IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent. BRYAN MAURICE JONES, Real Party in Interest.	Case No. S255826 **CAPITAL CASE** Appeal from the Court of Appeal, Fourth District, Division One, No. D074028 San Diego County Superior Court, No. CR136371, Honorable Joan P. Weber (Related to Habeas Corpus Case No. S217284 and Automatic Appeal Case No. S042346 [closed])

MATERIALS TO BE JUDICIALLY NOTICED PURSUANT TO EVIDENCE CODE SECTIONS 452 AND 459

VOLUME 1 OF 2

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Page Count: 287
Pages 1 to 287 of 368

***People v. Superior Court* (*Bryan Maurice Jones*), S255826**
Index of Materials to be Judicially Noticed Pursuant to Evidence Code Sections 452 and 459

Volumes 1 to 2

VOLUME 1

Exhibit	Description
A.	*People v. Superior Court* (*Carey*) (Sept. 28, 2018, B290318) [nonpub. opn.]
B.	*People v. Placencia* (Nov. 23, 2010, C062700) [nonpub. opn.]
C.	Excerpts from Petition for Writ of Habeas Corpus, *In re Jeffrey Gerard Jones* (Sept. 18, 2015, S230239.)
D.	Excerpts from Petition for Writ of Habeas Corpus, *In re George Brett Williams* (Sept. 27, 2007, S156682.)
E.	Order to Show Cause, *In re George Brett Williams* (March 28, 2018, S156682.)

VOLUME 2

Exhibit	Description
F.	Order on Defendant's Extraordinary Motion for New Trial, *State of Georgia v. Johnny Lee Gates* (Jan. 10, 2019, Superior Court Muscogee Cty. SU-75-CR-38335.)
G.	Excerpts from Motion of North Carolina State Conference of the NAACP for Leave to File Brief as *Amicus Curiae* and Brief of Amicus Curiae, *State of North Carolina v. Marcus Reymond Robinson, et al* (July 11, 2018, N.C. 411A94-6, 548A00-2, 441A98-4, 130A03-2.)
H.	Excerpt from Order Granting Motions for Appropriate Relief, *State of North Carolina v. Tilmon Golphin, et al* (Dec. 13, 2012, Superior Court Cumberland Cty. 97 CRS 47314-15, 98 CRS 34832, 98 CRS 35044, 01 CRS 65079.)
I.	Order, *Tennessee v. Abu-Ali Abdur'rahman* (Apr. 5, 2002, Tenn. M1988-00026-SC-DPE-PD.)

Exhibit A

People v. Superior Court (Carey) (Sept. 28, 2018, B290318) [nonpub. opn.]

Filed 9/28/18

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

DEWAYNE MICHAEL CAREY,

Real Party in Interest.

B290318

(Los Angeles County Super. Ct. No. TA042208)

ORIGINAL PROCEEDING. Petition for writ of mandate. Michael Shultz, Judge. Petition denied.

Jackie Lacey, District Attorney, Felicia Shu and John Pomeroy, Deputy District Attorneys for Petitioner.

No appearance for Respondent.

Hilary Potashner, Federal Public Defender, Gary Rowe and Andrea A. Yamsuan, Deputy Federal Public Defenders, for Real Party in Interest.

Penal Code section 1054.9 enables a habeas corpus petitioner sentenced to death or life imprisonment without parole to obtain discovery of materials to which he or she "would have been entitled at time of trial." (Pen. Code, § 1054.9, subd. (b).)[1] This includes "materials that the prosecution would have been obligated to provide had there been a specific defense request at trial, but was not actually obligated to provide because no such request was made." (*In re Steele* (2004) 32 Cal.4th 682, 696 (*Steele*).)

Habeas petitioner and real party in interest Dewayne Michael Carey was convicted of first degree murder and sentenced to death in 1996; his conviction and sentence were affirmed on direct appeal in 2007. A habeas corpus petition is pending in the California Supreme Court, and he filed a motion in the trial court pursuant to section 1054.9 to obtain discovery of the prosecutor's notes taken during jury selection. He seeks the notes to support his claim that his trial and appellate counsel were ineffective for failing to raise an objection of racial bias during jury selection pursuant to *People v. Wheeler* (1978) 22 Cal.3d 258 and *Batson v. Kentucky* (1986) 476 U.S. 79 (*Wheeler/Batson*). The trial court ordered Petitioner the People to submit the notes for in camera review. The People seek a peremptory writ of mandate prohibiting the trial court from so proceeding. They argue Carey is not entitled to the notes because he would not have been entitled to them at trial upon request, given they were protected work product at the time.

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1 All undesignated statutory citations are to the Penal Code unless noted.

We expressly do not decide whether a prima facie showing for a *Wheeler/Batson* claim would overcome a claim of work product protection and entitle a defendant to discover a prosecutor's voir dire notes. At this stage, there has been no finding by any court that Carey has presented a prima facie case of discriminatory purpose, the People do not concede the point, and we have not been called upon to consider the question. As a result, we do not address whether the defense has an independent right to the prosecutor's voir dire notes to address the prosecutor's stated reasons for the exercise of preemptory challenges.

We resolve the People's writ petition on a much narrower ground, holding the voluntary disclosure of a portion of the prosecutor's notes for the 16 seated jurors and alternates to Carey's habeas counsel in 2009 in response to a section 1054.9 discovery request waived work product protection over all the notes and precludes the People from using work product protection to bar current discovery of the rest of the notes pursuant to section 1054.9. Thus, we conclude the trial court may conduct an in camera review of the notes and deny the People's petition for a peremptory writ of mandate.

BACKGROUND

In 1996, Carey, who is African-American, was convicted of first degree murder with special circumstances and sentenced to death. His conviction and sentence were affirmed on direct appeal. (*People v. Carey* (2007) 41 Cal.4th 109.) He filed a first habeas corpus petition in the California Supreme Court on October 16, 2007, which was summarily denied on March 29, 2017. He did not raise a *Wheeler/Batson* claim at trial, on direct appeal, or in his first habeas petition.

The office of the Federal Public Defender was appointed to represent Carey and filed a second petition for habeas corpus in the California Supreme Court on September 12, 2017. In it, Carey claimed for the first time that a *Wheeler/Batson* error occurred during jury selection. He argued that his trial counsel rendered ineffective assistance by failing to object in the trial court and his appellate counsel was ineffective for not raising the issue on direct appeal. That habeas petition remains pending.

After seeking informal discovery, Carey filed a motion in the trial court seeking discovery of the prosecutor's voir dire notes pursuant to section 1054.9. Among other points, he argued any work product protection over the notes did not bar their discovery and the district attorney waived any work product protection by voluntarily disclosing some of the prosecutor's notes during informal discovery pursuant to section 1054.9 in 2009.

