

EXHIBIT 5

EXPLANATION OF THIS EXHIBIT/EVIDENCE

The following document is crucial, exceedingly material to understanding the lengths to which the District Attorney, the individual Deputy District Attorneys, & the Deputy Attorney Generals in charge of this case, Michael Johnsen & Louis Karlin, went to wholesale fabricate the case & the motive (which the trial Judge ruled was the case, exhibit B, page 1 line 16, 10 RT-4053), or in the case of the A.G. to keep a clearly bogus case alive.

On the next page, three different approaches the State has used to try to build a motive are summarized. Each of them is totally destroyed in the balance of the document, some of the specific prosecutor arguments being 180° contradicted by other arguments by the very same in some cases prosecutors.

Very simply, THEY REPEATEDLY, KNOWINGLY LIED & LIED.

When one overlays the evidence cited herein (all of which the petitioner is prepared to submit to prove his allegations) with the equally persuasive expose' in the AUGMENTATION pleading, see the entire case was a house of cards as to motive because the key issue re: paying the Thompson debt, that the Bankruptcy controlled, was not explained to the Jury at all, including with the Judge failing miserably in her sua sponte duty to give a correct (or any) Jury instruction addressing this law. Judge Schwartz was biased, incompetent, committed misconduct, or worse. See ~~exhibit L here plus~~ pages 23-32, iv, 1, 2, 6, 9-9A-10 in the AUGMENTATION pleading, here in exhibit 4. The 2nd part to exhibit four is also very telling as to the extensive frauds.

ALL 3 D.A. "LEGS" SUPPORTING MOTIVE ARE PROVABLY FALSE W/ NO SUPPORT

There were more than two dozen D.A. closing arguments/opening statements allegedly supporting these three "legs" which alleged Michael Goodwin's motive for killing Thompson that evidence proves:

1) Are conclusively, irrefutably false. And,

2) Had absolutely no support on-the-record. Those opening statements are illegal while those closing statements without evidentiary support are 6th Amendment violations requiring reversal for any one of them that was material. Most were.

THE THREE DIFFERENT "LEGS" OF MOTIVE WERE:

I. "Goodwin refused to pay Thompson, killing him instead".

Judge Schwartz bought into this & summarized it at 10 RT 4053:

"This whole prosecution is premised on one thing, & that is that the motive for the murders was because of the business dispute that existed & the lengths to which Mr. Goodwin would go to avoid having to satisfy the judgment & basically paying up" (10 RT 4053 @ last pg..

Evidence cited herein, but suppressed by the D.A., proves that Goodwin tried hard to pay Thompson, but it was illegal to do so.

II. "Thompson beat Goodwin in every Court battle. Goodwin could not stand this, so he killed Thompson", repeated 15 times, all LIES.

Evidence cited herein, but suppressed by the D.A., proves that Goodwin beat Thompson seven times, more "wins" than Thompson had over Goodwin, & Goodwin won \$1,000,000 cash more!

III. "Michael Goodwin was being financially crippled", 23 RT 8733:22, right at the beginning of closing arguments. But, it was a LIE.

Evidence conclusively proves that 1) the Goodwins had millions of dollars in good assets, 2) that Goodwin had won at least \$1,793,000 in Court approved funds, & collect

\$1,000,000 on it, while 3) Thompson collected a "few thousand"

1) Goodwin had been in Bankruptcy (BK) for 16 mos. BK law forbid direct payment.

MOTIVE
BOGUS
11/26/88

Hostile Thompson attorneys Dolores Cordell, & Phillip Bartinetti, both inappropriately approved as D.A. experts by biased Judge Schwartz¹, both confirmed that the Goodwins had millions of dollars in protected assets², that Goodwin had won more than one million dollars in wins³, & that Thompson had collected just \$1000, to "a few thousand". 7 RT 3193, 8 RT 3496. Thompson was no threat, WHILE ALIVE, to the Goodwin finances, because of Bankruptcy laws.

That is because, as Bankruptcy (BK) is designed to do, & was the case here, as experts Cordell², & Bartinetti testified⁴, it buys a "time out" prohibiting creditors from seizing assets while the debtor, here Goodwin, has an opportunity to reorganize his money affairs so that he can both eventually pay his/her debts, & preserve his life/get a legitimate fresh start, per the Bankruptcy Code.

But, all that crumbled when Thompson was unexpectedly killed. the Court should be right now made aware that Cordell, who clearly was hostile to Goodwin⁵, testified twice that it was illegal for Goodwin to pay the Thompson judgment debt while he was in Bankruptcy, 6 RT 3719-20 & 3739-43. This wasn't explained to the Jury.

The crux of the entire problem that allowed the DDAs (Deputy District Attorneys) to get away with their EXTRINSIC FRAUD ON THE COURT what enabled & facilitated it was Judge Schwartz's gross failure in her sworn duties to give the corrects Jury instructions that Bankruptcy law prohibited Goodwin from paying Thompson direct.

"There is a long established rule requiring sua sponte instructions on those principles closely & openly connected with the facts before the Court, & necessary for the Jury's understanding of the case." People v. ARANDA (2012) 55 C 4th 342, 354.

1) 7 RT 3186, 8 RT 3488. 2) 1 CT 113 (Not to Jury), doc #251 in the SA86-05280JR BK, page 2, & Cordell's 4/10/90 BK filing, page 2, + hornbook Bankruptcy law. Also see 9 RT 3701-3705 for over \$2,000,000 in assets, plus D.A. trial exhibits proving \$580,000 cash to Diane Goodwin in May, 1988, Court approved (request cites) 3) \$460,000+ cash from "interpleader," 8 RT 3496, \$625,000 INSPORT, 9 RT 3731, others. 4) 8 RT 3414. 5) Goodwin had sued her for frauds, stealing millions from him.

Legal scholars who are candid often admit that DDAs cannot always be counted on to be forthright, they too frequently ignore their oaths of office "To See that Justice is Done," & cut corners, or worse, to get convictions.

The law abounds with rules & case rulings, authority, to rein them in & to get them to observe the law. That is a Judge's job.

"A Judge's job is to see that Justice is done!"¹ (+ other similar law) People v. SANTANA (2000) 80 Cal App 4th 1194, 1206.

JUDGE SCHWARTZ, THE TRIAL JUDGE, SIMPLY DIDN'T DO HER JOB.¹

I submit that the evidence is overwhelming that she was biased, and/or incompetent, and/or guilty of sanctionable misconduct.

See our AUGMENTATION to the 2nd AMENDED COMPLAINT FOR...AND JUDICIAL ERRORS, filed approximately 11/29/13, pages 23-32, iv, 1, 2, 6, 9, 10A, & exhibit L to that pleading, plus the 2nd AMENDED COMPLAINT, comparing her ruling in exhibit one, to the witness testimony in exhibit three there, to see conclusive evidence of her to be polite, "errors".

Judge Schwartz had to be a) either asleep during key parts of the trial (comparing her ruling on 24 RT 10511, exhy one on the 2nd AMENDED, to the witness testimony in exh. three there), or b) was/is frightfully incompetent, or c) speaks intentionally untruthfully on material matters, unlawfully siding with the prosecution, wrongfully.

THIS CONVICTION WOULD NOT HAVE BEEN POSSIBLE WITHOUT JUDGE SCHWARTZ'S BIAS WHICH ENABLED, FACILITATED THE D.A.'s EXTRINSIC FRAUDS ON THE COURT, THE PEOPLE OF CALIFORNIA & THE DEFENDANT.

EXTRINSIC Fraud (AKA collateral fraud) is fraud that prevents a party from knowing about his rights or defenses, or from having a fair opportunity from presenting them at a trial, or from fully litigating at the trial all the trial all the rights or defenses that he was entitled to assert" BARRON'S LAW DICTIONARY, Sixth Edition, p. 227 of my copy.

1) She is obligated to know the law, WILLIAMS V. TAYLOR (2000) 529 US 362, 392, 395, & get the law before the Jury, People v. ARANDA (2012) 55 Cal 4th 342, 354.

Although this may be redundant, it is critical enough that it bears repeating. The alleged motive, "That Goodwin refused to pay Thompson, killing him instead," was so knowingly bogus & contrived that Judge Schwartz simply doing her job & giving the correct Jury instructions, as the law is legion & irrefutable that she was obligated to do, that it would have been quickly obvious to the Jury THAT THERE WAS NO CASE & THE DDAs WOULD HAVE BEEN LAUGHED OFF.

The very most egregious violation of her sworn duties was Judge Schwartz failing to give the Jury instructions explained at page 2 of exhibit L to the AUGMENTATION cited above. That alone would have toppled the prosecution's house of cards phony motive & entire case.

However, Judge Schwartz perpetrated many other severe errors to enable the DDAs to get away with their FRAUDS ON THE JUDICIAL SYSTEM. There are 25 of them listed that establish her bias in exhibit L. Amongst those are other serious Jury instruction failures such as A) giving instructions that were very prejudicial to the defendant, but that were illegal to give, item #8 in exhibit L, & B) leaving out critically required passages in other instructions that were also incorrectly very prejudicial to the defendant, item #7, exh. L.

The financial motive problem was severely exacerbated by Judge Schwartz also failing in her required gatekeeping duties to correctly "vet" expert witnesses. She allowed experts who were not qualified, testified to issues that should have been prohibited since the so-called experts had no correct knowledge of them, AND THEY LIED.

Judge Schwartz's "errors" enabled the DDAs to get away with the frauds they perpetrated, which were in turn only possible because they had suppressed extensive materially exculpatory evidence that Judge Schwartz had failed to order be produced, which she should do.

This was a "PERFECT STORM" for the EXTRINSIC FRAUD ON THE COURT.

IRONICALLY, HAD GOODWIN PAID THOMPSON THE WAY THAT THE DDAS ARGUED HE SHOULD HAVE, HE WOULD HAVE COMMITTED FELONY BANKRUPTCY FRAUD

On-the-record evidence, detailed here, conclusively proves this.

The DDAs (Deputy District Attorneys) achieved their conviction by 1) Materially misstating the law, 2) grossly & knowingly lying about the facts, & 3) making over 2 dozen opening statements & closing arguments that had no evidentiary support on -the-record or available.

The DDAs even suborned known perjury, provable, from their experts, making it appear that Goodwin had violated the law.

The mainstay of the DDA motive was that "Goodwin refused to pay Thompson, killing he & Trudy Thompson instead", arguing this 9 times, e.g., 8765:1, 6 RT 2741:25, 2742:2, 2726:24, 2718:3 & :5, & 2721:9.

But the legally trained DDAs knew that it was a felony Bankruptcy fraud for Goodwin to have paid just one creditor, e.g. Thompson, while Goodwin was in Bankruptcy. Goodwin & his company had both been in Bankruptcy for 16+ months before the murders, stipulated at trial.

Even Thompson's own collection specialist, Dolores Cordell, testified that she had tried to find a way for Goodwin to pay Thompson alone, but could not do so before the murders, 9 RT 3741.

She also testified that she felt a settlement had finally been reached to pay Thompson, by Goodwin, but that the Clerk of Court told her that would have been illegal, 9 RT 3719-3720 & 3741-3743.

Then, after the murders, the lawyers figured out how, not to have Goodwin pay just Thompson, but to at least have his debt made non-dischargeable in the Bankruptcy. This was signed before the end of March. 9 RT 3720. That is within two weeks following the murders.

Does this appear that "Goodwin refused to pay Thompson" rather than the true fact that Thompson's own lawyer testified that she could not find a way before the murders to allow Goodwin to pay him?

Recall also that Goodwin had offered JGA/Whitehawk as one of many assets in the personal surety in August 1986, to guarantee Thompson's payment, 8 RT 3402:6. This was before Bankruptcy, when Goodwin still had the right to negotiate to pay Thompson direct.

JGA/Whitehawk paid out over \$2,000,000, which would have paid Thompson 2½ times over, 8 RT 3528:11, 9 RT 3701-3705, at the L.A. pre-lim pages 1 CT 173>175, OC prelim 224-5 & Goodwin had \$830,000 in the trust account from which Thompson was to be paid, before the murders, 11 RT 4246. How can they say Goodwin refused to pay Thompson? 1) Just on motive.

UNSUPPORTED & FALSE DISTRICT ATTORNEY STATEMENTS & ARGUMENTS THAT
"GOODWIN REFUSED TO PAY THOMPSON, KILLING HIM INSTEAD!"

ON-THE-RECORD evidence proves that Goodwin, A) before filing Bankruptcy, to try to avoid filing Bankruptcy, offered to post a "surety" to guarantee Thompson's payment, including pledging the JGA/Whitehawk asset which generated over \$2,000,000 cash. Thompson refused this.

B) Had over \$800,000 in the Bankruptcy trustee controlled account from which Thompson was to be paid, at the time of the murders.

C) Signed an agreement to make Thompson's judgment nondischargable in Bankruptcy within two weeks following the murders.

D) Thompson's own lawyer attested that it was completely illegal for Goodwin to pay just Thompson, 9 RT 3741. and that,

E) They had reached an agreement verbally before the murders to settle, as soon as a legal way to do it could be determined. 3741-3743.

F) Not-on-the-record evidence that evidence we have proves the D.A. does have, but suppressed, proves that the only reason Thompson wasn't paid in full was because of malfeasance by his OWN LAWYERS, & other Government appointed attorneys, accountants & trustees.

Nonetheless the DDAs argued or stated, similarly, 8 to 10 times:

1. "He would see that Mickey Thompson was killed before he got a dime of his money!" 6 RT 2742:2 (6 RT is opening, 23 RT close)
2. "He wouldn't pay the judgment." 6 RT 2717:28.
3. "This sums up Michael Goodwin's intent for Mickey Thompson. Before he sees a dime i'll have him wasted. Before he sees a dime i'll have him wasted!" 6 RT 2726:24.
4. "Even if he had the money he wouldn't have paid it!" 23 RT 8765:16.
5. "The evidence will show that Michael Goodwin was never, ever going to pay Mickey Thompson what he owed him!" 6 RT 2741:25.
6. "He was maneuvering himself & his company such that he didn't have to pay a dime!" 6 RT 2718:4. WHAT ABOUT #S A THRU F ABOVE?
7. "Michael Goodwin wouldn't pay him!" 6 RT 2721:9.
8. "His lawyers² will say that Mike Goodwin had no intention of ever paying this judgment!" 6 RT 2718:3. THEY DIDN'T SAY THIS, and, how would they know anyway? Plus, the evidence disputes this.

Also the DDAs regularly misstated the law on how Bankruptcy law worked¹. They then argued that Goodwin was dishonest in complying, e.g. 6 RT 2723 & 2739:4-11, grossly prejudicial. The defense didn't correct.

- 1) The Judge was sua sponte obligated to give a jury instruction correcting this.
- 2) Thompson's lawyers. How could they know the workings of my mind, my intent to pay?

Given all of the above on-the-record evidence, including that Goodwin had arranged for \$830,000 to be put into & leftⁱⁿ the Bankruptcy trust account from which Thompson should be paid, it is inconceivable that the DDAs believed they had supported this:

"Even if he had the money he wouldn't have paid it. According to the accountant, according to the lawyers, there may have been times that he was solvent enough to pay it, but he wouldn't"; 23 RT:8765 in the close.

But no one testified to those things, particularly this key item:

"There may have been times when he was solvent enough..."

No evidence supported that & it was absolutely not true.

And, because Goodwin's post-Bankruptcy filing income and/or assets were not liable to pay Thompson¹ or to go into the Bankruptcy, this was a sly, & very deceptive, very prejudicial misstatement of the law. Defense counsel should have corrected this².

Lawyers are not allowed to misstate the law, People v. BOYETTE (2002) 29 Cal 4th 381, 435, U.S. v. ARTUS (9th Cir. 1976) 591 F.2d 526, 528, People v. HILL (1998) 17 Cal 4th 800, 829-830.

Again, there is also a massive amount of not-on-the-record evidence proving Goodwin's intent to pay Thompson as soon as the judgment was final. This evidence, much of which is suppressed, proves things like Goodwin repeatedly writing Bankruptcy trustee Jeffrey Coyne to "please pay Thompson", faxes to Goodwin's attorney "do whatever you must to settle, give him whatever you must!"

However, it was learned that it was illegal for Goodwin to settle with one creditor, 9 RT 3741. The lawyers finally learned of a way around that problem & Goodwin signed the nondischarge just 13 days after the murders, bps 029967, signed pages 031656.

- 1) Prior to Goodwin signing the nondischarge 13 days after the murders.
- 2) And, the Judge was obligated sua sponte to give correcting instructions.

