
S.K. there was a little hallway here
D.G. Hmm let me let me just go back to this right did you ever see any weapons or anything on these on any of these guys
S.K. No
D.G. Um they have that um Ed had when I talked to him the day before yesterday he had said that these two these two or three guys came in were well behaved and everything ah didn't seem intoxicated or anything came in drank a beer and everything left then came back sec, came back several hours later
S.K. that's possible because I had been gone
D.G. Okay
S.K. I was at a horse show and when I came in
D.G. so you might have just
S.K. that's when they had come back again
D.G. Okay, okay so where did these people sit at ah
S.K. they were at the bar as far as I know I was in this booth right here by the front door when this problem occurred with these guys
D.G. Okay
S.K. and I think there were some other people here I think there was three
D.G. Yeah
S.K. and I was (unintelligible) but I don't remember them
D.G. so where do you think they were you know
S.K. I think they were at the bar the bar was packed they were standing people were standing all over the place
D.G. Okay (unintelligible talking over her)
S.K. it was a really packed night and ah when I noticed them there were standing up in this area here
D.G. Okay all right do you ah and you were there for five years so you, you pretty much knew all your regular customers
S.K. Yeah
D.G. and everything like that let me show you this photograph here do you recognize that lady now take in to account that, that this picture is a currant picture of her drivers license so you'd have to subtract about twenty, twenty one years off of her age off of that photograph does that look does she look familiar to you at all?
S.K. No
D.G. Huh
S.K. no she has a pretty prominate nose so I would have probably remembered that
D.G. Hmhmm so it doesn't
S.K. and her eyes are kinda large

D.G. Hmhmm and well so that um let me, let me read something to you here and this is what her part of her declaration is and, and, and that's why ah were kinda asking because um give it Canyon Coral
S.K. Canyon Corral
D.G. Canyon corral was a local restaurant bar that I had been to previously with my family and friends for dinner and to socialize while I went there numerous times I only had occasionally had an alcoholic drink so
S.K. No
D.G. she would have maybe, maybe not necessarily sat at the bar
S.K. she may have come in for dinner or for lunch
D.G. yeah
S.K. or something like that
D.G. but not somebody you would consider as frequent or anything
S.K. No
D.G. Okay and the other thing I find that that and, and, and Ed went through this thing with me a little bit um and probably if you were working there that night (unintelligible) ah she was there with a Mik lady by the name of Marion Mary's friend but they sometime after they arrived two men walked in to the bar through the back door entrance and through the swinging doors through the kitchen so that would put it this door here correct with them coming these swinging doors
S.K. No the swinging doors over here
D.G. but there's two set swinging doors there's another swinging door here
S.K. Oh coming into the wall yeah
D.G. yeah and then there
S.K. Oh this nobody's allowed in here but the help
D.G. okay
S.K. kitchen
D.G. Yeah
S.K. and if they came in here and came in here the bartender would have seen it and so would the customers
D.G. the cooks would have seem 'em
S.K. Yeah the cooks would have seem 'em
D.G. Okay because even these swinging doors lead back to the kitchen right
S.K. yes
D.G. so somebody would had to come in through the kitchens or else came in through here
S.K. if they came in through the kitchen this is where the kitchen the chef was over here
D.G. because what she says um here is that ah okay swinging door through the kitchen came in through the back door ah entrance and through the swinging door through the kitchen so I mean this is the other back door and you wouldn't end up through the swinging doors
S.K. No

D.G. is that correct okay now both men were Caucasian and had blonde hair one of them was wearing a light colored tee shirt jeans and the other wearing overalls both men wearing tennis shoes um this is ah because the men were, were coming in through the swinging door to the kitchen I said to them hey you're coming in the wrong way they did not respond instead they stood there for a couple of minutes and I just kinda wondered if Ed, Ed was standing there behind the bar
S.K. he would have known
D.G. how would have somebody have you know (unintelligible talking over her)
S.K. and everybody sittin' at the bar would have seen
D.G. Yeah
S.K. where was she sitting did she
D.G. (unintelligible) she said she's sitting here she's sittin' there and her girlfriend Mary are all sittin' here at the bar and then basically what happens is I guess ah, ah, ah they seem like they were either drunk or high oh drugs or saying something and they saw what they thought was mud or something on their clothing as they stood there one of the men focuses his attention on Mary's friend who had large breasts and started staring at her at that point both men proceeded to come from behind the bar and starting hitting on us that's when they got closer and they saw that there was blood ah that it wasn't mud on them but the spots were blood and ah most of the blood was on their shoes and the front portion of their clothes they also had splat blood splatter on their face and arms and I know twenty one years later kinda hard to tell if these woman were sittin' over here um that night
S.K. well yeah because there was woman all over the place
D.G. Yeah
S.K. and men too um but I ah I was sitting here
D.G. yeah
S.K. did she say what time this was
D.G. she said sometime in the evening
S.K. Yeah because I think I'm trying to remember when I left the, the ah the horse show
D.G. Hmhmm
S.K. (unintelligible) came back there because I would have been sitting right across from the bar
D.G. Yeah
S.K. and I would have defiantly noticed somebody coming in there because that was absolutely off
D.G. do you remember the names
S.K. limits
D.G. of the cooks or who the cooks were that were there