In support of the waiver argument, Carey submitted an April 3, 2009 letter from Carey's habeas counsel to the district attorney seeking post-conviction discovery pursuant to section 1054.9 and *Steele*. The letter requested "all documents, evidence, reports, photographs, *notes*, test results, video and audio tapes, and any other material related to this case in the possession" of the district attorney or other named agencies. (Italics added.) In response, the district attorney sent Carey's habeas counsel a letter dated June 19, 2009 indicating the district attorney and a paralegal had "reviewed the contents of the above mentioned case. All material deemed exempt for review have [*sic*] been indicated as such and noted on the attached Log. In addition, enclosed please find a CD prepared from our archived files. Some redactions were made on RAP sheets as well as Special Circumstance memos." Sixteen pages of the prosecutor's jury

selection notes were included in the materials provided to Carey's counsel at that time. The notes were 16 one-page forms pertaining to the 16 jurors ultimately selected to serve on the jury and as alternates. Each form contained the prosecutor's handwritten notes regarding each juror, which included noting each juror's race. Three jurors were noted to be African-American or black.

After receiving these notes, Carey's counsel wrote to the district attorney on September 14, 2009, stating: "I also wanted to confirm that based on your review of the handwritten pages of DA notes printed from the CD of the DA's file (pages mailed to you on July 21, 2009), it is your determination that we can have access to those pages. If I am mistaken, please let me know as soon as possible." The district attorney did not respond to the letter.

At a hearing in the trial court on Carey's current section 1054.9 discovery motion, the court ordered the People to submit the remaining prosecutor's notes for in camera review so the court could "make a further determination about whether the defense is entitled to the discovery." The court found "the People really have waived any privilege that they would have had in terms of work product since they voluntarily disclosed it to the defense" in 2009. The court further explained: "I think under 1054.9 there comes a point where the due process clause would mandate disclosure of information that is not on the list of 1054, et seq. [¶] And that with the right record, a correct record during trial, I think it is inherently within the Court's power to review the prosecutor's notes. That right record has been made with the petitioner's moving papers. [¶] This is a death penalty case where the defendant received a death sentence. And I think

that balancing that with the need for discovery and the writ to prosecute the petition for writ of habeas corpus, it is a narrow order, an acceptable order, within the meaning of 1054.9 for the People to have to disclose that to the Court in camera."

The People filed a petition for a writ of prohibition or mandate in this court. We stayed the trial court's order and issued an Order to Show Cause requesting the parties address several issues, including whether work product protection was waived due to the district attorney's disclosure in 2009.

DISCUSSION

Section 1054.9, subdivision (a) provides: "Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c) [access to physical evidence not pertinent here], order that the defendant be provided reasonable access to any of the materials described in subdivision (b)." Subdivision (b) of section 1054.9 defines "discovery materials" as "materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial."

While section 1054.9 is not limited to reconstructing the file the defense once possessed, it does not permit " 'free-floating' discovery asking for virtually anything the prosecution possesses." (*Steele, supra,* 32 Cal.4th at p. 695.) Instead, a defendant may obtain discovery of four categories of material "currently in possession of the prosecution or law enforcement authorities involved in the investigation or prosecution of the

case." (*Id.* at p. 697.) We are concerned here with only one of those categories, namely material that "the prosecution had no obligation to provide at time of trial absent a specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically requested them." (*Ibid.*)

The People argue that the trial court may not conduct an in camera review of the prosecutor's voir dire notes. They contend that Carey is not entitled to discovery of them since they were protected work product at the time of trial, so he would not have been entitled to them upon request. As we will explain, the district attorney's voluntary disclosure of a significant part of the prosecutor's notes in 2009 in response to Carey's prior section 1054.9 discovery request waived work product protection over all the notes and precludes the People from raising work product protection to bar Carey's current discovery request pursuant to section 1054.9.

I. The People's Petition for a Writ of Mandate Was Timely

Before turning to the waiver issue, we address Carey's contention that the People's writ petition was untimely because it was filed 35 days after the court's order. He argues the outermost deadline to file the writ petition was 20 days based on the following footnote in *Steele*: "Section 1054.9 provides no time limits for making the discovery motion or complying with any discovery order. We believe the statute implies that the motion, any petition challenging the trial court's ruling, and compliance with a discovery order must all be done within a reasonable time period. We will consider any unreasonable delay in seeking discovery under this section in determining whether the

underlying habeas corpus petition is timely. [Citations.] *We would consider a petition for writ of mandate challenging the trial court's order filed within 20 days after that order to be filed within a reasonable time for these purposes.* Moreover, as we are directing in this case, any discovery order pursuant to section 1054.9 should be provided within a reasonable time, which might vary depending on the nature of the order. We will also consider the date of compliance with the order in considering the timeliness of any petition for writ of habeas corpus that might be filed in light of the discovery." (*Steele, supra,* 32 Cal.4th at pp. 692–693, fn. 2, italics added.)

Since *Steele* was decided, the California Supreme Court has held that, notwithstanding this footnote from *Steele*, section 1054.9 does not impose *any* time limit on filing the initial discovery motion in the trial court. (*Catlin v. Superior Court* (2011) 51 Cal.4th 300, 305 (*Catlin*).) It held that no language in section 1054.9 allows a trial court to deny a discovery motion as untimely, and the statute's legislative history showed the Legislature specifically chose not to impose a time limitation. (*Id.* at pp. 302–303.) It interpreted the reference to the "reasonable time" in the *Steele* footnote for filing a motion as "merely stat[ing] that discovery must be sought 'within a reasonable time' and that when a petitioner files an *untimely* discovery motion, the court in which the inmate files a habeas corpus petition based on the information obtained through discovery should consider the delay 'in determining whether the underlying habeas corpus petition is timely.' " (*Id.* at pp. 306–307.)

Thus, "[t]he *Steele* footnote's observation simply reflects our well-established rule that habeas corpus petitions must be prepared and filed 'without substantial delay.' [Citation.] Otherwise stated, *Steele*'s footnote 2 simply explains that when, because of delay in seeking postconviction discovery, an inmate does not file a habeas corpus petition within a reasonable time, *the petition* may be denied as untimely, assuming no exception to the habeas corpus timeliness requirement applies." (*Catlin, supra,* 51 Cal.4th at p. 307.)

