SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	) No. S004365
	)
Plaintiff,	) Los Angeles County
	) Superior Court
v.	) Case No. A194636
	)
STANLEY WILLIAMS,	)
	)
Defendant.	)
	)

MOTION FOR POST-JUDGMENT DISCOVERY UNDER PENAL CODE 1054.9, IN RE STEELE, AND BRADY V. MARYLAND

EXECUTION IMMINENT – DECEMBER 13, 2005

STANLEY WILLIAMS, by and through counsel, respectfully requests that this Court[1] order post-judgment discovery under Penal Code section 1054.9, In re Steele (2004) 32 Cal.4th 682, and Brady v. Maryland (1963) 373 U.S. 83. At any stage of the proceedings, the

[1] Discovery motions by death row inmates who are preparing petitions for writ of habeas corpus should be filed in this Court if an "execution is imminent." (In re Steele, *supra*, 32 Cal.4th. at p. 691.) As this Court is aware, Mr. Williams was sentenced to death in 1981, for four counts of capital murder. The Los Angeles County Superior Court has scheduled his execution for December 13, 2005.

prosecution has a duty first and foremost to "set the record straight." (Banks v. Dretke (2004) 540 U.S. 668, 676 [death row inmate given last minute opportunity to litigate federal habeas corpus petition despite procedural default because prosecution failed to set the record straight about its informant].)

I. INTRODUCTION

As will be described in detail below, Mr. Williams, in good faith, seeks evidence that should have been disclosed at the time of his trial but was suppressed and continues to be suppressed by the prosecution.

In addition, Mr. Williams seeks access to all the physical evidence in this case because the police crime scene investigation was less than thorough. In particular, the firearm evidence is unreliable because it is not scientifically based. It must be retested.[2]

Access to the physical evidence and the undisclosed evidence will show that the prosecution's case rested on a substandard police investigation. (Kyles v. Whitley (1995) 514 U.S. 419, 442, 446 [death judgment reversed after prosecution suppressed exculpatory evidence].)

[2] See Lamagna Declaration, ¶¶ 5-16 [3-7], Exhibit 1.

In Kyles v. Whitley, had the exculpatory evidence not been suppressed, the jury:

> would have been entitled to find ¶ (a) that **the investigation was limited by the police's uncritical readiness to accept the story and suggestions of an informant whose accounts were inconsistent .... and whose own behavior was enough to raise suspicions of guilt**; ¶ (b) that the **lead police detective who testified was either less than candid or less than fully informed**; and (c) that **the informant's behavior raised suspicions that he had planted ...** [the] murder weapon. (Kyles v. Whitley, *supra*, 514 U.S. at p. 453, emphasis added.)

Mr. Williams has maintained his innocence since the day he was arrested. Because the police investigation was substandard and exculpatory evidence suppressed,[3] Mr. Williams was unable to properly challenge the credibility and motive of the witnesses against him, or even to properly investigate the roles those witnesses may have played in the crimes.[4]

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[3] These multiple failures to disclose cannot be justified by asserting that the state's witnesses were already impeached. "That is true, but not true enough; inconsistencies ... provided opportunities for chipping away but not for the assault that was warranted." (Kyles v. Whitley, *supra*, 514 U.S. at p. 443.)

[4] As will be seen below, after testifying against Mr. Williams, both James Garrett and Alfred Coward continued to commit violent crimes but were treated in an extraordinarily lenient fashion by the District Attorney's Office.

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II. THE ITEMS REQUESTED[5]

1. Access to Firearms/Ballistics Evidence for Purpose of Retesting

The testimony of Deputy Sheriff James Warner that Mr. Williams' 12 gauge shotgun (Peo. Exh. 8) fired the expended shell (Peo. Exh. 9-e) found at the motel crime scene is unreliable because it is not scientifically based. According to the opinion of the forensic/firearm expert retained by the undersigned, the firearm evidence must be retested.

> After having reviewed numerous documents in Mr. Williams' case, I believe that it is critical to reexamine the firearm evidence, the only physical evidence purporting to link Mr. Williams' to the crimes. As discussed below, Deputy Sheriff Warner's opinion is **junk science at best**.[6]

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[5] The basis for these requests will be described in detail below. "CT" stands for Clerk's Transcript. "RT" stands for Reporter's Transcript. Page numbers to exhibits are listed in brackets: [##].

[6] See, Lamagna Declaration, ¶ 5 [5-6], attached as Exhibit 1 (emphasis added).

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2. Access to all Physical Evidence for Analysis

The crime scene investigation was substandard. The autopsy reports and coroner's testimony about the motel crime scene indicate that there may have been more than one shooter. At least one of the victims appears not to be have been killed by a 12 gauge shotgun.[7] This Court should permit access to all physical evidence for examination. The prosecution should also be ordered to provide Mr. Williams with the crime scene and autopsy photos.

3. All Law Enforcement Records Concerning the Murder of Gregory Wilbon (James Garrett's Crime Partner) Including but Not Limited to Sheriff Department File No. 079-02625-0300-010 and LAPD DR 78-612-653

[7] Lamagna Declaration, ¶¶ 18-19 [7-8], Exhibit 1.

James Garrett first implicated Mr. Williams when police interrogated him about the murder of Gregory Wilbon, his crime partner. The prosecution suppressed all evidence relating to the circumstances of Gregory Wilbon's death. As a result, Mr. Williams was unable to show that Deputy Sheriff Gilbert Gwaltney testified falsely when he told the jury that Garrett had an alibi for Wilbon's murder and was not a suspect.

Recently obtained coroner's reports for Wilbon show that when his body was discovered in the trunk of a car, it was "markedly decomposed." Gwaltney was an official witness at Wilbon's autopsy. Therefore, Gwaltney knew when he testified that it would have been impossible to determine when Wilbon was killed and impossible for James Garrett (or anyone else) to have an alibi.[8]

4. All Pitchess Material Regarding Deputy Gilbert Gwaltney's Proclivity for Lying Prior to and/or During the Prosecution of Mr. Williams

[8] See Exhibits 17 and 19, *infra*. Because the body was markedly decomposed, the coroners' report lists the date of date of death as 2/12/79, which is the date the body was discovered in the trunk of the car. Exhibit 19, p.1, [216]. The liver temperature could not be taken due to advanced decomposition. [223].

Given that Deputy Gilbert Gwaltney deliberately lied during Mr. Williams' trial about Garrett having an alibi for Wilbon's death, his personnel files should be produced for in camera inspection to determine if there is information regarding his proclivity for lying as a police officer. (*See* Pitchess v. Superior Court (1974) 11 Cal.3d 531.) In Alford v. Superior Court (2003) 29 Cal.4th 1033, the defendants were arrested for drug offenses in San Diego.

> Because petitioners' narrative of events leading to their arrest differed from that of the arresting officers, they sought to challenge the officers' credibility. Petitioners accordingly moved, in superior court, for *Pitchess* discovery of past complaints made to the San Diego Police Department regarding any incidents of dishonesty, excessive force, unnecessary violence, racist remarks, or similar misconduct on the part of the arresting officers. (Alford v. Superior Court, *supra*, 29 Cal.4th at p. 1036, citing Pitchess and Evidence Code §§ 1043 and 1045.)

There is a "low threshold" for discovery of police personnel records which must be reviewed in camera by the superior court. There must be a showing of good cause, materiality, and a reasonable belief that the government agency has the information sought to be disclosed. (Alford, 29 Cal.4th at pp. 1038-1039.)

5. All Law Enforcement Investigative Reports, Interviews, And/Or Prosecutions of Martha Hamilton, the Sister of Ester Garrett

Both James Garrett and his wife Ester told police that they learned of the motel murders from Ester's sister, Martha "Murt" Hamilton, who worked right next door to the motel and who used to go over there all the time to get change. Not only would ordinary suspicions be instantly aroused that Hamilton was casing the place for James Garrett to rob, but police were long aware that this was Garrett's *modus operandi* – sending people to case places he planned to rob. The prosecution provided no information at all regarding any interviews, investigations and/or prosecutions of Martha Hamilton.

6. All Law Enforcement Files Related to the Immigration and Naturalization Records of Alfred Reginald Coward, Including but Not Limited to Any Promises or Deals Made with Coward to Ensure He Not Be Deported

The prosecution failed to disclose that when Alfred Coward testified against Mr. Williams under a grant of immunity he was not a United States Citizen. He was a Canadian citizen[9] and had three prior prosecutions for robbery and loaded guns, also undisclosed. Fear of deportation would certainly have been another factor motivating him to falsely testify against Mr. Williams. Today, Coward is a prisoner at the Joyceville Institution in Ontario, Canada, for having killed a man during a robbery.

7. All Information Regarding the District Attorney's Arrangement for Walter Gordon, Esq., to Represent Samuel Coleman after He Was Beaten and Offered Immunity by the District Attorney

DDA Robert Martin gave Samuel Coleman immunity to testify against Mr. Williams although he insisted that Coleman was never a suspect in the crimes. Martin averred that Coleman had retained an attorney, Walter Gordon, who refused to let Coleman testify without immunity.

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[9] The December 19, 1990, probation report lists his Alien Registration Number as ALL51854 but that cannot be correct. It may be A11751854. (Exhibit 55, p.8 [551.) Through the NCIS/NCIC, the District Attorney can easily verify whether Coward was deported with the following information: DOB 01/24/55; CII No. 4541978, SSN No. 547-94-

Long after Mr. Williams' trial, Coleman declared that he was so severely beaten by the police after being arrested with Mr. Williams that he lost consciousness and two of his ribs were broken.[10] Coleman was so terrorized that he told the police what they wanted to hear about Mr. Williams. After being beaten and while still in police custody, someone from the District Attorney's Office came to him and offered immunity for his testimony.

Coleman's attorney, Walter Gordon, is the father of Walter Gordon III, who was representing Ester Garrett on her pending receiving stolen property case, a case where she was also acting as an informant. It would thus appear as if Walter Gordon III suggested to the prosecution that his father be the lawyer to handle Coleman's representation.

It is highly unlikely that Coleman would have had the resources and wherewithal to retain an attorney, much less an attorney who coincidentally turned out to be the father of Ester Garrett's attorney. If the District Attorney arranged for Walter Gordon to represent Coleman, this would have intensified the coercion he was subjected to, not lessen it.[11]

8100; country of origin, Canada; and Joyceville Institution (Ontario, Canada) Prison No. 267539E.

[10] Coleman's declaration is attached as Exhibit 63.

[11] See Exhibits 41, 65, 66, and 89, *infra*.

8. All Records Pertaining to the Involuntary and Forced Drugging of Mr. Williams While He Was A Pretrial Detainee at the Los Angeles County Jail from 1979 to 1981, Including Names, Business Addresses, and Telephone Numbers of All County Personnel Involved in Such Drugging

Mr. Williams has long complained that he was forcibly medicated with powerful tranquilizers while he was a pretrial detainee in 1979-1981. The judge, a juror, and his mother all stated that he appeared to be out of it. The State's psychiatrist, Dr. Ronald Markman did not dispute that in those days, the county jail gave inmates "high doses of tranquilizers" which were "not clinically mandatory."[12] In 1976, the California State Assembly held hearings and found that inmates were being forcibly drugged to control them. However, to date, the county has never produced any of Mr. Williams jail medical/psychiatric/medication records from 1979 to 1981, despite the fact that records for other death row inmates who were

[12] Excerpts of Markman's declaration is attached as Exhibit 81.

incarcerated at the Los Angeles County Jail during that same time period have been preserved.[13]

III. THE GOOD FAITH BASIS TO OBTAIN DISCOVERY

A. This Court Twice Found that the Prosecutor Lacked Integrity

The prosecutor, DDA Robert Martin[14] was twice found by a unanimous California Supreme Court to have engaged in prohibited racial discrimination during jury selection in a capital trial. In reversing, both courts observed that Martin lacked integrity. (*See e.g* People v. Fuentes (1991) 54 Cal.3d 707, 720 ["The trial court understandably found such reasons 'very **spurious**.'"emphasis added] and People v. Turner (1986) 42 Cal.3d 711 ["the record contains 'ample reason to suspect' that the proffered explanation" by Marin was "**not bona fide**."] Id. at 725, emphasis added, and ["we have little confidence in the good faith of his proffered explanation." Id. at 727].)

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[13] See Exhibits 77-83, *infra*.

[14] DDA Martin was the prosecutor on Mr. Williams' case from its inception.