S.K. Jerry ah Louie and his brother Jerry don't ask me their last name right now because I can't
D.G. they're both cooks there that night
S.K. yeah well Jerry was probably on cuz
D.G. Yeah
S.K. ah Louie worked days and Jerry worked nights ah they were brothers
D.G. so you know how to get a hold of them now or anything or
S.K. No gosh no
D.G. do you know of anybody that might know where they're at because I mean you know and according to Ed what's Ed's tellin' me is he's said that he says well first of all there'd be like two large Mexican guys he couldn't remember their names that were cooks
S.K. Yeah
D.G. and they would have told 'em hey this isn't the door to come in to
S.K. that's right
D.G. you have to go in the other
S.K. They would have
D.G. so he says so they wouldn't came in and then if they did even the cook would had seen them and redirected 'em but they even there they would have passed up and then you know so you're lookin' at these people coming in this door he says cooks wouldn't didn't see 'em he didn't see 'em
S.K. and I didn't see 'em
D.G. and you didn't see 'em
S.K. yeah
D.G. and, and probably if, if you're the manager I mean would what would be your what would be your take as far as ah you know seeing somebody behind the bar
S.K. that's the kitchen door it's not there it's over here and then the dishwasher sink
D.G. Yeah
S.K. stove and everything is over here then there was another doorway here went into store room so if they came in here right straight ahead
D.G. Yeah
S.K. are more swinging doors that come behind the bar
D.G. Hmhmm
S.K. if they came in here the cooks would have seen 'em they would have had to go through this swinging door
D.G. Hmm
S.K. to get in here and Eddie would have seen 'em
D.G. Hmhmm
S.K. or I would have seen 'em
D.G. well you know because what my what I'm just saying is that for
S.K. there

D.G. for people to walk in a lot of times you don't wouldn't pay that much attention but I would imagine
S.K. you would have if you're behind the bar
D.G. yeah that's what I saying
S.K. (Laughing) yeah
D.G. as employees if you start seeing somebody that does not work there and they're behind the bar that would that would probably ah peek your attention a little bit more
S.K. yes
D.G. Okay ah
S.K. cuz nobody was allowed back there customers were not allowed back there um at any time
D.G. Okay um so you never heard of those two names ah
S.K. I don't I don't recall the names and this picture doesn't look familiar to me
D.G. You didn't see anybody that even that looked like they had blood on 'em or anything that you
S.K. No
D.G. (unintelligible)
S.K. and I would of the ones that we asked to leave did not were not dirty
D.G. ah there we kinda described as military type haircut I mean
S.K. yeah
D.G. clean cut
S.K. clean cut
D.G. okay
S.K. not long hair you know
D.G. Okay
S.K. almost like a crew cut but
D.G. and you don't remember the police coming in that night right
S.K. No I don't know
D.G. You said you thought (unintelligible)
S.K. It's probably a possibility because they always stopped in there just to do a bar check every once in a while which was at my request most of the time just a walk through
D.G. It, it but it wasn't if it wasn't
S.K. I don't remember anybody calling the police no
D.G. Cuz was it a very you know like they were a little bit pissed cuz you wouldn't give 'em no drinks but I mean was it I mean you (unintelligible)
S.K. they were loud and arguing and
D.G. yeah
S.K. I said it's time for them to leave and I always had
D.G. But in the big, big scheme of things you cuz you've been around that bar business for five years

S.K. Yeah most of the
D.G. It wasn't
S.K. customers would have got up and helped me if I need any help
D.G. Yeah and
S.K. and, and one of 'em did
D.G. Hmhmm
S.K. and he was my back up
D.G. Hmhmm
S.K. guy because he you know he didn't have a family and he was there quite a bit
D.G. Okay
S.K. and I said okay Rob it's time we got 'em out and I went out with 'em to make sure they left didn't do any damage in the parking lot
D.G. did you see the kinda what remember what kinda car they got into
S.K. yeah one guy got into a white kinda I think it was well I know it was a pick up a white pick up and then I think I'm trying to remember what the other one was it was a smaller car I think
D.G. Oh so they oh they're both in separate cars and everything
S.K. Yeah they had two vehicles there
D.G. Just you remember the color
S.K. well the pick up was white
D.G. Hmhmm
S.K. then we had florescent lights out there
D.G. yeah
S.K. so you know it could have been tan
D.G. Yeah
S.K. or something to
D.G. yeah
S.K. but it both the vehicles were kinda light color
D.G. hmm, hmm and you said that but you don't remember if there was only two or three ii coulda been
S.K. there could have been three of 'em
D.G. Okay
S.K. Um
D.G. but
S.K. I, I was very much interested in the first one because
D.G. Yeah
S.K. he was the one you know giving me the hard trouble too well I don't see why I have we have to leave and they cuz you're not getting' any more to drink and you're rowdy and
D.G. what, what was their approximate age
S.K. Oh probably in there twenty's somewhere
D.G. early mid
S.K. Your asking a lot (laugh)