Catlin did not address the *Steele* footnote's reference to the 20-day timeframe for filing a petition for a writ of mandate. Nonetheless, *Catlin*'s reasoning compels us to conclude that the 20-day timeline is not a *deadline* to file a petition for a writ of mandate challenging a discovery order. As in *Catlin*, section 1054.9 is silent on the deadline to file a writ petition challenging a discovery order. Also as in *Catlin*, the 20-day timeline in the *Steele* footnote appears to be a guideline on how to consider the delayed filing of a petition for writ of mandate when determining the timeliness of a later habeas petition. This is consistent with the language in the *Steele* footnote that the 20-day limit should be considered "a reasonable time *for these purposes*." (*Steele, supra,* 32 Cal.4th at p. 692, fn. 2, italics added.) "[T]hese purposes" were set forth in the immediately preceding sentence, i.e., "determining whether the underlying habeas corpus petition is timely." (*Ibid.*)

Instead, we will apply the general 60-day deadline for filing most writ petitions. (*Labor & Workforce Development Agency v. Superior Court* (2018) 19 Cal.App.5th 12, 24 (*Labor & Workforce*) ["Generally, 'a writ petition should be filed within the 60-day period that applies to appeals.' "]; *People v. Superior Court*

(Brent) (1992) 2 Cal.App.4th 675, 682.) The People's writ petition was filed within that time, so we find it timely for appellate purposes.[2]

II. Work Product Protection Over All of the Prosecutor's Jury Selection Notes Has Been Waived

"Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (a) of Section 2018.030 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States." (§ 1054.6.) Code of Civil Procedure section 2018.030, subdivision (a) provides that "[a] writing that reflects an attorney's impressions, conclusion, opinions, or legal research or theories is not discoverable under any circumstances."

We accept the People's contention that the prosecutor's jury selection notes are protected work product generally not subject to discovery. " ' "The sole exception to the literal wording of [Code of Civil Procedure section 2018.030, subdivision (a)] which the cases have recognized is under the waiver doctrine[,] which has been held applicable to the work product rule as well as attorney-client privilege." ' " (*McKesson HBOC, Inc. v. Superior Court* (2004) 115 Cal.App.4th 1229, 1239 (*McKesson HBOC*).)

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2 Carey's habeas petition was already pending before he filed his discovery motion under section 1054.9, so the People's delay in filing the petition for writ of mandate beyond the 20-day timeline would appear to have no impact on the timeliness of his habeas petition.

Waiver of work product protection is "generally found under the same set of circumstances as waiver of the attorney-client privilege—by failing to assert the protection, by tendering certain issues, and by conduct inconsistent with claiming the protection. [Citations.] Waiver also occurs by an attorney's 'voluntary disclosure or consent to disclosure of the writing to a person other than the client who has no interest in maintaining the confidentiality of the contents of the writing.' " (*McKesson HBOC, supra,* 115 Cal.App.4th at p. 1239; see *Labor & Workforce, supra,* 19 Cal.App.5th at p. 35.) "Thus, work product protection 'is not waived except by a disclosure wholly inconsistent with the purpose of the privilege, which is to safeguard the attorney's work product and trial preparation. [Citations.]' " (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 891 (*OXY Resources*).)

The record demonstrates that, in response to a prior specific request made by Carey's counsel in 2009 pursuant to section 1054.9, the district attorney voluntarily disclosed the prosecutor's notes on the 16 empaneled jurors and alternates, thereby waiving work product protection over those notes. When the notes were produced, the district attorney sent a letter affirming that he and a paralegal had reviewed the material, and any documents deemed exempt from review were contained in a privilege log (and presumably withheld). Notwithstanding, the notes were produced to Carey. Carey's habeas counsel later wrote to the district attorney specifically asking if Carey could have access to the notes contained in the disclosure. The district attorney did not respond to the letter, and the People have provided no evidence that he did not receive it. (Cf. Evid. Code, § 641 ["A letter correctly addressed and properly mailed is

presumed to have been received in the ordinary course of mail."].) From this, we can infer the district attorney voluntarily granted Carey access to the notes.

With regard to the scope of waiver, the attorney-client privilege over an *entire* communication may be waived through voluntary disclosure of "a significant part of the communication." (Evid. Code, § 912, subd. (a) [attorney-client privilege waived "with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication"]; see *Transamerica Title Ins. Co. v. Superior Court* (1987) 188 Cal.App.3d 1047, 1052 (*Transamerica*).) Courts have expressed the same rule with regard to the voluntary disclosure of a "significant part" of attorney work product. (See *Labor & Workforce, supra,* 19 Cal.App.5th at p. 35 [" 'The work product protection may be waived "by the attorney's disclosure or consent to disclosure to a person, *other than the client,* who has no interest in maintaining the confidentiality . . . of a significant part of the work product." ' "]; *OXY Resources, supra,* 115 Cal.App.4th at p. 891 [same]; see also *Newark Unified School Dist. v. Superior Court* (2016) 245 Cal.App.4th 887, 903–904 ["Evidence Code section 912 finds a waiver of attorney-client and attorney work product privileges 'if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone.' "]; *Kaiser Foundation Hospitals v. Superior Court* (1998) 66 Cal.App.4th 1217, 1227 ["neither the attorney-client privilege nor the work product doctrine has been waived unless it is established through other discovery that a significant part of any particular communication has already been disclosed to third parties"].)

"What constitutes a significant part of the communication is a matter of judicial interpretation; however, the scope of the waiver should be determined primarily by reference to the purpose of the privilege." (*Transamerica, supra,* 188 Cal.App.3d at p. 1052.) "The scope of either a statutory or implied waiver is narrowly defined and the information required to be disclosed must fit strictly within the confines of the waiver." (*Ibid.*)

The People concede that the disclosure of the prosecutor's notes for 16 seated jurors and alternates "may" have waived work product protection over all of the notes. We hold that it did. According to Carey, the jury pool consisted of 80 potential jurors after some jurors were excused for hardship. Carey asserts that the prosecutor used a total of eight peremptory strikes, six of which struck black jurors. Using these numbers as a baseline, the disclosure of the prosecutor's notes for an entire category of jurors—the 16 jurors and alternates actually empaneled—was a "significant part" of the prosecutor's jury selection notes.

Moreover, the district attorney's voluntary partial disclosure undermined the purposes for withholding the remaining notes as work product. The Legislature declared two purposes for protecting attorney work product: (1) "Preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases."; and (2) "Prevent attorneys from taking undue advantage of their adversary's industry and efforts." (Code Civ. Proc., § 2018.020.) The selective disclosure of part of the prosecutor's notes 13 years after Carey was convicted and two years after his conviction was final demonstrates that the district attorney no longer had concerns about preserving the

prosecutor's ability to prepare the case for trial or preventing Carey from taking advantage of the prosecutor's trial preparation. The same reasoning applies to the undisclosed notes. Thus, the district attorney's waiver extends to all of the prosecutor's notes.