In closing argument in Mr. Williams' trial, DDA Martin compared him to a Bengal tiger in a zoo. Martin used these same racial epithets against two other black death row inmates, Henry Duncan and Melvin Turner. (*See* People v. Duncan (1991) 53 Cal.3d 955, 976, and Melvin Turner v. Arthur Calderon, CV-96-2844-AHS [Second Amended Petition for Writ of Habeas Corpus, pp. 253-254], respectively.)

B. The Ninth Circuit Found that the Witnesses Against Mr. Williams Had Less than Clean Backgrounds and Incentives to Lie

The Ninth Circuit Court of Appeals agreed that the evidence of guilt was based on "circumstantial evidence and the testimony of witnesses with less-than-clean backgrounds and incentives to lie in order to obtain leniency from the state in either charging or sentencing." (Williams v. Woodford (2004) 384 F.3d 567, 624.)

Of course, it is by now common knowledge that,

> [t]he use of **informants** to investigate and prosecute persons engaged in clandestine criminal activity is fraught with peril .... by definition, criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from **falsely accusing the innocent, from manufacturing evidence, and from lying under oath in the courtroom**.

(United States v. Bernal-Obeso (9th Cir. 1993) 989 F.2d 331, 333, emphasis added.)

The use of informers, accessories, accomplices, false friends, or any of the other betrayals which are `dirty business' may raise serious questions of credibility. (On Lee v. United States (1952) 343 U.S. 747, 757.)

James Garrett

On March 14, 1979, James Garrett, a career criminal and police informant with pending felony charges[15] was interviewed by Sheriff's detectives about the murder of Gregory Wilbon, his crime partner in an insurance fraud ring. (RT 1655.) In 1978, Garrett and Wilbon staged over one hundred automobile accidents on the freeway using cars obtained from auctions. (RT 1658.) Wilbon in the lead car would signal Garrett to slam on the brakes. Garrett hoped that a little old lady with lots of insurance would crash into him. (RT 1769-1770.)

Using as many as forty phony temporary driver's licenses, Garrett and Wilbon would make insurance claims and sell them to attorneys. (RT 1657-1659.) They earned about $5,000 from this scam. (RT 1660.) After Wilbon's death, Garrett took over Wilbon's business. (RT 1663.)

Garrett began working as a paid informant for the prosecution to snare one of these dishonest attorneys, Stephen Burke. (RT 1661-1667.) Garrett in turn attempted to extort money from Burke by offering to falsely testify on his behalf. (RT 1668.)

Garrett denied knowledge of Wilbon's murder but said a man who sometimes stayed at his house, Mr. Williams, confessed to shootings at a motel at 10411 S. Vermont and a 7-11 in Whittier. (RT 1664, 1689-1690.)

Garrett described the motel murders in detail and said that Mr. Williams committed the 7-11 murder with a man named Alfred "Blackie" Coward. In the presence of police, Garrett pulled a 12 gauge shotgun from underneath his own bed and handed it to them. (RT 1690.)

The shotgun had been legally purchased by and registered to Mr. Williams. (RT 1478-1406.) The prosecution expert opined that this shotgun fired the expended shell found at the motel crime scene. (RT 1512-1548.) Garrett denied committing the motel murders himself and said that his wife and children could verify he was home asleep that Sunday morning, March 11, 1979. (RT 1788.)

> Mr. Ingber: You're sure you weren't over at the Brookhaven Motel with a shotgun?

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[15] Garrett's trial testimony is attached as Exhibit 86 [912-1057].

Garrett: No sir. I didn't know what the Brookhaven Motel was until after I heard it from Stan." (RT 1789.)[16]

Ester Garrett

Garrett's wife Ester,[17] herself facing multiple felony charges, also claimed that she overheard Mr. Williams confess. For their cooperation, the Garretts were given money to pay living expenses by DDA Martin. When this money ran out, DDA Martin instructed her to apply for welfare. As she had done in the past, Ester committed perjury in order to receive welfare. She admitted that she perjured herself because it did not bother her to lie under oath. (RT 1958, 1988-2001.) Ester also testified that her husband frequently lost the family's money gambling. (RT 2011, 2028-2030.)

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[16] Garrett's testimony that he had never heard of the Brookhaven Motel was a lie, however, which DDA Martin allowed to go uncorrected. Garrett told Sheriff's Deputies Hetzel and Solar that he had heard about the murders from his sister-in-law, Martha Hamilton, who Ester also told police worked right next to the motel. See *infra*, Exhibits 25, p.6 [294] & 26, p.3 [307] respectively.

[17] To avoid confusion, James Garrett will be referred to as "Garrett" and Ester Garrett as "Ester." Ester's trial testimony is attached as Exhibit 87 [1058-1167].

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Alfred Coward

Alfred Coward[18] was given immunity for his self-confessed role in the robbery murder of Albert Owens. Coward testified that he, Mr. Williams, Tony Sims, and a man known only as "Darryl," were riding in two separate cars on their way to Pomona when they stopped at the 7-11 in Whittier. Once inside, Mr. Williams shot and killed Albert Owens. (RT 2146-2164.)

Samuel Coleman

Samuel Coleman, who was arrested driving a car with Mr. Williams as a passenger, also testified under a grant of immunity. (RT 1568.) Coleman said that Mr. Williams confessed to killing some people as they drove to Griffith Park to walk their dogs. (RT 1560-1563.) Coleman said the two were not close friends and did not discuss personal things, but

[18] Coward's trial testimony is attached as Exhibit 88 [1168-1136].

did share a love of dogs and lifting weights. (RT 1571.) Mr. Williams often asked Coleman where he could find a job. (RT 1574.) [19]

George Oglesby

George Oglesby, a veteran jailhouse informant who had been arrested for capital murder and who ultimately pled to second degree murder also testified that Mr. Williams confessed. Oglesby produced some notes written by Mr. Williams purporting to plan an escape. (RT 2399-2402.)

The Defense

Beverly McGowan, Mr. Williams' former girlfriend, testified that he was with her from February 27 to 28, 1979. (RT 2767-2768.) Fred Holiwell, Mr. Williams stepfather, testified that he saw him the Showcase bar in the early morning hours of March 11, 1979. (RT 2611-2623.)

C. The Substandard Police Investigation

[19] Samuel Coleman's trial testimony is attached as Exhibit 90 [1346-1446].

As in Kyles v. Whitley, the prosecution was so intent on convicting Mr. Williams that it performed a substandard crime scene investigation and ignored and/or suppressed significant evidence regarding the roles its primary witnesses – James Garrett and Alfred Coward – played in these crimes. (Kyles v. Whitley, *supra*, 514 U.S. at p.453.)

1. THE FIREARM EVIDENCE IS UNSCIENTIFIC AND UNRELIABLE AND MUST BE RETESTED

According to police reports, although the decedents sustained numerous gunshot wounds only one expended shotgun shell was found at the scene of the crime. (RT 1506.)[20] This means that the other shotgun shells had to have been picked up by the shooter(s).[21]

The recovered, expended shotgun shell was made by Browning.[22] According to police reports, there were only two stores where

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[20] See March 11, 1979, Sheriff's Department Supplemental Report of Harald R. Treichler, attached as Exhibit 2 [11] and Testimony of Deputy Sheriff Richard Sanford (RT 1497-1512), attached as Exhibit 3 [12-27].

[21] Lamagna Declaration, ¶ 9, Exhibit 1

[22] See March 18, 1979, Sheriff's Department Supplemental Report (list of evidence held, item nos. 1-19) (File Nos. 079-04349-0372-015 [new] and 079-04349-0372-010 [old]) (The expended shell is item # 5.) and April 5, 1979, Supplemental Report (evidence held item no. 20) attached as Exhibits 4, pp. 1-2 [28-29] and 5, p. 1 [41].

this Browning shotgun ammunition could have been purchased in the previous year, one of which was Big Five. Big Five advised police that only one of their stores had stocks of Browning 12 gauge shotgun ammunition at the end of 1978, and that was in Inglewood.[23] In 1978, the Inglewood Big Five was robbed by James Garrett of more than one hundred firearms and an unknown quantity of ammunition.[24]

The Sheriff's Department firearm examiner, Deputy Sheriff James Warner, examined the expended shotgun shell and compared it to test firings of Williams' shotgun. On March 15, 1979, Warner stated that he could not determine if the expended shotgun shell came from Williams' gun, because there were "not enough" characteristics "for a positive comparison."[25] DDA Robert Martin, told Warner to run the tests again. (RT 1543-1545.) Thereafter, on April 18, 1979, Warner changed his opinion from inconclusive to positive.[26] This is a stark

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[23] See March 29, 1979, Sheriff's Department Supplemental Report re "Active/Additional Information" (File No. 079/01607/1575/015), attached as Exhibit 6, p.1 [48].

[24] See Exhibits 30, pp.1-2 [339-340]; 34, pp. 8-9 [373-373]; and 43, p.5 [455].

[25] See April 7, 1979, Sheriff's Department Firearms Report, Deputy James Warner, p. 4 [52], attached as Exhibit 7.

[26] See April 18, 1979, Sheriff's Department Supplemental Report, Firearms Identification, attached as Exhibit 8 [53].

example of "confirmation bias," a common problem in police work when the firearm examiner renders an opinion to please the prosecutor.[27] The fact that Warner changed his opinion, without any real scientific basis for such an opinion change, seriously undermines the reliability of his testimony.[28]

Warner testified[29] that he fired Williams' shotgun (a twelve-gauge High Standard slide-action shotgun, serial number 3194397) eighteen (18) times. (Peo. exh. 8; RT 1515-1516.) Warner compared those 18 shells with the expended shell found at the motel (Peo. exh. 9-E) under a comparison microscope. (RT 1516-1517.) Of the 18 test firings, Warner found only two (2) shells that had "sufficient marks" for a "comparison." (RT 1520.) "The other shells were not getting a significant hit to get good marks from the breach face." (RT 1521.) Warner said that unspecified "marks" caused by the "breach face and firing pin" were "similar" to marks on the expended shell (Peo. exh. 9-E.).

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[27] See e.g. Lisa J. Steele, "'All We Want You to Do is Confirm what We Already Know,'A Daubert Challenge to Firearms Identification," 38 Criminal Law Bulletin 466 (2002), pp. 10-11 [63-54] attached as Exhibit 9.

[28] Lamagna Declaration ¶ 11 [5], Exhibit 1.

[29] A copy of Warner's testimony (RT 1512-1548) [77-113] is attached as Exhibit 10.

Warner apparently did not make any effort to examine and compare ejector and extractor marks on the recovered spent shotgun shell with those of his test firings. These markings are important class characteristics (and potentially sub-class characteristics) that should be examined and identified, if at all possible.[30] Warner then concluded that 9-E was fired by People's Exhibit 8. (RT 1522.) Warner also testified that the expended shell could not have been fired from any other shotgun because he could "find sufficient patterns within the breach face and the firing pin." (RT 1522-1522.)

Contrary to standard practice, Warner did not identify the markings on the spent shotgun shells by class, sub-class, and individual characteristics. His report lacks specificity regarding the type, location, and dimensions of any toolmark impressions that he utilized in his comparison and subsequent identification. Thus, there is no scientific basis for his claim that there was a "match."[31]

Nor did Warner provide any photomicrographs of the spent shotgun shells he fired, which would have backed up his opinion. Traditionally, firearm examiners use an optical comparison microscope to compare striae and other toolmarks on the evidence bullet or cartridge case

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[30] Lamagna Declaration, ¶ 12 [5-6], Exhibit 1.

[31] Lamagna Declaration, ¶ 13 [6], Exhibit 1.

with those from a test firing. The comparison microscope allows the two images to be merged so that a comparison may be readily observed and photographed. It is standard practice for the examiner to record the observed comparison with a photomicrograph. In fact, photographs of matching toolmarks showing the imposed image of the evidence cartridge case over the test firing were presented as far back as 1921, at the celebrated trial of Sacco and Vanzetti. Without the photomicrographs, the evidence is solely one man's subjective untested opinion.[32]

There are no reports, and his testimony does not reflect, that a second firearms examiner reviewed Warner's findings and came to the same conclusions. Standard practice requires the results be validated by a second opinion, as does the Scientific Method.[33]

Because Warner's testimony is unreliable, it is important to test fire the shotgun at a firing range and examine the expended shell recovered from the motel crime scene. It is also necessary to re-examine the actual test firings made by Deputy Sheriff Warner. [34]

Mr. Lamgna has portable equipment, including a microscope, camera, and computer, which could easily be used to reexamine Warner's

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[32] Lamagna Declaration, ¶ 14 [6-7], Exhibit 1.

[33] Lamagna Declaration, ¶ 15 [7], Exhibit 1.