D.G. I know
S.K. Um probably mid when you looked at 'em you knew they were drinking age
D.G. yeah
S.K. so that, that goes
D.G. Yeah
S.K. anywhere from thirty down to what twenty five maybe
D.G. yeah okay can you think of any thing else?
S.K. No I can't think of anything I haven't already you know
D.G. Okay
S.K. Um like I said I was gone the early evening which was really amazing cuz I never go
D.G. Hmhmm
S.K. anywhere else just always there but I got talked in to going to the horse some friends of ours were in the horse show so I went and ah I remember it was cold that night and it was damp and I didn't even stay to the finish we left but I, I now I can't tell you what time I got back whether it was eight thirty somewhere in there but I'm not sure because I don't remember
D.G. Okay
S.K. but and then I spent the rest of the evening there until after the business slowed down and people got out of there
D.G. We'll be off tape and I've got ah zero nine forty one hours

End of Tape

DECLARATION OF DETECTIVE MICHAEL GILLIAM

I, Michael Gilliam, declare as follows:

1. I am a detective with the San Bernardino County Sheriff's Office, and am currently assigned to the homicide division.

2. On March 31, 2004, I went to the home of Shirley Killian in San Bernardino County, California, and conducted an interview of Ms. Killian.

3. I tape-recorded my interview with Ms. Killian. Attached hereto is a true and correct copy of the transcript of my interview with Ms. Killian. Ms. Killian's age and date of birth have been redacted from the transcript.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27 day of April 2004, at San Bernardino, California.

MICHAEL GILLIAM, Detective
San Bernardino County Sheriff's Office

Exhibit 13

Mitchell L. Eisen, Ph.D.
Psychologist

Mark McDonald
Law offices of Morrison Foerster
707 Wilshire Boulevard, Suite 6000
Los Angeles, CA 90017-3543

In the Matter of Kevin Cooper's Clemency appeal

1) I was asked by Morrison & Foerster LLP to evaluate the reliability of the eyewitness evidence in this case. In particular, Morrison & Foerster LLP said they wanted my opinion on the reliability of Josh Ryen's statements. Morrison & Foerster LLP asked for my independent evaluation of the evidence and they did not have a result they wanted me to reach.

2) Based on my review of the materials and our discussions to date related to this case, I have identified several factors that are relevant to understanding the eyewitness evidence in this case. Below I describe each of these factors and summarize how the eyewitness evidence should be viewed in context of the available physical evidence.

3) **The change in Joshua Ryen's memory reports**. The main eyewitness issue in this case is that Joshua Ryen, the sole surviving victim of the attack, originally stated that three Mexican men committed the crime but then changed his report to recall seeing the image of a single man. The specific concerns revolve around how his early memory reports are inconsistent with later statements presented at trial.

4) **Retention interval.** All other things being equal, fresher memory reports (those provided closer to the event) tend to be more complete and more accurate than memory reports given after extended delays (particularly major defining features of the event and a person's appearance). Although anecdotal accounts of cases show that many people will say they remember events better after extensive delays than right after and event, research on point demonstrates that this is rarely if ever true (see Deffenbacher, Borenstein, McGorty & Penrod; 2008 for a review).

5) **Joshua Ryen's original memory report: Three white or Mexican males.**
The first attempt to interview eight-year old Josh took place at Loma Linda Hospital, where Josh had been airlifted after being found on the floor of his parents' master bedroom next to his murdered family members and friend. At the time of the interview, Josh was heavily medicated, still in shock, and reportedly had to use signs to communicate because his throat had been slashed and he could not speak. According to the original police report (PR 6/6/83), Josh indicated that he believed the culprits who murdered his family were three Mexican males. It was clear in this initial report that the child believed these were the murderers, although he was

inconsistent about their race at first (White vs. Hispanic/Mexican) and never stated that he **saw** the suspects the night of the attack.

6) **The second interview: Joshua Ryen still remembers three Mexican males**. In the second interview conducted on 6/14/83, records indicate that Joshua Ryen was able to speak. The police report indicated that Joshua did not see the killers on the day of the event, but "believed" it was the three Mexican men who came by the house the day before the murder in a blue pickup truck (PR 6/16/83). However, psychologist, Dr. Hoyle was present in this second interview and his hand written notes indicated that Joshua stated that the three Mexican men chased the victims around the house.