Having concluded that the disclosure in 2009 in response to Carey's prior section 1054.9 request waived work product protection over the prosecutor's notes, we reject the People's reliance on the language of section 1054.9 to bar Carey's current section 1054.9 discovery request. The People argue that, notwithstanding any later waiver, the prosecutor's notes were protected as work product at trial, and section 1054.9, subdivision (b) only allows discovery of materials Carey "would have been entitled at time of trial." Yet, by disclosing a significant portion of the prosecutor's notes in 2009 *specifically in response to Carey's section 1054.9 discovery request*, the district attorney implicitly concluded that neither work product nor section 1054.9 barred discovery of the notes. The People cannot now take the opposite position and withhold the rest of the notes for those reasons.

Thus, under the narrow circumstances here, we find the trial court's may conduct an in camera review of the prosecutor's voir dire notes. The People have not presented any other reason why Carey would not have been entitled to the notes had he requested them at trial, so they fall within section 1054.9.

DISPOSITION

The People's petition for a peremptory writ of mandate is denied. Having served its function, the order to show cause is discharged.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.

Exhibit B

People v. Placencia (Nov. 23, 2010, C062700) [nonpub. opn.]

2010 WL 4731953
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

Court of Appeal, Third District, California.

The PEOPLE, Plaintiff and Respondent,
v.
Michael Antonio PLACENCIA,
Defendant and Appellant.

No. C062700.
|
(Super.Ct.No. 06F09764).
|
Nov. 23, 2010.

Attorneys and Law Firms

Office of the State Attorney General, David A. Rhodes, Sacramento, CA, for Plaintiff and Respondent.

William A. Malloy, Attorney at Law, Redding, CA, for Defendant and Appellant.

Opinion

SIMS, J.

*1 A jury found defendant Michael Antonio Placencia guilty of carjacking and related counts, and the trial court sentenced him to nine years and four months in state prison. Defendant appealed, claiming among other things that the trial court erred when it denied his *Batson/Wheeler*[1] motion. We agreed, and reversed and remanded for further proceedings. The trial court conducted a hearing as directed, found the prosecutor exercised her peremptory challenges in a permissible fashion, and reinstated the original judgment.

Defendant appeals a second time, again claiming he is entitled to a new trial as a result of *Batson/Wheeler* error. We will affirm the judgment.

PROCEDURAL BACKGROUND

In our opinion regarding defendant's first appeal, we concluded that because we could not determine any legitimate basis for dismissal of J.M., the juror in question, we inferred a discriminatory purpose (*People v. Williams* (2006) 40 Cal.4th 287, 310) and reversed for further proceedings. We directed the trial court as follows: "The trial court 'should attempt to conduct the second and third *Batson* steps. It should require the prosecutor to explain [her] challenges. If the prosecutor offers a race-neutral explanation, the court must try to evaluate that explanation and decide whether defendant has proved purposeful racial discrimination. If the court finds that, due to the passage of time or any other reason, it cannot adequately address the issues at this stage or make a reliable determination, or if it determines that the prosecutor exercised [her] peremptory challenges improperly, it should set the case for a new trial. If it finds the prosecutor exercised [her] peremptory challenges in a permissible fashion, it should reinstate the judgment. (*People v. Johnson* (2006) 38 Cal.4th 1096, 1103–1104.)' "

On July 24, 2009, the trial court conducted a hearing consistent with this court's instruction. Counsel for the prosecution stated she had reviewed her trial notes and her jury selection notes, and provided copies of those documents to the court as marked exhibits. Counsel also provided copies of notes she made at trial regarding other potential jurors who were excused by either the prosecution or the defense. This colloquy between the court and counsel followed:

"[THE PROSECUTION]: In regards specifically to the juror in question her name is [J.M.]. And I have in my notes that prior to my excusing her from the panel, that I had passed on the panel. And when I passed on the panel, [J.M.] from all questioning and for all intents and purposes during the jury selection, seemed like a fair juror and appeared to me to be a person I wanted on the panel.

"THE COURT: [Defense counsel] said her responses were remarkable and nothing really about her background.

"[THE PROSECUTION]: Actually, felt [*sic*] she would be a fine juror. And she appeared from all her responses and demeanor to be somebody who [would] be a fit juror. [¶] After I passed the panel, she abruptly sat up in her seat. I wrote that she sat up to the edge of her seat, crossed and folded her arms

when I made my first pass of the jury. [¶] The jury was then passed a second time. And [a]t that point—I recall specifically this person's demeanor because it was so abrupt—she looked unhappy at me. While her expression on her face and she was sitting there crossed armed and at the edge of her seat as if she was looking at me as if she was saying, you know, you can't leave me on this jury. She had this expression. [¶] And because of her sudden and abrupt change in demeanor, I made the motion to have her excused from the jury at that time. [¶] I wrote those notes into my sticky notes, the one [*sic*] the court did not find a prima facie case, I did not state them on the record. However, these have been preserved in my office and went home with me while I was on maternity leave, those are the same notes I provided to the Court. [¶] That was the reason I passed on [J.M.]. She appeared great. Her answers were responsive and kind. But for her sudden change in demeanor and her negative attitude at the fact that she was going to potentially serve on the jury, I would have kept her. But her demeanor made me feel as though she was not going to be fair. As if she was not going to listen. As if she was going to have a negative attitude towards the proceedings, and specifically towards the prosecution's case based on her looking at me and not the defense on the fact she was being left on the jury."

***2** As the court reviewed the prosecutor's notes, the prosecutor stated, "[I] do have an independent recollection of this particular juror, because I've never had that experience before where a juror seemed so perfect to begin with and then her demeanor radically changed when I made a pass of the jury. [¶] And the defense, you know, had the opportunity to pass as well, she would have been on the jury if they had passed. [¶] So in regards to her, it was her change in demeanor that we me [*sic*] feel that she was not going to be fair to the prosecution, specifically from her conduct towards the prosecution." The colloquy continued:

"THE COURT: I recall her.

"[THE PROSECUTION]: Yes.

"THE COURT: For the record, I have located the sticky that will relates [*sic*] to that particular juror. And they have [the prosecutor's]—these notes were made by you at the time during voir dire?

"[THE PROSECUTION]: That's correct, your Honor.

"THE COURT: And, for the record, I'm looking at the note regarding this particular juror. And [the prosecutor] did pass at the time. She did pass but then the juror apparently—[¶] What's the verbiage—oh, that she looked unhappy as you were just telling the court. Looks unhappy when DA passed second time and that's the reason you did it.

"[THE PROSECUTION]: Correct. And that's what made me change my assessment of her ability to be a friar [*sic*] and impartial juror.

"THE COURT: It's agree[d] this was the only black juror [ ] left?