Because of the failure to have complete & correct Bankruptcy law Jury instructions, which defense counsel should have requested, & the Judge was obligated to sua sponte give, without request, (People v. ARANDA (2012) 55 Cal 4th 342, 354, 145 CR 3d 855, 864.) defendant was convicted. The spider web of 85 unsupported opening statements & closing arguments, 76 of which are provably false, are very prejudicial, & complex to unwind, but we can do so.

We must juxtapose the three different parts of the various prosecution motive theories detailed three pages prior to prove the true facts & how they should have been seen by the Jury under the law. Bankruptcy law Jury instructions would have eviscerated the mainstay of the State's motive allegations, "That Goodwin¹ refused to pay Thompson, killing him instead," proven it as false.

That is because Bankruptcy trustees were in charge of both of Goodwin's Bankruptcies, personal & company. They alone were allowed to recommend which creditor was to be paid, how much & when, 1 CT 213, "food chain" at the prelim, but not explained at all to the Jury at trial. This was fatal to petitioner's defense.

It would have been a felony crime for petitioner to pay Thompson in the manner that the DDAs repeatedly argued he should have, & repeatedly implied that he was dishonest for not doing.

This cinched his conviction. See 8 CT 2082 for a page from the Jury foreman's post-trial sworn declaration, "no moral compass"

Tellingly, at 8 CT 2078-2079 in this same declaration², the Jury foreman confirmed that petitioner would not have been convicted except that the Judge gave another instruction that caused an illegal "directed verdict," a structural error requiring reversal,

SULLIVAN v. LOUISIANA (1993) 508 U.S. 275, 279, others.

1) Summarized by Judge Schwartz at 10 RT 4053. 2) See exhibit G herein.

1 16. 90% plus of the documents that investigators seized from my
2 home legal office were BK documents, about 350,000 pages.

3 17. 90%+ of the documents filed re: collection of the Thompson debt
4 were filed in the Bankruptcies. I believe this is closer to 99%.

5 18. Documents in the BKs would have proved that I absolutely
6 intended to pay Thompson. Included in these was a pledge I had
7 made of good assets that generated \$5,000,000 in cash¹, of my
8 assets, plus the separate property assets of my wife & associates.

9 Bankruptcy Law would have proven this plus all the below.

10 19. Bankruptcy Law would have proven conclusively that A) the two
11 largest assets that the DDAs plead at trial as being criminally
12 "misappropriated" by me to avoid paying the Thompson debt, were not
13 mine at all, & that I did nothing illegal or improper with them.

14 B) That the DDAs knew this & lied to the Judge & Jury on this,
15 including in offers-of-proof. As stated, the law is absolute that
16 those DDA lies in offers-of-proof are felony perjuries requiring
17 i) prosecution on criminal charges of the DDAs, & reversal of the
18 charges because of the perjuries. (Reversal per 513 F3d 1057, 1075-76)².

19 These assets totaled over \$2,500,000. The DDAs repeatedly
20 lied about them, accusing me of crimes on them, when in fact, BK
21 law would have proven I acted completely appropriately, & that the
22 true owner, my wife, as her legitimate separate property from a
23 well designed & followed pre-nuptial agreement, agreed to pledge to
24 pay Thompson even though she was not subject to the debt, & thus
25 these assets were not liable to pay it.

26 However, we needed Bankruptcy Law to prove this.

27 20. The BK expert who was also a lauded BK Law professor at Duke

28 University broke BK law in the case, but we needed BK Law to prove.

1) To pay a debt of just \$794,000, including written guarantees.

2) Penal Code § 1473(b)(1), in re HALL 30 Cal 3d 408, 424 also reverses.

1 Some of the not on the record evidence of Goodwin's intent &
2 ability to pay Thompson's judgment 100% is so powerful that it
3 would be remiss not to disclose it. Yet this is a small bit of it.

4 The Goodwin personal estate Bankruptcy (BK) trustee confirmed
5 that the Goodwin BK looked very good to pay all creditors, doc-
6 uments #82 & #83 in the SA-86-06166-JR Bankruptcy, page 2, both.

7 Thompson's lawyer & D.A. trial expert Dolores Cordell
8 confirmed that Goodwin said "I will pay Thompson. I want to get
9 on with my life," bp 031912.

10 Goodwin's Bankruptcy attorney, William Lobel, gave a sworn
11 deposition wherein he repeatedly said that Goodwin intended to
12 pay all creditors 100%, including Thompson.

13 Goodwin had his wife immediately pay every dollar of the JGA
14 money she received from that asset prior to the murders, \$345,000,
15 into the Bankruptcy trust account from which Thompson was to be
16 paid. See bps 026996-8 for that money into the ESI (company)
17 trust account. The other documents to "complete the circle" of
18 from where that came, Diane's JGA account, are suppressed.

19 There is a 7/25/88 letter from Goodwin to the Bankruptcy
20 trustee saying "Take JGA to pay the creditors!" It is item #326 on
21 page 24 of our 186 page inventory of 2100+ suppressed documents in
22 the D.A. files. There are many more like this.

23 Several cash flows show an amount to pay Thompson, including
24 \$850,000 with an allowance for addl. interest, at bp 023776-023778.¹
25 The prosecution blanked out a key part of that critical cash flow.²

26 Notwithstanding all of this & more, the Judge said the D.A.
27 allegation was that Goodwin had transferred assets to avoid

- 28
- 1) Also bps 002914-18, 011715-18, 016377-9, 016423, 016452-5. Also 1 CT 181.
 - 2) Telltales prove our claim above, \$850,000 to pay, & the tampering.

1 paying Thompson, 18 RT 6751:18.

2 But, the President of my company gave a statement¹ that I did
3 not ask her to transfer assets or to hide them from Thompson, bp
4 006234. The Bankruptcy trustee in the Goodwin case also confirmed
5 in several citations that there were no transfers attempting to
6 defraud Thompson or the Bankruptcy, bps 010491, 010090, & even
7 Cordell admitted that all assets were offered as part of the
8 surety to pay Thompson, 032394:26 & elsewhere.

9 The following is extremely demonstrative.

10 In the cash flow noted on the prior page, bp 023776-778,
11 Goodwin listed \$850,000 should be available to pay Thompson as
12 of March, 1988. This was a well thought out & planned cash flow,
13 very realistic & conservative.

14 Showing just how realistic & conservative it was, there was
15 \$823,145 in the company Bankruptcy trust account from which
16 Thompson was to be paid as of the date of the murders. That is
17 confirmed at continuous page 334 in the U.S. Bankruptcy book.
18 Those funds had been sitting there available to pay Thompson for
19 months before the murders, not on the record evidence will prove.

20 Company trustee Jeffrey Coyne testified to this amount being
21 about \$830,000*, but he simply didn't precisely recall after 18
22 years. That is understandable. *(11 RT 4246:25)

23 Briefly back on-the-record; in 1989 Goodwin wrote the Thompson
24 lawyers opening the door to an offer to settle the judgment by
25 paying it, 8 RT 3427. But, the Thompson lawyers did not respond so
26 Goodwin did not pursue it any further.

27 This wraps that the DDAs had no support for their statement
28 "Goodwin refused to pay Thompson, killing him instead"

1) To Sheriff's deputies.

1 Tellingly, the D.A. motive changed a mutually exclusive 180°
2 between the original Orange County charges being filed, & the L.A.
3 charges, after the prosecutors had illegally seized/read prohibited
4 attorney-client-privileged documents. See our AOB pages 34-96.

5 In Orange County, the motive was not only just the opposite,
6 but just as easily provable as incorrect. When the L.A.D.A. saw
7 these files, they changed the motive allegations. In O.C. they said:

8 "Thompson had taken virtually everything Goodwin had...
9 nothing Goodwin did (to stop the collections) seemed to work!"

10 See the Orange County prelim transcript at pages 9:4 & 325:6.

11 The Orange County prosecutor also argued that at the time of
12 the murders, petitioner was trying to take Thompson's business,
13 O.C. prelim transcript, pages 323 lines 17-20 & 324 line 25.

14 The Judge ruled, in granting jurisdiction:

15 "The evidence that has been presented here is that the
16 defendant...& victim had a substantial business relationship in Orange County at the time of the crimes," 338:5

17 But, petitioner & Thompson had not done business for 3½ years at
18 the time of the crimes & there was absolutely no business link.

19 Thompson's lawyers testified to this Oct. 1984 separation, 8RT3696-7.

20 Los Angeles prosecutors learned this when reading the
21 prohibited attorney-client privileged records, & did not plead
22 this in L.A. That is unfortunate, since we would have embarrassed
23 them, as we would have on the "Mickey took virtually everything
24 Goodwin had!" There are many more cites of this latter one than
25 we've given here. Det. Lillienfeld lied that Goodwin had said this.

26 Please recognize how mutually exclusive these two different
27 "versions" of the motive are, "Thompson took everything" vs.
28 "Goodwin wouldn't allow Thompson to get anything" in Los Angeles.

D.A. OPENING & CLOSING ALLEGATIONS WITH NO SUPPORT ON-THE-RECORD
THAT THOMPSON RELENTLESSLY BEAT GOODWIN IN COURT

These 14 opening statements/closing arguments were shamelessly made even though no evidence supported them, & on-the-record evidence conclusively & repeatedly proved they were not true. For brevity #1 will be accurately paraphrased. None of these are true.

1. "Goodwin lost EVERY SINGLE LEGAL BATTLE" (after the initial judgment & before the murders). 6 RT 2717:17-:23.
However, on-the-record evidence proves that Goodwin won over \$1,000,000 more than Thompson in Court approved cash collections, in seven different wins. Thompson got just \$3000.
2. "Mickey Thompson was crushing, literally crushing Michael Goodwin under the weight of the Court System". 6 RT 2724:4
3. "Mickey Thompson was prevailing over & over & over. Mike Goodwin was suffering a pattern of losing that he could not & would not tolerate". 6 RT 2717:24
4. "He couldn't win at any cost against Mickey Thompson". 23 RT 8733:21.
5. "Michael Goodwin suffered loss, after loss, after loss, after loss". 23 RT 8765:26. (All 6 RTs are in the opening, 23 RTs, the close)
6. Inadverdant dupe, sorry. I have another to add at a later date.
7. "He started losing in Court more & more". 23 RT 8766:14.
8. "He lost the Insport agreement". 23 RT 8766:1 & 6 RT 2718 > 2719.
But the D.A.'s own witnesses testified that this wasn't true.
9. "He lost the Bankruptcy suits". 23 RT 8766:15. But Goodwin won these.
10. "He lost his car". 23 RT 8766:12, 6 RT 2718:13, 2721:18, 2726:21.
But trial testimony proved Thompson did not get the car.
11. "He was losing his discharge of debt". 23 RT 8766:18. Not true.
12. "Michael Goodwin was suffering loss after loss after loss after loss at the hands of Mickey Thompson". 6 RT 2724:2.
13. "He couldn't beat him legally. He tried & tried & tried. He ran out of opportunities...He couldn't beat him legally". 23 RT 8768:16.
14. "He couldn't win fairly. He couldn't beat Thompson on his own terms". (In Court) 23 RT 8783:9.
15. "Mike Goodwin lost to Thompson...in almost every Courtroom they walked into". 23 RT 9030:9.

There are more similar untrue allegations but these paint the picture.

Next we examine the on-the-record evidence proving that there was no on-the-record evidence to support that "Thompson beat Goodwin in every Court battle," & that on-the-record evidence proved that Goodwin beat Thompson regularly, & more times than Thompson beat Goodwin in Court, & more importantly, for millions of dollars in more wins and/or collections. Yet see page 12 here.

These citations overlap & effect the other two versions of the motive allegations detailed on the first page of this section, or this document, depending on whether it has been inserted into another document so as to more fully explain, e.g. the document detailing the 45+ closing arguments without evidentiary support.

On-the-record, undisputed evidence proves that Goodwin won on the following. It is incomprehensible that defense counsel did not recognize and argue these facts. Petitioner pointed them out.¹

1. After having won the \$625,000 Insport Supercross franchising agreement, #2 below, petitioner ran an event at Anaheim Stadium on 1/31/87, 10 RT 3932. The stadium manager's testimony also confirmed that these events had a ten year average of \$708,000. in income, 9 RT 3949.

Since events grow as years go by, & ticket prices go up each year, it is a permissive inference that the Goodwin camp benefitted at least the \$708,000+ average here. This is by far the largest collected asset before the murders.

2. The Goodwin camp won the \$625,000 Insport agreement in a Court ordered & Court approved auction in fall 1986, 9 RT 3731.
3. The Goodwin camp won over Thompson's attempt to take the \$625,000 Insport contract in fall 1987, 11 RT 4226, 10 RT 4058.

1) Although because of no "overnights," petitioner had no cites.

1 4. Goodwin prevailed on the \$460,000 cash in the Coliseum box
2 office interpleader account that Thompson attorney & D.A.
3 expert Dolores Cordell had lied wasn't litigated, 8 RT 3498.
4 The defense located the published opinion showing Goodwin
5 prevailed for \$460,000 cash, 9 RT 3746:24, "catching" Cordell.

6 It is instructive that Cordell was acknowledged by the
7 D.A. financial expert, Karen Kingdon, as the "#1 source of
8 case information", 19 RT 6939, also at bp 032369.

9 Evidence proves 35 material perjuries by Cordell. Request
10 our pleading, with evidence cites on that.

11 5. Goodwin prevailed on keeping the Thompson lawyers from being
12 appointed as counsel to the Bankruptcy trustee, 8 RT 3519.
13 Although this is not listed as a cash win since we cannot
14 precisely identify the beneficial areas, I am confident that
15 defeating Thompson here saved or made Goodwin over \$100,000.
16 But, this won't be counted in the total Goodwin cash benefits.

17 6. Goodwin prevailed on keeping the Mercedes following the
18 temporary seizure in 1986, 8 RT 3407. An alleged Mercedes
19 seizure, with Goodwin making threats at the seizure, just
20 before the murders, was a big part of the D.A. case.

21 But that was impossible since Goodwin & his company, who
22 owned the car, had been in Bankruptcy for 16 & 18 months
23 respectively at the time of the murders. Seizure/repossession
24 while in Bankruptcy is not permitted, as the D.A. stipulated.
25 8 RT 3476. Goodwin drove the car, company paying, until 1/22/88.
26 It is correct to "count" the \$625,000 value of Insport twice,
27 but even without that, which we won't do, Goodwin "won" \$1,793,000
28 in six clear wins, not counting money for items #5 and/or #6.

1 It would also be entirely reasonable to argue/demonstrate that
2 Goodwin accomplished a huge strategic win against Thompson when he
3 filed Bankruptcy. But, Goodwin wasn't trying trying not to pay.¹

4 Certainly Thompson pushing Goodwin to file Bankruptcy when he
5 rejected Goodwin's offer of the surety, which included JGA/Whitehawk
6 & generated over \$5,000,000 cash, was a huge loss for Thompson.

7 That is because, as noted elsewhere herein, malfeasance by-the
8 Thompson lawyers, including repeated felony crimes, provable, & the
9 other Bankruptcy trustees, attorneys & accountants, kept Thompson
10 from being paid in full. They wasted 85% of the creditors' money.

11 These Bankruptcy "professionals," led by the Thompson attorneys,
12 looted over \$2,200,000 in unnecessary fees & costs that evidence
13 proves had absolutely no benefit to the Bankruptcy estates/creditors.

14 Again, not-on-the-record, mostly suppressed evidence, proves this.

15 However, we have enough evidence in hand to make at least a
16 prima facie case as to our claims here.

17 For example, we have in hand the sworn perjury by Thompson
18 attorney Dolores Cordell stating that the Thompson debt had no
19 conflict with other general unsecured creditors. Had the Court known
20 that she had a conflict she could not represent the Bankruptcy estate.

21 However, Thompson was also a secured creditor on some Goodwin
22 assets, putting his claim in direct conflict with the unsecureds.

23 Cordell did not disclose this, & was thus appointed as SPECIAL
24 COUNSEL TO THE BANKRUPTCY TRUSTEE. In that position of unbridled
25 power she led a looting of the assets that would have made Sherman's
26 march to the sea tame in comparison. Yet she was the #1 murder witness.

27 A CPA we hired to analyze it said it was the worst Bankruptcy
28 looting he had ever seen. Why didn't defense counsel put the CPA on?

1) He was, per Bankruptcy law, requesting a "time out" to accumulate cash to pay.

Now that we've verified what the on-the-record evidence proves that Goodwin won in Court, we turn to what the evidence proves that Thompson won.

We must focus first that no one testified that Thompson won every Court battle at trial, nor was any evidence introduced to support. But, the Judge said that was the argument, 8 RT 3523:2.

And, critically, before getting into what Thompson won, & how often, let's look at a critical fact. On-the-record evidence proves that the Court ruled for Goodwin and/or the Goodwin "camp" 7 times, for a total on-the-record of at least \$1,793,000¹.