   The discrepancy between the psychologist notes and Officer Ocampo's report: **Potential bias in omitted statements.** According to the available records, on 6/14/83 when this second interview took place, the San Bernardino Sheriff's Department had already focused its investigation on Mr. Cooper. According to his trial testimony, at this point in the investigation, Ocampo believed that Cooper was the killer and no longer put credence in Joshua Ryen's belief that the crime was committed by three Mexican men. This raises potential concern that the clear discrepancies between Ocampo's report and the hand written notes of the psychologist were driven by Ocampo's bias against believing Joshua's Ryen's accounts of the attack. Notably, the psychologist's notes specified that Josh stated that the three assailants chased the family around the house. However, this differs from Ocampo's report, which noted that Joshua *believed* it was the three Mexican men who came to the house the day before who committed the crime, but provided no notation whatsoever on Josh's assertion that the family were being chased around the house or anything like that.

7) **The weight and clarity of Joshua Ryen's statements about three Mexican men chasing the family around the house during the killing**. Even when considering the psychologist's notes, based on that 6/14/83 interview with Officer Ocampo, it does not appear that Joshua Ryen ever stated that he saw any assailants on the night of the attack. What we know from the two first police interviews (including the psychologist notes) and the nurse's notes, is that Joshua stated that he first found his sister dead in the hall, then found his parents dead in their bedroom, then hid in the laundry room. The psychologist notes add that he believed the killer(s) were chasing victims around the house. The nurse's notes elaborate that he said he heard feet stomping around the house, and it was this stomping that led him to believe the killer(s) chased the victims around the house. Regarding his own wounds, he stated that he was attacked from behind.

8) **A change in Joshua Ryen's memory**. By the time the case went to trial, Joshua Ryen changed his report to indicate that he now remembered it was not three Mexican men who committed the crime, but rather he recalled seeing a single dark shadow.

9) **Consistency of memory reports provided over time.** In general, when people are interviewed on multiple occasions about events they have experienced, in the best of circumstances, one would expect that the general content of their memory reports will be consistent, and that various minor additions and omissions will occur (Poole & White, 1995). However, for well-remembered events, one would not expect

contradictions, because when contradictory information is reported, than either the initial report or the subsequent report, are of course inaccurate (as both cannot be true).

10) **The potential for suggestion: The change in memory from three Mexican men to a single male occurred after the police focused their investigation on Mr. Cooper**. Josh Ryen's changed memory report is in concert with the police theory that a single black man committed the crime. If the change in the child's memory report had come before the police theory changed to focus on Cooper that would indicate that the memory change was not being driven by talking with the investigators. However, records indicate that it was only after the police charged Cooper that his memory changed.

11) **Child suggestibility.** There is a robust literature on interviewing children. This literature indicates that children are also quite susceptible to altering their reports when the questioning involves suggestion (Ceci & Bruck, 1993), and school age children and young adolescents tend to be more suggestible than older adolescents and adults (Eisen, Qin & Goodman, 2002; Eisen, Goodman, Goodman, and Davis 2006; Eisen Qin, Goodman & Davis, 1998).

12) In this case, Josh Ryan was only 8-years-old and was of course motivated to help the police apprehend and prosecute the family's killer(s).

13) **Suggestion and memory change**. Decades of research examining the misinformation effect has clearly demonstrated that misinformation acceptance can distort witnesses' memory for the details of an event for children and adults (Loftus, 1979; Hoffman & Loftus, 1989; Loftus, 2005). In this context, when a witness comes to embrace the suggested information, reactivating their memory for the crime while imagining the misinformation could result in that information being bound together with the witnesses' memory for the event; leading them to update their memory to match the suggestions they have now come to embrace.

14) **The strength of Joshua Ryen's memory for the killer(s)**. When considering all reports, it is clear that Joshua's Ryen's memory for the event was weak from the start; particularly when considering elements of his memory related to the perpetrators.

15) **If the event was not well remembered, people are more likely to be more vulnerable to suggestion.** Notably, witnesses are most likely to consider and accept information if they do not detect a discrepancy between their memory for the event and the suggested details (Tousignant et al., 1984; Loftus, 2005), and if they consider the suggestion to be plausible (Berntsen & Rubin, 2007; Pezdek & Blandon-Gitlin, 2009). Thus, when a witness' memory for the event is very weak, they are more vulnerable to suggestive influence.

16) **In this case, Joshua's weak memory for the event made him even more vulnerable to suggestive influence**. Since he did not recall any details of the event related to seeing the assailants well to start with, it is not surprising that Joshua Ryen went from believing three Mexican men committed the crime and that there was a

chase around the house to remembering that he saw the shadow of a single man; and that this updated memory report was now consistent with the investigators' theory that the crime was committed by a single black man.

17) **The potential of developing a false memory for the event**. Although children are more suggestible than adults in general and are more susceptible to following the lead of authority figures during forensic interviews, it has also been demonstrated that even adults may create well elaborated narratives for "false memories," often with little prompting. This can be done by getting the child or adult to imagine the event to them self and carefully consider false information (see Loftus, 2003 for a review). When this occurs, it is often virtually impossible for an outside observer to distinguish false memories from factual accounts based on the quality of the person's narrative.