"[THE PROSECUTION]: At the time, as you see from my notes, I don't write down the race of the potential jurors. In my opinion, I'm not basing anything on that. It didn't even occur to me to write down the race of any of the potential jurors who were still in the panel or in the back. And I have never wrote [*sic*] it on any of them that the court had excused prior to that point. [¶] So I have no idea how many potential jurors were in this pool were [*sic*] African American, Hispanic at the time.

"THE COURT: I recall that she was the only one left. [¶] I believe [counsel for the defense] made the motion[;] there were two and then you had excused one. I immediately rejected any argument with any Wheeler–Batson motion with the other juror—I don't recall who's that juror's [*sic*] name was. It is a juror, as the transcript indicates, it was a juror I almost excused for cause myself during voir dire. I thought there had be [*sic*] no cause of an improper motive as to that juror which led to this particular Juror [J.M.]. I think that's why we're here. [¶] [Counsel for the defense], I'll give you a chance to weigh in if you wish. I don't know what your recollection is of what happened.

"[THE DEFENSE]: What's the Court's recollection as to the body language of [J.M.]?

"THE COURT: I do not have any recollection of it. I do recall she was the one that was on there. I recall—I don't remember anything particularly unusual about her responses to my questions or yours when counsel was doing voir dire. But I don't recall anything about her body language."

***3** Defense counsel then argued that he could not participate because he did not "remember any of this." Counsel noted defendant had a "right to due process and juror selection" and argued the due process rights "have been violated, and

we can't fix them in a hearing that I don't remember [*sic*] anything." Counsel did not recall J.M.'s body language, and stated, "If I remembered more, if I could participate more I would, because I'd like you to rule in [defendant's] favor and maybe do a trial tomorrow. [¶] I've gone over everything. I think it's just not happening for me."

The court replied, "I certainly understand that. [¶] Like I said, the Appellate Court, you know, understand oftentimes when they send a case back to the trial court in this type of setting, having lost the moment, really can't recall exactly what happened, so we go back on memory, and hopefully somebody kept some notes regarding what happened. In that regard then, I believe then—[¶] I think, by the way for the record, that we do have enough evidence for me to conduct a meaningful hearing. And that is based upon the fact that [the prosecutor] did keep some detailed contemporaneous notes regarding what happened. [¶] And, plus, also given her statement to the Court that she remembers independently what happened at the time. Her memory is a little bit better than yours and mine, [defense counsel]. [¶] I don't have any reason to doubt what she said, particularly since what she is telling the Court just now is backed up by her contemporaneous notes. [¶] I realize there's a level of unfairness, perhaps. There's a level of, perhaps—well, that this is not—doing something two years after the fact is going to substitute for doing it at the time when it happened and it's fresh in our minds. [¶] But I think the appellate process is such that they recognize that sometimes we are stuck in this kind of a setting and we do the best we can."

Defense counsel stated, "I certainly agree with you that her notes and her refreshed recollection will get you through step two of that prima facie case, step two. [¶] ... [¶] ... Step two, the race neutral explanation. Step three falls upon [defendant] to convince the Court that there was no race, [*sic*] neutral explanation. I can't do that. That's where I think it stands."

The court asked, "You're not able to do it because of the passage of time?" Defense counsel replied, "Excellently put. That's it. [¶] ... [¶] ... I just don't remember."

The court concluded as follows: "So then based upon that, here's the ruling: [¶] Number one, I feel that we did have enough evidence that we were able to recreate enough of what happened that day so I was able to conduct a meaningful hearing. [¶] I recognize there may be a certain level of unfairness involved here, but I think we did the best we could. [¶] And I believe then that there was still enough still that I could make a ruling at this time that the proponent of the motion of the defense has not been able to meet the third requirement of the Wheeler–Batson. [¶] That is, proof that the district attorney engaged in purposeful rational [*sic*] discrimination of juror [J.M.]. And, therefore, I'm going to reaffirm my ruling denying the Wheeler–Batson motion. [¶] And I'm therefore at this time also going to reinstate the judgment as entered back after we finished the trial that day."

*4 The court reinstated its original judgment. Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends the trial court could not make "a sincere and reasoned attempt to evaluate the stated reasons" for striking J.M. two years after trial for several reasons: (1) the court had no recollection of J.M.'s body language, thus preventing it from assessing the prosecutor's credibility via its own observations, (2) the court made no mention of the prosecutor's common practices in assessing her credibility, (3) the court did not state that it actually believed the prosecutor's explanation, only that it had no reason to doubt what she said, (4) the prosecutor's use of her own hand-written notes to corroborate her observations of J.M.'s body language is "questionable at best," (5) due to the passage of time, defense counsel was "unable to participate as an advocate in the third *Batson* step," and (6) the court conceded the hearing was "marked by a 'level of unfairness.' " None of these claims is persuasive.

To establish a *Batson/Wheeler* claim, three steps are involved. First, a defendant must make a prima facie case by showing that the " 'totality of the relevant facts' " gives rise to a discriminatory inference. (*Johnson v. California* (2005) 545 U.S. 162, 168 [162 L.Ed.2d 129], quoting *Batson, supra,* 476 U.S. at p. 94.) Then, and only then, the People must show race-neutral reasons for the challenge. (*Johnson, supra,* at p. 168.) If that is done, the trial court must then decide whether purposeful racial discrimination has been proved. (*Ibid.*)

A trial court's ruling on the issue of discriminatory intent must be upheld on appeal unless it is clearly erroneous. (*Snyder v. Louisiana* (2008) 552 U.S. 472, 477 [170 L.Ed.2d 175, 181].) "The trial court has a pivotal role in evaluating Batson claims. Step three of the Batson

inquiry involves an evaluation of the prosecutor's credibility, [citation], and 'the best evidence [of discriminatory intent] often will be the demeanor of the attorney who exercises the challenge,' [citation]. In addition, race-neutral reasons for peremptory challenges often invoke a juror's demeanor (e .g., nervousness, inattention), making the trial court's first-hand observations of even greater importance. In this situation, the trial court must evaluate not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor. We have recognized that these determinations of credibility and demeanor lie ' "peculiarly within a trial judge's province," ' [citations], and we have stated that 'in the absence of exceptional circumstances, we would defer to [the trial court].' [Citation.]" (*Snyder v. Louisiana, supra,* 552 U.S. at p. 477 [170 L.Ed.2d at p. 181].)

Here, the People met their burden to show race-neutral reasons for challenging J.M. The prosecutor provided her own hand-written notes regarding J.M., which noted the fact that J.M.'s demeanor and body language abruptly changed after the prosecutor's first pass of the jury. The prosecutor stated that those abrupt physical changes and the fact that J.M. "looked unhappy" led her to change her initial decision to keep J.M. on the jury and instead move to excuse her. Additionally, the prosecutor had an independent recollection of the specific juror in question and recalled that the juror's "demeanor radically changed when I made a pass of the jury."