Would the Court have done that had Goodwin been cheating & defrauding the Court & Mickey Thompson as DDA Jackson so often stated and/or argued? E.g. see 6 RT 2723, 2716-2717, 2740, 23 RT 8783.

Now let us scrutinize the facts as to how often & how much Mickey Thompson won. To do that, we must first define the time period in question, as was stipulated by DDA Jackson's opening statement at 6 RT 2717:18-23:

"Over the next year and a half or two years (after the Thompson judgment) there began a series of legal wranglings; a series of Court battles; a series of fights inside the Courtroom that would rival any Court battle any time anywhere"².

And what is notable about those battles is that Mike Goodwin lost every single one. Mickey Thompson was prevailing over & over. Mike Goodwin was suffering a pattern of losing that he could not & would not tolerate."

This evolved through the trial, even though it had no evidentiary support, to "This fueled Goodwin's desire & need to kill Thompson".

Based upon the above opening statement, Thompson's initial \$794,000 win was not counted in this time period.

- 1) Not on the record evidence proves 11 to 15 Goodwin wins for \$4,000,000+ vs. 7 to 8 for Thompson for \$794,000 total, where he collected just \$120,000. Goodwin collected over \$2,000,000, arguably \$2,500,000.
- 2) Although Thompson's lawyer testified that this was a bad litigation, suppressed evidence proves it was not the worst for Goodwin, Caldwell was.

Mickey Thompson's wins/collections, on-the-record

His initial May 5, 1986 \$794,000 judgment, 7 RT 3191, 8 RT 3420. Based on DDA Jackson's opening statement, prior page, this was not to be counted in the number that Thompson won ("Over the next year and a half to two years" (after the judgment), so it is not counted for our comparison here.

Thompson collected just \$1,000 to a few thousand dollars on that judgment, 8 RT 3496, 7 RT 3193, prior to the murders, since the Bankruptcy trustee, Jeffrey Coyne, a D.A. trial expert vs. Goodwin, refused to use any of the \$830,000 Goodwin had in the Bankruptcy trust account 11 RT 4246:25¹. Not-on-the-record evidence proves that Thompson eventually collected just about \$120,000 total, that reduced amount because of his attorney's crimes.

And, Thompson spent \$286,000 on legal fees, 8 RT 3522:14+.

1. Thompson prevailed on a stay of execution during the period we assembled the cash to pay him, 8 RT 3471:6. This was in effect a big loss for Thompson, since not-on-the-record evidence proves that had we prevailed on this we could have paid the judgment before the end of 1987, avoiding filing Bankruptcy that ate up 85% of the funds intended for him. This applies to an even greater degree to the #2 issue here below.

2. Thompson prevailed against our offer to guarantee the payment on the judgement with assets that ended up generating over \$5,000,000, including both Diane's JGA/Whitehawk asset & the large portion owned by the general partner, John Gates. See 1 CT 124, 8 RT 3528, 1 CT 150-173-175, 9 RT 3701, but defeated at 8 RT 3473. This pushed Goodwin & his company into Bankruptcy.

1) Recognize that Thompson not being paid was not due to Goodwin. Bankruptcy law is firm that only the Bankruptcy trustee was permitted to pay creditors with the \$830,000 that Goodwin had arranged to be put into the trust account.

1 Not on the record evidence, a filed legal pleading by
 2 Thompson's own lawyers, confirmed that had they accepted the
 3 surety Mickey would have been paid, bp 023792:17. Defense counsel
 4 committed bad IAC by not questioning on this, particularly to
 5 impeach D.A. expert Bartinetti, Thompson's lawyer, when he lied
 6 about how a surety worked, implying we could have escaped paying
 7 via the surety, 1 CT 124. Jury instructions should have been given.

8 The surety offer was repeatedly postured as a way to get out
 9 of paying the judgment, when in fact it absolutely guaranteed
 10 payment, via assets that generated over \$5,000,000 cash, & the
 11 personal guarantees of three legitimate individuals in addition to
 12 Goodwin still being responsible. Jury instructions were necessary¹.

13 The IAC (Ineffective Assistance of Counsel) of defense counsel
 14 not investigating & pleading this was extremely prejudicial.

15 As noted, Thompson had the opportunity to have JGA/Whitehawk
 16 pledged to him, so that he would have had first claim to that over
 17 \$2,000,000 in income. Not-on-the-record evidence proves \$2,350,000.
 18 The surety would have saved the \$2,200,000 in totally unnecessary
 19 Bankruptcy attorneys, accountants, & trustees fees & costs that
 20 kept Thompson from being paid.

21 Not on the record evidence also proves that Thompson attorney
 22 & D.A. expert Dolores Cordell caused this illegal looting of the
 23 Bankruptcy monies that kept Thompson from being paid, via perjuries
 24 & frauds on the Court. But, that is a different story, provable.

25 3. Thompson won a non Bankruptcy case in winter 1988. This case was a
 26 Goodwin attempt to enforce the original contract & to keep Mickey
 27 from staging motorcycle races at Anaheim Stadium. This was agreed
 28 in the original contract. Goodwin's lawyer ceased to represent him
 & Thompson won by default. 1) The Judge was sua sponte obligated to give it.

4. Thompson applied to have trustees appointed in both Bankruptcy estates by lying to the Judge that Goodwin was stealing assets. Goodwin initially prevailed, 8 RT 3516:14 & had examiners appointed.

Not-on-the-record evidence proves this was a tremendous boon to Goodwin. The examiners closely scrutinized the transactions between Mike & Diane & the company Pension that the Thompson lawyers alleged were illegal transfers. They were legitimate.

The examiner's reports said that all was kosher, bps 023218, 022057±, & at bp 005114, items #50 & 56. There also may be a very relevant evidence/exhibit list at bp 023576-023578.

The Bankruptcy Judge accepted the recommendations of the examiners, ruling that JGA/Whitehawk was not an asset that was liable to pay Thompson. The Bankruptcy Judge ruled this again in the summer of 1988, cites at page 24 here, & a Federal District Court also ruled this in 1993.

Why is this not res judicata, collateral estoppel, issue resolution? The DDAs repeatedly argued that JGA was liable to pay the Thompson judgment, & got their conviction based on this as a foundation. They argued that Goodwin's motive was to protect JGA.¹

The win by Goodwin in having the examiners appointed is not counted, in an abundance of caution. However, if, contrary to Jackson's foundational statement at 2717, that the "legal win comparison" was to start after the initial judgment, & it is then included, we will include the examiner's win for Goodwin.

This would then still keep his number of wins higher, 8 to 7.

5. Thompson won the appeal of the initial judgment, the one on which he collected just \$1000 to a few thousand dollars, per his lawyers.

6. The Supreme Court denied review of the initial Thompson judgment.

1) Specifically, "Goodwin killed Thompson to avoid paying him!"

Although it must be proven with not-on-the-record evidence, it is conclusive that the appointment of the trustees hurt Thompson's chances of payment terribly. They & their attorneys-accountants get paid before the general unsecured creditors, which Thompson was.

They charged needless fees & costs of over \$2,200,000 to the Bankruptcy estates. Because of this, Thompson was eventually paid just about \$120,000 on his \$794,000, plus accruing interest judgment. (The surety would have paid Thompson all \$794,000 plus interest)

To avoid confusion, all except a few thousand dollars of this was years after the murders. Recall that the time period that DDA Jackson stipulated to for the "win comparison" was from after the initial judgment until the murders, 6 RT 2717:16-18.

On the same token, when the not-on-the-record evidence is plead, it is proven that the Goodwins received over \$2,000,000, probably over \$2,500,000 during this period. The money the Goodwins received in 1987 allowed them to put that \$830,000 into the trust account from which Thompson was to be paid, 11 RT 4246:25.

It is tragic that Goodwin's defense counsel did not introduce, at trial, an exhaustive study she had commissioned on the Bankruptcy finances. It was conclusive that Thompson would have been paid 100% except for the provable felony crimes of his own lawyers.

Both of those dishonest lawyers were D.A. expert witnesses at trial, testifying to alleged, but untrue, "facts," that supported that Thompson only did not get paid because of Goodwin's actions.

In summary, Goodwin won at least seven times, eight when we count the examiners. Thompson won six times, seven if we count the judgment.

Goodwin won at least \$1,168,000 in Court approved collections, \$1,793,000 in "wins." Thompson collected just a few thousand dollars on just \$794,000 in wins. Goodwin won a million dollars more.

1 We should focus here on "What was the reason for the lawsuit?"

2 Thompson's own lawyer testified it was for Thompson to collect
3 his out of pocket & opportunity costs of about \$380,000, 8 RT 3399.

4 This was actually perjury by D.A. expert & Thompson lawyer
5 Bartinetti, (expert at 7 RT 3186:12-20); one of six provable
6 material perjuries by him.

7 These easily provable perjuries require reversal per Penal Code
8 § 1473(b)(1). See in re PRATT (1999) 82 Cal Rptr 2d 260, 272, 69 Cal
9 App 4th 1294, 1313-1314, & other hornbook law since the perjuries
10 were known of, actually suborned by the DDAs.

11 The above "\$380,000 out of pocket" for Thompson, testified to
12 by Bartinetti, was actually just \$220,000 from Bartinetti's own
13 pleading, bp 100320. Why did defense counsel not impeach with this?

14 This perjury by Bartinetti was just one of the over sixty (60+)
15 that evidence proves for the four D.A. experts & 2-top investigators.

16 The acknowledged "#1 source of case information", 19 RT 6939,
17 also bp 032369, committed 35 material perjuries, most much worse
18 than this one by Bartinetti, evidence proves.

19 Back to the "Wins comparison" & reason for the lawsuit.

20 The lawsuit was clearly about trying to collect money.

21 Again, during the period stipulated to by DDA Jackson, that is
22 prior to the murders ("over the next year to year & a half after the
23 initial judgment"), Thompson collected either just \$1,000, 7 RT 3193,
24 or at best a few thousand dollars, 8 RT 3496, per his own lawyers.

25 But, Thompson incurred \$286,000 in legal fees, 8 RT 3522:14.

26 Goodwin collected at least \$1,168,000 in cash, proven on-the
27 record, the \$460,000 from the interpleader & the \$708,000 at Anaheim.

28 All his legal fees were paid in the Bankruptcy, 8 RT 3521. WHO WON?

The final L.A. version of Goodwin's alleged motive was:

"Michael Goodwin was being...financially...crippled," 23RT 8733.

As we saw from the 2nd version of the D.A. motive, "Thompson was beating Goodwin in every Court battle," this simply cannot possibly be true. Bankruptcy law protected Goodwin & hurt Thompson.

On-the-record evidence proves that Goodwin won and/or collected \$1,793,000 in Court approved wins. Goodwin's camp actually collected \$1,168,000 in cash, proven on-the-record, while Thompson's lawyers admitted that Thompson only collected \$1,000 to a few thousand dollars, 8 RT 3496, 7 RT 3193¹.

This is because Bankruptcy rules are designed to protect debtors, giving them leeway to have a "time-out" to rebuild their lives & accumulate the funds needed to pay their debts, 8 RT 3414.

As Thompson lawyer Phillip Bartinetti testified:

"This was a reorganization, as we understood it, where they were saying time out, we don't have assets now to pay (the) liability so we want Court protection in order to reorganize our business so that we can pay our debts."

In addition, Thompson lawyer Cordell admitted at document #251, pg. 2 in the SA-86-05280-JR Bankruptcy that Goodwin's assets were well protected.² Also, that the Bankruptcy paid Goodwin's lawyers, 8 RT 3521.¹

It was also repeatedly confirmed at trial that the Goodwins still had over \$2,500,000 in assets between them that were outside of the Bankruptcies, JGA, Desert Investors & the Insport contract.

\$580,000 cash was paid to Diane from those assets within two months of the murders, on-the-record evidence conclusively proves.³

Although the DDAs & their witnesses tried to make the receipt of those funds sound illegal, not on the record evidence proves that the Bankruptcy Judge ruled the funding was legal, completely.

1) Yet Thompson incurred \$286,000 in legal fees to collect this, 8 RT 3522+.

2) The same at 1 CT 113. 3) Two Courts approved this \$580,000 to Diane.

1 Here we wrap up this section by giving the on-the-record
 2 cites proving our claims on the prior page that the Goodwins,
 3 between them, still had at least \$2,000,000 in assets as of the
 4 date of the murders. This was the largest group of liquid assets
 5 that the combined Goodwins had ever had.

6 Please understand that in actuality Mike owned little of
 7 these & Diane, per a pre-marital agreement, & assets that initially
 8 sourced from an inheritance, legitimately owned most of these.

9 However, the DDAs repeatedly argued that Diane's assets were
 10 actually Mike's, & solicited conclusively provable as materially
 11 false testimony supporting those opening statements, 6 RT 2740, &
 12 closing arguments, 23 RT 8783. Testimony was by Cordell & Kingdon.

13 So, based on the case that the DDAs were successful in making,
 14 although had defense counsel not been grossly ineffective in
 15 failing to put on evidence that she had in hand to truly embarrass
 16 the DDAs, proving that their allegations were knowingly fabricated,
 17 we here count Diane's & Michael's assets together.

18 We've already shown how on-the-record evidence proves that
 19 the Court approved the \$708,000 that the Goodwins gained from the
 20 1987 Anaheim Supercross. Not on the record evidence proves that
 21 the Goodwins actually took in an additional \$1,000,000 in 1987
 22 on Supercross events as a result of winning the Insport agreement.

23 That the Goodwins, specifically Diane, owned JGA/Whitehawk at
 24 the time of the murders, a \$2,000,000 asset, ^{is at} 9 RT 3701-3705. Also
 25 see 8 RT 3528, 1 CT 174-175, O.C. prelim transcript pp. 224-5, 234.
 26

27 See trial exhibits 90-91 for a copy of the \$365,000 check for
 28 Diane' May, 1988 distribution from the JGA partnership account.

1) Here Senior Asst. O.C.D.A. Brent confirmed that Mike didn't own JGA. L.A.
 changed this to Mike owned it after reading the attorney-client-privileged files.

1 I say distribution on the prior page since DDA Jackson
2 outrageously lied in both his opening & closing that the \$365,000
3 represented a sale of JGA/Whitehawk. The check said "distribution".¹

4 Here again, defense counsel had, & refused to use, extensive
5 evidence conclusively proving that JGA/Whitehawk was not sold.

6 In addition, there was additional extensive evidence re: JGA/
7 Whitehawk, to both prove it was not sold, & that Mike Goodwin had
8 no ownership interest in it; hundreds of pages suppressed.

9 But those issues are for another place.

10 The \$215,000 paid to Diane Goodwin, which is 100% of what she
11 had invested, is proven by D.A. trial exhibit 94, I believe.

12 So, the \$365,000 from JGA & the \$215,000 from Desert Investors
13 total the \$580,000 Diane (or the Goodwins, per the DDA argument)
14 received in cash in May, 1988. No evidence, nothing even from
15 which a permissive inference could be drawn, was introduced to
16 indicate that had Thompson been alive Diane would have been
17 hindered in any way from receiving these funds.

18 Not on the record evidence will prove 1) that the Court had
19 approved in advance of this that Diane owned these assets, & they
20 were not liable to pay the Thompson judgment, & 2) the Court also
21 ruled, after Diane received the \$365,000 & the \$215,000 that she
22 was entitled to those funds, that her receiving them was completely
23 legal, & that they were not liable to pay the Thompson debt and/or
24 to go into the Bankruptcy. Another Federal Court later affirmed this.

25 See documents #215 page 27:24 & #261, page 13, item 25 in the
26 SA-86-06166-JR Bankruptcy, & in the SA-88-0086-JR adversary action,
27 rulings on 8/5/88, pp. 8:4, 9:9, 13:14, 7:21, 7/28/88, pp. 11-15,
28 7/27/88 p. 15:1-13 plus dozens of other pleadings & bates page cites.

1) And, it was from the JGA partnership account.

SUMMARY

We've irrefutably proven, with conclusive evidence cited, that the three different thrusts of the prosecution motive were all false, known of as false, & intentionally contrived. Those are:

I. "Goodwin refused to pay Thompson, killing him instead"¹

II. "Thompson won EVERY Court battle, Goodwin couldn't stand that so he killed Thompson". This blatant LIE was repeated 14 times.²

III. "Thompson was financially crippling Goodwin"³

This last one, III, may be the most hilarious, if an innocent man was not in prison, partially as a result of this fraud.

Thompson's own lawyers, D.A. experts, one of whom, Dolores Cordell, was acknowledged by a key D.A. ex-employee, as the:

"#1 SOURCE OF INFO TO THE D.A., SHE LAID OUT THE FINANCIAL CASE".

at 19 RT 6939, similar at bp 032369, testified that Thompson had collected at best a few thousand dollars, while Goodwin & his wife still had over \$2,000,000 in good assets that were protected because of legitimate Bankruptcy laws designed to protect Goodwin.