18) **The weight of Joshua Ryen's orginal memory report.** As noted above, memory reports given closer to the event are generally fresher, more available and all other things being equal the best indication of a person's memory for the event (Deffenbacher et al., 1986). Indeed, in this case Josh Ryen's early reports suggest he believed the culprits were three Mexican men who had come by the day before and that he recalled that they had chased the victims around the house. *Also as noted above, when taken together, Joshua Ryen's memory for the event was weak from the start and this made him particularly vulnerable to suggestive influence.* In this context, the change in Joshua Ryen's memory reports to fall in line with the investigators' theory of the case is not surprising at all.

19) **If Joshua Ryen's original reports had provided clear evidence of him actually <u>seeing</u> the culprit or culprits clearly on the night of the attack, then the weight of this evidence would be much more potent, and could be considered to be exculpating**. Even when considering the psychologist's notes, none of these early reports indicate that Joshua Ryen **<u>saw</u>** the culprit or culprit's clearly on the night of the attack. Indeed, he never actually provided descriptions of any kind of the attackers seen on the night of the attack; only reports of what the presumed attackers looked like the day before the crime when they came by looking for work. This suggests that he never actually saw the killer or killers; or at least did not form a clear memory for seeing the killer or killers on the night of the attack. Considering the extreme nature of the trauma, it is of course possible that he was amnesic for details of the event. That said, since Joshua Ryen's original reports provided no clear evidence of him actually seeing the culprit or culprits clearly on the night of the attack, this evidence should not be considered to be exculpating.

DR. PEZDEK'S DECLARATION ON EYEWITNESS ISSUES FROM THE CLEMENCY PETITION.

20) Dr. Pezdek accurately notes that memory reports given right after an event are the best indications of a person memory and that if an expert were called to testify at trial they would have explained this to the jury. This is undeniably correct. That said, as noted above, Josh Ryen's earliest reports were vague and problematic. As Dr. Pezdek accurately notes, his earliest report using hand squeezing suggested that there were

three to four white assailants. Dr. Pezdek notes that he specifically indicated that they were not Black; suggesting that this excludes Cooper. However, in the very next interview, Josh appeared to change his report of the assailant's race, noting that he did not believe they were white; but rather Hispanic. This did not appear to reflect a change in Josh Ryen's memory, but was more likely a problem with the hand squeezing communications with the severely traumatized child.

21) **Josh never saw three Hispanic men on the night of the crime**. Dr. Pezdek accurately notes that Josh gave detailed descriptions of the three Hispanic men. Indeed, if Josh had been recalling what he had seen the night of the event, that would certainly be considered exculpating evidence for Cooper. However, the record suggests that Josh was not describing what he saw the night of the event, but rather three men who had come to the house looking for work the day before.

22) **The interview of Josh by Detective Ocampo with Dr. Hoyle present**. Dr. Pezdek accurately notes that at the time of this interview Detective Ocampo was "convinced in his own mind" that Cooper was the killer and that his report of how Josh described the event differed from the notes taken by the arguably more objective psychologist, Dr. Hoyle who was also present at the interview. As Dr. Pezdek accurately notes, Detective Ocampo did not write that Josh described multiple assailants, but Dr. Hoyle's notes refer to multiple attackers and attempts to fight them off. However, Dr. Hoyle's notes were not written in the form of a report and were somewhat hard to follow. I would agree that if Josh had actually seen multiple men chasing him around the house this would in fact be exculpating evidence for Cooper. However, Dr. Hoyle clarified in his trial testimony that Josh Ryen did not state in that interview that he had seen three Mexican men in the house during the attack. (101 R.T. 6371). Although Dr. Hoyle wrote in his notes "They chased us around the house", at trial Dr. Hoyle testified those were not Josh Ryen's words but were Dr. Hoyle's summary of what Josh Ryen said (101 RT 6358). Importantly, Josh Ryen indicated that he "*believed*" it was three Mexican men who came by the house the day before the murder in a blue pickup truck (PR 6/16/83). Indeed, the only thing that was clear about what Josh actually remembered about the attacker or attackers was that he was hit by a single assailant which he not see well enough to describe as black, white, Hispanic, or otherwise.

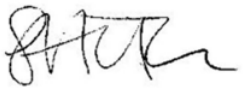
23) **Seeing Cooper's face on television and not recognizing it.** Dr. Pezdek accurately notes that when Josh first saw Cooper's picture on television he did not recognize it, and that he maintained for some time that he did not recall Cooper as the killer. Indeed, this is not surprising, as it appears clear from the reports that Josh never actually saw the killer or killers. Thus, this lack of recognition is not exculpating.

24) **Suggestion and the change in Josh Ryen's memory**. I wholeheartedly agree with Dr. Pezdek's assertion that "Suggestibility is a major factor likely to have influenced Josh Ryen's account of his memory for the perpetrators…". Indeed, the evolution in Josh Ryen's reports from believing it was three Hispanic men, to later saying he remembered seeing a single shadow at trial, to his more recent statements at an

evidentiary hearing stating that the first time he met Cooper he was wielding a hatchet in one hand and a knife in the other, are not credible and likely the result of suggestion, as described earlier in this report.