***5** The reason for excusing J.M.—that she displayed an abrupt change in physical demeanor and looked at the prosecutor in a manner that led the prosecutor to believe she would not be fair to the prosecution—is race-neutral. (*People v. Lenix* (2008) 44 Cal.4th 602, 613 (*Lenix*) ["A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons"].) That reason is supported by the prosecutor's contemporaneous notes, as well as her independent recollection of the events. The prosecutor confirmed, and the record does not dispute, that her notes do not contain any indication of the race or national origin of J.M. or any of the other jurors. The fact that J.M. was not excused until *after* the prosecutor's initial pass of the jury, from which it is reasonable to infer that the prosecution intended to keep J.M. on the jury until her abrupt change in demeanor, is also evidence that the reason for excusal was race-neutral.

The court found the prosecutor credible based on her contemporaneous notes and independent recollection of the original *Batson/Wheeler* hearing. Contrary to defendant's claim, the trial court's evaluation of the prosecutor's demeanor is not dependent upon whether or not the trial court saw or recalled seeing the change in J.M.'s demeanor. Similarly, while the court may rely on the common practices of a prosecutor in assessing her credibility (*Lenix, supra,* 44 Cal.4th at p. 613), failure to do so is not dispositive of the issue. The court observed the prosecutor's demeanor and inspected her contemporaneous notes, concluding it did not "have any reason to doubt what she said." While defendant argues the court never expressly stated it believed the prosecutor's explanation, we infer that fact from its comment and its ruling.

Despite that defense counsel agreed, at the hearing, that the prosecutor's hand-written notes and personal recollection of events sufficed as a basis to find that her explanation for excusing J.M. was race-neutral, he now criticizes the prosecutor's use of those notes to corroborate her observations of J.M.'s body language, implying those documents are of questionable value. To the contrary, the notes are the only contemporaneous evidence of what took place during the initial hearing. Without even a hint of evidence that the notes lack credibility, their value was immeasurable, and the court's dependence on them not only reasonable, but necessary.

Defendant argues, with little analysis and no citation to authority, that defense counsel was "unable to participate as an advocate in the third *Batson* step" due to the passage of time and the fact that the prosecutor "intentionally declined to state the reason for striking of [*sic*] J.M. two years earlier." Because defendant's contention is unsupported by authority or analysis, we reject it. (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2 [a reviewing court need not discuss claims that are asserted perfunctorily and insufficiently developed]; *People v. Hardy* (1992) 2 Cal.4th 86, 150 [same]; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1159 [appellate contentions must be supported by analysis].) In so doing, we note that courts regularly reject similar claims regarding the passage of time. (*People v. Johnson* (2006) 38 Cal.4th 1096, 1101 [more than seven years elapsed between trial and hearing on remand]; see also *Williams v. Runnels* (9th Cir.2006) 432 F.3d 1102 [remand ordered eight years after trial]; *Paulino v. Castro* (9th Cir.2004) 371 F.3d

1083 [remand ordered five years after the state appellate court decision and even longer after trial]; *Fernandez v. Roe* (9th Cir.2002) 286 F.3d 1073 [remand ordered about seven years after trial].)

*6 The trial court's determination that the prosecutor's reason for excusing juror J.M. was not discriminatory was not clearly erroneous. (*Snyder v. Louisiana, supra,* 552 U.S. at p. 477 [170 L.Ed.2d at p. 181].)

We deem defendant to have raised the issue whether amendments to Penal Code section 4019, effective January 25, 2010, which increased the rate at which prisoners earn presentence conduct credits, apply retroactively to his pending appeal and entitle him to additional conduct credits. (Misc. order No.2010–002.) We conclude that the amendments apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [statutory amendments lessening punishment for crimes apply "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to an amendment involving custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying the rule of *Estrada* to an amendment involving conduct credits].) However, the recent amendments to section 4019 do not operate to modify defendant's entitlement to additional presentence custody credit, as he was committed for carjacking, a serious felony. (§ 1192.7, subd. (c)(27), 4019, former subds. (b)(2) & (c)(2) [as amended by Stats.2009, 3d Ex.Sess.2009, ch. 28, § 50], 2933, subd .(e)(3) [as amended by Stats.2010, ch. 426, § 1, eff. Sept. 28, 2010].)

DISPOSITION

The judgment is affirmed.

We concur: SCOTLAND, Acting P.J., * and HULL, J.

All Citations

Not Reported in Cal.Rptr.3d, 2010 WL 4731953

Footnotes

1 *Batson v. Kentucky* (1986) 476 U.S. 79 [90 L.Ed.2d 69] (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Exhibit C

Excerpts from Petition for Writ of Habeas Corpus, *In re Jeffrey Gerard Jones* (Sept. 18, 2015, S230239.)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re	)	No.
	)	
JEFFREY GERARD JONES,	)	[Related to prior cases No. S009141, S050483 and S093647]
	)	
Petitioner,	)	
	)	(From Sacramento County Case
On Habeas Corpus.	)	No. 77173, Hon. Allen P. Fields)
	)	
_____	)	

PETITION FOR WRIT OF HABEAS CORPUS

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TABLE OF CONTENTS

B. THE RECORD IN THIS CASE TOGETHER WITH ADDITIONAL EVIDENCE DISCOVERED AFTER THE CONCLUSION OF PETITIONER'S APPEAL AND HABEAS PROCEEDINGS DEMONSTRATES THAT THE PROSECUTOR EXCLUDED JURORS ON THE BASIS OF RACE

As noted above, an all-white jury convicted Mr. Jones, who is African-American, of the first degree murder of a white doctor and the attempted murder of a white medical student and the first degree murder of an Asian man. During the penalty phase, the jury heard evidence that Mr. Jones also killed a white physics professor.

On September 15, 1994, counsel for Mr. Jones filed Appellant's Opening Brief ("AOB") in *People v. Jones*, Case No. S009141. In Claim V of the AOB, at 211-18, appellate counsel argued that the prosecutor's use of race-based peremptory challenges to excuse all three African American jurors on Mr. Jones' jury panel violated his rights under the United State Constitution to trial by a jury drawn from a fair cross-section of the community, as set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986).[10]

On March 17, 1997, this Court issued a divided opinion affirming Mr. Jones' conviction and sentence. *People v. Jones*, 15 Cal.4th 119 (1997). While Justice Mosk believed that Mr. Jones had proved the existence of a *Batson* violation (15 Cal.4th at 204-05), the majority concluded that while petitioner had established a *prima facie* case of discrimination (*id.* at 159-60), "the trial court properly could find that the

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[10]Petitioner incorporates by this reference his prior briefing on this claim. *In re Reno*, 55 Cal.4th at 444. Claim V remains pending as Claim IV.A of Mr. Jones' federal habeas petition.

reasons advanced by the prosecutor for exercising a peremptory challenge against Parker were not mere pretexts intended to conceal a motive of racial bias." *Id.* at 163.

