IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. EDWARD MATHEW WYCOFF, Defendant/Appellant.	)	Automatic Appeal Supreme Court No. S178669 (Contra Costa Superior Court Case No. 5-071529-2)

APPELLANT'S REPLY BRIEF

On Automatic Appeal from a Judgement of Death
Rendered in the State of California, Contra Costa County Superior Court

Honorable John W. Kennedy, Presiding

DAVID A. NICKERSON
Attorney at Law
California State Bar No. 111885
32 Bridgegate Drive
San Rafael, California, 94903
Telephone: (415) 507-9097

Attorney for Appellant
EDWARD MATHEW WYCOFF

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff/Respondent, v. EDWARD MATHEW WYCOFF, Defendant/Appellant.	)	Automatic Appeal Supreme Court No. S178669 (Contra Costa Superior Court Case No. 5-071529-2)

APPELLANT'S REPLY BRIEF

On Automatic Appeal from a Judgement of Death
Rendered in the State of California, Contra Costa County Superior Court

Honorable John W. Kennedy, Presiding

DAVID A. NICKERSON
Attorney at Law
California State Bar No. 111885
32 Bridgegate Drive
San Rafael, California, 94903
Telephone: (415) 507-9097

Attorney for Appellant
EDWARD MATHEW WYCOFF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES **PAGE**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff/Respondent,	)	Automatic Appeal
	)	No. S178669
v.	)	
EDWARD MATTHEW WYCOFF,	)	
Defendant/Appellant.	)	

APPELLANT'S REPLY BRIEF

INTRODUCTION

In this brief, appellant Edward Wycoff does not reply to each and every one of Respondent's arguments, but replies only when further discussion may, in his view, be helpful to the Court. That appellant has not addressed any particular argument or allegation made by Respondent, or reasserted any specific point made in his Opening Brief on appeal, does not constitute a concession, abandonment or waiver of that point, but rather reflects appellant's view that the issue has been adequately presented and the position of the parties fully joined. *People v. Hill* (1992) 3 Cal. 4th 959, 995, fn. 3.

///

I.

THE TRIAL COURTS COMMITTED NUMEROUS INSTANCES OF REVERSIBLE ERROR WHEN THEY (1) FAILED TO CONDUCT A HEARING INTO WYCOFF'S COMPETENCY TO STAND TRIAL; (2) FAILED TO CONDUCT A HEARING INTO WYCOFF'S COMPETENCY FOR SELF-REPRESENTATION; (3) APPLIED AN INCORRECT LEGAL STANDARD

A. Competency to Stand Trial

1. Judge Bruiniers Erred When He Failed To Conduct a Hearing Into Wycoff's Competency to Stand Trial

Two things are not in dispute. First, on October 2, 2008, after recognizing that Wycoff showed "evidence of grandiosity and perhaps a fairly high level of paranoia," Judge Bruiniers appointed Dr. Good to examine Wycoff. Second, Dr. Good examined Wycoff and submitted to Judge Bruiniers a 15-page report. That report concluded that "Mr. Wycoff is most probably suffering from Paranoid Schizophrenia..." Dr. Good specifically concluded that Wycoff has "not shown the present ability to consult with his lawyers" and "I find him incompetent to stand trial."

Despite these undisputed facts, Respondent contends that Dr. Good failed to opine with particularity that Wycoff was incompetent to stand trial, that Judge Bruinier's personal observations of Wycoff outweighed Dr. Good's professional opinion, and that Judge Bruinier's actually held a hearing on Wycoff's competency because "the parties were heard on the issue." Respondent's contentions are hollow and distort the record.

2. Respondent Fails To Adequately Address Dr. Good's Report

Respondent repeatedly asserts that Dr. Good "did not opine with particularity that Wycoff was incompetent to stand trial." (RB, pp. 37, 61.) To this Respondent adds that "it is not clear that Good intended to or did opine as to Wycoff's competence to stand trial at all" because "Good rendered only one opinion - that Wycoff could not represent himself because he could not intelligently waive counsel." (RB, p. 64.) Later, Respondent asserts that "Good stated that the only opinion he would render was whether Wycoff could validly waive counsel and represent himself." (RB, p. 65.) All of these assertions are entirely erroneous. Dr. Good's report unequivocally and expressly stated in **bold** print, "**I find him incompetent to stand trial.**" (2CT 424.)