The depth of the prosecution EXTRINSIC FRAUDS ON THE JUDICIAL SYSTEM, THE PEOPLE OF THE STATE OF CALIFORNIA, & THE DEFENDANT don't stop there. Note at page 11 here, the L.A.D.A.'s partner in this Penal Code § 182 (1) thru (5) Felony CONSPIRACY TO OBSTRUCT JUSTICE & FALSE CONVICT, also violating federal Statutes §§ 1341 & 1346, DEPRIVING THE PUBLIC OF THEIR INTANGIBLE RIGHTS TO IMPARTIAL & HONEST GOVERNMENT, the Orange County D.A., initially alleged mutually exclusive motive allegations; eg; that Goodwin was trying to take Thompson's business at the time of the murders. Simply not true.

Goodwin intended to pay Thompson. Suppressed evidence proves this. But Federal Bankruptcy law prohibited it. The Judge blew it!

1) E.g. 23RT 8765, 6RT 2742, 2717, 2726, 2741, 2718, (2), 2721, 2723, 2739

2) E.g. 6RT 2717 (2), 2724, 23RT 8733, 8766 (2), 8768, 8783, 9030, 14+ times.

3) E.g. 23 RT 8733; also in the A.G. reply to our AOB, page 53.

EXHIBIT 6

EXPLANATION OF THIS EXHIBIT

These are copies of pages written by my State appointed Appeal Attorney, Gail Harper, copied directly out of our Appeal Opening Brief.

They detail a very little of the illegal & inappropriate political influence which was brought to bear in this case specifically to have:

- 1) Other higher priority suspects ignored, &
- 2) To focus on petitioner alone.

The additional political influence not detailed here, since it is not "on-the-record" & thus not allowed in the AOB, is of much greater volume & more reprehensible.

Some of the depth of this, & the reasons for it are seen below.

- Petitioner has conclusive evidence proving that the victims' sister, Collene Campbell, a powerful local politician, & her attorneys¹, looted millions of dollars from petitioner, perpetrating frauds & Federal crimes to do so.
 - Petitioner has opened civil fraud litigation that would have exposed these crimes & subjected Campbell & her attorneys to criminal charges, fines & restitution as well as political embarrassment.
 - Three days after petitioner opened this litigation petitioner was charged with the murders.
 - 13½ years after the crimes, on the very same evidence that authorities had since the crimes,
 - On which petitioner had been cleared, & the correct jurisdiction, Los Angeles, had repeatedly refused to charge, citing lack of evidence.
 - Petitioner was initially charged out of jurisdiction for the L.A. crimes by Campbell's ex-personal attorney & close friend, now the O.C.D.A., Anthony Rackauckas Jr.
- 1) Her two most culpable lawyers were D.A. trial experts.

XVI. THE GOVERNMENT'S MISCONDUCT DURING THE INVESTIGATION OF THIS CASE WAS SO OUTRAGEOUS AND SO DAMAGING TO THE TRUST AND INTEGRITY OF THE JUDICIAL SYSTEM THAT DISMISSAL IS REQUIRED

A. Overview

A prosecutor is not permitted to target a person for prosecution in the absence of evidence to establish his guilt, and then unfairly ignore, manufacture or manipulate evidence to obtain a conviction. Rather, the prosecutor has a unique role in the criminal justice system, and prosecutors are held to an elevated standard of conduct. (*People v. Hill, supra*, 17 Cal.4th 800, 819.) The prosecutor's duty is not to obtain convictions, but to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial. (*In re Ferguson* (1971) 5 Cal.3d 525, 531) The goal of a trial is the "ascertainment of truth," (*ibid*) and the goal of the prosecutor is to seek justice. (*Ibid.*)

Since 1992, numerous wrongful convictions have been overturned, due to the work of the Innocence Project.⁸⁴ Perjury has been a major cause of wrongful convictions.⁸⁵ The prosecutor here

⁸⁴

See The Innocence Project, <http://innocenceproject.org> (last visited May 25, 2012). The Innocence Project was founded by Barry Scheck and Peter Neufeld at the Benjamin N. Cardozo School of Law in 1992. It has since expanded into the national Innocence Network and has exonerated over 200 people.

⁸⁵

See, for example, Steven Clark, Procedural Reforms in Capital Cases Applied to Perjury, 34 J. Marshall L. Rev. 453, 453 (2001) [finding the

relied heavily upon false evidence created by LASD's investigators in order to arrest and convict Goodwin. Because the investigation and resulting trial were tainted by false testimony and misconduct, Goodwin's convictions must be reversed.

B. The Issues Are Not Forfeited For Lack of Objection

Lack of objection does not forfeit these issues on appeal.

Defense counsel at the Los Angeles trial was not in a position to object to all of the misconduct committed by Lillienfeld during the investigation. Counsel attempted to dismiss the case for prosecutorial misconduct in large part related to Lillienfeld's known misconduct. (See Argument I, *supra*.) Rather, having become aware of Lillienfeld's actions and that Jackson and Dixon had no intention of calling Lillienfeld to testify at trial – even though Lillienfeld was the lead investigator – counsel called Lillienfeld as a defense witness and attempted to impeach him with his prior false statements in his various affidavits supporting the Orange County search and arrest warrants, for a live lineup, at grand jury proceedings and at the Orange County preliminary hearing – among other sworn statements – that Goodwin owned a gun that was consistent with the weapons used in the Thompson murders. (See 20RT 7584-7585.) The trial court sustained the prosecutor's objections to this impeachment. (20RT 7600 - 7619.)

Further, a defense objection to an investigator's misconduct prior to trial is not required in order to preserve that issue

most common cause of capital wrongful convictions in Illinois is perjury].

for appeal if the objection, or the court's subsequent admonition to the jury to disregard the misconduct, would have been futile. (*People v. Hill, supra*, 17 Cal.4th 800, 820-823; *People v. Williams, supra*, 17 Cal.4th 148, 161, fn.6; *People v. Arias* (1996) 13 Cal.4th 92, 159; *People v. Bradford, supra*, 15 Cal.4th 1229, 1333.) Here, Goodwin's counsel unsuccessfully 1) moved to dismiss the entire case due to misconduct, including Lillienfeld's misconduct (see Argument I, *supra*), and 2) attempted to question Lillienfeld regarding his false testimony over Jackson's objection, and was precluded from doing so. (20RT 7600 - 7619.) It would have been futile for Goodwin to object that Lillienfeld's prior sworn statements were misconduct because they were false, given the court's refusal to permit cross-examination of Lillienfeld with those same sworn statements.

If Goodwin's motion to dismiss and his unsuccessful attempt to impeach Lillienfeld with his false statements are insufficient to preserve the issue, this Court may still review it. The reviewing court has discretion whether to consider issues not raised at the trial (*Canaan v. Abdelnour* (1985) 40 Cal.3d 703, 723, fn. 17), if to do so would be in the interests of justice. (*Conservatorship of Waltz* (1986) 180 Cal.App.3d 722 [pertains to issues not raised on appeal, but by analogy should be applicable to issues not raised during trial].)

Finally, "objection in the trial court is not required to preserve a federal constitutional issue." (*People v. Vera* (1997) 15 Cal.4th 269, 279; accord, *People v. Santamaria* (1991) 229 Cal.3d 269, 279, fn. 7 (1991) [errors "of... magnitude" are cognizable on appeal in absence of objection]; *People v. Mills* (1978) 81 Cal.App.3d 171, 176 ["The Evidence

Code section 353 requirement of timely and specific objection before appellate review is available 'is, of course, subject to the constitutional requirement that a judgment must be reversed if an error has resulted in a denial of due process of law' "].)

C. The OCDA, Relying Upon the LASD's Improper Investigation, Brought this Case Despite the Absence of Good Evidence And The LADA Later Took the Case Back, Notwithstanding Manufactured Evidence

The LADA brought this case against Goodwin following sixteen years of an ineffective investigation that intermittently halted entirely for years at a time, and knowing there was no substantial, reliable evidence connecting Goodwin to the killers.⁸⁶ The LADA pursued Goodwin with full knowledge investigators had ignored far more damning evidence against other individuals developed within the year the murders occurred.⁸⁷

1. Facts Pertaining to the Investigation and Resulting Prosecutions

(a) Lead Detective Griggs' Investigation Was Derailed by Campbell's Interference

Investigators suspected Goodwin from the outset of the investigation in March of 1988, found nothing to incriminate him, then revived a cold case investigation under pressure from Thompson's politically-connected sister, Collene Campbell. (1CT 11-15, 5CT 1154,

⁸⁶See Argument II, *supra*.

⁸⁷See Arguments IX, X and XI, *supra*.

1157; 6CT 1487-1517.) Early on, when Detective Griggs – the first lead investigator – did not pursue the investigation to Campbell's liking, she hired her own team of investigators and actively interfered with Griggs' work.⁸⁸ (1CT 15-16; 5CT 1153-1154, 1192-1201; 1205-1206; 6CT 1493-1517.)

From the start of the investigation, Campbell insisted Goodwin had the Thompsons killed. (5CT 1198-1199.) After Campbell lobbied her personal friend and attorney, former Deputy OCDA – now OCDA – Tony Rackauckas to help pursue Goodwin, a deputy from the OCDA's office contacted Griggs and directed him to cooperate with Campbell. (6CT 1503-1505.)

In late 1988, Campbell filed complaints against Griggs because he was not focusing solely on Goodwin. (5CT 1154; 6CT 1487, 1512.) In December 1988, Deputy Griggs responded in two written and taped memoranda asserting Campbell was interfering with his investigation and attempting to direct the investigation on her terms. (5CT 1154, 1195; 6CT 1487-1569; 4RT P-2 – P-3.) Griggs secreted his memoranda in the evidence locker, apparently concerned the material

88

Campbell's investigator was former Orange County Sheriff's homicide investigator Bernie Esposito. (6CT 1493.) In a 1988 memorandum, Griggs stated that after his first meeting with Campbell, members of law enforcement warned him Campbell had "created problems" in the Anaheim investigation of the murder of Scott Campbell, Collene Campbell's son. (6CT 1493-1494.) Esposito met with Griggs, and the two of them agreed Esposito would channel information from Campbell to Griggs in an attempt to avoid tainting the case. (6CT 1494-1495.)

would disappear if it went through normal Sheriff's Department channels. (4RT R-13.)

Campbell first telephoned Griggs in March or April of 1988, telling him she wanted to do whatever she could to help find the killers. (5CT 1189.) She said she had ways of obtaining phone and other records the police could not get. (5CT 1190.) When Griggs told Campbell he was bound by the rules of search and seizure and discovery, she assured him she had experience in these matters and had assisted the Anaheim police when they investigated her son Scott's murder. (5CT 1190-1191.)

Griggs met with Campbell the first time at the Thompsons' house in early April 1988, informing him she was working on telephone records from Goodwin's residence. (5CT 1191.) Campbell told him if he really could not use the records she gave him, they were just "for information," and Griggs responded once he received them they were open to discovery. (5CT 1191.) Griggs advised Campbell if her information broke the case he would have to reveal his source at any discovery hearing, leaving Campbell open to a civil suit. (5CT 1192.)

Around May 1, 1988, Griggs first met with Campbell's investigator, Esposito, at the Norwalk police station, where Griggs presented an overview of the case. ^{bl} (5CT 1193-1194.)

In mid-May of 1988, Campbell contacted Griggs to tell him a cousin had checked on Goodwin's brother, Mark, and had some information. (5CT 1196; 6CT 1539.) Griggs met with the cousin, who gave him Mark's mug shot and rap sheets. (5CT 1196.) Campbell said

Mark resembled the white male suspect in the Thompson case, and she had phone toll information about calls from California to Pensacola, Florida just prior to the murders. (5CT 1196-1197; 6CT 1538-1539.) Griggs investigated Mark, ruling him out as a suspect. (6CT 1540-1542.)

On June 2, 1988, Campbell gave Griggs the names of two witnesses who had seen two black men near the Thompson house. (5CT 1195.) The witnesses told him they had seen a white male in a Toyota on the road leading to the Thompsons' neighborhood. (5CT 1195; 6CT 1554.) Griggs prepared a flyer and walked the neighborhood with Detectives Verdugo and Jansen. (5RT 1195, 1198; 6CT 1554.)

In June of 1988, Campbell told Griggs she might need security because she wanted to tape a conversation with one of Goodwin's employees. (5CT 1200.) Griggs asked Campbell if this person had some information, because if so, Griggs would conduct an interview. (5CT 1200.) Campbell became annoyed, saying she had made tapes before. (5CT 1201.) Griggs again advised Campbell about the rules regarding discovery. (5CT 1201.) Griggs told Campbell he would not risk tainting the investigation without a solid reason to use her in as an agent. (5CT 2001.)

Griggs discussed Campbell with Lt. Chausse and Captain Grimm, who said the LASD would not take part in a "fishing expedition" by a police agent without first establishing its importance to the case. (5CT 1201-1202.) LADA Deputy Dale Davison advised Griggs the police agent guidelines were strict. (5CT 1202.)

On July 7, 1988, Griggs met with Esposito and Campbell,

but Campbell refused to allow Griggs to tape-record the meeting. (5CT 1205.)

On July 8, 1988, Campbell gave Griggs two clues. (5CT 1207; 6CT 1557-1558.) First, Campbell claimed Ross Olney had information about Goodwin's connections in Jamaica who may have provided the "hit men." (6CT 1557.) An investigator contacted Olney, who indicated the "hit man" comment was just speculation among race drivers. (6CT 1557-1558.) Second, Campbell claimed the Thompsons' neighbor, Scott Smith, had been involved in litigation with Goodwin, and that Smith had expressed fear for his safety; Smith denied this. (6CT 1558.)

Two or three weeks later, LADA Deputy Dale Drusin contacted Griggs, saying Deputy OCDA Snethen had called the Chief Deputy in Los Angeles to talk to him about the Thompson murder investigation. (5CT 1202.) Griggs called the OCDA, and the deputy told him to listen to Campbell's "important information." (5CT 1204.)

In September of 1988, Campbell reported taping conversations with Jeanne Sleeper [sic] and Larry Huffman. (5CT 1210.) Griggs reminded Campbell about discovery rules and contacted Esposito, who told him the tapes did not contain any useful information. (5CT 1210.)

Griggs spoke with Campbell about the script for the "Unsolved Mysteries" program on the Thompson murders. (5CT 1209, 1211.) Detective Burbau disagreed with Campbell's theory on how the murders occurred, and how Campbell found out about the murders through a friend in the Sheriff's Department. (5CT 1211.)

On October 6, 1988, Griggs and Deputy Lyons went to the Thompson residence for the filming of the Unsolved Mysteries program. (5CT 1212.) Campbell told Lyons she had problems with Griggs and hoped to get along with Lyons. (5CT 1212.) Lyons told Griggs Campbell was being manipulative.

Also on October 6, 1988, Campbell reported her husband Gary had taken a call from someone who said the Goodwins had put a contract out on her. (6CT 1560.) Campbell discussed this "threat" with Tony Rackauckas. (6CT 1560.)

On October 7, 1988, Griggs spoke with Gary Campbell, who confirmed having received a call from an investigator about a threat. (6CT 1560.) The investigator never identified the source of the threat or mentioned the Goodwins. (5CT 1209; 6CT 1561.) Griggs confirmed Gary's version with Rackauckas and the investigator. (6CT 1561-1562.)

Griggs noted he had had no negative contacts with Campbell since July of 1988, and he did not know why she went to the District Attorney to complain about him and the investigation. (5CT 1214.)

Campbell interviewed witnesses both before and after law enforcement interviewed them. (5CT 1216.) Campbell would give information to Griggs for clues, and then when he interviewed the witnesses they said something quite different from what Campbell had reported. (5CT 1216.)

(b) Lillienfeld Permitted Campbell to Direct His Investigation

In January of 1992, Griggs took a psychiatric-stress disability retirement, and the investigation of suspects other than Goodwin abruptly ceased. (5CT 1154.) Somewhere between January of 1992 and 1997 – depending on which of his sworn statements and testimony one believes – Lillienfeld picked up the investigation where Griggs left off. (See, e.g., OCPHRT 68; 20RT 7569, OC Grand Jury⁸⁹ Lillienfeld RT 881-882; sealed Exhibit B to sealed 1538.5 motion.)