[34] Lamagna Declaration, ¶16 [7], Exhibit 1.

test firings and compare with the recovered shotgun shell. This could be done right in the exhibit room of the courthouse. Of course, to test fire the shotgun, the shotgun would need to be removed to a firing range.[35]

2. THE AUTOPSY REPORTS AND CORONER'S TESTIMONY INDICATE THAT MORE THAN ONE WEAPON WAS USED AT THE MOTEL

It is also extremely important to examine all the physical evidence that was gathered by the police. The overall police forensic examination was substandard and less than thorough. It does not appear that a final, formal crime scene re-construction was performed and properly documented. This crime scene analysis and reconstruction would have shown the victims and shooter(s) locations and movements during the development and performance of the criminal activity at the location in question.[36]

After reviewing the autopsy reports[37] and the testimony of the coroner, it appears that there may have been more than one weapon used.

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[35] Lamagna Declaration, ¶ 17 [7], Exhibit 1.

[36] Lamagna Declaration, ¶ 6 [4], Exhibit 1.

[37] See Autopsy Reports for Tsai Shen Yang, Yen Yi Yang, and Ye Chew Lin, attached as Exhibits 11 [114-126], 12 [127-137], and 13 [138-147, respectively.

First and foremost, all the shots sustained by all of the victims appear to be either near contact or intermediate distance gunshot wounds. The frontal abdominal wound sustained by Tsai Shen Yang consisted of three buckshot pellets. The trial testimony of the deputy medical examiner, Eugene Carpenter,[38] indicates that this frontal abdominal wound was due to a shot fired from only a few feet away. Actually, 3-4 feet as listed in his hand written notes.[39] This is indicative of the frontal abdominal shot being made with a four-ten (410)-gauge shotgun, instead of a twelve (12)-gauge shotgun. A 2.5 inch 410-gauge shotgun will fire a buckshot load that consists of three (3) pellets stacked one on top of each other in the loaded shotgun shell.

On the other hand, a twelve (12) gauge 2 3/4" shotgun shell is typically loaded with nine (9), or more buckshot pellets. It is also important to note that some derringers and other handguns chambered for the 45 Long Colt will also chamber and fire some 2.5inch 410-gauge shotgun ammunition. If the decedent, Tsai Shen Yang had been shot within a distance of 3-4 feet, most, if not all nine or more buckshot pellets would have been deposited into her abdominal cavity. Yet only three buckshot

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[38] See Testimony of Coroner Eugene Carpenter (RT 1447-1476), attached as Exhibit 14 [148-176].

[39] Carpenter's handwritten notes are attached as Exhibit 15 [177-182].

pellets were found in her abdominal cavity as a result of this frontal wound. This is a very critical issue, because the pattern spread of 12-gauge buckshot at a distance of 3-4 feet from the shotgun muzzle is quite small.[40]

This leads to another issue related to the testing performed by Deputy Sheriff Warner. Warner only pattern tested the twelve-gauge, number six (6) shot ammunition (birdshot). He, for some very odd reason, did not pattern test twelve gauge buckshot loads, to determine pellet spread in relation to distance traveled from the muzzle of the shotgun barrel. This pattern testing of 12 gauge buckshot ammunition would have clearly demonstrated that the frontal wound sustained by Tsai Shen Yang was in all likelihood, **not fired from Stanley Williams' 12 gauge shotgun, or any other twelve gauge shotgun for that matter.**[41]

Finally, some effort should have been made to perform a materials analysis and identification of the plastic shotgun wadding, shotgun wadding fragments, and lead pellets that were recovered at the crime scene, and during the autopsy of the three decedents. For example, some effort should have been made to recruit the assistance of Remington and Browning to help identify which lead pellets and which wadding came

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[40] Lamagna Declaration, ¶ 18 [7-8], Exhibit 1.

[41] Lamagna Declaration, ¶ 19 [8], Exhibit 1.

from the different ammunition that may have been used in this particular shooting incident.[42]

It is therefore imperative to examine all the crime scene photographs and the autopsy photographs.[43] Mr. Williams post-conviction counsel do not possess these autopsy and crime scene photographs, although there are some photographs in evidence at the courthouse.

Other crime scene evidence was never processed properly. While not impossible, it is unlikely that latent, visible or plastic fingerprints of the assailant(s) did not form on some of the surfaces present at the crime scene. In particular, the security door that was allegedly ripped out of its framing by Mr. Williams, should have produced some fingerprint, trace, or other physical evidence that could have been traced back to the perpetrator. This same door should have also been properly examined in order to determine just how this door was compromised. In other words, was a crowbar used to help remove the door from its framing, etc.?[44]

There were no footwear impressions found inside or outside the motel that could be traced back to Stanley Williams.[45]

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[42] Lamagna Declaration, ¶ 20 [8], Exhibit 1.

[43] Lamagna Declaration, ¶ 21 [8], Exhibit 1.

[44] Lamagna Declaration, ¶ 11 [8], Exhibit 1.

[45] Lamagna Declaration, ¶ 24 [9], Exhibit 1.

Furthermore, the clothing of the decedents was apparently never tested for gunshot residue (GSR), gunpowder stippling, and gunpowder residue. No effort was made to incorporate the anthropometrics of the individual victims and suspects into an organized shooting reconstruction.

This information, along with bloodstain patterns, would have been useful in helping to establish locations and distances of the victims and assailant(s).[46]

It is thus important to examine microscopically or otherwise, all extant physical evidence in this case, whether it is in the custody of the superior court or the Sheriff's Department. A greater crime scene reconstruction effort should be made utilizing the existing crime scene and autopsy photographs, the physical evidence, as well as autopsy and crime scene reports.[47]

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[46] Lamagna Declaration, ¶ 25 [10], Exhibit 1.

[47] Lamagna Declaration, ¶ 26 [10], Exhibit 1.

3. THE PROSECUTION'S FAILURE TO DISCLOSE ANY INFORMATION ABOUT THE CIRCUMSTANCES OF GREGORY WILBON'S DEATH MADE IT IMPOSSIBLE FOR MR. WILLIAMS TO SHOW THAT DEPUTY GWALTNEY TESTIFIED FALSELY THAT GARRETT HAD AN ALIBI FOR WILBON'S MURDER

The only police information disclosed about the murder of Gregory Wilbon, Garrett's crime partner, was one sentence in a report.

> On 3-14-79, Investigators Gwaltney and Gallatin were conducting an interview in Lennox Sheriff's Station with a JAMES Garrett, MN/33, 10402 S. St. Andrews Place, Los Angeles, telephone, 754-6477, as a witness in the murder case (file #079-02625-0300-010, victim Gregory Wilbon). At the conclusion of this interview witness Garrett asked Investigators if they knew of any other murders in the vicinity within the past few days.[48]

[48] See March 19, 1979, Sheriff Department Supplemental Report, File No. 079-04349-0372-015, p. 1 [183], attached as Exhibit 16.

Deputy Sheriff Gwaltney[49] testified that in March 1979, while investigating the murder of Gregory Wilbon, he learned that James Garrett was "well-acquainted" with the victim. (8 RT 1870, 1874.) Garrett said he was "terribly grieved" about Wilbon's death and told Gwaltney about Wilbon's "habits, places that he went, things that he did, people he associated with." (RT 1879:3-4, 1880.)

Garrett also told him where he was the night that Wilbon was killed, which Gwaltney "checked out." (RT 1880.) Gwaltney added that James Garrett was "not a suspect" in Wilbon's murder. (RT 1885.)

> Mr. Ingber: Did he ever indicate to you where he was on the night Mr. Wilbon was killed?
>
> Gwaltney: I believe he did give us information. I can't tell you right now what it was.
>
> Mr. Ingber: Was it ever checked out?
>
> Gwaltney: Yes. (RT 1880.)

> DDA Martin: Sergeant Gwaltney, was James Garrett a suspect in the Wilbon murder?
>
> Gwaltney: No. (RT 1885.)

[49] Gwaltney's testimony (8 RT 1868-1898) [184-214]is attached as Exhibit 17.

Gwaltney's testimony, informing the jury that Garrett had an alibi for Wilbon's murder, was deliberately and intentionally false.[50] The coroner's report states that when Wilbon's body was found in the trunk of a car on February 12, 1979, it was "markedly decomposed."[51] The coroner did not take the liver temperature due to advanced decomposition.[52] Nor could the coroner determine the body's alcohol content because the blood was decomposed.[53]

Given that the body was **markedly decomposed** it would have been impossible to determine when that person was killed. Therefore, it would have been impossible to establish whether James Garrett (or anyone else) had an alibi.[54]

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[50] On August 31, 2005, the undersigned obtained a copy of the undisclosed coroner's report for Gregory Wilbon, true name Willie Wilbon See Miscellaneous Receipt for Coroner Case No. 1979-01980, attached as Exhibit 18 [215].

[51] See Wilbon Autopsy Report, p.12-3, of Coroner Case Report No. 79-1980, Gregory Bernard Wilbon, attached as Exhibit 19 [216262. Initial identification was made by his driver's license. (Autopsy Report, p. 1 [216].)

[52] Exhibit 19, p.6 [223].

[53] Exhibit 19, p.42 [246].

[54] On February 9, 1979, a Cadillac (1978), license number 875VPI was found parked across a driveway (address not provided) at 7 a.m. The car was towed to a vehicle storage yard at 150 Ivy St. Inglewood. On February 12, 1979, the attendants noted a bad odor coming from the trunk and called the police, who discovered the decomposed body. Wilbon had

Gwaltney's testimony is an intentional lie and not a mistake because Gwaltney was an official witness at Wilbon's autopsy on February 14, 1979. Gwaltney therefore knew when he testified that it would have been impossible to determine when Wilbon was killed and thus impossible for James Garrett to have an alibi.[55]

4. THE PROSECUTION'S FAILURE TO DISCLOSE THAT WILBON HAD BEEN PLACED IN THE TRUNK OF A CAR ALSO MADE IT IMPOSSIBLE FOR MR. WILLIAMS TO SHOW THIS WAS A MODUS OPERANDI OF JAMES GARRETT

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been shot in the head and abdomen. A plastic bag had been placed around his head. (Wilbon Autopsy Report Continuation Sheet, p. 13 [218], Exhibit 19.)

[55] Wilbon Autopsy Report, Exhibit 19, pp.12-8 and 42 [231, 247]. ["Detective Gallatin and **Gwaltney**, representing the Los Angeles County Sheriff's Department, **witnessed the photography and autopsy of the body**."[(emphasis added).

Not only did Gwaltney provide a false alibi for Garrett as to Wilbon's murder,[56] but the police appear to have overlooked another factor that should have made Garrett a prime suspect in Wilbon's murder (and the murder of the Yang family). (S*ee* Kyles v. Whitley, *supra*, 514 U.S. at p. 442 [the police investigation was substandard because it "failed to direct any investigation against Beanie" the informant] and "never treated Beanie as a suspect." Id. at p. 447.)

The placing of Wilbon's body in the trunk of a car was a *modus operandi* of Garrett. At the time of Mr. Williams' arrest, James and Ester Garrett were already being prosecuted for receiving stolen property for having planned the hijacking **at gunpoint** of Stanley Gantt, the driver of a Gallo Wine truck, on April 28, 1977, at 11401 South Vermont Avenue

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[56] In Kyles v. Whitley, *supra*, 514 U.S. at pp. 428-429, Kyles was charged with the murder of a woman named Dye. Kyles' defense was that the state's main witness, "Beanie," was the real killer. Among the items of exculpatory evidence found to have been suppressed was the fact that the main informant, "Beanie," was a **suspect in another murder** of a woman named Leidenheimer. "The police failed to disclose that Beanie ... was a primary suspect in the January 1984 murder of Patricia Leidenheimer, who like Dye [the deceased victim in Kyle's case] was an older woman shot once in the head during an armed robbery. (Even though Beanie was a primary suspect in the Leidenheimer murder as early as September, he was not interviewed by the police about it until after Kyle's second trial in December. Beanie confessed his involvement in the murder, but he was never charged in connection with it.) **These were additional reasons for Beanie to ingratiate himself with the police and for the police to treat him with a suspicion they did not show**." (Kyles v. Whitley, *supra*, 514 U.S. at p. 442, n.13, emphasis added.)

in Los Angeles. Gantt was not shot, but he, like Wilbon, was also placed into the trunk of a car. He survived because he managed to escape.[57]

It is also important to note, that the address where Gantt was hijacked was less than a mile down South Vermont Avenue from the Yang family motel.[58]

It would not be surprising, given Gwaltney's false testimony establishing a phony alibi for Garrett, that Garrett was indeed a suspect in Wilbon's murder.[59] Moreover, Garrett told the District Attorney's Office,

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[57] See testimony of Stanley Gantt, the truck driver who was hijacked, at preliminary hearing of James and Ester Garrett, Case No. A-342090, on May 30, 1978, cover page and pp. 27-34, attached as Exhibit 20.