For the reasons stated in the AOB, and in Appellant's Reply Brief at 28-30, which was filed in Mr. Jones' automatic appeal on July 26, 1995, petitioner remains convinced that this Court's ruling on this issue was incorrect. As discussed in these appellate pleadings and below, the prosecutor gave pretextual reasons for challenging African American jurors, and in particular Audrey Parker.

As noted above, during the course of federal habeas proceedings, Mr. Jones' counsel discovered additional evidence in the prosecutor's own files that further showed that the reasons given by the prosecutor for excusing all of the African American jurors from petitioner's panel were a pretext for racial discrimination. This petition brings this evidence to the attention of this Court.

As petitioner pointed out in his appellate briefing, the justification given by the prosecutor for excusing African American juror Audrey Parker was exceptionally weak and unpersuasive. The prosecutor used his third peremptory challenge to excuse one African American prospective juror, Don Haynes. After exercising 20 of 26 peremptory challenges, the prosecutor accepted the jury as constituted. Defense counsel then used their 20th challenge to exclude prospective juror Gainey and Audrey Parker was seated in Gainey's place. The prosecutor then used his 21st challenge to exclude Parker and his 22nd challenge to exclude the final African American juror, Judith Credic.

After both parties exhausted all of their peremptory challenges, defense counsel raised an objection to the prosecutor's use of peremptory

challenges under *People v. Wheeler*, 22 Cal.3d 258 (1978), this Court's decision invalidating race-based peremptory challenges. RT 9985. The trial court demanded an explanation from the prosecutor for his use of these challenges. As to prospective juror Parker, the prosecutor stated:

> Ms. Parker was problematical for me and I made a choice as to her, between her and three other jurors. The main thing that struck me about Ms. Parker, because it was an elimination process, either between her, Mr. McKenzie or Ms., keeping Ms. Blanchett - - Ms. Parker in particular, said that she believed that she would go life without if there was evidence of insanity. That is the guts of the defense case. That is what they are going to try to do to save this guy the death penalty and sell this jury on the mental problem. And Ms. Parker specifically indicated – Hold on, I will get her quote. *She could only go for the death penalty in some cases if there was no insanity* . . . . That was my primary reason, because I felt that she would cut him some slack. None of these other jurors indicated they would cut or favor life without possibility of parole if there was a mental problem, and that is the guts and essence of the defense case here.

RT 9987 (emphasis added). The trial court then found that "there is no *Wheeler* violation based upon the explanation that the District Attorney has given as to each and every one of the three jurors." RT 9988. The trial court admitted that the jury, as constituted, was all white. RT 9998.

As petitioner noted in Appellant's Opening Brief, the sole justification for the prosecution's choice to excuse Audrey Parker is not believable. AOB at 212-13. Jo Anne Blanchette, who the prosecutor admitted that he chose over Ms. Parker, stated that in order to vote for death "I would have to be convinced that the person . . . was sane and committed the murder deliberately." RT 9888. Parker stated simply that individuals like petitioner, who randomly kill innocent people warrant the death penalty "[i]f there is no insanity." RT 8665. Contrary to the prosecutor's

allegations, these answers were in fact identical.

This Court viewed the District Attorney's comments in a different light, arguing that the prosecutor wasn't commenting on these jurors answers regarding insanity, but was instead stating that as to prospective jurors Blanchette and McKenzie, only Parker had said she would "favor life without possibility of parole if there was a mental problem." *People v. Jones*, 15 Cal.4th at 161. This is not a correct reading of the prosecutor's statements. He quite specifically singled out and quoted Parker's statement regarding insanity as his reason for excusing her. RT 9987. Even if this Court were correct however, the prosecutor's only stated rationale would still be pretextual. Contrary to this Court's conclusion, Parker's answers did not suggest that she would favor life if there were a mental problem.

In her questionnaire and during voir dire, Parker said very little on the subject of mental illness; it simply didn't appear to be very meaningful for her. Blanchette and Parker made similar, nearly identical concessions regarding mental illness in response to the questioning of counsel. Both stated that they could independently determine when people were trying to talk their way out of trouble and that they would not automatically accept psychiatric testimony as valid. RT 8669-70, 9890-91. Parker also stated that she accepted the principle that a person could have mental problems and not be insane and the mere fact that Mr. Jones killed multiple people didn't make him insane. RT 8673.

Finally, Parker acknowledged, as Blanchette also did, that when she reached the penalty phase, she already would have found petitioner sane. RT 8667, 9889. Defense counsel asked Parker if, after making that determination she would be "*willing to listen* to evidence with regard to the person's mental problems . . . *to determine whether or not in your own mind*

that would mitigate the nature of the crimes." RT 8667 (emphasis added). Parker responded without elaboration, "I would. I consider myself fair and open minded." RT 8667.[11]

This Court characterized Ms. Parker's affirmative statement in response to defense counsel's question on this point as an indication that "she would favor a sentence of life imprisonment without the possibility of parole if there was evidence defendant had a 'mental problem.'" *People v. Jones*, 15 Cal.4th 119, 162 (1999). This completely mischaracterizes Parker's answer. In response to a leading question from defense counsel, Parker simply affirmed that she would listen to the mental health evidence he presented in a fair minded way during the penalty phase. Parker was in no way an advocate for such evidence and did not indicate that she would find such evidence meaningful or persuasive. Viewing her questionnaire and voir dire as a whole, Parker demonstrated little interest in the subject of mental health. If the prosecutor's answer is characterized as a more general commentary on Parker's alleged bias towards a life sentence based on mental health evidence, as this Court suggested, his explanation was a false one.

Moreover, Blanchette and Parker's voir dire and questionnaire answers on the subject of mental health weren't distinguishable in ways that made Blanchette more sympathetic to the prosecution. Blanchette's answers on mental health issues, while more involved and contradictory than Parker's, were ultimately no more favorable to the prosecution.

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[11]As petitioner further pointed out in Appellant's Opening Brief, Ms. Parker's views on mental health evidence also were no more favorable to the defense than a number of other jurors, including Ronald Sundberg and Robert Cartwright. AOB at 213.