25) **In my opinion, Josh Ryen's original memory reports are not exculpatory of Mr. Cooper's guilt**, **and carry little weight in this matter**. Indeed, although it is very likely that the change in Joshua Ryen's memory reports was driven by suggestion from the investigators who likely convinced the boy that the crime was not committed by three Mexican men but rather a single black male, I do not see this as an eyewitness case at all. Rather, in my opinion, this is clearly a case based on DNA. In essence, the weak and inconsistent eyewitness evidence does not weigh strongly on determining Mr. Cooper' guilt or innocence.

Sincerely,



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References on Point

Loftus, E. (2003). A 30-year investigation of the malleability of memory. *Learning and Memory*, 12, 361-366.

Garven, S., Wood**,** J. M., Malpass, R. S.. (1998). More than suggestion: The effect of interviewing techniques from the McMartin Preschool case. *Journal of Applied Psychology, 83*(3), 347-359.

Ceci, S. J., & Bruck, M. (1993). The suggestibility of the child witness: A historical review and synthesis. *Psychological Bulletin, 113*(3), 403-439.

Eisen, M. L., & Goodman, G. S., Qin, JJ and Davis, S. (2002). Memory and suggestibility in maltreated children: Age stress arousal, dissociation, & Psychopathology. *Journal of Experimental and Child Psychology. 83* (3), 167-212.

Eisen, M. L., & Goodman, G. S., Qin, J. & Davis S. L. (2007). Maltreated Children's Memory: Accuracy, Suggestibility and Psychopathology. *Developmental Psychology. 43*(6) 1279-1294.

Eisen, M. L., & Goodman, G. S., Qin, J. & Davis S. L. (1999). Individual Differences in maltreated children's memory and suggestibility. In L. Williams, (Ed.), Trauma and Memory, (pp. 163-189) London: Sage. 163-189). In S. J. Lynn, (Ed.), *Truth in Memory*, New York: Guilford.

Eisen, M. L., & Goodman, G. S., (1998). Trauma, memory, and Suggestibility in children. *Development and Psychopathology. 10,* 717-738.

Eisen, M. L., & Goodman, G. S., Qin, J. & Davis S. L. (1998). Memory and suggestibility in maltreated children: New Research relevant to evaluating allegations of abuse (163-189). In S. J. Lynn, (Ed.), Truth in Memory, New York: Guilford.

Fivush, R., & Shukat, J. R. (1995). Content, consistency, and coherence of early autobiographical recall. In M. Zaragoza, J. Graham, G. Hall, R. Hirchman, & Y. Ben-Porath (Eds.), *Memory and testimony in the child witness* (pp. 5-23). Thousand Oaks, CA: Sage.

Poole**,** D. A., & Lindsay, D. S. (2001) Children's suggestibility in the forensic context. *In: Memory and suggestibility in the forensic interview*. Eisen, Mitchell L.; Quas, Jodi A.; Goodman, Gail S.; Mahwah, NJ, US: Lawrence Erlbaum Associates Publishers. pp. 355-381

Saywitz**,** K. J., Nathanson, R., & Snyder, L. S. (1993). Credibility of child witnesses: The role of communicative competence. *Topics in Language Disorders*, *13*(4), pp. 59-78.

Saywitz**,** K., Jaenicke, C., & Camparo, L.(1990) Children's knowledge of legal terminology. *Law and Human Behavior*, *14*(6), pp. 523-535.

Saywitz, K. J., Lyon, T. D., (2002) Coming to grips with children's suggestibility. *In: Memory and suggestibility in the forensic interview*. Eisen, M. L.; Quas, J. A.; Goodman, G. S.; Mahwah, NJ, US: Lawrence Erlbaum Associates Publishers.

Exhibit 14

Memo

To MORRISON & FORESTER, SPECIAL COUNSEL

From KEVIN COOPER LEGAL TEAM

Date AUGUST 23, 2021

Re INDEPENDENT INVESTIGATION—BLOOD DROP A-41

Blood Drop A-41

Blood drop evidence A-41 is the prosecution's only "evidence" that purports to place Mr. Cooper in the Ryen house. However, Mr. Cooper has shown there was mishandling of, and tampering with, A-41. The facts surrounding A-41 were summarized by Ninth Circuit Judge William Fletcher in his dissenting opinion:

> The crime lab conducted serological testing of this blood drop (entered into evidence as A-41) under suspicious circumstances. The [criminalist] who conducted the testing arrived at one result, and then altered his records to show a different result that conformed to Cooper's known blood characteristics. The drop of blood has a history of being "consumed" during testing and then inexplicably reappearing in different form for further testing when such testing would prove useful to the prosecution…There is a strong likelihood that the results of the blood tests performed on A-41, presented at trial, were false evidence. [*Cooper v. Brown*, 565 F.3d 581, 615 (9th Cir. 2009) (Fletcher, J., dissenting from denial of rehearing *en banc*)].