[58] See google map showing both locations, attached as Exhibit 21.

[59] Under California law, a person who takes an oath but then "wilfully states as true any material matter which he or she knows to be false is guilty of perjury. (Penal Code § 118.) "It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him." (§ 123.) Gwaltney's lie under oath was indeed material. It cannot be overemphasized that it was only after Gwaltney interrogated James Garrett about Wilbon's murder that Garrett implicated Mr. Williams in these crimes. It is also important to emphasize that perjury and/or the subornation of perjury that "procures the conviction and execution of any innocent person" is itself a capital crime, " punishable by death or life without the possibility of parole." (§ 128.)

that after Wilbon was killed he had "taken over Wilbon's cases, "[60] thus providing another motive to kill Wilbon.

Disclosure of the Sheriff's Department investigative reports might well reveal that the police simply stopped investigating Wilbon's murder after James Garrett implicated Mr. Williams. Wilbon's sister, Theresa Daniels, recently stated that the only contact she had with the police was when they asked her to identify his body. She helped to raise Wilbon's two children and never heard from police again.[61]

5. THE POLICE FAILED TO RECOGNIZE THAT ESTER'S SISTER, MARTHA HAMILTON, WAS LIKELY CASING THE MOTEL FOR GARRETT TO ROB

Mr. Williams seeks any and all investigative reports and/or interviews of Martha Hamilton, who was the sister-in-law of James Garrett. The only information that the undersigned has been able to find to identify

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[60] See August 8, 1979, memorandum re James Paul Garrett, File No. 79-4-0696, from W.T. Olson, Insurance Fraud Section to Donald F. Bowler, Chief, Bureau of Investigation, p.4 [274] attached as Exhibit 22.

[61] See Declaration of Theresa Daniels, attached as Exhibit 23 [283].

Hamilton is an address [625 “87 or “89" Place, LA, phone number, 778-3004], given by Ester Garrett in 1978, on a bail application form.[62]

In March 1979, when James and Ester Garrett were interviewed by sheriff’s deputies they both said they first heard of the motel murders because Ester’s sister, Martha “Murt” Hamilton, worked right next door to the motel and told them about the crimes. Ester Garrett said:

> because she work next door to a motel ... this new store open up, called uh, the Community Store, and it’s owned by the church, and uh, she works there as – as assistant manager. It was about two doors from the motel.[63]

> ‘Murt’ ...**work right next to the people. She said that they always go over there, you know, to get change**, I said she told me about that.[64]

James Garrett also told sheriff’s deputies that his sister-in-law, “Martha Hamilton,” who worked at 104th and Market, had “also informed my wife, you know, of the incident that had happened, you know, sometime, you know, Sunday.” [65]

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[62] See April 4, 1978, “Application for Release Without Bail (Felony Only)” in People v. Ester Garrett, A342090, attached as Exhibit 24 [285].

[63] See transcript of March 19, 1979, taped interview of Ester Garrett with Sgt. Gene Hetzel and Deputy James Solar, at Lennox Sheriff’s Station, p.3 [292], attached as Exhibit 25.

[64] Exhibit 25, p. 6 [294], (emphasis added).

[65] See transcript of March 15, 1979, taped interview of James Garrett with Deputy W.A. Wilson and Sgt. Gene Hetzel, at Lennox Sheriff’s Station, p.3 [307], attached as Exhibit 26.

Garrett told Hetzel that Mr. Williams had described the murders in detail, "the same way that it had happened, you know, the way my wife had heard it over, you know, the TV and the newspapers."[66] When Hetzel informed Garrett that there were no details regarding how the victims were dressed and/or where they were located on the news, Garrett backpedaled, and said: "No, no, it wasn't nothing like that, it was just that some people had gotten killed at a motel on Vermont, you know –that's all that she heard ...."[67]

The apparent failure to investigate the Garrett's prior connection to the motel's cash register via Ester's sister was substandard police work. (Kyles v. Whitley, *supra*, 514 U.S. at pp. 44.2, 446.) Not only would the suspicions of an ordinary layman be instantly aroused that Martha Hamilton may have been casing the motel for James Garrett to rob, but the prosecution was already aware that James Garrett's *modus operandi* was to send other people to case places he planned to rob.

On March 21, 1977, Garrett told undercover FBI special agent Larry Wansley that he "could supply endless amounts of stolen merchandise" from "machine guns, grenade launchers, grenades,

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[66] Exhibit 26, p.4, [308]

[67] Exhibit 26, pp. 4-5 [308-309].

ammunition, and handguns."[68] Garrett told Wansley he wanted him to meet his wife.[69]

On February 16, 1978, Garrett complained about the fence that Wansley had introduced him to for other stolen property jobs. Garrett:

> had been **planning a burglary of the Big 5 Sporting Goods Store in Inglewood for well over a month .... the burglary would occur in the early morning hours** of 2/19/78. He had planned to deliver the weapons that they were to get from the burglary to [a fence] in Reno.[70]

Now, because of problems with Wansley's fence he would not be taking the guns to Reno. Garrett:

> stated that he had **an employee inside the sore who had already set up the job and had given him the details regarding the layout** of the store and alarm system. Garrett

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[68] See March 22, 1977, Sheriff's Department Supplemental Report, File No. 477-07443-2040-325, attached as Exhibit 27 [321]. Because the photocopies of these reports are difficult to read, they have been retyped.

[69] In addition to her husband James, the police were also aware that Ester Garrett's brother Robert Stroud and her son-in-law Perry Hicks were involved in crime. Only two months before the motel and 7-11 crimes, Ester boasted to her probation officer that "her brother, Robert Stroud, is a numbers boss in Patterson, New Jersey. She indicated he has avoided 'hard time' because he had many officials 'in his pocket.'" See p. 3 [325], February 2, 1979, probation report of Ester Garrett in Case No. A342090, attached as Exhibit 28. Perry Hicks was James' codefendant in the extortion of attorney Burke. *See* June 29, 1979, Information in Case No. A344683, charging Perry Hicks and James Garrett with extortion, attached as Exhibit 29 [336-338].

[70] See February 17, 1978, Sheriff's Department Supplemental Report, File No. 477-07443-2040-325, attached as Exhibit 30 [339] (emphasis added).

> then requested WANSLEY to accompany him to the store in order that WANSLEY could see the layout and the guns which would be stolen by his group.[71]
>
> Garrett and WANSLEY then travelled to the Big 5 Sporting Goods Store in Inglewood. At that location, Garrett directed WANSLEY's attention to an employee .... Garrett stated that the man was his **inside man** on the burglary and would handle everything.[72]

On March 4, 1978, Garrett called Wansley to tell him that:

> **his inside man** (the employee at Big 5) wanted to put the job off for one day since it would be necessary for him to open the store on Sunday morning and wanted no part of making the discovery of theft. Garrett stated that the job would go the following evening, and he would notify WANSLEY Sunday afternoon or Monday morning.[73]

James Garrett continued to employ the same *modus operandi*[74] in crimes he committed long after Mr. Williams was sentenced

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[71] Exhibit 30 [339] (emphasis added).

[72] Exhibit 30 [339-340] (emphasis added).

[73] See March 6, 1978, Sheriff's Department Supplemental Report, File No. 478-18275-2040-325, attached as Exhibit 31 [343] (emphasis added).

[74] (*See* People v. Balcom (1994) 7 Cal.4th 414) [subsequent conduct that shows a common design or plan is admissible under Evidence Code section 1101] *see also* People v. Shoemaker (1981) 135 Cal.App.3d 442, 447-48 [quoting Wigmore: "There is no difficulty from the point of view of the relevancy of character; a man's trait or disposition a month or a year after a certain date is as evidential of his trait on that date as his nature a month or a year before that date; because **character is more or less a permanent quality and we may make inferences from it either forward or backward**."] emphasis added.)

to death. In 1990, James Garrett masterminded an armed robbery of the El Monte Employees Credit Union. He admitted to FBI Special Agent John A. Gardner, that, he was involved in:

> **basically planning the robbery, he had a white female prior to or a couple days prior to the actual robbery or day prior go into the bank and obtain that visual description of the facility**. ¶ Once he obtained that, he formulated the plan along with two other associates of his.[75]

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6. JAMES GARRETT'S MODUS OPERANDI PRIOR TO AND AFTER MR. WILLIAMS' TRIAL ALSO INCLUDED PREYING UPON THE INNOCENT PUBLIC WITH GUNS

When James Garrett first implicated Mr. Williams in these crimes, he was facing trial in two felony prosecutions. His New Jersey rap sheet shows that when he came to California he had already been arrested for armed robbery and assault with a deadly weapon four times between

[75] See Preliminary Hearing Transcript of People v. James Paul Garrett aka Melvin Lockhart, in Case No. KA005712, October 22, 1990, attached as Exhibit 32 (RT 14) [358] (emphasis added).

1970 and 1972. He did time in New Jersey state prison for armed robbery.[76]

On March 3, 1978, Garrett was arrested along with his wife Ester, at the Ramada Inn in Culver City. Although he confessed to being the "mastermind" of several armed robberies, he was only charged with receiving stolen property:[77]

(1) On March 24, 1977, a salesman at a Lincoln Mercury dealership was carjacked **at gunpoint**;

(2) on April 8, 1977, the driver of a Gallo wine truck was hijacked **at gunpoint** [the driver was placed in the trunk of a car; the truck and 245 cases of wine were sold];

(3) on February 27, 1978 and March 7, 1978, two Big Five Stores in Inglewood and Torrance were robbed of more than 120 firearms and an unknown quantity of ammunition. Garrett admitted that he had

[76] See New Jersey "Rap Sheet" for FBI No. 336920F and New Jersey State Bureau No. 203848-A for James Paul Garrett Jr., attached as Exhibit 33 [363-364].

[77] Deputy Sheriff E. Huffman, who was in charge of the major violator crew stated that "the Garretts were the principal movers behind all those robberies." See Ester Garrett probation, report, 2/2/79, p.11[337] (Exhibit 28.)

planned the robberies and hired three men who forced the employees and customers **at gunpoint** to lie down on the floor in the back room. [78]

On April 12, 1979, Garrett was charged with extortion and ultimately given probation. Garrett attempted to extort money from Stephen Burke, the attorney with whom he and Wilbon had been staging automobile accidents to get insurance claims. When Garrett when to Burke's office he was **carrying a loaded shotgun** at his side.[79] Burke felt very threatened by the shotgun.[80]

When it came time for sentencing on the receiving stolen property cases, the probation officer was against giving Garrett probation again.

> Probation officer views the defendant's involvement in the present matter as very serious and it is further noted that the defendants actions tended to have caused younger persons to

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[78] See September 1981, probation report of James Garrett in Case No. A342090, pp. 6-7 [370-371], attached as Exhibit 34 ; James Garrett probation report in Case No. A904142, attached as Exhibit 35; see also Inglewood crime report re: robbery of Big Five & City of Hawthorne Crime report re: robbery of Big Five, attached as Exhibits 36 [394-399] and 37 [400-416], respectively.

[79] See December 4, 1979, probation report of codefendant Perry Hicks (Garrett's son-in-law), Case No. A344683, p. 5 [421], attached as Exhibit 38.

[80] See December 1979, probation report for James Garrett in Case No. A344683, p. 6 [432], attached as Exhibit 39. See also June 14, 1979, preliminary hearing testimony of Stephen Burke, in Case No. A344683 (RT 14-17) [439-442], attached as Exhibit 40.

> become criminally involved. Due to the seriousness of the present matter, probation officer seriously questions whether or not the defendant should be continued under probation supervision and feels that perhaps his needs may best be met by a period of incarceration.[81]

Nevertheless, on September 9, 1981, Garrett was sentenced to probation by the Honorable Richard Gadbois after he had a "long conversation with Mr. Martin."(RT 5.)[82]

While on probation, Garrett was arrested for carrying a concealed firearm [PC § 12025] and **carrying a loaded firearm in a public place** [§ 12031]. On October 13, 1982, the case was disposed of as a misdemeanor and he was sentenced again to probation. (Case No. M177556.)[83]

On March 19, 1983, to collect on his unpaid gambling winnings, Garrett **shot his bookie in the chest** with a .38 revolver while the victim was parked in his car. The victim returned fire and Garrett was shot in the shoulder and elbow. The victim survived but informed the probation officer that a bullet in his shoulder could not be removed and that he continued to suffer much pain. Though Garrett was charged with attempted

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[81] Exhibit 34, p.13 [377].