After describing his "Evaluation Procedures" (2CT 413), Dr. Good described the "Background Information" he gathered concerning Wycoff. (CT 414-416.) This background information included Wycoff's psychiatric history. Dr. Good then described his "Mental Status Examination" of Wycoff. (2CT416-417.) Next, Dr. Good set forth his "Diagnostic Formulation." (2CT 417-418.) This concluded with a "differential diagnosis...between Paranoid Schizophrenia and Delusional Disorder. Both are psychotic conditions, and either would constitute a 'severe mental illness.'" Dr. Good concluded "with a reasonable degree of psychological certainty, Mr. Wycoff is most probably suffering from Paranoid Schizophrenia. This diagnosis is based on the presence of paranoid and grandiose delusions, negative symptoms of flattened affect, and long

standing interpersonal alienation." (2CT 418.)

After reaching a diagnosis of Paranoid Schizophrenia, Dr. Good's report then expressly addressed the issue of "Competency to Stand Trial" and Wycoff's "Problematic Relationship With Counsel" for seven pages. (2CT 418-424.) This part of Dr. Good's report included an extended discussion of Wycoff's relationship with each of the five attorneys appointed to represent him. This discussion ended with Dr. Good's report explicitly stating in **bold print**, "Mr. Wycoff has not shown the 'present ability to consult with his lawyers(s)...Because of his grandiosity, Mr. Wycoff is not able to rationally consider 'telling his story' with the assistance of an attorney. On this ground I find him incompetent to stand trial." (2CT 424.)

Contrary to Respondent's assertion, without question Dr. Good intended to and did state an expert opinion that Wycoff was not competent to stand trial. Dr. Good explained his opinion in detail and set forth many concrete particulars.

Additionally, Dr. Good placed his statements and opinions about Wycoff's competency within a precise legal framework. For instance, Dr. Good stated *in quotation* that Wycoff had a "rational as well as factual understanding of the proceedings against him." He questioned, however, whether Wycoff had the "present ability to consult with his lawyer with a reasonable degree of rational understanding." (2CT 420.) Dr. Good concluded that Wycoff did not have the "present ability to consult with his attorney(s)." Again, the quotation marks are Dr. Good's. (2CT 424.) The quotations contained in Dr.

Good's report were taken directly from *Indiana v. Edwards* (2008) 554 U.S. 164, 169. *Edwards*, quoting *Dusky v. United States* (1960) 362 U.S. 402, stated that the "mental competence standard" asks "both (1) whether the defendant has a rational as well as factual understanding of the proceedings against him and (2) whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." *Indiana v. Edwards, supra,* 554 U.S. at 170; internal quotations deleted. In short, Dr. Good's opinion not only expressly addressed the question of Wycoff's competency to stand trial, it did so by quoting from the competency standard set forth in both *Edwards* and *Dusky.*

Respondent's argument, in part, appears to be that Dr. Good was appointed by the trial court only to evaluate Wycoff's competency to waive counsel, therefore he could not or did not render an opinion on competency to stand trial. After asserting that Dr. Good did not render an opinion on competency to stand trial, Respondent asserts without any evidence, "This limited opinion made sense given the parameters of Good's appointment." (RB, p. 64.) Respondent then asserts that "Good stated that the only opinion he would render was whether Wycoff could validly waive counsel and represent himself." (RB, p. 65.) Again, Respondent's assertions are contradicted by the record.

As pointed out above, Dr. Good unequivocally and expressly stated that Wycoff was not competent to stand trial. (2CT 424.) Seven pages of Dr. Good's 15-page report explained the basis for that opinion.

In essence, Respondent's assertion is that Dr. Good was only appointed by the court to render an opinion on Wycoff's competency to waive counsel, therefore Dr. Good's opinion on any other issue was somehow invalid and the trial court was therefore free to ignore it. Respondent is wrong for two reasons.

The standard for competency to stand trial is the same as the standard for competency to waive counsel. "The competency defendant needed was the competency to waive the right to counsel, and to determine this, a trial court applies the same standard that it uses to determine if a defendant is competent to stand trial." *People v. Weber* (2013) 217 Cal.App.4th 1041, 1051, citing *Godinez v. Moran* (1993) 509 U.S. 389, 399-401. Therefore, if there is substantial evidence that a defendant is incompetent to waive counsel, there must also be substantial evidence that the same defendant is incompetent to stand trial.[1] If, as Respondent erroneously asserts, Dr. Good had *only* rendered an opinion that Wycoff was not competent to waive counsel, since the standards are the same, that alone would constitute "substantial evidence" that Wycoff was not competent to stand trial.