The key facts are as follows:

- On June 5, 1983, SBSD supervising criminalist Deputy William Baird directed criminalist Deputy David Stockwell to a drop of blood on the wall in the hallway outside the Ryen master bedroom. (89 R.T. 3511-12, 3639). Stockwell took the drop by carving it and the underlying plasterboard out of the wall; he also took four trailing spatters of blood within a one-foot radius which he believed were related to the larger spot. Stockwell failed to recover the carpet directly below, which might have had blood from the same source. Once collected, the hallway paint chip

containing, this drop of blood was identified as "A-41." The four spatters came to be labeled "UU 1-4" – discussed further below.

- SBSD criminalist Daniel Gregonis waited to conduct testing on the material Stockwell gathered until he had at least a partial blood type profile of Mr. Cooper from the testing of semen found on bedding where Mr. Cooper had slept in the Lease house. Gregonis further delayed some of the most sensitive testing of A-41 for weeks until after Mr. Cooper's arrest on July 31, 1983. Gregonis waited until he had access to a vial of Mr. Cooper's blood (vial VV-2) taken upon his arrest. (56 R.T. 4852; 93 R.T. 4428-29, 4438.) As Judge Fletcher stated, "he [Gregonis] waited until he knew what he had to match**."** *Cooper v. Brown*, 565 F.3d 581, 615 (9th Cir. 2009) (Fletcher, J., dissenting from denial of rehearing *en banc*)].

- Gregonis did not conduct "blind" testing on A-41, the standard forensic method in which the tester knows nothing about the sample, conducts tests and then compares the results to standards or to a specific sample. Instead Gregonis placed samples A-41 and VV-2 side-by-side on the same slide when he performed his tests on A-41. (93 R.T. 4488, 4526, 4550, 4557.) He initially denied doing so, and falsely represented under oath that he had tested the samples blind (ER 761).

- Although Gregonis originally found that both Mr. Cooper's blood sample and the blood in A-41 had an erythrocyte acid phosphatase ("EAP") enzyme of "B," Gregonis subsequently learned that Mr. Cooper's EAP was not "B" but in fact "rB." To tie his test results of A-41 to Mr. Cooper, Gregonis then altered his testing records to show that A-41 had an EAP result of rB so that A-41 would match Mr. Cooper's EAP type. (93 R.T. 4429-31, 4444.)

Gregonis initially lied under oath about his test result alterations (93 R.T. 4493-95.) It is noteworthy that during deliberations, the jury requested only two sections of the court transcripts to be read back to them; one of them was Gregonis's testimony about A-41(ER 746). Here is an excerpt:

> Q [by Mr. Negus]: Did you change your mind about A-41 after you learned that if your original call was accurate, A-41 couldn't have come from Mr. Cooper?

> A [by Gregonis]: Not immediately, no. But it was after. Yes.
>
> Q: Prior to your learning that if your original call about A-41 was correct, then it couldn't have come from Mr. Cooper, how many times did you testify on the witness stand, under oath, that A-41 was a B and nothing else but a B?
>
> A: It is probably about three times.
>
> Q: And your explanation was that it was a technical fault on your part, you made a mistake?
>
> A: Essentially, yes.

- Prior to trial, Gregonis used a large percentage of the already limited A-41 sample on duplicative testing (56 R.T. 4851-52, 4854), failed to take steps to accurately document the tests that he did perform so that they could be verified (56 R.T. 4819, 4841, 4847-48; 57 R.T. 4913-15), and ran tests that had a small likelihood of excluding Mr. Cooper as a suspect (56 R.T. 4856- 58, 4863-65). He did his original testing without consulting Mr. Cooper's expert, Dr. Ed Blake, or having him present.

- When the prosecution and defense finally performed joint testing of blood drop A-41 before trial, the remaining sample was so small that their results were largely inconclusive. Furthermore, all the plasterboard chips that had any traces of blood on them were discarded. [*Cooper v. Brown*, 565 F.3d 581, 616 (9th Cir. 2009) (Fletcher, J., dissenting from denial of rehearing *en banc*)].

- On August 9, 1984, in Judge Garner's chambers during Mr. Cooper's trial, Mr. Kochis admitted that A-41 had been fully consumed and that its remnants had been discarded during testing. (*People v. Kevin Cooper*, CR 72787, 70 R.T. 6408-09). Mr. Kochis tried to shift responsibility for the sample being exhausted by complaining that the defense's expert did not stop the prosecution's testing when he could see that A-41 was being totally consumed. Mr. Kochis said to Judge Garner: "He [Dr. Blake] sat there while we moved to other tests, while the sample was exhausted in his presence."

- Gregonis testified several times that "all the usable blood had been consumed in the analysis," (93 R.T. 4547-48.) But then, he testified, "At some point in time, just out of curiousity [sic] sake, I did open the pillbox and saw a very small quantity of blood remaining." (93 R.T. 4547-48). On October 17, 1984, the parties tested those remaining small specks of blood and again the results were inconclusive. (93 R.T. 4442-45). Gregonis testified at Mr. Cooper's trial that in that October testing, the SBSD had processed and discarded the remaining portions of the chips with blood on them. (ER 722-23).