[82] See "Probation" transcript for September 9, 1981, for James and Ester Garrett, in Case No. A342090, p. 6 [448] attached as Exhibit 41.

[83] See Criminal History in Probation Report for Garrett, Case No. KA002730, p. 4 [455] attached as Exhibit 42.

murder he was allowed to plead guilty to assault with a deadly weapon. The probation officer wrote:

> In considering the nature and sophistication of the defendant's involvement in his two prior felony criminal matters, it is quite apparent that he is quite criminally oriented. Although the defendant was shown much consideration by being granted a formal probation in each of his criminal offenses, he subsequently exploited the trust placed in him by the court by failing to report on these grants of probation. As a result of his irresponsible behavior, the defendant had two outstanding warrants for his arrest at the time of his arrest in this matter. In his statement to the probation officer, the **defendant attempted to totally exonerate his violent behavior** by alleging that it was the victim who initiated the assault upon him. Further, the defendant, **candidly admitted the fact that for the past several years he has armed himself with a weapon** because of his need for protection. Because of the nature of his statement, the **defendant exhibited no remorse or concern about the plight of the victim.** Judging from the victim's

remarks about his injuries, it can be assumed that he will suffer permanent injury throughout his life because of the **defendant's violent behavior**.[84]

In considering the defendant's criminal arrest record and the above aggravating circumstances, it is apparent that the **defendant's presence within the community constitutes a serious danger to others**.[85]

On November 11, 1983, Garrett was sentenced to 5 years in state prison.[86] According to a subsequent probation report, however, he appears to have served no more than 2 years before being paroled. He was returned to prison in March 1986, after violating parole and was reparoled in April 1989.[87]

On April 8, 1989, he was arrested for being under the influence in San Bernardino. Case No. 8904330578. The disposition is unknown.[88]

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[84] See November 1983, probation report for James Garrett in Case No. A904142, pp. 11-12 [472-473] attached as Exhibit 43 (emphasis added).

[85] Exhibit 43, pp. 12-13 [473-474] (emphasis added).

[86] See "State Prison" transcript in Case No. A904142, p.3 [478], attached as Exhibit 44.

[87] See probation report for James Garrett in Case NO. KA005712, p.4 [484], attached as Exhibit 45.

[88] Exhibit 45, p.4 [484].

On November 12, 1989, Garrett was again arrested for carrying a concealed weapon and a **loaded firearm in a public place**. (Case No. 89M00502). He was sentenced to 10 days in jail.[89]

On May 15, 1990, he was arrested in West Covina for a minor traffic violation and sentenced to probation. (Case No. 90M01999.)

On December 17, 1990, Garrett was charged with three counts of armed robbery.[90] He entered the Pomona Valley Credit Union on West Holt in Pomona dressed as a UPS driver. After asking for the manager, "he **pulled a gun**" on her and demanded to be taken to the safe. After finding there was only coin in the safe, he ordered the tellers "**at gunpoint**," to open the cash drawers. During the robbery, he **shot teller Elizabeth Simpson** in the hand. Garrett left with more than six thousand dollars.[91] Simpson needed the care of a psychologist and the credit union lost three employees.[92]

> The present offense is a **daring professional style robbery during which the defendant threatened the lives of numerous employees of the credit union and wounded one victim** ....¶ The defendant was on parole at the time of his

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[89] Exhibit 45, p.4 [484].

[90] See Information and Amended Information in Case No. KA002730, attached as Exhibit 46 [486-489].

[91] Exhibit 42 [453] (emphasis added).

[92] Exhibit 42 [453].

> involvement in the present offense, having been previously convicted of assault with a deadly weapon and receiving stolen property offenses, both of which were aggravated crimes ... defendant is a **professional criminal, and ... represents a significant threat to the public safety and welfare**.[93]

As discussed above, in 1990, Garrett was arrested for the armed robbery of an El Monte credit union.[94] (Case No. KA005712.)

Court proceedings were suspended for some time in both these cases because Garrett lost his ability to speak after suffering several strokes.[95] On February 11, 1992, Garrett was determined to be competent to stand trial.[96]

On November 10, 1992, James Garrett pled guilty to four counts of armed robbery. Despite having shot a bank teller in the hand, terrifying other employees, and taking thousands of dollars, not to mention

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[93] Exhibit 42 [459] (emphasis added).

[94] See Transcript of Preliminary Hearing, in Case No. KA005712, pp. 4, 9-10 [493, 498-499], attached as Exhibit 47.

[95] See January 30, 1991, letter from John M. Mead, M.D. to Honorable Robert Gustaveson, and February 4, 1991, letter from Kaushal K. Sharma, M.D., to Honorable Robert Gustaveson, re James Paul Garrett in Case Nos. KA005712 and KA002730, attached as Exhibits 48 [408-509] and 49 [510-512], respectively.

[96] See Certification of Mental Competence Section 1372 Penal Code, in People v. James Garrett, Case Nos. KA005712 and KA002730, attached as Exhibit 50 [513].

an already considerable prior record, Garrett was sentenced to only 2 years imprisonment on all counts to run concurrent. He was ordered released forthwith for time already served.[97]

Garrett died on August 13, 1996, of a heart attack. The death certificate also states that he suffered coronary artery disease and severe gastrointestinal bleeding.[98] It is presently unknown what criminal activities Garrett committed between 1992 and 1996.

The District Attorney will no doubt insist that Garrett was never promised he would be given a license to go on committing violent crimes and get away with it because he testified against Mr. Williams. However, the District Attorney – and Garrett – both knew that he could continue to call in favors for the rest of his criminal career. A training memorandum written by Los Angeles DDA Elliot Alhadeff cautions prosecutors that informants must be kept happy long after they have left the witness stand.

> If you alienate the informant you run the risk of his recanting the testimony you agreed to use ....So, nurse the witness. This does not mean you have to cave in .... but the witness

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[97] See Abstract of Judgment in Case Nos. KA002730 and KA005712, attached as Exhibit 51 [514-515].

[98] See County of San Bernardino death certificate for James Paul Garrett, attached as Exhibit 52 [516-517].

should be confident you will be there to take care of the important requests.[99]

7. THE PROSECUTION FAILED TO DISCLOSE THAT ALFRED COWARD WAS NOT A UNITED STATES CITIZEN AND THAT HE HAD THREE PRIOR PROSECUTIONS FOR ARMED ROBBERY AND/OR WEAPONS VIOLATIONS

At the time of Mr. Williams' trial in 1981, the prosecution failed to disclose that Alfred Coward was not a United States Citizen. Because he already had a lengthy arrest record for guns and robbery (also undisclosed), his fear of being deported was another incentive to testify falsely against Mr. Williams.

A probation report in 1974, obtained by post-conviction counsel, states that Coward was born in St. Johns, Canada, and that he

[99] See Alhadeff, "Use of Jail House Informants," ¶ 25, p.11[529] [written sometime in the 1980s and disclosed during the wake of the jailhouse informant scandal], attached as Exhibit 53. Garrett's lifetime pass to commit violent crimes but spend little time in prison is a tragic example of prosecutors using winking and nodding to get around Brady and Giglio. (*See e.g.* Campbell v. Reed (4th Cir. 1979) 594 F.2d 4; Willhoite v. Vasquez (9th Cir. 1990) 921 F.2d 247; and Randolph v. State of California (9th Cir.

moved to Los Angeles from Canada, in 1958, when he would have been 3 years old.[100] A probation report from 1990, obtained by post-conviction counsel, states that his "Alien Registration Number is ALL751854."[101]

Today, Coward is a prisoner at the Joyceville Institution in Ontario, Canada, Prison No. 276539E, serving a seven year sentence for manslaughter and robbery. According to Ottowa, Ontario Superior Court of Justice records, he robbed and killed Alfred Racicot on December 12, 1999.[102] Coward punched Racicot from behind. Mr. Racicot fell and hit his head, went into a coma, and died the next day.[103]

Coward is the only witness apart from James Garrett linking Mr. Williams to the 7-11 murder and he was given immunity for his claimed role in capital murder. DDA Martin conceded that "corroboration"

2004) 380 F.3d 133, for examples of winking and nodding to avoid constitutional obligations.)

[100] See August 29, 1974, probation report of Alfred Reginald Coward in Case No. A306026, p.1 [534], attached as Exhibit 54.

[101] See October 19, 1990, probation report in Case No. BA026000, p.8 [551], attached as Exhibit 55. An alien registration number has an "A" followed by eight digits. The number may be A1175184.

[102] See Crown v. Alfred Coward, Court File No. 00-G19295, docket and indictment, attached as Exhibit 56 [556-561].

[103] *See* Declaration of Carmela Floro, attached as Exhibit 57 [562-563].

for Coward's testimony was "thin,"[104] but insisted that Coward was not armed.

> **Because Coward did not have a weapon,** did not receive any money from the crime, was the least culpable of the four participants, and was willing to testify for the People if granted immunity, approval was obtained pursuant to P.C. Section 1324.[105]

DDA Martin failed to inform his superiors and Mr. Williams that by that point in time, Coward already had a considerable criminal record involving armed robbery and loaded weapons. Had Martin been candid with his superiors he would have had a hard time convincing them that Coward was not armed at the 7-11 and/or that he should be granted immunity.

In 1971, at the age of 16, Coward, who was born on January 24, 1955, was arrested for armed robbery. The probation officer noted that he was "gang oriented" and "totally beyond the control of his mother or anyone else." He was placed in several boys homes and returned to his mother after completing juvenile probation.[106]

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[104] See June 1, 1979, memorandum from Robert Martin to Stephen Trott through Michael Genelin, re People v. Stanley Williams and Tony L. Sims, Case No. A194636, p. 2 [565], attached as Exhibit 58.

[105] Exhibit 58, p. 2 [565], emphasis added.

[106] Exhibit 54, pp. 2-4 [535-537].

On August 26, 1973, no longer a juvenile, Coward was arrested for carrying a loaded firearm in a public place. On November 29, 1973, he was placed on probation. (Case No. M-86583.)[107]

On March 17, 1974, Coward was arrested for armed robbery. DDA Martin failed to inform his superiors and Mr. Williams that Coward had pulled a gun on Jarvis White, a former classmate, and demanded 50 cents.[108] Even more significant, Martin failed to inform his superiors and Mr. Williams that this armed robbery took place at **104th and Vermont**, which is the location of the Yang family motel. [109]

Coward was allowed to plead guilty to a lesser offense of grand theft person and placed on misdemeanor probation.[110] This disposition was contrary to the probation officer's recommendation that he be sent to the Youth Authority to "impress" him "with the **seriousness of possessing and using weapons** in the community."[111]

> The probation officer is highly disturbed by the nature of the defendant's recent activities and the fact that **this is the**

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[107] Exhibit 54, p. 4 [537].

[108] See April 15, 1974, Preliminary Hearing Transcript in Case No. A306026 (RT 5-6) [574-575], attached as Exhibit 59.

[109] Exhibit 54, p.5 [538]; Exhibit 59 (RT 9) [577].

[110] Exhibit 55, p.4 [547] .

[111] Exhibit 54, p.9 [542] (emphasis added).

> **defendant's second offense in a one-year period involving the use or possession of a weapon.** The defendant is presently in direct **violation of his active probation which requires the defendant not to own or possess any gun or firearms**.[112]

Coward subsequently violated probation for numerous arrests: (1) On April 27, 1975, for possession of drugs;[113] (2) on May 21, 1975 for disturbing the peace (Case No. M 14838);[114] (3) on April 2, 1976, for grand theft auto;[115] and (4) on May 4, 1976, for burglary (Case No. M 13091).[116] These cases resulted in little jail time or dismissals.[117]

After being admonished for the probation violations, Coward eventually completed probation and the case was dismissed on February 5, 1979, less three weeks before the 7-11 robbery murder of Albert Owens.[118]

The grant of immunity to Alfred Coward after he admitted having committed capital murder not only resulted in Mr. Williams'

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[112] Exhibit 54, p.9 [542] (emphasis added).

[113] See June 7, 1976, probation report, Alfred Coward, Case No. A306026, p.3 [586], attached as Exhibit 60.

[114] Exhibit 55, p.4 [547]

[115] Exhibit 60, p.3 [586].

[116] Exhibit 60, p.3 [586]

[117] Exhibits 55, pp. 4-5 [547-548], 60 p.4 [587].