Secondly, the source of the "substantial evidence" is irrelevant. If the trial court had ordered Dr. Good to examine Wycoff's feet, and after such an examination Dr. Good

---

[1] Since Judge Bruiniers thought it necessary to appoint Dr. Good to determine whether Wycoff could competently waive counsel, as a matter of law, he must have had the same question about Wycoff's competence to stand trial. Judge Bruiniers' failure to express such a doubt about Wycoff's competence to stand trial reflects the court's failure to properly understand the applicable standards.

reported that Wycoff's behavior was indicative of severe mental illness, such evidence would trigger the necessity for a hearing into Wycoff's competency. *People v. Rogers* (2006) 39 Cal.4th 826, 847: "Evidence of incompetence may emanate from several sources, including the defendant's demeanor, irrational behavior, and prior mental evaluations." See also *People v. Mai* (2014) 57 Cal.4th 986, 1033. This Court has repeatedly held that a competency hearing is necessary "whenever the court is presented with evidence of incompetence..." *People v. Sattiewhite* (2014) 59 Cal.4th 446, 464, quoting *People v. Rogers, supra,* 39 Cal.4th at 847. It does not matter who presented the evidence, how the evidence was presented, or why the evidence was presented. In this case the evidence was presented by a forensic psychologist appointed by the court.

Respondent next asserts that Dr. Good rendered an opinion "that Wycoff was both competent and incompetent to stand trial." (RB 66.) Respondent reaches this nonsensical conclusion by severely distorting Dr. Good's report.

As discussed above, *Edwards*, *Dusky*, and numerous opinions of this Court, including *People v. Mai, supra,* 57 Cal.4th at 1032, have stated that there are two prongs to the standard for competency to stand trial. The trial court must ask "both (1) whether the defendant has a rational as well as factual understanding of the proceedings against him and (2) whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." If the defendant fails *either* prong, he is incompetent. Dr. Good expressly stated that Wycoff "has a 'rational as well as

factual understanding of the proceedings against him..'" (2CT 420.) That is, Dr. Good found that Wycoff was competent under the first prong of the *Dusky* standard.

Dr. Good's report does address Wycoff's competency under the first prong with some specificity. For instance, Dr. Good reported that Wycoff "was able to state and explain the different pleas a person can enter in court" and that Wycoff "understands that defendants do not always have to testify in their own cases." (2CT 418.) Respondent also discusses at length Dr. Good's use of the Competency Assessment Instrument - Revised. (RB, pp. 50-51.) However, what Dr. Good actually said about the CAI-R was that it showed that Wycoff "has a factual understanding of the proceedings and intellectually understands the relationship between attorney and client." (2CT 418.) That is, the CAI-R showed that Wycoff was competent under the first prong of the *Dusky* standard.

However, Dr. Good unequivocally found that Wycoff was not competent under the second prong of the *Dusky* standard. Respondent calls this "logically inconsistent." To Respondent, Dr. Good's conclusion that Wycoff was competent under the first prong, but incompetent under the second prong of the *Dusky* standard, means that Dr. Good "would opine that Wycoff was both competent and incompetent to stand trial." (RB, p. 66.) Respondent's assertion is both erroneous and illogical.

Dusky requires <u>both</u>; that the defendant have a rational understanding of the proceedings against him <u>and</u> the ability to consult with his lawyer with a reasonable

degree of rational understanding. There is nothing logically inconsistent with a finding that Wycoff had a rational understanding of the proceedings against him, but did not have the ability to consult with his lawyer with a reasonable degree of rational understanding. Respondent simply misstates, misapplies, and misunderstands the *Dusky* standard.

Dr. Good's report made it abundantly clear that Wycoff did not have the competency to consult with his lawyer with a reasonable degree of rational understanding. Indeed, Dr. Good's report discussed Wycoff's "Problematic Relationships with Counsel" for five pages. Among other things, Dr. Good noted that Wycoff did not want to consider an insanity defense because he believed that he was "too competent, too sane." Yet he wanted "to pick a jury that believed in vigilante justice." (2CT 422.) Wycoff told Dr. Good, "I need to handle my case myself. I need to know what people are thinking about me." (2CT 421.) While he recognized that his attorneys were "trying to do their job. They got in the way of doing things. I just don't want to do it that way. I want to know what's going on...I need to know what my friends and business associates are saying..." (2CT 423.) Later, Wycoff stated to Dr. Good that "My attorneys are the enemy. I consider them the bad guys. I can't deal with them. I cannot feed them, let them have the spotlight, the limelight, that comes with being in the news." (Id.)