In addition to the omissions and misconduct described in previous arguments, Lillienfeld conducted a non-objective investigation. He participated in a crime-scene “reconstruction” for the television show America’s Most Wanted, fictionalizing the “facts” to which witnesses later testified (20RT 7583.) He falsely declared under penalty of perjury in multiple affidavits, at the preliminary hearing, and possibly at Grand Jury proceedings that Goodwin owned guns consistent with the weapon used to kill the Thompsons. (20RT 7585-7594; 20RT 7600-7619; OCPHRT [4-15-2002] 288-289; sealed Exhibit B to sealed 1538.5 motion.) This was a key piece of “evidence” Lillienfeld manufactured to obtain orders for the live lineup, search and arrest warrants, and upon which Goodwin was subsequently held to answer in Orange County. (See OCPHRT [4-15-2002] 288-291; OCPHRT [4-18-2002] 340.) He falsely testified during the Orange County preliminary hearing that Gail Moreau-Hunter had not

⁸⁹Hereinafter referred to as “OCGJ.”

attempted suicide. (OCPHRT 155-156.)

Because in 1998 the LADA declined to prosecute Goodwin due to insufficient evidence, Lillienfeld went forum-shopping to Orange County, personally lobbied the OCDA to prosecute Goodwin, attended and testified at grand jury proceedings with Deputy OCDA David Brent, and directed the investigation on Campbell's terms. (OCPHRT 29; OCGJ Lillienfeld RT, 885-886.)

(c) The Los Angeles Prosecution

The LADA attempted to inhibit all information that did not support the theory Goodwin was responsible for the Thompson murders. The passage of 16 years since the murders helped in this effort.⁹⁰ At the LA preliminary hearing the prosecutor presented the testimony of Gail Moreau-Hunter – a person who appeared to be delusional, who had repeatedly been hospitalized due to severe mental illness, and who may have been hearing voices – as evidence Goodwin had "confessed" to the Thompson murders. (3CT 789-826; 4CT 872; 2RT F-39 – F-47, 2RT P-30 – P-31.) During this proceeding the prosecutor repeatedly objected to cross-examination regarding Moreau-Hunter's substance abuse and numerous commitments in mental institutions and rehabilitation centers during the period she claimed to have heard Goodwin's "confession." (3CT 803-818; 4CT 870-875.) Ultimately – after Moreau-Hunter's psychiatric records were obtained by the defense – the prosecutor did not present Moreau-Hunter's testimony at trial. (4RT P-30 – P-31.)

⁹⁰See Argument III, *supra*.

The LADA resisted discovery of materials generated by investigators and the OCDA of other potential suspects in the Thompson murders and jeered at the notion that others might have been more viable suspects. (2RT A-2 – A-9.)

Lillienfeld's and the prosecutors' conduct was inconsistent with a "search for truth." (*Drake v. Kemp* (11th Cir. 1985) 762 F.2d 1449, 1479.) Outrageous government misconduct pervaded this case.

2. Pursuing a Course of Action That Shocks the Conscience, Lillienfeld Engaged in Forum-Shopping In Order To Assist a Private Citizen In Her Personal Vendetta Against Goodwin

Detective Lillienfeld improperly went forum-shopping by taking this case to the OCDA after the LADA rejected it in 1998 for lack of evidence to connect Goodwin to the crimes. (OCGJ RT Lillienfeld testimony, 885-886.)

(a) Detective Lillienfeld Usurped Power

The California Constitution identifies California sheriffs as county officials. "[T]he California Constitution does not list sheriffs as part of 'the state executive department.'" (*Streit v. County of Los Angeles* (9th Cir. 2001) 236 F.3d 552, 561, cert. denied, 534 U.S. 823, 122 S.Ct. 59, 151 L.Ed.2d 27 (2001) [quoting *McMillian*, 520 U.S. at 787, 117 S.Ct. 1734 internal quotation marks omitted.]) "Instead, Article XI, § 1(b) of the California Constitution designates sheriffs as county officers." (*Id.*)

Several provisions of the Government Code support the conclusion the sheriff acts for the county when conducting investigations. "Under California law, monetary damages for §1983

claims are paid by the County and not the state." (*Id.* at 562 [citing Govt. Code § 815.2].) California law places liability for a sheriff's misconduct on the county – not the state. (Cal. Gov. Code § 815.2; *Streit*, 236 F.3d at 562.) California sheriffs are elected county officers. (Govt. Code § 24000(b); Elec. Code § 314].) Sheriffs are required to maintain their offices at the county seat with other county officers. (Govt. Code § 24250). Sheriff vacancies are filled in the same manner as other elective county officers. (Govt. Code § 24205.) The services of the sheriff may be contracted out by the county – not the state. (Govt. Code § 53069.8.) "These various state provisions lead inexorably to the conclusion that the [sheriff] is tied to the County in its political, administrative, and fiscal capacities." (*Streit, supra*, 236 F.3d 552, at p. 562.)

Finally, California authorities support a county's liability for a sheriff's actions. (See *Sullivan v. County of Los Angeles* (1975) 12 Cal.3d 710, 716-717; *Beck v. County of Santa Clara* (1988) 204 Cal.App.3d 789, 251.) The sheriff acts as the final policymaker for the county when administering the County's release policy." (*Streit, supra*, 236 F.3d 552, 564-565.)

A sheriff's jurisdiction in law enforcement matters extends throughout his county, and he has concurrent jurisdiction with that of the city police within the boundaries of any city within his county. (Pen. Code § 830.1; *People v. Pina* (1977) 72 Cal.App.3d Supp. 35, 39-40.) Those powers are limited, with a few statutory exceptions, to actions within the deputy's county of employment. (*Ibid.*) The powers of a deputy sheriff when acting beyond his territorial limits, except under circumstances specified by statute, are those conferred on a private

citizen under the same circumstances. (*People v. Pina*, *supra*, 72 Cal.App.3d Supp. 35, 39.) If an investigative agency acts outside the scope of its investigatory powers, it is precluded from showing it acted with a law enforcement purpose. (See *Ramo v. Department of Navy* (N.D. 1979) 487 F.Supp. 127, 130; *Weissman v. Central Intelligence Agency* (D.C. Cir. 1997) 565 F.2d 692.)

Based on the above authorities, it appears Lillienfeld lacked authority to expand his investigation into Orange County after the LADA initially rejected this case, and it appears Lillienfeld was acting as a rogue officer in doing so. Lillienfeld's attempt at having Goodwin prosecuted by the OCDA constituted a personal end-run around the authority of the LADA and the Los Angeles courts done at Campbell's behest. As such, Lillienfeld's actions constituted a usurpation of power outside of his authority as a Sheriff's deputy, ratified by the OCDA and later by the LADA. Lillienfeld's actions, and the OCDA and LADA's ratification of those actions, shock the conscience and constitute outrageous government misconduct.

(b) **Lillienfeld Impermissibly Went Forum-Shopping
In His Quest to Put Goodwin Behind Bars**

Los Angeles unquestionably was the county with jurisdiction over this case. (See unpublished decision in *Goodwin v. Superior Court*, Court of Appeal, Fourth District, case No. G031285.) The appellate record does not disclose directly how Lillienfeld, a LASD deputy, came to investigate this case on behalf of the OCDA, or how he presented this case to the OCDA for prosecution, other than that the LADA refused to prosecute the case after Lillienfeld presented it to that

office.⁹¹ It is reasonable to assume that if the LADA believed there was a case to be brought against Goodwin, the LADA would have brought that case instead of repeatedly rejecting it, and the LADA would not have authorized Lillienfeld to go outside the jurisdiction to shop for a prosecutor.

Judge-shopping and forum-shopping are evils "that should be prevented." (*People v. Preciado* (1978) 78 Cal.App.3d 144, at p. 149.) California and federal courts generally consider such conduct unethical and sanctionable. (See *Fields v. Gates* (C.D. Cal. 1999) 184 F.R.D. 342; *Hernandez v. City of El Monte* (9th Cir. 1998) 138 F.3d 393, 398-399 ["Judge-shopping clearly constitutes 'conduct which abuses the judicial process.'"]; *Standing Committee on Discipline of U.S. Dist. Court for Cent. Dist. of California v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1443 ["Judge-shopping doubtless disrupts the proper functioning of the judicial system and may be disciplined."].)

"[V]enue provisions applicable to criminal proceedings serve a variety of purposes." (*People v. Simon* (2001) 25 Cal.4th 1082, 1095.) "[F]rom the perspective of a defendant, statutory enactments that provide for trial in a county that bears a reasonable relationship to an alleged criminal offense also operate as a restriction on the discretion of the prosecution to file charges in any locale within the state that it chooses, an option that, if available, would provide the prosecution with the considerable power to choose a setting that, for whatever reason, the

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See Lillienfeld's explanation during the Orange County Grand Jury proceedings. (OCGJ RT Lillienfeld testimony pp. 884-886.)

prosecution views as favorable to its position or hostile or burdensome to the defendant's." (*Ibid.* [emphasis added].) "[V]enue provisions also serve to protect the interests of the community in which a crime or criminal activity occurs, 'vindicat[ing] the community's right to sit in judgment on crimes committed within its territory.' (*People v. Guzman* [1988] 45 Cal.3d [915,] 937 [248 Cal.Rptr. 467, 755 P.2d 917].)" (*Ibid.*, italics added.) Here, Lillienfeld sought to have Goodwin prosecuted in Orange County, a setting more favorable to Campbell due to her personal connection with the OCDA and that office's willingness to prosecute Goodwin.

Lillienfeld's decision to seek a forum in Orange County when he could not obtain one in Los Angeles for lack of evidence against his intended target was a usurpation of his power as a member of the LASD, and in acting as he did Lillienfeld was a rogue officer proceeding under the political influence of a private citizen, Campbell. (*Ibid.*)

Nonetheless, the fact that Lillienfeld was able to obtain the cooperation of the OCDA in convening a grand jury, charging Goodwin and proceeding through a preliminary hearing to holding Goodwin to answer on charges of conspiracy to commit murder and murder for financial gain, lent credibility to Lillienfeld's pursuit of Goodwin such that the LADA was convinced to bring a case against Goodwin it had previously declined to prosecute.

3. The OCDA Used False Evidence In Order To Arrest and Charge Goodwin in Orange County, Setting in Motion the Juggernaut That Resulted in Goodwin's Conviction

(a) Relevant Facts

Prior to seeking the warrant for the live lineup to procure the Stevenses' identifications of Goodwin as the man in the station wagon "planning" the murders, the search warrant, and the arrest warrant for Goodwin, Lillienfeld possessed a ballistics report dated May 23, 1988, indicating a three-digit model Smith & Wesson firearm such as that owned by Goodwin could *not* have been used in the Thompson murders. (20RT 7600-7603.) Lillienfeld also knew at the time he drafted his affidavits in support of the warrants seeking the live lineup, the search warrant, and the arrest warrant that Goodwin had legally purchased a three-digit Smith & Wesson. (20RT 7587.)

Lillienfeld claimed he misunderstood the ballistics report, but his claim is incredible – especially after he ordered his own ballistics tests in July of 2001 and obtained the same results excluding Goodwin's firearms. Lillienfeld repeatedly falsely swore the gun legally registered to Goodwin could have been the murder weapon. (20RT 7587-7588, 7604-7606.) Based largely on this falsehood, Goodwin was arrested for the Thompson murders, setting in motion the process that resulted in Goodwin's conviction. (20RT 7588.)

On March 28, 2001, the same day Goodwin held a press conference in Orange County to proclaim his innocence, Lillienfeld sought an order from the LA County Superior Court, *ex parte*,

compelling Goodwin to attend a live lineup at the LA County jail. (*Goodwin v. Superior Court* (2001) 90 Cal.App.4th 215, 218-219.) In support of the request, Lillienfeld filed an affidavit under seal repeating the lie about Goodwin's firearms. (*Id.* at p. 219.) The superior court issued the requested order, which directed the Sheriff to conduct a lineup on April 17, 2001, in which Goodwin would be a participant. (*Ibid.*)

In July of 2001, Lillienfeld had a Smith & Wesson three-digit model firearm tested, and the general rifling characteristics report came back indicating five lands and grooves with a twist to the right – which again ruled Goodwin's firearm out as one of the murder weapons. (20RT 7601.) Nonetheless, in mid-April of 2002, at the Orange County preliminary hearing, Lillienfeld testified, falsely, that Goodwin's three-digit Smith & Wesson firearm could have been the murder weapon. (20RT 7601; OCPHRT 218-219.)

Lillienfeld also relied in earlier proceedings and in sworn affidavits upon what he knew was unreliable, incompetent testimony from Gail Moreau-Hunter that Goodwin had confessed to committing the Thompson murders. (See Argument III.D.2(d), *supra*.)

(b) Governing Law

"More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. There has been no deviation from this established principle." (*Miller v. Pate* (1967) 386 U.S. 1, 7.) "A defendant has a due process right to a fair trial. Government agents may not manufacture evidence and offer it against

a criminal defendant.” (*Doswell v. City of Pittsburgh*, No. 07-0761, 2009 U.S. Dist. LEXIS 51435 (W.D. Pa. June 16, 2009) (quoting *Stepp v. Mangold*, No. 94-2108, 1998 U.S. Dist. LEXIS 8633, 1998 WL 309921, at (E.D. Pa. June 10, 1998.)

Due process is denied when a prosecutor uses perjured testimony to obtain a conviction. (*Napue v. Illinois* (1959) 360 U.S. 264, 269; *In re Imbler* (1963) 60 Cal.2d 554, 560.) At the time *Napue* and *Imbler* were decided, it was necessary for an accused to establish by a preponderance of the evidence a) perjured testimony was elicited at his trial, b) the prosecutor knew or should have known of its falsity, and c) the false testimony may have affected the outcome of the trial. (*In re Imbler, supra*, 60 Cal.2d 554, 560; see also Pen. Code § 1473, subd. b [writ of habeas corpus available when substantially material false evidence was presented at trial]; *People v. Gordon* (1973) 10 Cal.3d 460, 473, fn.7 [when alleged perjury appears from the record, same test applies on appeal as in habeas corpus proceedings].)

In *People v. Gordon, supra*, 10 Cal.3d 460, 473 (disapproved on other grounds in *People v. Ward* (2005) 36 Cal.4th 186, 212), the California Supreme Court explained if the alleged perjury is apparent on the appellate record, it may be raised on direct appeal rather than in a habeas corpus proceeding. The same test is applied in either proceeding:

The petitioner [i.e., Appellant] must show by a preponderance of substantial, credible evidence that perjured testimony was knowingly presented by the prosecution and that such testimony established an essential element of her conviction.

(*Id.* at p. 473.) More recent California decisions no longer require a showing the testimony was perjurious or the prosecutor knew of its falsity. (*In re Hall* (1981) 30 Cal.3d 408, 424 [Penal Code section 1473 revised and expanded the category of prosecution evidence subject to challenge on this ground. The new law requires only that the evidence be "false" and "substantially material or probative on the issue of guilt or punishment]; *In re Wright* (1978) 78 Cal.App.3d 788, 809, fn. 5.) This authority should also apply to a defendant's direct appeal.

In *People v. Morales* (2003) 112 Cal.App.4th 1176, the Court explained that to prevail on a claim of prosecutorial misconduct such as this, a defendant must show a) "the testimony was, in fact, false", and b) the prosecutor did not make "full disclosure of the falsity." (*Id.* at pp. 1195-1196.)

Goodwin acknowledges that issues involving the credibility of witnesses are normally deemed questions of fact to be resolved by the jury. However, in certain circumstances it is readily apparent erroneous details in a witness' testimony are not honest mistakes of fact, and that in certain circumstances the contradictory testimony of witnesses cannot be explained away as innocent misrecollection or confusion. If the prosecutor cannot reconcile any of the witness' statements or anticipated testimony with the truth, allowing that witness to testify without correcting the falsehood is misconduct. (*People v. Morales, supra*, 112 Cal.App.4th 1176, 1195.) In fact, occasionally the testimony of a witness can be so "inherently improbable" that a reviewing court may find the witness' testimony to be unbelievable as a matter of law – regardless of whether the

prosecutor claimed to believe the witness or not. Further, if the only properly admitted evidence is the "inherently improbable" testimony of a witness, the evidence is insufficient as a matter of law to support the conviction. (*People v. Headlee* (1941) 18 Cal.2d 266, 267-268.)

In *People v. Headlee, supra*, after asserting it is not an appellate court's function to weigh evidence, the Supreme Court stated, "Where, however, the evidence relied upon by the prosecution is so improbable as to be incredible, and amounts to no evidence, a question of law is presented which authorizes an appellate court to set aside a conviction. [Citation.] Under such circumstances an appellate court will assume that the verdict was the result of passion and prejudice. [Citation.] To be improbable on its face the evidence must assert that something has occurred that it does not seem possible could have occurred under the circumstances disclosed. The improbability must be apparent; evidence which is unusual or inconsistent is not necessarily improbable." (*People v. Headlee, supra*, 18 Cal.2d at pp. 267-268; accord *People v. Thornton* (1974) 11 Cal.3d 738.) The burden of proof is by a preponderance of evidence that the testimony affirmatively presented by the prosecution was false. (*People v. Gordon, supra*, 10 Cal. 3d 460, 473.)