[118] See Petition and Order under PC 1203.4 or PC 1203.4a, filed February 5, 1979 [589], attached as Exhibit 61.

wrongful conviction, but permitted Coward (like James Garrett) to continue to prey upon the innocent and unsuspecting public and get away with it.

On December 17, 1984, Coward was convicted of federal conspiracy and given five years probation. Coward and others were involved in a scheme to steal student loan checks and sell them.[119]

On June 9, 1989, Coward was arrested for possession of narcotics for sale. The District Attorney declined to file charges.[120] On July 11, 19

On May 16, 1990, Coward was arrested for receiving stolen property. Again the District Attorney declined to file charges.[122]

In October 1990, Coward was charged with burglary and pled guilty. [123] The probation officer recommended state prison, noting that Coward,

> has a criminal history dating back several years. His various periods of incarceration on the county and federal level have had little effect in changing his life style. He recently completed a five year federal probation grant and then became involved in this present matter. ¶ It is apparent that

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[119] Exhibit 55, pp. 4-5 [547-548]

[120] Exhibit 55, p.5 [548].

[121] Exhibit 55, p.5 [548].

[122] Exhibit 55, p.5 [548].

[123] Exhibit 55, p.1 [544].

> the defendant has no respect for the rights and property of other people. His criminal behavior goes on unabated.[124]

Despite the probation officer's recommendation, on October 29, 1990, Coward was placed on probation by the agreement of the District Attorney.[125] Upon his return to Canada, Coward robbed and killed again.

8. THE PROSECUTION FAILED TO DISCLOSE THAT AFTER COLEMAN WAS SEVERELY BEATEN BY THE POLICE IT WAS THE DISTRICT ATTORNEY WHO OFFERED HIM IMMUNITY AND MAY HAVE CHOSEN HIS LAWYER

According to DDA Martin, Samuel Coleman was given immunity at the insistence of an attorney he had retained. At the preliminary hearing on April 18, 1979, just prior to his testimony, DDA Martin informed the court that Coleman had waived his right to a hearing under Penal Code section 1324, in the presence of his attorney Walter

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[124] Exhibit 55, p.10 [553].

[125] See Guilty Plea; Probation Transcript in Case No. BA 02600 (RT 7) [596], attached as Exhibit 62.

Gordon. The immunity order was signed by the Honorable Burch Donahue on April 17, 1979.[126] (CT 106.)[127]

Prior to Coleman's testimony at Mr. Williams' trial on February 11, 1981, DDA Martin told defense counsel that Coleman had never been charged with anything but he had been given immunity at the insistence of his attorney, Walter Gordon. (RT 1550-1551 [1347-1348].) When defense counsel said that he "could not envision that he would be granted immunity to testify in this case unless he were charged with something having to do with this case, DDA Martin replied, "We've turned over all the discovery to you counsel. ¶ Have you ever found anything that would indicate that Samuel Coleman was ever charged with anything?" (RT 1551 [1348].)

In 1994, Coleman declared that after being arrested he was so severely beaten by the police he lost consciousness. Two of his ribs were broken. While still in police custody he was visited by someone from the District Attorney's Office who offered him immunity to testify against Mr.

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[126] The undersigned does not have a copy of Coleman's immunity papers.

[127] Samuel Coleman's preliminary hearing testimony is attached as Exhibit 89 [1337-1345].

Williams.[128] Coleman feared that if he did not testify the way the police wanted him to he faced a lifetime of beatings, detentions on the street, and harassment by the police.[129]

The Ninth Circuit Court of Appeals held that Coleman's testimony was not coerced because of the passage of time between the beating and the trial and because he was represented by counsel. (Williams v. Woodford (9th Cir. 2002) 384 F.3d at p. 595.) "With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court." (Ibid, citing Cooper v. Dupnik, 963 F.2d 1220, 1240 (9th Cir. 1992) (en banc).

The Ninth Circuit also said that "the record does not indicate that Coleman's attorney objected to coercive practices by the state at trial or in the negotiations regarding Coleman's immunity." (Williams v. Woodford, *supra*, 384 F.3d at p. 595.) That a lawyer would fail to complain about his client having been severely beaten by the police is an indication that Coleman did not trust the lawyer to confide in him and/or the lawyer was in the pocket of the prosecution. That Coleman's lawyer

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[128] See March 23, 1994, Declaration of Samuel Coleman Declaration, ¶¶ 3-4 [599-600] attached as Exhibit 63.

[129] Coleman Declaration, ¶ 7 [600-601], Exhibit 63.

did not object is most likely because it was the District Attorney's Office that arranged for his lawyer.

It is highly unlikely that a young man in Coleman's situation would have had the resources and wherewithal to retain an attorney.[130] His lawyer, Walter Gordon (State Bar No. 15769) was the father of the lawyer who had been representing Ester Garrett in her pending receiving stolen property case, Walter Gordon III[131] (State Bar No. 59019). This is the case where both James and Ester were acting as police informants. As the lawyer for one of DDA Martin's informants, Walter Gordon III may well have suggested to the prosecution that his father handle Coleman's representation. It is customary for prosecutors to hand pick lawyers to represent their informants. Moreover, it is highly unlikely that Coleman would have coincidentally retained the father of the lawyer representing Ester Garrett.

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[130] In his own criminal prosecutions, Coleman was always represented by court appointed counsel. See 1979, municipal court docket sheet for Case No. 3112361, attached as Exhibit 64 [602], and face sheet to Probation hearing transcript, Samuel Coleman, Case Nos. BA025370, A964364, and A973019, attached as Exhibit 65 [603].

[131] See Exhibit 41, p.1 [443] (sentencing hearing for A342090, 9/9/81, "Ester Garrett with her attorney Walter Gordon, III.") Walter Gordon III also represented Ester Garrett at the preliminary hearing on May 30, 1978, Exhibit 66 [604].

Although Coleman does not appear to have been a dangerous and/or violent individual like James Garrett and Alfred Coward, he continued to have problems with the law. He, too, continued to be treated in an extraordinarily lenient fashion by the justice system.

In 1980, Coleman was arrested on an unrelated drug charge. Because the police knew that he was slated to testify against Mr. Williams he was not beaten again and was given a diversionary sentence.[132]

In February 1988, Coleman was arrested during a traffic stop and charged with possession of rock cocaine (HS § 11350(a). (Case No. A964364.) In July 1988, he was arrested after officers saw him drop a plastic baggie resembling rock cocaine. (Case No. A973019). Coleman admitted to the probation officer that he had been using cocaine for three to four years and desired help.[133] He was placed on probation and ordered to submit to drug testing.

Coleman violated his probation, however, with dirty tests and a new arrest for being a felon in possession of a firearm. (Case No. BA025370.) Coleman had been arrested after a bystander flagged down a police officer and said someone was shooting in front of a nearby bar.

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[132] Coleman Declaration ¶ 7 [600-601], Exhibit 63.

[133] See September 1988, probation report for Samuel Coleman in Case Nos. A964364 and A973019, pp.5, 8 [609, 612], attached as Exhibit 67.

Officers found Coleman inside the bar with a .38.[134] After admitting being in violation of probation on the two earlier cases, he pled guilty and was placed on probation with the agreement of the District Attorney. (RT 11,15-16.)[135]

In September 1991, the probation officer found he had violated his probation twice in five months for failing to report and for missing his drug counseling sessions.[136] On October 2, 1992, at the probation revocation hearing, Coleman was continued on probation. As a condition, he was given 66 days in the county jail and ordered to report to a residential treatment program.[137] It is unknown whether Coleman's drug treatment was successful.

9. FORCIBLE DRUGGING OF INMATES WITH POWERFUL TRANQUILIZERS TO CONTROL THEM

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[134] See October 1990, probation report for Samuel Coleman in Case Nos. BA025370, A964364 and A973019, pp. 2 [617], attached as Exhibit 69.

[135] See October 18, 1990, Sentencing Transcript for Case Nos. BA025370, A964364 and A973019, 4-5 [619-620], attached as Exhibit 68.

[136] See August 1991, probation officer's report in Case No. BA025370, A964364, and A973019, p. 4 [647], attached as Exhibit 70.

[137] See Transcript of Probation Modification Hearing in Case Nos. BA025370, A964364, and A973019, pp. 2, 5-6 [651, 654-655], attached as Exhibit 71.

TOOK PLACE AT THE LOS ANGELES COUNTY JAIL IN 1979-1981

In his memoirs, Mr. Williams seeks all medical and psychiatric records regarding the involuntary drugging that he was subjected to at the Los Angeles County Jail from 1979 to 1981. Thus far, the county has claimed that Mr. Williams' records no longer exist. If such records really have been destroyed, Mr. Williams seeks information regarding the date of destruction of these records.[138]

Mr. Williams also seeks the names, business addresses and telephone numbers of all county personnel (Sheriff's Department and/or Department of Mental Health), whether civilian staff or sworn officers, who

[138] The Sheriff's Department has stated that his medical records were routinely destroyed after 7 years. None of Mr. Williams medical, psychiatric, or medication records from 1979 to 1981, have ever been produced despite numerous requests through subpoenas and/or the Public Records Act. It is unusual for the county jail medical/psychiatric/medication records not to be sent to San Quentin Prison when an inmate has been sentenced to death in Los Angeles. Moreover, medical records for other death row inmates who were housed in the county jail at the same time as Mr. Williams were retained long after 7 years. See October 20, 2005, Declaration of Renee Manes [659-660]; October 21, 2005, Declaration of Margo Rocconi [661-665]; March 13, 1996, Declaration of Jamilla Moore [666-667]; December 28, 1992 Letter from Jacqueline Porche, Medical Records, Department of Mental Health to California Appellate Project [668]; and March 26, 1998, letter from James M. Owens to Emilio Varanini, Deputy Attorney General [669], attached as Exhibits 72-76, respectively.

worked at the county jail from 1979 and 1981, and who authorized, participated in, and/or were aware of the involuntary/forced medication of Mr. Williams.

a. Mr. Williams' Memoirs of Being Drugged

In his memoirs, Mr. Williams recounts being drugged by county jail personnel, the effects of which took many years to wear off. When he was first locked up in the county jail, he was a gang member facing four counts of capital murder, and no doubt his "enormous size from pumping iron" was intimidating. (Blue Rage, Black Redemption, p.205.)[139] Mr. Williams soon found objects in his food, from thumb tacks, to clumps of hair, to broken glass. He responded by throwing objects and spitting on the officers. (Id. at p.207.)

On one occasion when he was handcuffed the deputy "found it amusing to use undue force by twisting my wrist." (Ibid.) When the cell door was opened, Mr. Williams broke out of his handcuffs and dashed at the deputy who managed to slam the cell door shut. Mr. Williams braced himself for corporal punishment, and was surprised that this did not

happen. His dinnertime "meal had been spiked with a tranquilizer that knocked me out cold." (Id. at p. 208.) When he regained consciousness he found himself in "five points," "harnessed to a steel bunk with leather straps.

> Each strap is positioned at one of the four corners, or points of the bed, to secure both writs and both ankles. The longer, thicker wider fifth strap extending from the middle point of the bunk is wrapped around the upper torso. (Ibid.)

From that point on, whenever he was moved from his cell to the medical unit he was drugged. (Ibid.)

He was forcibly administered tranquilizers when in five points. Other times the tranquilizers would be disguised as part of his high blood pressure medication. (Ibid.) The nurse would check to see if he had swallowed everything and he felt obliged to take the medication. (Ibid.) "The violence done to [his] mind was far worse." (Id. at p. 209.)

> Its effect would be to suspend me in oblivion for days. Even when I awakened, there was no way to banish the experience from my mind because of the lingering after-effects; drowsiness, poor coordination, slurred speech and general mental confusion. (Id. at p.209.)

Mr. Williams tried to avoid these chemical onslaughts by refusing to eat the jail food and trying to subsist on candy bars. He also

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[139] See Williams, "Blue Rage, Black Redemption," Chapters 25 ["The Longest Day"]; 26 ["A Rage of Another Kind"]; and 27 ["The Missing Years"], pp. 197-211, 228-239 [670-686], attached as Exhibit 77.

informed his defense attorneys that he was being drugged, to no avail. (Ibid.) "The most frightening reality of being forcibly drugged is that no one was trying to revive me from my coma-like state .... It was a living death." (Id. at p. 209.) These tranquilizers were far more powerful than street drugs such as PCP. "It was like being buried alive." (Id. at p. 210.)