Dr. Good concluded that Wycoff's beliefs about his attorneys "is a function of his paranoid mental disorder." Dr. Good expressly stated, "As a result of his hypercritical and suspicious stance toward his attorneys, Mr. Wycoff has not shown the 'present ability

to consult with his lawyer(s).'" Therefore, Dr. Good found Wycoff incompetent to stand trial. (2CT 428.) In short, Dr. Good found Wycoff not competent under the second prong of the *Dusky* standard.

Respondent's fall-back position is that "even if we assume Good intended to opine on Wycoff's competency to stand trial, his observations on this point too lacked particularity and thus failed to constitute substantial evidence of incompetence." (RB, p. 67.) Respondent cites *People v. Mai, supra,* 57 Cal.4th 986 to support this proposition.

In *Mai*, the defense psychologist never said the defendant was incompetent. Instead, the psychologist "acknowledged defendant's intelligence, indicated he was 'not out of touch with reality at all,' and agreed he was 'certainly able to discuss' his legal situation." Indeed, the psychologist believed that the defendant suffered from "emotional instability stemming from his custodial status sometimes caused him to be 'kind of irrational...'" *Id.*, at 1034. The trial court in *Mai* also concluded that the conditions of the defendant's confinement, virtual solitary confinement in federal custody, "were seriously affecting his mental and emotional state." *Id.*, at 1035.

This case is not *Mai*. In *Mai* no one, including the defense psychologist, believed the defendant was incompetent. Instead, everyone, including the defense psychologist, defense counsel, and the trial court, recognized that the defendant was "kind of irrational" at times because of the harsh conditions of his confinement. Wycoff, on the other hand, was examined by the court's psychologist and found to be incompetent in a lengthy and

detailed report. The two cases are nothing alike.

Moreover, Respondent's truncated discussion of Dr. Good's report fails to even address many of the things Dr. Good actually said about Wycoff. (RB, p. 50-51.)

For instance, Respondent fails to notice that Dr. Good described Wycoff's psychiatric history in some detail. Dr. Good noted in particular that Wycoff made two suicide attempts in the 1980s, that Wycoff was treated by a psychiatrist two or three times for school behavior problems, that Wycoff was placed on anti-psychotic medication when he was 17 or 18, and that in 2001 Wycoff was diagnosed as suffering from a major depression and prescribed anti-depressants.

Respondent also fails to mention that Dr. Good described the findings of the county jail's mental health unit. These findings were made just after Wycoff's arrest. According to Dr. Good's report, Dr. Hanlin of the jail staff described Wycoff as having a "flat affect" and as having "grandiose thoughts about being justified in harming bad people." Dr. Hanlin "diagnosed a Delusional disorder with mixed schizoid, paranoid, and anti-social personality traits." Dr. Hanlin believed that Wycoff "might benefit from anti-psychotic medication," but Wycoff refused any such medication. (2CT 415-416.)

Respondent also fails to mentions that Dr. Good reported that Wycoff had been examined by psychiatrist Dr. Douglas Tucker six times beginning in February 2006. Dr. Tucker "diagnosed Mr. Wycoff as suffering from Asperger's Disorder (a pervasive development disorder characterized by severe and sustained impairment in social

interaction and stereotyped behavior), Paranoid Schizophrenia (a psychosis involving delusions and negative symptoms of flat affect), and Attention Deficit Hyperactivity Disorder (a disorder of inattention, hyper activity and impulsivity)." (2CT 416.)

This Court has always found "prior mental health evaluations" important indicators of incompetence. *People v. Rogers, supra,* 39 Cal.4th at 847, citing *Drope v. Missouri* (1975) 420 U.S. 162, 180. See also *People v. Sattiewhite, supra,* 59 Cal.4th at 464. Respondent simply ignores Wycoff's mental history and prior psychiatric evaluations.

Also missing from Respondent's discussion of Dr. Good's report is Dr. Good's diagnosis. Dr. Good concluded that Wycoff's mental illness was "between Paranoid Schizophrenia and Delusional Disorder." Dr. Good concluded that "Mr. Wycoff is most probably suffering from Paranoid Schizophrenia. The diagnosis is based on the presence of paranoid and grandiose delusions, negative symptoms of flattened affect, and long standing interpersonal alienation." (2CT 418.)