If the testimony of a witness is deemed "inherently improbable" by the reviewing court, the reasonable inference is the witness was either mistaken or the witness intentionally presented false testimony. If the witness' "inherently improbable" testimony was of such a nature it is clear the witness was not simply mistaken, the only other reasonable conclusion is that the witness intentionally testified

falsely. Here, Lillienfeld repeatedly falsely swore under oath Goodwin's firearms were consistent with the weapon used to kill the Thompsons, and Goodwin had confessed to Gail Moreau-Hunter. It is inherently improbable that Lillienfeld did not realize Goodwin's weapon could not have been the murder weapon, given Lillienfeld's years of experience as a homicide detective and the fact that Lillienfeld himself subsequently ordered testing of a Smith & Wesson three-digit model firearm like Goodwin's, conclusively determining the type of gun Goodwin owned could not have been the murder weapon. (20RT 7592, 7601.) In spite of this finding, in December of 2001 Lillienfeld declared under penalty of perjury in his affidavit in support of Goodwin's arrest warrant that Goodwin's firearm was consistent with the murder weapon. (20RT 7592.) Clearly Lillienfeld was not mistaken when he made these statements on behalf of the prosecution - he was lying.

Based on Lillienfeld's investigation, the prosecutor held Gail Moreau-Hunter out as a legitimate witness to some damning facts - including a full confession by Goodwin to hiring two black men to commit the murders. (OCPHRT 152-154.) Lillienfeld made false statements in affidavits - and Gail Moreau-Hunter testified at the preliminary hearing - that Goodwin "confessed" to arranging for the Thompson murders. (3CT 789-826; 8CT 2172.) Moreau-Hunter was, however, delusional. She claimed Goodwin had attempted to kill her, and that she had suffered multiple, serious injuries in the attempt, including a broken back and burn marks made with a cigarette or an iron. (4RT F-42.) Lillienfeld testified during the Orange County

preliminary hearing that Gail Moreau-Hunter had not attempted suicide, and then admitted he had never obtained Gail Moreau-Hunter's medical records. (OCPHRT 155-156.) Moreau's medical records showed Hunter had fabricated injuries she claimed she suffered; she had been hospitalized numerous times for severe mental illness; and the hospitalization she claimed occurred after Goodwin attempted to kill her was, in fact, a hospitalization for a drug overdose. (4RT F-40 - 45.) Moreau's statements, therefore, were inherently improbable and demonstrably false, yet Lillienfeld repeatedly used them in his attempt to have Goodwin prosecuted and both the OCDA and LADA relied upon Moreau's false testimony in prosecuting Goodwin.

Finally, under California law, a defendant who presents a claim of perjured testimony or a claim the prosecution presented false evidence must show that the falsity was not apparent to the trier of fact from the trial record, and the defendant had no opportunity at trial to show the evidence was false -- usually because the prosecution suppressed evidence. (*In re Waltreus* (1965) 62 Cal.2d 218, 221.) Here, pursuant to the prosecutor's objection, the trial court prevented Goodwin from impeaching Lillienfeld with his false sworn statements that Goodwin's Smith & Wesson firearm was consistent with the murder weapon. (20RT 7600 - 7619.) The jury never heard about Gail Moreau-Hunter because the prosecutor abandoned her as a witness after Goodwin obtained her medical records. (See 4RT F-42 - 44.) Therefore, Lillienfeld's perjury -- on the force of which the investigation and Goodwin's prosecution was propelled -- ultimately was not

apparent to the trier of fact, the jury that convicted Goodwin.

(c) The Meaning of "Material Evidence"

False evidence is "substantially material or probative" (Penal Code § 1473) "if there is a 'reasonable probability' that, had it not been introduced, the result would have been different. [Citation.]" (*In re Roberts* (2003) 29 Cal.4th 726, 742; *People v. Coddington*, *supra*, 23 Cal.4th 529, 589-590; *In re Sassounian* (1995) 9 Cal.4th 535, 546.) The Supreme Court defined "reasonable probability" as "a chance great enough, under the totality of the circumstances, to undermine our confidence in the outcome. [Citation] The [appellant] is not required to show that the prosecution knew or should have known that the testimony was false. [Citations]" (*In re Roberts*, *supra*, 29 Cal.4th 726, 742.)

The governing principles of materiality were discussed by the California Supreme Court in *In re Brown*, *supra*, 17 Cal.4th 873:

First, ... materiality does not require demonstration by a preponderance that disclosure ... would have resulted ultimately in ... acquittal.... [T]he touchstone of materiality is a reasonable probability of a different result, and the adjective is important....

Second, it is not a sufficiency of evidence test.... The possibility of an acquittal ... does not imply an insufficient evidentiary basis to convict....

Third, once a ... court applying *Bagley* has found constitutional error, there is no need for further harmless-error review. The one subsumes the other for while ... undisclosed evidence is evaluated item by item, its cumulative effect ... must be considered collectively....

(*Id.* at pp. 886-887.)

Lillienfeld's false statements were material. Lillienfeld falsely swore in multiple affidavits and during multiple court proceedings that the gun legally registered to Goodwin could have been the murder weapon, and that Goodwin had "confessed" to Gail Moreau-Hunter. (See, e.g., Exhibit B, pp. 8-9, to the 1538.5 motion filed under seal; OCPHRT 151-152, 217-219; 20RT 7587-7588.) There is a reasonable probability that, had Lillienfeld's false sworn statements not been utilized by investigators and prosecutors, the prosecution team would not have been able to obtain the search warrant, the live lineup warrants, and Goodwin's arrest warrant. Based in significant part on Lillienfeld's manipulations, Goodwin was arrested for the murders and held to answer on charges in Orange County. (20RT 7588.) There is also a reasonable probability that, had the jury been informed of Lillienfeld's falsehoods and how they had been utilized to obtain Goodwin's prosecution, Goodwin would have obtained a different result at trial. Lillienfeld's falsehoods were undeniably material.

(d) If False Evidence Presented by the Prosecution Was "Material" to the Guilt or Innocence of the Accused, the Conviction Must Be Reversed Without Weighing the Degree of the Prejudice to the Accused

Although the Supreme Court in *People v. Ruthford* (1975) 14 Cal.3d 399, 406-407, dealt with evidence withheld from the defense, its language regarding the test to be applied is pertinent to this case:

We note preliminarily, that when the evidence which is suppressed or otherwise made unavailable to the

defense by conduct attributable to the state bears directly on the question of guilt, our initial inquiry is whether such conduct resulted in denial of a fair trial. If so, the judgment of conviction must be reversed without weighing the degree of the prejudice to the accused.

(*People v. Ruthford*, *supra*, 14 Cal.3d 399, 406-407)

Federal law is in harmony with California law in this regard. Under the federal Constitution, the intentional or inadvertent suppression of material evidence, whether or not specifically requested by the defense, requires reversal of a conviction. (*Giglio v. United States*, *supra*, 405 U.S. 150, 153.) If the evidence the investigator or the prosecutor affirmatively presented was false and it bore directly on the question of the defendant's guilt, the same rule applies. Lillienfeld's statements were false, and they bore directly on the question of Goodwin's guilt. (Exhibit B, pp. 8-9, to the 1538.5 motion filed under seal; 20RT 7587-7588; OCPHRT 151-152, 217-219.) Because Lillienfeld – and later the prosecutor – presented false and material testimony against Goodwin, Goodwin's convictions must be reversed.

D. Collene Campbell's Influence in This Case Violated The Rule that Prosecution of Criminal Offenses on Behalf of the People is the Sole Responsibility of the Public Prosecutor

"In California, all criminal prosecutions are conducted in the name of the People of the State of California and by their authority. (Gov. Code § 100, subd. (b).) California law does not authorize private prosecutions. Instead, "[t]he prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor [¶]

[who] ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. [Citation.] No private citizen, however personally aggrieved, may institute criminal proceedings independently [citation], and the prosecutor's own discretion is not subject to judicial control at the behest of persons other than the accused." (*People v. Eubanks, supra*, 14 Cal.4th 580, at pp. 588-589, citing *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.)

Between 1972 and 1988, Tony Rackauckas was a deputy OCDA. In 1988 Tony Rackauckas left the OCDA to practice in a private firm, and in that capacity he represented the Thompson family, including Campbell, in Thompson's probate proceedings. (OCPHRT 25; 9RT 3695-3696.) One of the issues in the probate was who died first during the murders, Trudy or Mickey Thompson. (OCPHRT 14.)

During most of the 1990's Campbell was mayor of San Juan Capistrano, California.⁹² (11RT 4295.) Rackauckas left private practice in 1990 when he was appointed to the bench, serving until becoming District Attorney of Orange County in 1999.⁹³

During his tenure as OCDA, Rackauckas has maintained a professional and personal relationship with Campbell and her family. (OCPHRT 15.) Rackauckas assisted Campbell in establishing her victims' rights organization, MOVE; has served as its treasurer; and was a treasurer of the Mickey and Trudy Thompson Memorial Fund.

⁹²<http://articles.latimes.com/2001/aug/30/local/me-40177>

⁹³<http://members.calbar.ca.gov/fal/Member/Detail/51374>

(OCPHRT 15, 26.)

The district attorney of each county is the public prosecutor, vested with the power to conduct on behalf of the People all prosecutions for public offenses within the county. (Govt. Code §26500; *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 240.) Subject to supervision by the Attorney General (Cal. Const., art. V, § 13; Govt. Code §12550), therefore, the district attorney of each county independently exercises all of the executive branch's discretionary powers in the initiation and conduct of criminal proceedings. (*People ex rel. Younger v. Superior Court* (1978) 86 Cal.App.3d 180, 203; *People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 199–204.)

The district attorney's discretionary functions extend from the investigation of and gathering of evidence relating to criminal offenses (*Hicks v. Board of Supervisors, supra*, 69 Cal.App.3d 228, 241), through the crucial decisions of whom to charge and what charges to bring, to the numerous choices the prosecutor makes at trial regarding “whether to seek, oppose, accept, or challenge judicial actions and rulings.” (*Dix v. Superior Court, supra*, 53 Cal.3d 442, at p. 452; see also *People v. Superior Court (Greer), supra*, 19 Cal.3d 255, 267.)

The importance, to the public as well as to individuals suspected or accused of crimes, that these discretionary functions be exercised “with the highest degree of integrity and impartiality, and with the appearance thereof” (*People v. Superior Court (Greer), supra*, 19 Cal.3d 255, at p. 267) cannot be overstated. The public prosecutor “ ‘is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as

its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.' " (*Id.* at p. 266, quoting *Berger v. United States*, *supra*, 295 U.S. 78, 88.)

The nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. "The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People." (Corrigan, *On Prosecutorial Ethics* (1986) 13 *Hastings Const. L.Q.* 537, 538-539.) Thus the district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual. (*People v. Superior Court (Greer)*, *supra*, 19 Cal.3d 255, 267.)

While the district attorney has a duty of zealous advocacy, "both the accused and the public have a legitimate expectation that his zeal ... will be born of objective and impartial consideration of each individual case." (*People v. Superior Court (Greer)*, *supra*, 19 Cal.3d 255, at p. 267.) A prosecutor is "not disinterested if he has, or is under the influence of others who have, an axe to grind against the defendant, as distinguished from the appropriate interest that members of society have in bringing a defendant to justice with respect to the crime with which he is charged." (*Wright v. United States* (2d Cir.1984) 732 F.2d 1048, 1056.)

The purpose of Penal Code § 1424, *Eubanks, supra*, and due process is to insure prosecutorial independence from the undue influence of private parties. Goodwin's ability to be treated fairly was fatally compromised by the prosecutors both in LA and Orange County ceding essential prosecution functions to Campbell, and prosecuting Goodwin based on Campbell's political power, influence and connections rather than untainted facts obtained in an unbiased manner.

The Supreme Court has determined the word "conflict" in §1424 refers to "evidence of a reasonable possibility" that the district attorney's office may not be able to exercise its discretionary function in an evenhanded manner. (*People v. Conner, supra*, 34 Cal.3d 141, 148.) There was most certainly a conflict even before charges were brought because of Campbell's influence on the investigation and the decision to charge Goodwin, as described above. Because the investigation and decisions to charge Goodwin, both by the OCDA and the LADA, were so tainted, this Court should reverse Goodwin's convictions.⁹⁴

E. Members of the OCDA's Office Committed Misconduct By Acting as Investigators Searching for Clues and Corroboration That Might Give Them Probable Cause to Arrest Goodwin

In the civil context, courts recognize "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity." (*Buckley v.*

⁹⁴See discussion in section XVII. F, *infra*.

Fitzsimmon (1993) 509 U.S. 259, at p. 260.) However, in endeavoring to determine facts normally left to police investigators, prosecutors act "not as advocates but as investigators searching for clues and corroboration that might give them probable cause to recommend an arrest." (*Ibid.*) Civil courts recognize such activities constitute misconduct and are not immune from liability. (*Ibid.*)

Here, having been influenced by Campbell, Deputy OCDA Snethen indirectly contacted LASD investigator Griggs and pressured him to follow up on leads offered by Campbell, in order to develop probable cause to arrest Goodwin for the Thompson murders. (5CT 1202.) OCDA investigator Hodges told Griggs an unnamed source in the OCDA's office had spoken with Campbell and then turned the information over to Hodge's supervisor, who ordered Hodges to call Griggs. (5CT 1208.) These influences on Griggs' investigation should be taken into account as part of the quantum of evidence supporting a dismissal in this case.⁹⁵

95

Goodwin anticipates he will be able, if necessary, to develop facts supporting this issue and others in habeas corpus proceedings.

XVII. REVERSAL IS REQUIRED BASED ON THE CUMULATIVE EFFECT OF THE ERRORS

Even if no single error in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors in this case is so harmful that reversal is required. (See *Cooper v. Fitzharris* (9th Cir. 1987) 586 F.2d 1325, 1333 (en banc); see *Greer v. Miller* (1987) 483 U.S. 756, 765 [cumulative errors may so infect "the trial with unfairness as to make the resulting conviction a denial of due process"].) Indeed, where a number of errors occur at trial, "a balkanized, issue-by-issue harmless error review" is far less meaningful than analyzing the overall effect of all the errors in the context of the evidence introduced at trial against the defendant. (*United States v. Wallace* (9th Cir. 1988) 848 F.2d 1464, 1476.) This Court must apply the Chapman standard to the totality of the errors because errors of federal constitutional magnitude are combined with the other errors. (*People v. Williams* (1971) 22 Cal.App.3d 34, 58-59 *Chapman v. California*, *supra*, 386 U.S. 18, 24; *People v. Williams* (1971) 22 Cal.App.3d 34, 58-59.)

The delay in prosecuting Goodwin doomed his opportunity for a fair trial from the beginning. (Arguments III and IV.)

Aside from the violation of Goodwin's speedy trial right, the proceedings were tainted by the investigators' wholesale invasion of the defense camp by seizing Goodwin's attorney-client privileged communications – a *per se* violation of the Sixth Amendment right to counsel, for which dismissal is the sole appropriate remedy. (Argument I.)

The lack of evidence requires *per se* reversal. (Argument

II.)

The bad character evidence (Argument VII) and Kingdon's incompetent "expert" testimony the Goodwins had commingled funds and Goodwin was acting "behind the scenes" in his wife's purchases so that the two of them could "flee" on a yacht (Argument V), painted Goodwin as a man of bad character who displayed a consciousness of guilt. Kingdon's testimony was a crucial, critical, highly significant factor in Goodwin's conviction. The prosecutor repeatedly suggested to the jury Goodwin was involved in other criminal activity - specifically bankruptcy fraud - even though Goodwin had been acquitted of the federal fraud charges, fact the jury never heard - and the jury believed it. (8CT 2082 ["The bad character of Michael Goodwin along with his ability to take everything he did (including other criminal activity) to an extreme level was very evident"].) The error in admitting Wilkinson's irrelevant testimony that Thompson was afraid of Goodwin and thought there might be a sniper outside just compounded the jury's belief Goodwin was a bad guy who deserved to be convicted. (Argument VI.) The prejudice emanating from the bad character evidence (Argument VII) was exacerbated by the court's error in admitting evidence of Thompson's good character. (Argument VIII.)

In addition to maintaining an all-out, unfair attack on Goodwin's character, the prosecutors successfully gutted Goodwin's defenses by excluding evidence others were more likely responsible for the murders (Argument IX), Thompson had purchased a large quantity of gold and told others about it just before he was killed (Argument X), and Joey Hunter failed three polygraph examinations (Argument XI).