Fifteen years later, the SBSD and SBDA renewed their efforts to use A-41:

- In August 1999, at a time Mr. Cooper was pursuing DNA testing through the habeas corpus hearings in state and federal court, Gregonis checked the A-41 container out of the SBSD evidence locker for more than 24 hours [ER 1629, 2650-54]. He said he did so at the request of Mr. Kochis, for the alleged purpose of verifying that A-41 still existed, even though both men had testified on numerous occasions that A-41 had been exhausted.

- When Gregonis removed A-41 from the SBSD evidence locker in 1999, A-41 was kept within feet of VV-2, Mr. Cooper's blood sample, which was not subject to evidentiary controls. Gregonis signed his initials across the seal of the glassine envelope with the container of A-41, following SBSD protocol to indicate he examined the evidence inside. A photograph of Gregonis' initials on the seal of the glassine envelope containing A-41 proves that in August 1999, he opened the envelope containing A-41. However, Gregonis denied under oath ever doing so. (Clemency Petition 86, fn 148.)

- When Mr. Cooper's post-conviction DNA testing took place in 2002, a "bloodstained paint chip" and " blood dust" had inexplicably appeared in the A-41 canister. [ER 790]. The blood on that chip was tested, and Mr. Cooper's DNA was found. The appearance of a blood-stained chip in 2002 is shocking, given that Gregonis had testified at trial that in the October 1984 testing of A-41, the SBSD had processed and discarded all the paint chips with blood on them. (ER 722-2)].

- The testing in 2002 revealed the presence of Mr. Cooper's DNA and the presence of another person's DNA. That person's DNA did not match Mr. Cooper's DNA or DNA

from any of the victims. (In 2020 testing, Bode Laboratory Technology did not detect that second person's DNA profile, perhaps due to degradation of the sample over the length of time that has passed and how it has been stored and handled.)

- In the 2004-2005 habeas corpus proceeding, Mr. Cooper requested EDTA testing of A-41. Without taking evidence on the feasibility of testing anything remaining of A-41 for the presence of EDTA, the district court rejected Cooper's request. (Dist. Ct., 510 F.3d at 948-50; ER 3467; 6/29/04 RT 209).

In 2020 Bode conducted testing on what the SBSD said was the container of blood drop A-41. Bode noted that the tube was unlabeled and appeared to be empty and described the container as "just containing debris." [See Transcript of November 1, 2019, call with Special Master Hon. Daniel Pratt (ret.).] Bode swabbed the inside of the container and the inside of the tube. Bode obtained a partial DNA profile from the container that is consistent with a male contributor. [Bode Report November 11, 2019.] Bode reported that this profile matched the sample of a buccal swab from Kevin Cooper and blood vial VV-2 which contained Mr. Cooper's blood taken at the time of his arrest. [Bode Report February 24, 2020.]

The UU 1-4 Series

When SBSD criminalist David Stockwell collected A-41 from the Ryen home, he also collected four minor blood spots that were within a one-foot radius of A-41 that he believed were related to A-41. At some point, the four minor samples came to be labeled UU 1-4 as part of the UU Series, blood evidence that was collected from various locations throughout the crime scene. UU 1-4 was checked out by Sergeant Billy Arthur for testing by the State's outside expert, Brian Wraxall. (ER 4782-83; ER 1619-23.)

- Mr. Wraxall's notes state that tests on some of the UU series spots excluded Mr. Cooper because Mr. Cooper had a particular enzyme type that did not match the enzyme type in the spots Mr. Wraxall tested. (*Id.*)

- When it became evident that the UU series of blood spots exculpated Mr. Cooper, Sergeant Arthur immediately instructed Mr. Wraxall to stop the testing. (*Id.*) In his statement to John Grele, one of Mr. Cooper's attorneys, Wraxall confirmed that he was ordered to stop testing

the UU series. (ER 4783; 2016 Clemency Petition, 221). Thus, the remaining UU series blood spots, at least one of which was very close to A-41, have never been tested. (*Id.*)

- After Mr. Wraxall's testing, the SBSD took the position that the UU 1-4 blood spots could not be tested because they were too tiny and were likely placed on the wall by the foot pads of flies that had landed in blood around the crime scene. This not logical since Mr. Wraxall was able to conduct enough testing on UU 1-4 to exclude Mr. Cooper as the donor.

If UU 1-4 bloodspots were tested by someone other than Mr. Wraxall, those tests were never revealed to the defense.

In conclusion, Mr. Cooper maintains that Daniel Gregonis planted Mr. Cooper's blood on A-41. This is the same criminalist who violated protocols by testing A-41 in the near proximity of VV-2, and whose perjuries and evidence of his "sloppy" work acknowledged by Judge Garner (70 R.T. 6405) legitimately call into question his credibility and that of his work. The "evidence" of A-41 implicating Mr. Cooper must be considered for what it truly is: false.