Instead of actually addressing what Dr. Good reported, Respondent critiques Dr. Good's report based on Respondent's own personal opinion. For instance, Respondent claims that Dr. Good's opinion about Wycoff did not "logically follow from Good's various subsidiary observations." (RB, p. 69.) Respondent states, "Moreover, Good's observations compelled conclusions opposite to those he rendered." (RB, p. 71.) However, Respondent provides no proof of her own expertise or her ability to critique the

observations and opinion of a trained psychologist.

Respondent's argument is also irrelevant. The issue before this Court is whether there was sufficient evidence before the trial court that Wycoff was incompetent. In essence, Respondent's assertion is that Dr. Good, or more precisely Dr. Good's report, lacked credibility. Because his "observations compelled conclusions opposite to those he rendered," Respondent contends, this Court should reject Dr. Good's opinion as lacking credibility. If Dr. Good's report lacked credibility, it did not provide substantial evidence of Wycoff's incompetency. Yet, Respondent does not contend that Dr. Good was unqualified. Nor did the trial court make any finding that Dr. Good or Dr. Good's report lacked credibility. Respondent wants this Court to make a finding that Dr. Good's opinion was not credible based solely on Respondent's own non-expert opinion.

Even if they were to be taken seriously, Respondent's assertions about Dr. Good's report and the opinions stated in his report are erroneous. For instance, Respondent contends that Dr. Good's "conclusion that Wycoff was incapable of assisting his defense" did not "logically follow from Good's various observations." (RB, p. 69.) Similarly, Respondent asserts that none of Dr. Good's "observations suggested Wycoff was incapable of assisting his attorneys." (Id.) Respondent focuses on Dr. Good's "observation" that Wycoff "could not rationally 'consider telling his story with the assistance of an attorney.'" (Id.)

Respondent contends that this "observation," in reality the professional opinion of

a forensic psychologist, "is belied by the record." (RB, p. 69.) Respondent correctly noted that Wycoff "did not want to present an insanity defense." Respondent contends, however, that "Good disagreed with Wycoff's rejection of an insanity plea." Respondent further asserts that Dr. Good was actually "attempting to persuade Wycoff he would still be able to tell his story in the confines of an insanity defense." (Id.) Respondent contends that Dr. Good's "reasoning" was "legally erroneous" because a competent person can disagree with his attorney's preference for an insanity plea. (RB, pp. 69-70.) In short, Respondent concludes a defendant need not "agree to an objectively rational defense in order to be found competent." (RB, p. 70.)

Respondent's contentions are utter nonsense. There is no evidence that Dr. Good tried to "persuade" Wycoff of anything. Dr. Good did not "disagree" with Wycoff's rejection of an insanity defense. Dr. Good did not find Wycoff incompetent because Wycoff rejected an insanity defense even though his attorneys believed it was his best, and possibly only, defense. Dr. Good did not conclude that Wycoff was incompetent because he refused to agree to present "an objectively reasonable defense" presented by his attorneys.

Wycoff made clear to Dr. Good, "Insanity is not an option." (2CT 424.) However, contrary to Respondent's assertion, Dr. Good did not find Wycoff incompetent because Wycoff refused to present the "objectively rational defense" of insanity with the assistance of counsel. Dr. Good found Wycoff incompetent because Wycoff's "failure to

appreciate the logic and wisdom of his attorneys is a function of his paranoid state." (2CT 424.)

Dr. Good correctly understood that Wycoff *could* "tell his story" as part of an insanity defense presented by counsel. Dr. Good correctly understood that Wycoff's "story" was indicative of his mental illness and incompetency. Dr. Good recognized that telling Wycoff's "story" and an insanity defense presented by counsel were not mutually exclusive. Nevertheless, Wycoff rejected presenting an insanity defense and rejected representation by counsel. Why Wycoff did so, Dr. Good concluded, was evidence of mental illness and incompetence.

As early as April 22, 2008, Wycoff's then attorney, Najera, informed the court that Wycoff "would not cooperate with neuro psyche evaluation." (1RT 85.) Wycoff would not cooperate with any psychological evaluation because Wycoff believed that an insanity defense "would undermine the righteousness of what he had been doing" and that he "believed that his actions [killing the victims] were right." (Id.)

When Dr. Good examined Wycoff six months later, he found that Wycoff's beliefs remained unchanged. Wycoff told Dr. Good, "If I go for insanity I'm saying I was wrong, it was crazy to kill Julie and Paul... I know it was the right thing to do. To go for insanity, would be going against myself." (2CT 424.)