Compounding all of the damage from the evidentiary errors, the flawed conspiracy instructions permitted the jurors to convict Goodwin even though the jurors agreed the prosecutor had failed to prove any connection between Goodwin and the killers (Argument XII). In addition, the version of CALJIC No. 2.92 given to the jury violated Goodwin's right to due process, to meaningfully present his defense, violated his right to the effective assistance of counsel, and resulted in the jury's failure to fully consider the evidence where Goodwin's conviction depended significantly upon uncorroborated eyewitness identifications. (Argument XIII.) The court's error in giving the flight instruction compounded all of the other errors by allowing the jurors to draw the unwarranted inference that the Goodwins' departure on a yacht five months after the Thompson murders showed consciousness of guilt. (Argument XIV.)

Finally, the many and inexcusable instances of misconduct committed by the investigators and prosecutors from the beginning of the investigation to the guilty verdicts added to the overwhelming cumulative error. (Arguments XV and XVI.) Lillienfeld's creation of false evidence against Goodwin and the prosecutor's knowing use of it at trial, combined with the other outrageous government conduct Goodwin has described requires reversal of Goodwin's convictions and dismissal of any further proceedings against him.

The cumulative effect of these errors so infected appellant's trial with unfairness as to make the resulting conviction a denial of due process. (U.S. Const. 14th amend.; Cal. Const. art. I, §§ 1, 7, 15, 16 & 17; *Donnelly v. DeChristoforo* (1974) 416 U.S. 637, 643.) Goodwin's

convictions, therefore, must be reversed. (*Killian v. Poole* (9th Cir. 2002) 282 F.3d 1204, 1211 ["even if no single error were prejudicial, where there are several substantial errors, 'their cumulative effect may nevertheless be so prejudicial as to require reversal'"]; *Harris v. Wood* (9th Cir. 1995) 64 F.3d 1432, 1438-1439 [cumulative effect of the deficiencies in trial counsel's representation requires habeas relief as to the conviction]; *United States v. Wallace, supra*, 848 F.2d 1464, 1475-1476; *People v. Holt* (1984) 37 Cal.3d 436, 459.)

Finally, a court may dismiss a case or reverse a conviction based on a unique doctrine developed by the United States Supreme Court in *Rochin v. California* (1952) 342 U.S. 165, 172-173. In *Rochin* the Supreme Court reversed a criminal conviction on substantive due process grounds because the police action of forcibly pumping a suspect's stomach was an action "that shocks the conscience" and violates the "decencies of civilized conduct." (*Rochin v. California, supra*, 342 U.S. 165, at pp. 172-173.) Various Ninth Circuit decisions have found a prosecution could be dismissed or reversed on this basis, and three California cases have actually done so. (*Morrow v. Superior Court, supra*, 30 Cal.App.4th 1252, 1259-1261; *Boulas v. Superior Court, supra*, 188 Cal.App.3d 422, 429, 434; *People v. Moore, supra*, 57 Cal. App. 3d 437, 442.)

Goodwin's prosecution for the Thompson murders should shock the conscience of any appellate court or lay observer, because the proceedings went so wrong on multiple levels and violated Goodwin's fundamental rights in so many ways. In their zeal to prosecute and convict Goodwin, members of the LASD and OCSD, the OCDA and the

LADA permitted themselves to be influenced by Thompson's politically well-connected sister, Collene Campbell, to the point investigators and prosecutors at the very least proceeded in a grossly negligent manner, and at worst acted deliberately to satisfy Campbell's personal vendetta against Goodwin.

To gain reversal under *Rochin*, a defendant must show the governmental conduct "shocks the conscience" and violates the "decencies of civilized conduct." (*County of Sacramento v. Lewis* (1998) 523 U.S. 833, 846, citing *Rochin v. California*, *supra*, 342 U.S. 165, at pp. 172-173.) If the defendant is able to satisfy this enormously difficult burden, the Fourteenth Amendment substantive due process doctrine requires the prosecution be dismissed, despite the lack of any showing of prejudice. (*Rochin v. California*, *supra*, 342 U.S. 165, 172-173; *Morrow v. Superior Court*, *supra*, 30 Cal.App.4th 1252, 1263; *Boulas v. Superior Court*, *supra*, 188 Cal.App.3d 422, 429.)

In *Morrow v. Superior Court*, *supra*, 30 Cal.App.4th 1252, 1259-1261, *Boulas v. Superior Court*, *supra*, 188 Cal.App.3d 422, 429, 434; and *People v. Moore*, *supra*, 57 Cal.App.3d 437, 442, the courts unambiguously found that *per se* reversal should be applied if outrageous governmental conduct is found because "proceedings against the accused are thereby rendered improper." (*People v. Tribble*, *supra*, 191 Cal.App.3d 1108, 1116; *Boulas v. Superior Court*, *supra*, 188 Cal.App.3d 422, 422.) "Dismissal is occasionally used by the courts to discourage flagrant and shocking misconduct by overzealous governmental officers." (*Ibid.*)

There is no question that both procedural due process and

prosecutorial misconduct require a showing of prejudice. (*People v. Zapien* (1993) 4 Cal.4th 929, 967; *United States v. Valenzuela-Bernal*, *supra*, 458 U.S. 858, 872.) The gateway to *Rochin* relief, however, is not prejudice, but the high showing required to assert it. "Arbitrary official action can violate a defendant's substantive due process rights, but 'only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.' " (*People v. Alexander* (2010) 49 Cal.4th 846, at p. 892, quoting *County of Sacramento v. Lewis*, *supra*, 523 U.S. 833, at p. 846.) *Lewis* further explained the inquiry:

Thus, in a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience. That judgment may be informed by a history of liberty protection, but it necessarily reflects an understanding of traditional executive behavior, of contemporary practice, and of the standards of blame generally applied to them.

(*County of Sacramento v. Lewis*, *supra*, 523 U.S. 833, at p. 847.)

Effectively, what *Rochin* established was a constitutional grant of power to the court in those truly exceptional "shocking" circumstances where such additional power is necessary. While the *Rochin* doctrine is only intended to be utilized in exceptional circumstances, the circumstances here are so exceptional that the case appears to be unprecedented in the sheer number and magnitude of substantive due process violations. For that reason, Goodwin asks this Court to reverse his convictions for the Thompson murders and dismiss this case to preclude any further prosecution.

CONCLUSION

As demonstrated above, Goodwin's prosecution was infected by fundamental error. Starting with Lillienfeld's involvement in the case, Goodwin's prosecution devolved into a Kafkaesque exercise in incompetent evidence presented to a jury by prosecutors who engaged in reprehensible misconduct from the beginning of the investigation to verdict. The prosecution employed tainted and unreliable eyewitness testimony as the only evidence suggesting Goodwin was involved in a "conspiracy" to murder the Thompsons.

Goodwin's convictions must be reversed.

Dated:

Respectfully submitted,

GAIL HARPER
Attorney for Appellant
MICHAEL GOODWIN

EXHIBIT 7

EXPLANATION OF THIS EXHIBIT

There was far more evidence that the murders were done by someone other than petitioner rather than petitioner.

Only a small portion of that evidence of "Third Party Culpability" is on the record. Much that we had in hand, in discovery for example, was not introduced by defense counsel.

One of the most obvious omissions of compelling evidence that one of these other suspects committed the crime was to do with convicted killer Jerry Henrickson. He:

- 1) Strikingly resembled the physical description of the white suspect seen on the crime scene by every one of the five crime scene witnesses who reported or testified to seeing any suspect on the crime scene.
- 2) He confessed to involvement in the murders, bp 007294.
- 3) He was tentitively identified as being seen within 50 yards of the Thompson home on a bicycle¹ by a witness, Kirsten Hackman, who lived very close to the Thompsons.
- 4) Lead Det. Lillienfeld testified under oath that he had not shown this photo to the witness. However, the time of the showing of the photo is while he was in charge of the investigation, & the handwriting where her tentative ID is shown appears to be Lillienfeld's, bp 026494-496.
- 5) There is a packet of evidence that was given to Sheriffs re: Henrickson in 1990 that is suppressed, bp 036956.
- 6) There are also numerous confirmed interviews re: Henrickson referenced between bps 000318 & 329 & 000336 thru 000370 that are suppressed.²

Similar anomolies/omissions/contradictions appear for every one of the known suspects. For example, a page that the prior pg. indicates is extremely telling as to the real killers at bp 034923 has been removed & a "red herring" page inserted instead.

- 1) Prosecutors argued the killers escaped on bicycles down thru the location at which Henrickson was tentatively ID'd at.
- 2) None of this came out at trial.

HEADLINE: Theory in 2 Slayings

BYLINE: Compiled from News Dispatches

BODY:

Racing legend Mickey Thompson and his wife, Trudy, may have been murdered in retaliation for Thompson's testimony in a murder trial that led to the conviction of their nephew's killer, a prosecutor said.

Orange County Deputy District Attorney Tom Goethals in Los Angeles called the coincidence between the Thompson murders Wednesday and that of Scott Campbell six years ago "absolutely incredible."

"First, his nephew is murdered execution style, then Thompson and his wife are hit execution-style. The connection just knocks you right out of your chair," Goethals said.

END OF REPORT

FROM POLICE MURDER BOOK

THIS PAGE & THE NEXT THREE ARE
RELATED TO THE THREATS FROM THE
VAGOS MOTORCYCLE CLUB THAT MICKEY
WAS RECEIVING.

THIS SHOWS THE SCOTT
CAMPBELL MURDER
PROSECUTOR SAYING THE
TWO KILLINGS LOOKED
LINKED.

A FASCINATING ISSUE IS THAT ONE OF THE TWO MEN WHO WERE CONVICTED INITIALLY HAD HIS FATHER, GENE COWELL, ADVISE ME THAT HE, LARRY, HAD INFORMATION THAT SHOULD CLEAR ME & PLACE THE CULPABILITY WHERE IT SHOULD BE. HE WOULD NOT TELL ME WHERE THAT WAS, SAYING HE WAS FEARFUL. HOWEVER, JUST BEFORE MY TRIAL LARRY COWELL, ONE OF THE CONVICTED MEN, CALLED MY LAWYER & OFFERED INFORMATION TO CLEAR ME. MY PUBLIC DEFENDER REFUSED TO SPEAK WITH HIM.

Two pick Pick Nine

Each ticket pays \$1,167,120.40



Lions roar

Loyola win a record

To see or not to see

'Beanfield,' 'D.O.A.' reviewed

LOS ANGELES

Friday

March 18, 1988

Final news

Herald Examiner

Weather
Warm, breezy/A2

25 cents

Officials intrigued by
connection in slayings
of Thompsons, nephew

By Bill Johnson
Herald Examiner staff writer

Six millionaires racing promoter Mickey Thompson was a key prosecution witness in the murder trials of two men charged with the brutal killing of his nephew, and the possibility that Thompson was killed in retaliation "isn't that far-fetched," a prosecutor in the two cases said yesterday.

Meanwhile, Los Angeles County Sheriff's Department homicide investigators yesterday said they are searching for a

Thompson, A-6

Mickey's nephew, Scott Campbell, was convicted of murdering a VAGOS Motorcycle Club member in a drug deal gone bad. Scott was later murdered by another member of the VAGOS and Mickey testified at his trial.

LOS ANGELES HERALD-EXAMINER

3/18/88

2 DAYS AFTER THE MURDERS

Thompson

From A-1

white man with medium-length golden-blond hair who abandoned a bicycle in nearby Irwindale an hour after the Thompson slayings. A sheriff's spokesman said this man may have information about two men seen fleeing on bicycles after they opened fire on Thompson, 59, and his wife, Trudy, 42, who were walking along the driveway of their exclusive home in Bradbury shortly after 6 a.m. Wednesday.

Orange County Deputy District Attorney Tom Goethals said the coincidence between the Thompson murders and that of their nephew, Scott Campbell, six years ago "is absolutely incredible."

"First, his nephew is murdered execution-style, then Thompson and his wife are hit execution-style. The connection just knocks you right out of your chair," Goethals said.

Thompson, a pioneering race car driver and the first person to crack the 400-mph land speed barrier, served as a key witness in destroying the alibi of Larry Cowell, who was convicted in 1982 of pushing Campbell from an airplane when a drug deal went sour, Goethals said.

Cowell currently is serving a 25-years-to-life prison sentence. Don DiMaseo, who was hired by Cowell to kill Campbell, was convicted last summer of first-degree murder and was sentenced to life imprisonment without parole, Goethals said.

very possible," Goethals said. "Certainly, it's an angle that will be explored."

Sheriff's Department homicide investigators, who earlier characterized the shootings as "an assassination," yesterday declined to speculate on a motive for the killings. No arrests have been made.

Autopsies performed yesterday revealed that Mickey Thompson, who recently confided to friends that he had received threats against his life, died from multiple gunshot wounds to the head and body. Los Angeles County coroner's spokesman Steve Stewart said, Trudy Thompson, who neighbors heard scream hysterically "Don't shoot! Don't shoot!" moments before the shots were fired, also died of gunshot wounds to the head and body, Stewart said.

Deputy Hal Grant, a Sheriff's Department spokesman, said the man being sought is about 5 feet 8 inches tall, 180 pounds, between 35 and 40 years of age, and was last seen about 7 a.m. Wednesday in Irwindale, about three miles from the Thompson home.

Grant said the man, wearing a light yellow sweater and off-white or light blue pants, was seen riding a bicycle on Foothill Boulevard. He apparently abandoned the bike before hitching a ride with a motorist near a bus stop on Foothill Boulevard near Irwindale Avenue. The man had tried desperately for about 10 minutes to flag down passing motorists, Grant said.

"There is no evidence connecting this man to the crime scene, but his behavior was very unusual

recovered a bicycle that may have been used by one of the gunmen.

Deputies are also searching for the two men seen fleeing the Thompson home on bicycles. Sheriff's officials also said that among the possible leads detectives are investigating are reports from Thompson's neighbors and friends that he had received death threats from a competitor over the last four months.

Michael Goodwin, who over the past four years had been locked in bitter court fights with Thompson over control of motocross race promotion in Southern California, refused to comment on the speculation. Goodwin said he planned to make a statement within the next several days.

"I could and I would like to make a statement about what happened, but my attorney believes it's best to say nothing at this time," Goodwin said in a telephone interview yesterday.

Ron Coulombe, Goodwin's attorney, also declined comment, saying "obviously we must allow the criminal attorneys to come in and appraise the situation. That will take careful and thorough handling." Coulombe called speculation linking Goodwin with the murder "irresponsible. What evidence is there to do this to someone?" he said.

The Specialty Equipment Marketing Association, a automotive racing trade group, yesterday offered a \$30,000 reward for information leading to the arrest of the Thompson's killer or killers.

Funeral services for the Thompsons have been scheduled for 1 p.m. Monday at Rose Hills

Thompson &
Campbell
murder
similarities/
connections.

Thompson
murders -

Thompson's willingness to play rough and tough put him squarely in the public spotlight twice in the last several years.

Campbell said she did not believe that the killings were related. "There's no connection in their lives," she said. "The other case has been solved and the men put away."

REPORT CONTINUATION NARRATIVE

URN

*HOWEVER, NOTE THAT DDA DIXON ARGUED AT TRIAL THAT THOMPSON HAD NO OTHER ENEMIES,
AT RT-9008:17.

3-4-89 - SCOTT ARMSTRONG - PARTNER
DAVID HARVEY - WERE AT POMONA
FAIR GROUNDS. OTHER PEO. ASSOCIATED
WITH M.T.E.

THE PEO. WERE STANDING AROUND
& M.T. SAID THAT HE WANTED HIM
& DAVID TO BE ON THE LOOK-OUT
FOR ANY SUSPICIOUS PERSONS. HE
SAID HE HAD TESTIFIED IN A
DAVID TRIAL INVOLVING HIS NEPHEW
& SOMEONE HAD BEEN THREATENING HIM.

IT GOT THE GUY FEELING THAT
SOMETHING HAD JUST HAPPENED TO
MAKE M.T. SAY THIS. HE HAD
HEARD RUMORS OF OTHER THREATS
BY M.T. HE HAD SEEN M.T.
NUMEROUS TIMES AFTER THE POMONA
FAIR GROUNDS & M.T. NEVER MENTIONED
ANY OTHER THREATS OR ANY MORE
ABOUT DAVID TRIAL THREATS.

3-4-89 - LFT MARS. AT DAVID
HARVEY 818-303-3060.

6-89 - POMONA FAIR GROUNDS 81 82 83 -
J. SPRING 83 MADE STATEMENT AT POMONA
MADE A RECORD OF DEATH THREAT

3-3-89 - MTEB SAYS THAT TRACY
- VALENTA & THOMAS SCOTT ARMSTRONG
ARE RECENTLY -

3-3-89 - MESS. LEFT ON ASS. MATRNR
FOR BOTH SUBS.