> [I]n the courtroom I felt as weak as a lamb, physically defenseless, in chains and with no control over what was being done to me. My reasons for feeling mentally defenseless were twofold; my mind was unstable due to the 'therapeutic' druggings I was enduring .... I was reduced to marionette status, nodding my head if and when an attorney suggested it, though I comprehended absolutely nothing. (Id. at p. 211.)

b. The Judge, a Juror, and His Mother Thought Mr. Williams Was Spaced Out During Pretrial Detention and the Trial

During pretrial proceedings the judge observed that Mr. Williams did not respond to his question. He asked Mr. Williams' stepfather if he got:

> into these moods frequently, Mr. Holiwell, where he won't speak ... I am aware that at least he's alert and looking at me. And he's not choosing to respond to my words. But I can't say he's understanding what I say. (RT A-15 [692].)[140]

(Williams v. Woodford, *supra*, 384 F.3d at p.604.) After Mr. Holiwell said that he had abused PCP in the past, the court ordered a psychiatric evaluation but did not hold a competency hearing. The psychiatrist "conducted only a limited interview with Williams." (Id at p. 605)

Juror Sherry Wiseman stated that she remembered Mr. Williams very clearly and that:

> his demeanor was in sharp contrast to his size. He reminded me of a child. He played with his fingers and hands throughout the trial" and "seemed 'spaced out' and not all there. He looked to me as if he was on drugs ....He seemed oblivious to what was going on and in another world.[141]

Sheriff's deputies informed Ms. Wiseman that they would give him "sugar to calm him down" and "gave him cookies to keep him on an even keel." (¶ 4.)

Mr. Williams' mother, Ceola Williams, stated that she would visit her son two to three times a week at the county jail.

> The person I saw was not the son that I knew. He was dazed and confused, and on several occasions, did not recognize me or my husband Fred Holiwell. Mentally, he was far, far away. Often he was unable to answer even simple questions

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[140] Attached as Exhibit 78 [687-694].

[141] See July 10, 1993, Declaration of Sherry Wiseman, ¶ 2, [695], attached as Exhibit 79.

> such as 'how are you?', seeming not to understand. When he would answer, he would often lose his train of thought before finishing. He had no idea why he was in jail and at times seemed even unaware that he was in jail.[142]

c. The State's Psychiatrist Conceded that County Jail Inmates Are Given "High Doses of Tranquilizers" that are "Not Clinically Mandatory"

Psychiatrist Ronald A. Markman, M.D., who evaluated Mr. Williams for the Attorney General, conceded in a declaration in 1998, that jail authorities administer powerful tranquilizers that are "not clinically mandatory."

> [I]t is my understanding that the general practice of medical personnel in the County Jail is to **withhold on trial days**[143] **any medications that are not clinically mandatory that might affect a defendant's level of function or conscious awareness. High doses of tranquilizers, if administered, could have slowed his thought processes and analytic**

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[142] See Declaration of Ceola Williams, ¶ 13 [699-700], attached as Exhibit 80.

[143] As a psychiatrist, Markman was certainly aware that even if Mr. Williams had not been given any medication on the trial day, the lingering effects of such drugs would already have taken their toll on his mental alertness.

> **thinking**, but there would certainly have been overt signs of somnolence easily observable by untrained personnel[144]

As to Mr. Williams, however, Markman was unable to "enter a definitive opinion to a reasonable degree of medical certainty" because Mr. Williams could not tell him "what medications were administered"and his medical records were unavailable.[145]

d. The Chemical Straightjacket

In 1979 to 1981 (and perhaps today), it was not unusual for prisons and jails to use powerful psychotropic medication as a type of chemical straightjacket. "Chemical solitary confinement is today the most common mode of treatment of the mentally ill .... It is also used as a straightjacket for the sane and healthy children and adults in correctional

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[144] See May 21, 1998, declaration of Ronald Markman, ¶ 1-3, and 35 [701-703], attached as Exhibit 81 (emphasis added). By submitting Dr. Markman's declaration, the State was on notice that involuntary drugging of inmates with powerful tranquilizers at the county jail was a routine practice and was obliged under Brady principles to provide any and all information concerning these practices. The alleged loss or destruction of Mr. Williams' 1979-1981, jail medical/psychiatric/medication records is highly suspect and is a bad fath failure to preserve evidence that allowed the prosecutor to unfairly manipulate the trial. See *infra*.

[145] Exhibit 81, ¶ 35, p.16. [702-703]

facilities." (Richard Hughes and Robert Brewin, The Tranquilizing of America: Pill Popping and the American Way of Life, 1979, p 142.)[146]

> [M]any correctional officers and administrators 'are all too thankful for the supportive custodial role psychotherapeutic drugs play' in keeping children in line and costs down. The phenothiazines, of which the tranquilizer Thorazine, or chlorpromazine, is the most common, were being used," not "for the control of disturbed psychotic persons but, more often than not, to minimize fighting, running away, and general misbehaving, as well as for punishing and controlling. (Id. at pp. 142-143, citation omitted.)
>
> The potent tranquilizing drugs – Thorazine, Mellaril, Stelazine, Prolixin, Serentil, Triavil, Vesperin, and Haldol, to name the more common ones – unquestionably are effective in controlling behavior. When used on a large population of institutionalized persons, as they are, they can help keep the house in order with the minimum program of activities and rehabilitation and the minimum number of attendants, aides, nurses, and doctors. (Id. at p. 157.)

e. The California State Assembly Found that Forced Drugging to Control Inmates was a Widespread Problem in Prisons and Jails

In 1976, the California State Assembly, Select Committee on Corrections held hearings and produced a report entitled, "An Investigation

[146] See Richard Hughes and Robert Brewin, The Tranquilizing of America: Pill Popping and the American Way of Life, 1979, Chapter 6,

into the Practice of Forced Drugging/Medication in California's Detention Facilities"("Assembly Report")[147] The State Assembly found that "Forced drugging is a widespread phenomena affecting state prisons, major county jail facilities as well as local juvenile detention centers. (Assembly Report at p. 4(a) [726].)

> Major tranquilizers have been employed for extended periods of time, greatly exceeding recommended time limitations fo use .... ¶ .... **Forced drugging/medication is being utilized as an indirect threat to the general prison population as a form of management control**. i.e. resident [sic] displaying a non-conforming type of behavior may be subjected to forced drugging/medication. (Id. at p. 5(a) [727], emphasis added.)
>
> In some instances there is a possibility that **forced drugging/medication has been employed solely as a form of management control**. (Id. at p. 7(a) [729], emphasis added.)

The State Assembly found that powerful tranquilizers were being administered involuntarily and surreptitiously. "Few, if any, residents and former residents on forced drugging/medication were ever told the reasons for being placed on the drug or medication, or the ramifications of the use of the particular drug or medication." (Id. at p. 6(a) [728].).

"Chemical Solitary Confinement," pp. 142-161 [706-715], attached as Exhibit 82.

[147] A copy of the Assembly Report is attached as Exhibit 83 [716-857].

The State Assembly recommended that "psychiatric medication should never be given in a covert or disguised fashion," the inmate should have the right to his own psychological records, and that "there should be no retaliation carried out by prison authorities on any resident who refuses to take medication." (Id. at p. 10(a) [732].)

Psychiatrist, Dr. Lee Coleman testified before the State Assembly that dangerous and powerful psychotropic medication was routinely administered "in virtually every institution" as "policy." (Id. at p.42 [778].) Drugs were given to inmates without a psychiatric diagnosis but as a form of control. (Id. at p. 23, 35 [759, 771].)

> Dr. Coleman: [If an inmate is a] **problem in the prison for one reason or another, the heavy tranquilizers get used as agents of control, there just isn't any question about it**. Thorazine, Stelazine, Mellaril, and of course, the wonder drug of them all all Prolixin because you can inject it and you only have to go back two or three weeks later to inject it again. You know the **psychiatric and drug professions are proud of this. They advertise the advantages of certain drugs**. For example some of the liquid forms, they advertise how **convenient they are because they can be placed into the client's food or the prisoner's food and they won't know it. You don't taste it, you don't smell it and so you avoid any problems of hassling with the person**. So the way it happens is one of those methods. **You get that label put on you, you're considered to be troublesome in some way ... then you get put on a variety of medications** and if the result is not what they want then they juggle them. You know they will try you on Thorazine and then they increase that and then they drop that and try Polixin or Stelazine and so forth and so on. (Id. at p. 35 [771], emphasis added.)

Chairman Alatorre: ....Another area that troubles me is the fact that **I could be eating and drugs could be put in my food** .... (Id. at p. 35 [771], emphasis added.)

Dr. Coleman: ... They can **put it in juice**, that is a very common form, you see what typically happens is that they put you on pills, they don't particularly want to give everybody shots because that is just a lot of work. They will put you on pills, Thorazine, Stelazine, Prolixin or something like that, **if you don't take it, or you're troublesome, if you check [sic] it, or you try to spit it out, put in the toilet, throw it away or something, they will start giving you the concentrate because they can stand there and watch and they can insist that you open your mouth and if you don't have any liquid in your mouth they know that you have taken it. If you refuse to do that, then you can get the shot of Prolixin which lasts for a couple of weeks and you're chemically controlled for that period of time**. (Id. at pp. 36-37 [772-773], emphasis added.)

f. Involuntary Medication Violates the Due Process Clause

A prisoner has a "liberty interest in the unwanted administration of antipsychotic drugs under the Due Process Clause of the Fourteenth Amendment." (Washington v. Harper (1990) 494 U.S. 210, 222.)

Psychotropic (or antipsychotic) drugs [these include thorazine, prolixin, stelazine, serentil, quide, tindal, compazine, trilafon, repose, mellaril, tractan, navane, haldol,

> moban, and vesprin] have become a primary tool of public mental health professionals ....They also possess a remarkable potential for **undermining individual will and self-direction, thereby producing a psychological state of unusual receptiveness to the directions of custodians**. (Keyhea v. Rushen (1986) 178 Cal.App.3d 526, 530 and fn.1, citations omitted, emphasis added.)

> The drugs also, however, have many **serious side effects**. Reversible side effects include akathesia (a distressing urge to move), akinesia (a reduced capacity for spontoneity), speudo-Parkinsonism (causing retarded muscle movements, masked facial expression, body rigidity, tremor, and a shuffling gait), and various other complications such as muscle spasms, blurred vision, dry mouth ..... and, on rare occasions, sudden death. A potentially permanent side effect of long-term exposure, for which there is no cure, is tardive diskenesia, a neurological disorder manifested by involuntary, rhythmic, and grotesque movements of the face, mouth, tongue, jaw, and extremities. (Keyhea v. Rushen, *supra*, 178 Cal.App.3d at p.530, emphasis added.)

> The demeanor often associated with mental illness – shuffling gait, rigid body movements, restlessness, and staring – may be caused by medication rather than by the illness itself. (Keyhea v. Rushen, *supra*, 178 Cal.App.3d at p.530, n.2.)

"Involuntary medication with antipsychotic drugs poses a serious threat to a defendant's right to a fair trial." (Riggins v. Nevada (1992) 504 U.S. 127, 138, Kennedy, J., concurring.) "[A]bsent an extraordinary showing by the State, the Due Process Clause prohibits prosecuting officials from administering antipsychotic medicines...." (Ibid.)

> When the State commands **medication during the pretrial and trial phases of the case for the avowed purpose of**

> **changing the defendant's behavior, the concerns are much the same as if it were alleged that the prosecution had manipulated material evidence**. (Riggins v. Nevada, *supra*, 504 U.S. at p. 138, Kennedy, J., concurring, citing Brady v. Maryland, *supra*, 373 U.S. at p. 87 ["suppression by the prosecution of material evidence favorable to the accused violates due process"] and Arizona v. Youngblood (1988) 488 U.S. 51, 58 ["bad faith failure to preserve potentially useful evidence constitutes a due process violation."] emphasis added.)

In Sell v. United States (2003) 539 U.S. 166, the United States Supreme Court reversed a lower court order approving involuntary medication of a defendant to render him competent to stand trial. The "involuntary administration of drugs solely for trial competence purposes" would be justified in only "rare" instances. (Id. at p. 180.)