What Dr. Good recognized was that Wycoff could "tell his story" - that he was justified in murdering Julie and Paul Rogers - as part of an insanity defense because

Wycoff's "story" itself was indicative of Wycoff's paranoid schizophrenia. But doing so, Wycoff believed, was "going against myself." Wycoff told Dr. Good, "What I'm accused of was the right thing to do." (2CT 421.) Wycoff explained he wanted to tell his "story" without an insanity defense because, "I want to be taken seriously. My attorneys are not taking me seriously. The way they are locking me away. They don't want people to known I'm sane." (2CT 422.) As a result, Wycoff told Dr. Good, "My attorneys are the enemy. I consider them the bad guys. I can't deal with them." (2CT 423.)

Dr. Good correctly concluded that Wycoff was "not able to rationally consider 'telling his story' with the assistance of an attorney" because Wycoff believed the murders were justified and an insanity defense would be an admission that "I was wrong, it was crazy to kill Julie and Paul." Dr. Good expressly found Wycoff's belief that the murders were justified was irrational. ("The...irrationality in deciding that it was morally right to kill his sister and brother in law to prevent them from stealing his inheritance, and in deciding that killing them would prevent further psychological harm to their children..." 2CT 427.) Dr. Good also found that Wycoff could not admit he "was wrong, it was crazy to kill Julie and Paul" because that would be "an acknowledgment that he was mentally disturbed, a notion that he rejects in total. He is in complete denial of his mental illness." (2CT 426.)

Contrary to Respondent's contentions, Dr. Good's opinion was not based upon a "legally erroneous" observation that Wycoff refused to agree to an objectively reasonable

defense. Dr. Good's opinion was based on the clear evidence that Wycoff's "reasoning process is not rational and instead reflects the irrational thinking of a paranoid man suffering from severe mental illness." (2CT 427.)

Respondent makes several other assertions about Dr. Good's report that are equally erroneous. For instance, Respondent contends that Wycoff's delusional belief that the murders were justified was merely a "circumstance of the crime." Even if this "circumstance of the crime" was "irrational" it "does not raise a reasonable doubt as to the defendant's competence." (RB, p. 72.)

Wycoff's belief that "it was morally right to kill his sister and brother in law to prevent them from stealing his inheritance, and in deciding that killing them would prevent further psychological harm to their children" (2CT 427) was not a mere "circumstance of the crime." Wycoff's belief was a delusion. It was also his entire explanation, or defense, for the murders. It was Wycoff's "story" that he believed had to be told.

Respondent also makes the astonishingly erroneous assertion that there "was no basis for Good's assumption" that Wycoff was unable to work with his attorneys. (RB, p. 73.) Wycoff told Judge Bruiniers on April 22, 2008, that he did "not intend to talk to these people or cooperate with these people. I still don't." (1RT 76.) On September 22, 2008, Wycoff wrote a letter to Judge Bruiniers that stated, "...I will still fight against my attorneys. The only sollution (sic) is for me to be my own lawyer." (2CT 389.) On

October 2, 2008, Wycoff told Judge Bruiniers that he was "done with lawyers...I mean, I can't, I can't work with these people." (1RT 122.) To Dr. Good, Wycoff "said this about the group of attorneys that represented him: 'I don't like them. They don't like me...They've done me wrong so much...My attorneys are the enemy. I consider them the bad guys. I can't deal with them...'" (2CT 423.) Wycoff "attributes malicious motives to his attorneys." (2CT 426.) Wycoff also told Dr. Good that "if Najera and Headly had gotten off my case, given me my respect, my reports, my discovery," he would not have done the "bad things" he promised to do. Wycoff told Dr. Good that when he believed the "prosecutor was going to drop the death penalty," he wrote a letter to the press and his "my letter to the press got back to the DA and they reinstated the death penalty." (2CT 426.) In short, as long as Wycoff was represented by counsel, he intended to do everything he could to undermine that representation.

Respondent asserts as a final fall-back argument that "an expert's opinion without more does not necessarily constitute substantial evidence of incompetence." (RB, p. 61.) Respondent never explains what "without more" actually means. In any event, Respondent replies upon three cases to support this assertion.

First, Respondent relies upon *People v. Lewis* (2006) 39 Cal.4th 970, 1046-1047. In *Lewis*, a Dr. Davis wrote a report "opining that Lewis could not assist in his defense." However, "the trial court and counsel each opined that Lewis was both manipulative and competent." *Id.*, at 1046. Dr. Davis later testified that "Lewis was malingering." *Id.*