3-4-89 - TALKED TO THOMAS VALENTA -
HE WAS CONTACTED BY SCOTT ARMSTRONG
ABOUT SUPPOSED THREATS FROM SUSPECTS
IN NEPHEW'S DEATH.

TRACY SAID THAT HE HAS NEVER
HAD ANY PROBLEMS WITH MOT. OR
T.T. THEY GAVE HIM AN AWARD FOR
RISKING IN 1985, REFER CLUR 858
FOR FURTHER & A 69

NEXT PAGE

JOEY HUNTER WAS & SHOULD BE THE HIGHEST PRIORITY WHITE SUSPECT IN THE THOMPSON*
MURDERS. HIS DESCRIPTION MATCHED THAT REPORTED BY EVERY CRIME WITNESS.
PLUS HE CONFESSED, 3 POLYGRAPHS PROVED HIS INVOLVEMENT & MUCH MORE.

Yet at least 18 witness statements from witnesses that had exculpatory or potentially exculpatory information are suppressed, including two in which he admitted to his involvement. Much other evidence re: Hunter is also suppressed.

- The three polygraph tests that he failed.
- Three important police reports confirmed on the final page here, item N relating to his possible crime partners, the black Counce brothers.
- The police reports that analyzed his culpability. and I believe,
- That his phone records, confirmed at bp 000265 haven't been produced.

Also, a friend confirmed it was well known that Hunter killed people, bp 33199.

I. JOEY HUNTER: Pages¹ 84-111, 270-274 and 609-613.

In summary, Joey Hunter confessed to two different people to being the shooter, failed three lie detector tests about being involved in the killings, was identified by several witnesses as being near the crime scene and much more. His physical description also matched the "white guy" seen by the eyewitnesses at the crime scene.

We received a tape of a witness interview of the Hackman family, wherein they identified the "white guy" they saw at the Thompson shooting from a photo. This photo, later provided to the defense, appears to be Joey Hunter. But neither Hunter's photo, nor it seems like any other suspect photos, were shown to the line up witnesses. Why not? We also need a confirmation that the photo was or was not of Joey Hunter.

Although 38 typed witness statements were produced re: Hunter, ~~eighteen~~ sets of original investigator notes (OINs) were ^{not} produced. Since these were exculpatory, it was required to produce them and absolutely is a BRADY violation not to have done so. See in re: HINES 25 Cal Rptr 2d 712,714, THOMPSON 61 Cal Rptr 2d 785, BARNETT 54 Cal Rptr 3d 283,295,306.

- A. Hunter admitted to being the "white guy" involved in the homicides twice to two different witnesses, at pages 105 and 273-274.
- B. The defense interviewed a very credible witness who has compelling evidence that Hunter killed Thompson. One of our investigators, Jack Holder, has this information.
- C. Every eyewitness identified the shooter(s) and/or a suspect on the property at the time of the murders as white. Not one crime scene witness reported a black shooter/suspect...
- D. Hunter failed three lie detector tests about being involved in the Thompson murders. Pages 99, 272-274 and 612-613.
- E. Hunter was identified from photographs/composites by four witnesses as the suspicious "white guy" hitchhiker in the vicinity of the Thompson homicides just after the killings. Pages 88, 95 and 96, last paragraph. Also at bp 270-1.

* These four pages are from our 17 page study of all evidence we had at the time this was prepared, of other suspects. It is doc TM-0007. We have since learned much more.

¹ Where we say page number with no other reference, we are referring to the bates page number in the official prosecution discovery. The new L.A.D.A. discovery appears to have "repositioned" the Hunter discovery. It is not in the same location. We have not yet located where it is.

2 Mr. Holder is at South Coast Investigations in Laguna Beach. He believes Hunter was involved.

- F. Hunter, in a rush, left his bicycle at a bus stop near the Thompson home just after the homicides. Last paragraph, page 96. **There were no fingerprints on the bicycle when it was picked up by the police** (bp 25384). Isn't that suspicious?
- G. Hunter is into guns and is a drug dealer. Pages 87 and 91.
- H. Hunter quit his job on March 14. Page 90. He unexpectedly quit earlier than he had planned. Page 92.
- I. Hunter knew someone who knew Thompson. Pages 90-91.
- J. Hunter tried and tried but could not come up with an alibi, at pages 97-98 and 101-103. Hunter could not alibi where he was on March 16th at 6:00 – 8:00 a.m., the time of the homicides.
- K. Hunter evidently even tried to use the Counce Brothers (suspects described next page(s)) as an alibi. Page 610, third paragraph. They matched bicyclists "escaping" the area. One was 6'2" 208, the other shorter but over 200 lbs. No description for 3rd, 33231.
- L. There is substantial other evidence of Hunter matching the description of the "white guy" on the Thompson property at the time of the murders, particularly at pages 124 third paragraph, 261-263, 393, 396, 398, 425 second paragraph, and 426 fifth paragraph.
- M. Hunter's best friend is a VAGOS Motorcycle Club member. Aubrey Wix, whom Thompson nephew Scott Campbell killed in 1976, was a VAGOS associate (563). L.A.S.O. says that one of Scott's killers, Donald DiMascio, was a VAGOS (562). Thompson helped finance the investigation and convict those killers. See the *ORANGE COUNTY REGISTER* 11/3/88, bps 29536, 29553, 29849 plus page 39 of the 4/1/88 *SPORTS ILLUSTRATED* and the 4/11/88 *AUTOWEEK*. Strong evidence supports VAGOS involvement in the Thompson homicides (484-5).¹ Thompson had other problems with the VAGOS via his daughter, bp 26432 and may have "stepped on toes" in the VAGOS, bp 36101. Lead investigator Lillienfeld made a list of possible VAGOS connections at bp 26876.
- Also see Section IV, page 7 here for more information on this very high probability lead. But, no investigation re: the VAGOS was in discovery.
- N. As indicated above, Hunter is also linked to suspects the Counce Brothers. See information on them in section III below.
- Yet even in light of all of this, Lillienfeld admitted that he had never interviewed Mr. Hunter, OCPHT (Orange County preliminary hearing transcript) 175. And, he falsely stated that it was apparent from the materials that Hunter should have been eliminated as a suspect, OCPHT 175 also. None of the materials in discovery indicate this.
- O. The defense deserves and needs to find if the photo shown to the Hackmans and possibly identified by them at pages 22-3 of their 5/13/97 tape transcript was of Hunter, (or possibly Henrickson).
- P. Trial counsel Elena Saris said that two percipient witnesses also identified Hunter as being near the crime scene near the time of the crime. I don't know those "cites". Sorry.

Jack Holder, one of our investigators, has interviewed several additional people since this document was originally written. He now has additional evidence that he feels cinches that Hunter was one of the killers.

- 1) This was a powerful lead to the white suspect. Lillienfeld ignored it, saying only blacks were involved & the VAGOS wouldn't hire blacks. But every crime scene witness reported a white shooter/suspect. None reported blacks.

was involved in drug dealing. Ask for document #5105.

- J. Thompson evidently flew his private airplane into the Parker, Arizona airstrip, at the Colorado River, bp 26742.
- K. Larry Shaleen related how Scott Campbell acted when he was killed, as described by Dean Kennedy, as if Kennedy had been there. Page 565. Recall that they have never found the person who ordered the Scott Campbell "hit" in this admitted "murder for hire."
- L. Investigators saw a connection to the Mickey Thompson homicide with Kennedy/Young/Paupule and wrote up a 9 point, "Points of Interest". Pages 566-567. Also see a similar list by investigators on page 333¹. No evidence has been produced to show that investigation on those "points of interest" was done.
- M. Also note the "high rollers" and the dope/limousine connection. This is at pages 334 & 427. (Mickey Thompson was Las Vegas connected.) Also see section VIII here.
- N. Important parts of Det. Lillienfeld's taped interview with John Young are missing, at bp 32880. What was produced was held until long after the O.C. preliminary hearing.
- O. John Young lived near Thompson, bp 26719.
- P. There is a potential Kennedy link to a stun gun at bp 26780.
- Q. There are many 1988-89 interviews of these witnesses listed at bp 562-570 that have not yet been provided to the defense. To verify the earlier investigation, see the clue number, etc. referenced at the top left of bp 562.

A conclusive "wrap" or something which is noted as eliminating all 3 of these suspects has not been found in discovery.

Start
here for
Counce Bros.

III. COUNCE BROTHERS: Pages 109 and 607-613 and 617-621. Also 33231

- A. The Counces said they knew who did the murder and that they had cased the Thompson house in advance. Page 608.
- B. Counce's wife said that **Hunter** (above, #1) had done the killing and that he accurately described the Thompson murders. Page 609, third paragraph.
- C. The Counces knew Hunter was "arrested" for the Thompson murders(mistake; picked up for the lie detector test). Page 609.
- D. Hunter used the Counces as alibis, page 610 third paragraph, but they were unavailable as alibis. They didn't even have their own alibi. Page 613.
- E. The Counces once said they killed Thompson. Pages 612 and 613.

¹ Note at bp 330 this is called a Supplemental Report. But neither the earlier report(s), nor the support documents for this report were produced in discovery.

- F. Counce's wife, Donna Reed, described a white male matching Joey Hunter's description being around them near the time of the homicides. Page 611.
- G. The Counces initially lied about knowing Hunter. Page 613.
- H. Informant Reese confirmed some of the above. Page 618.
- I. Vance Counce worked for the person who later bought Thompson's house, Dootson. Page 618.
- J. Donna Glazoreed, (aka Donna Reed, above), said Andre Counce was involved in the Thompson homicides. Page 621.
- K. Ms. Glazoreed was threatened by Det. Lillienfeld not to call Goodwin or his lawyers and give them exculpatory evidence she had that would tend to clear Mr. Goodwin. She called and told us this. Ask Jeffrey Benice, 714-641-3600.
- L. Informant Connie Webber stated on 4/23/99 that Vance Counce had confessed to her to doing the Thompson homicides.
- M. New discovery at bps 37005-10 reflects additional potential Counce links to the Thompson homicides. It is mostly unreadable, we believe intentionally. It appears that they may have confessed therein.
- N. **The discovery and witness statements about the Counces is suspiciously scrambled with three official reports missing, noted at bps 611, 613 and 620.**
- O. The discovery/interviews at bps 607-13 and 617-21 is very suspiciously miscast. Notice that most of the interviews appear to have been taken in 1989, not by Lillienfeld, but they are typed to appear that they were taken by Lillienfeld. Because of that, the missing reports noted in N above and that no original investigator notes were produced for any of these witness statements, the anomalies should be investigated¹.

IV. The VAGOS Motorcycle Club may have been involved²

The prosecution has evidently refused to provide the defense with evidence on the VAGOS Motorcycle Club that we know they accumulated and have. Without this "foundation" evidence the defense could not wrap up the VAGOS Motorcycle Club investigation. The prosecution was very successful in burning up defense funds on wild goose chases. Some of the following was summarized above in section I, at M. Also see page 16, the quotes, very important related to this.

- A. In 1976 Scott Campbell killed Aubrey Wix, a drug dealer who was a VAGOS Motorcycle Club associate (bp 563).
- B. The District Attorney who prosecuted Ms. Campbell's son, Scott, for killing Aubrey Wix in Ms. Campbell's home, said that he felt she and/or her husband helped clean up the bullet holes. See bp 36052. He and other law enforcement officials also stated at bps 36050-1 that they felt that the entire family (Thompson/Campbell) dealt drugs.

- 1) There are many witness statements missing for the Counce Brothers. See the exhibit just in front of this one listing over sixty witness statements missing.
- 2) Thompson had very bad blood with the VAGOS. He financed a murder investigation against one of their members, testified against him in the trial, & expected to testify again at the time of his death. He had reported death threats by them & one of his best friends saw him in a bullet proof vest days before the murders. Thompson attributed it to his fear of the VAGOS.

DECLARATION

I Michael Goodwin swear that the following is of my own personal knowledge, & if required, I could & would testify truthfully thereto under oath.

1. First & foremost I swear that all the statements I made in the foregoing, not equivocated or attributed to others, are true & correct.


2. I recognize that Penal Code § 125 defines UNQUALIFIED STATEMENTS OF FACT THAT ARE NOT TRUE JUST LIKE PERJURY THAT ONE KNOWS NOT TO BE TRUE WHEN GIVEN.

Thus I am certain of my statements unless I equivocate them.

3. I also swear under penalty of perjury to being able to conclusively prove each & every one of the following:

- A) There are over 70 trial & preliminary hearing material perjuries and/or instances of false testimony by 14 D.A. witnesses. Over 60 of those are by the four D.A. experts & two investigators. The #1 D.A. expert did 20 more to the Grand Jury.
- B) There are more than 15 lies/perjuries in offers-of-proof by the DDAs (Deputy District Attorneys) to the Judge.
- C) There are about 205 material perjuries by lead investigator Det. Mark Lillienfeld, actually I feel he will total 180+.
- D) Evidence proves i) felony forgery, ii) threats & a thinly veiled bribe offer to a key witness, & iii) destruction of materially exculpatory evidence plus more misconduct/crimes.
- E) Improper political influence/OBSTRUCTION OF JUSTICE.
- F) 70+ false and/or unsupported DDA closing arguments/openings.

I swear under penalty of perjury under the laws of California that the above is true & correct. _____ in _____.


Michael Goodwin

PROOF OF SERVICE BY MAIL

I MICHAEL F. GOODWIN declare,

That I am over 18 years of age, and a party to the attached herein
case of action, that I reside at CSP-CORCORAN in the county
of ~~San Bernardino~~ KINGS California. My mailing address is,

3C05-106 ~~XXXXX~~ low, C.S.P. P.O.

Box 3466, Corcoran, CA 93212.

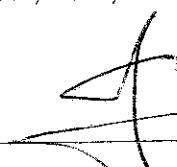
On , 2014, I delivered to prison officials for
mailing at the above address, the attached; NON-HABEAS CORPUS PLEADING

RE: THE PROBABILITY OF BIAS BY JUDGE SCHWARTZ, & OTHER MISCONDUCT

In sealed envelope(s) with postage fully prepaid¹, addressed to:
PRESIDING JUDGE, U.S. ATTORNEY, SOUTHERN CALIFORNIA
(1). JUDGE DAVID WESLEY (2). MS. LAURA DUFFY,
LOS ANGELES SUPERIOR COURT 1200 U.S. COURTHOUSE, STE. 7516
111 N. HILL ST. LOS ANGELES, 312 SPRING ST., LOS ANGELES,
CA. 90012-3014 CA. 90012

1) PRISON PAYS THE POSTAGE.

I declare under the penalty of perjury that the foregoing is true
and correct. Executed this 6th day of JANUARY, 2014, at
Corcoran State Prison (CSP), Corcoran, CA, 93212.


IN PRO PER

Because all of the hundreds of pages of prosecution "expert" testimony incorrectly stated & implied that Goodwin should have paid Thompson directly while he was in Bankruptcy, the testimony grossly violated United States Supreme Court law as a whole, in addition to the 60+ material perjuries that evidence proves the experts directly told. YES, THAT IS CORRECT, SIXTY PLUS, PROVABLE.¹

"Outright falsity in testimony need not be proven (to establish it as false testimony or perjury requiring reversal of the conviction) if the testimony as a whole gave the Jury a false or misleading impression!"
ALCORTA V. TEXAS (1957) 355 U.S. 28, 31, 78 S. Ct. 103.

Clearly, THE JUDGE DID IT TO GOODWIN, 1-2-3, by:

1. Failing in her obligation to give the required Jury instruction that the law was that Goodwin wasn't permitted to pay Thompson.
2. Allowing four alleged "experts" to testify that she obviously didn't correctly vet to verify if a) they knew their craft, (e.g. that the law prohibited Goodwin from paying), and also, B) that their testimony would not be based on the prohibited issues in the law on the prior page, e.g. "unsupported reasoning".
3. Permitting hundreds of pages of unlawful, irrelevant questions by the DDAs (Deputy District Attorneys) stating & implying that Goodwin should have paid Thompson, including 60+ provable felony perjuries without which Goodwin wouldn't be convicted.¹

We have no way of knowing why Judge Schwartz threw this case, whether it was merely unlawful political influence, as the Court bailiff claimed that it was, whether a bribe was involved, or just that perhaps Judge Schwartz is grossly incompetent. See exhibit L.

The key issue is that had Judge Schwartz done her job to instruct on the correct law, the Jury would have quickly seen there was no case here, no motive for the murder, as she stated at 10 RT 4053.²

1) Including 35 by the "#1 source of case information for the D.A." Thompson's lawyer & D.A. expert Dolores Cordell. 2) Also 18 RT 6751, also in exh. one.