Of course, in Mr. Williams' case, the State failed to seek any permission before administering powerful psychotropic medication, failed to disclose that they were doing so, and suppressed his medical/ psychiatric/ medication records so that he could not prove this was being done to him.

g. Involuntary Drugging Affects Issues of Competency to Stand Trial and Manipulation by Jailhouse Informant Ogelsby

It is indisputable that "[c]ompetence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial." (Drope v. Missouri (1975) 420 U.S. 162, 171-172.) A defendant is incompetent unless he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." (Cooper v. Oklahoma (1999) 51 U.S. 348, 354, citing Dusky v. United States (1960) 362 U.S. 402)

Mr. Williams' competency to stand trial while being forcibly drugged relates to Samuel Coleman's beating. One of the reasons that the Ninth Circuit gave for finding Samuel Coleman's testimony not to be coerced, was the fact that Mr. Williams knew that Coleman had been beaten. "Thus, defense counsel might have cross-examined Coleman about the coercive police tactics employed at his 1979 interrogation." (Williams v. Woodford, *supra*, 384 F.3d at p. 596.) In his memoirs, Mr. Williams does recall Coleman's beating in the jail after the two had been arrested.[148]

The fact that Mr. Ingber did not cross-examine Coleman about the beating demonstrates that Mr. Williams was not in a state of mind to assist in his defense. (Cooper v. Oklahoma, *supra*, 51 U.S. at p.354.) It is inconceivable that Mr. Williams would have failed to tell Mr. Ingber of

the beating, particularly when Coleman was on the witness stand. It is likewise inconceivable that Mr. Ingber would have failed to cross-examine Coleman about the beating had he been aware of it.

It also goes without saying that inmates who are being drugged by powerful tranquilizers are easy prey for other unscrupulous inmates. Numerous notes written by Mr. Williams to jailhouse informant Ogelsby were introduced at trial purporting to show that Mr. Williams planned an escape. However, as Mr. Williams was sedated by powerful tranquilizers Ogelsby was free to manipulate Mr. Williams who would have had no idea what was going on. A well-known *modus operandi* of jailhouse informants is to procure notes from vulnerable inmates by trickery. Recently, in Hall v. Director of Corrections (9th Cir. 2003) 343 F.3d 976, a murder conviction was overturned after the jailhouse informant confessed that he had written Hall questions to which Hall had responded in writing. The informant erased and altered the questions so that the answers appeared incriminating. (Id. at pp. 981-985.)

It matters not that county jail officials believed in their minds that Mr. Williams posed trouble due to his size and perceived reputation, and therefore needed to be sedated. County officials forcibly drugged him

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[148] Exhibit 77, pp. 201-202 [674-675]

without seeking permission from any court and then suppressed all records of having done so.

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IV. RELEVANT LAW

A. A Steele Motion May Be Filed Prior to the Filing of Any Habeas Corpus Petition in order to Obtain Discovery to Make a Prima Facie Case

Mr. Williams' clemency petition must be filed and served by 5:00 p.m. on November 8, 2005. Currently there is no habeas corpus petition pending before this Court or any other court, state or federal, on his behalf. This Court, therefore, will not entertain a motion for stay of execution. (Policy 1 (stays of execution): Supreme Court Policies Regarding Cases Arising From Judgments of Death.)

This discovery motion is properly filed to obtain evidence to aid in making a prima facie case for a habeas corpus petition. (In re Steele, *supra*, 32 Cal.4th at p. 691.)

Section 1054.9, which became law on January 1, 2003. (*See* Steele, *supra*, 32 Cal.4th at 690) provides:

> (a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be

provided reasonable access to any of the materials described in subdivision (b).

(b) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence for those purposes.

(d) The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant.

B. This Motion May Be Filed to Obtain Evidence that the Prosecution Possesses but Has Suppressed in Violation of the Constitution

1. Penal Code § 1054.9 Imposes No Time Limits

As detailed above, Mr. Williams' requests in good faith, critical evidence and information that was not disclosed by the prosecution, but should have been. (§ 1054.9 and In re Steele, *supra*, 32 Cal.4th at p.697.) It should be very easy for the prosecution to ascertain if it is still in possession of the evidence/information sought. (Id. at p. 695.) Mr. Williams was and is unable to obtain the items requested (and/or access to evidence) through Public Records Act/FOIA requests and/or independent investigation. This Court observed that "section 1054.9 provides no time limits for making the discovery motion or complying with any discovery order." (In re Steele, *supra*, 32 Cal.4th at p. 692.) Nevertheless, this Court held that the motion must be filed within a "reasonable time." (Ibid.) "We will consider any unreasonable delay in seeking discovery under this section in determining whether the underlying habeas corpus petition is timely. (Id. at 692, citing In re Robbins (1998) 18 Cal.4th 770 and In re Clark (1993) 5 Cal.4th 750.)

This Court is aware that Mr. Williams' prior counsel filed four state habeas corpus petitions. (S004365 [consolidated with automatic appeal; S008526, S011868, and S039285.) However, during the entire time that Mr. Williams case was in the state courts, he had no right to post-judgment discovery. (People v. Gonzalez (1990) 51 Cal.3d 1179.) His

motion for relevant discovery in the federal courts was denied. (Williams v. Woodford, *supra*, 384 F.3d at p. 597.)

2. The Prosecution's Brady Obligations

It is well settled that prosecutors must disclose all material impeachment evidence that casts doubt upon the credibility of its witnesses. (Brady v. Maryland (1963) 373 U.S. 83; Giglio v. United States (1972) 405 U.S. 150; United States v. Agurs (1976) 427 U.S. 97; United States v. Bagley (1985) 473 U.S. 667; Kyles v. Whitley (1995) 514 U.S. 419. "When the state relies on the testimony of a criminal informant, it has an obligation to disclose 'all information bearing on that witness's credibility." (Carriger v. Stewart (9th Cir. 1997) 132 F.3d 463, 480.)

It is also well settled that prosecutors have a **duty to look for** evidence that casts doubt on the credibility of their witnesses. (Kyles v. Whitley, *supra*, 514 U.S. 419; In re Brown (1998) 17 Cal.4th 873.) "The "responsibility for Brady compliance lies exclusively with the prosecution, including the "duty to learn of any favorable evidence known to the others

acting on the government's behalf in the case." (In re Brown, *supra*, 17 Cal.4th at p. 952, citing Kyles v. Whitley (1995) 514 U.S. 419.)

The Supreme Court emphasized that federal law has long "declined to draw a distinction" between government agencies for Brady purposes as the duty falls to the entire "prosecution team," which includes both investigative and prosecutorial personnel. (In re Brown, *supra*, 17 Cal.4th at p. 879.) "The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation. (Ibid.)

Most important, "[t]he prosecutor charged with discovery obligations cannot avoid finding out what 'the government' knows, simply by declining to make reasonable inquiry of those in a position to have relevant knowledge." (In re Brown, *supra*, 17 Cal.4th at p. 879, n.3, citing United States v. Osorio (1st Cir. 1991) 929 F.2d 753, 761.) "A prosecutor's office cannot get around Brady by keeping itself in ignorance, or compartmentalizing information about different aspects of a case." (In re Brown, *supra*, 17 Cal.4th at p. 879, citing Carey v. Duckworth (7th Cir. 1984) 738 F.2d 875, 878.) The prosecutor's duty is nondelegable, at least to the extent the prosecution remains responsible for any lapse in compliance. (In re Brown, 17 Cal.4th. at p. 881.)

> It is imortant that the prosecutors, who possess the requisite legal acumen, be charged with the task of determining which evidence constitutes Brady material that must be disclosed to the defense. A rule requiring the police to make separate, often difficult, and perhaps conflicting, disclosure decisions would create unnecessary confusion. (In re Brown, 17 Cal.4th at p. 881, *citing* Walker v. City of New York (2d Cir. 1992) 974 F.2d 293, 299.)

"The principles that Brady and its progeny embody are not abstractions or matters of technical compliance. The sole purpose is to ensure the defendant has all available exculpatory evidence to mount a defense." (In re Brown, 17 Cal.4th at p. 881, citations omitted.) The prosecutor's Brady obligations:

> serve 'to justify trust in the prosecutor as 'the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done. It also tends to preserve the criminal trial, as distinct from the prosecutor's private deliberations ... as the chosen forum for ascertaining the truth about criminal accusations. (Brown, 17 Cal.4th at p. 883.)

When it comes to informants, prosecutors must do more than disclose exculpatory information – they must fully investigate whether the exculpatory information ultimately proves these witnesses are lying to save themselves. (Commonwealth of Northern Marian Islands v. Bowie (9th Cir. 2001) 243 F.3d 1109, 1122-1123, amended, 236 F.3d 1083.) Nor can the

prosecutor blame the defense attorney for the failure of exculpatory information to come before the jury.

> The prosecution" has a "duty" to "protect the trial process against fraud ....defendants cannot waive the freestanding ethical and constitutional obligation of the prosecutor as a representative of the government to protect the integrity of the court and criminal justice system. (Bowie*, supra*, 243 F.3d at p. 1122.)
>
> **Few things are more repugnant to the constitutional expectations of our criminal justice system than covert perjury, and especially perjury that flows from a concerted effort by rewarded criminals to frame a defendant.** The ultimate mission of the system upon which we rely to protect the liberty of the accused as well as the welfare of society is to ascertain the factual truth, and to do so in a manner that comports with due process of law as defined by our **Constitution. This important mission is utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye** to the manifest potential for malevolent disinformation. (Bowie, *supra*, 243 F.3d at p. 1114, emphasis added.)
>
> The authentic majesty in our Constitution derives in large measure from the rule of law – principle and process instead of person. Conceived in the shadow of an abusive and unanswerable tyrant who rejected all authority save his own, our ancestors wisely birthed a government not of leaders, but of servants of the law. Nowhere in the Constitution or in the Declaration of Independence, nor for that matter in the Federalist or in any other writing of the Founding Fathers, can one find a single utterance that could justify a decision by any oath-beholden servant of the law to look the other way when confronted by the real possibility of being complicit in the wrongful use of false evidence to secure a conviction in court. (Bowie, *supra*, 243 F.3d at p. 1124.)

In regard to exculpatory evidence, it is important to emphasize that the prosecution's duty to disclose is not extinguished after the defendant is convicted. (People v. Gonzalez (1991) 51 Cal.3d 1179, 1260-1261, relying on Imbler v. Pachtman (1976) 424 U.S. 409, 427, fn. 25; Thomas v. Goldsmith, (9th Cir. 1992) 979 F.2d 746, 749-750; People v. Garcia (1993) 17 Cal.App.4th 1169.) The prosecution cannot profit from its own wrongdoing because it took the defense too long to catch them. (Banks v. Dretke, *supra*,540 U.S. 668.)

C. Perjured Testimony by "Snitches" Is the Leading Cause of Wrongful Convictions in Murder Cases in the United States

Given that the state's case rests on the testimony of criminal informants who had an incentive to lie, not only to obtain benefits, but to hide the truth of their involvement in these crimes, it is imperative that discovery be granted at this critical stage of Mr. Williams' case.

An exhaustive study by the Center for Wrongful Convictions at Northwestern University School of Law, concludes that "snitch

testimony is the leading cause of wrongful convictions in capital cases."[149]

The study details the cases of several men

> who were exonerated of crimes for which they were sentenced to death based in whole or part on the testimony of witnesses with incentives to lie – in the vernacular, snitches. For the most part, incentivised witnesses were jailhouse informants promised leniency in their own cases or killers with incentives to cast suspicion away from themselves." In all, there have been 111 death row exonerations since capital punishment was resumed in the 1970s. The snitch cases account for 45.9% of those. That makes snitches the leading cause of wrong convictions in U.S. Capital cases.[150]

The same is true for exonerations in non-capital murder cases.

The "leading cause of the false convictions we know about is perjury."[151]

> Because the stakes in murder cases are so high, the police invest far more resources in investigating them than they devote to other crimes of violence. That is as it should be. The main effect is that the clearance rate for murders is higher than for other crimes – killers are more likely than rapists to be caught and brought to justice. **These same high stakes, however, can also produce false evidence. The real perpetrator is at far greater risk, and far more motivated to frame an innocent person to deflect attention, for a murder than for a rape – particularly if he might be sentenced to death. Co-defendants, accomplices, jail house snitches and other police informants**, **can all hope**

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[149] *See* Center on Wrongful Convictions, *The Snitch System*, attached as Exhibit 84 [858-873]. The study is available at the center's website: www.law.northwestern.edu/wrongfulconvictions.

[150] Exhibit 84, p.3 [860].

[151] *See* Samuel R. Gross, et al., *Exonerations in the United States 1989 Through 2003*, 95 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 523, 551 [902], attached as Exhibit 85.

for substantial rewards if they provide critical evidence in a murder case – even false evidence –especially if the police are desperate for leads.[152]

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[152] Exhibit 85, p. 542-543 [893-894] (emphasis added).

CONCLUSION

For the foregoing reasons, the request for discovery and access to evidence under Penal Code section 1054.9, In re Steele (2004) 32 Cal.4th 682, and Brady v. Maryland (1963) 373 U.S. 83, should be granted.

Date: November 9, 2005 Respectfully submitted,

VERNA WEFALD

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