Blanchette initially stated that the death penalty might be wise and save money for people who are so mentally ill that they could not lead a normal life. RT 9881. Blanchette then contradicted that statement in the very same passage and without interruption, contending that if a person was severely mentally ill and went berserk, they should be left in prison. RT 9881. On further examination, she took a position that was far more sympathetic to individuals with mental illness than anything Parker uttered. Blanchette clarified that "I meant to say . . . that I think the death penalty should be applied only to people who are not mentally ill and who have . . . premeditated killing." RT 9884.

Upon prompting from counsel, Blanchette later agreed that not all mental illness rises to the level of insanity. RT 9886. Like Parker, Blanchette then acknowledged that when she reached the penalty phase, she already would have found Mr. Jones sane. RT 9889. Blanchette said that if she found Mr. Jones sane, she would "probably say, yes, the death penalty." RT 9889. However, Blanchette then agreed with the prosecutor's characterization of this answer as saying that if she found Mr. Jones guilty and sane, "although [she] could listen to the evidence on the other side, [she] could impose the death penalty." RT 9889. In context, Blanchette, like Parker, was simply stating that she would be open to both sentences at the penalty phase and would consider the evidence presented by both sides in a fair-minded manner.

In Parker's questionnaire as well, mental health was simply a non-issue. In contrast, Blanchette was considerably more sympathetic to people with mental illness. Blanchette listed "unfortunate early environmental experiences of an individual or mental illness" as the most important causes

of crime. Exhibit 13,[12] p. 429.[13] Parker in contrast, listed drugs, joblessness, gang violence, drug selling and multiple murders as important causes of crime and causes for increased crime. Exhibit 14, pp. 457-58. Unlike Parker, Blanchette had personal experience with mental illness. Blanchette stated during voir dire that the husband of a friend of hers had paranoid schizophrenia that required long term medication. RT 9880.

Looking carefully at their respective testimony and questionnaires, the sole reason given by the prosecutor for challenging Parker, her answer on insanity, made no sense. Moreover, contrary to this Court's conclusion, Parker did not favor a life sentence for individuals with mental illness, and that rationale cannot justify the prosecutor's decision. Finally, Parker and Blanchette's views on mental illness provided no reason for the prosecution to favor Blanchette over Parker. In the absence of a valid justification for this strike, this Court should have concluded that the reason given by the prosecutor was a pretext for discrimination.

Moreover, taking race out of the equation, Parker was a superior choice from a prosecution point of view. Comparing their questionnaires

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[12]The juror questionnaires were made a part of the record on appeal, as reflected in the Court's docket entry in for April 5, 1993 in *People v. Jones*, Case No. S009141. However, petitioner's counsel have not been able to locate them as part of the Clerk's Transcript. For this reason, the juror questionnaires for jurors Blanchette and Parker are attached as Exhibits 13 (pp. 416-43) and 14 (pp. 444-71) respectively.

[13]Blanchette listed "insecure home environment, abuse at home and overcrowded conditions in large cities" as causes for increases in crime. Exhibit 13, p. 430. Blanchette's responses on the causes of crime were much more sympathetic to criminal defendants than Parker's. All five of the causes of crime that Blanchette listed were unequivocally sympathetic to criminal defendants; only one of the five causes listed by Parker--joblessness--was unequivocally sympathetic to defendants.

and testimony, Audrey Parker, unlike Blanchette, had significant law enforcement ties. Blanchette was a music teacher (Exhibit 13, pp. 419, 421); Parker had worked for sixteen years at the Department of Justice as a Supervisory Technician checking records on applicants for law enforcement jobs and running rap sheets. Exhibit 14, pp. 449, 453; RT 8647-50. Parker's brother was a Sacramento sheriff who had graduated from the police academy, she had majored in the administration of justice in college, and her ex-husband was a Sergeant at arms at the State Capitol. Exhibit 14, pp. 450-52; RT 8650-52. In her questionnaire and during voir dire, Parker expressed stronger concerns about crime than Blanchette, and less concern for individuals accused of crimes. Parker admitted that she was personally frightened by crime (Exhibit 14, p. 458); Blanchette did not, and as noted above, Blanchette was actually more concerned about mental health issues than Parker was. Exhibit 13, p. 430. Unlike Blanchette, Parker had been following news coverage of the crime closely and knew that Mr. Jones had attacked two doctors with a hammer in the restroom of the UC Davis Medical Center. Exhibit 14, p. 4651; RT 8658-59.

The prosecutor's motives are further elucidated by evidence obtained by Mr. Jones' counsel from the prosecution's own files. The prosecutor's notes, in conjunction with the record, provide the following additional evidence that the reasons given for striking Parker and the other African American jurors were mere pretexts for race based discrimination:

- On September 13, 1988, following the conclusion of voir dire and at the request of both parties, the court clerk read out a list of all 82 prospective jurors in the order they would be selected for exercise of peremptory challenges. RT 9954-59.
- That same evening, the prosecutor drafted a four page list of the

jurors, from 1 to 82, in the order they would be called. Exhibit 15, pp. 478-80. On the right hand side of that list, the prosecutor wrote codes drawn from notecards he had drafted regarding each of these jurors. *Id*; Exhibit 16, 481-613. On the left hand side of the list, the prosecutor made notations for only three jurors: Juror Number 5, Donald Haynes; Juror Number 53, Audrey Parker and Juror Number 55, Judith Credic. Exhibit 15, pp. 478-80. Each of these jurors, who were the only three African American jurors, had the letter "B" listed next to their names. *Id.*, pp. 478, 480. There was no other left hand notation for any juror. *Id.*, pp. 478-80. These notations were plainly made before jury selection commenced, as the letter B next to Donald Haynes' name was struck through by a straight line from a marker that also struck through the entirety of Mr. Haynes' name. *Id.*, p. 478.

- The letter B stood for "black" and was included by the prosecutor to remind him of the race of the African American jurors he excluded as he plotted out his challenges. Counsel for both parties, and the court referred to the issue of race based peremptory challenges as *Wheeler*, not *Batson*. RT 9985, 9988. For example, to the right hand side of Parker's name there was an additional notation: "Wheeler Prob See DA Resp." Exhibit 15, p. 480.
- The note cards drafted by the prosecutor (Exhibit 16, pp. 481-613) contained numerous references to the race of the jurors, as well as derogatory references to the perceived sexual orientation of certain male jurors. Asian jurors were described as "oriental," despite the obsolescence of that term. Nancy Arashiro was described as "Filipino-looking." *Id.*, p. 488. Barbara Birt was described as

"Hispanic looking." *Id.*, p. 492. Judith Credic was described as a "middle aged black." *Id.*, p. 504. The prosecutor noted that Donald Haynes was "Male--purse/gold chain. Black short afro/small stache . . . . Believes in blacks sticking together, but would 'draw the line' since defendant charged with 187." *Id.*, p. 528.[14] Lampa Lutgarda was described as of "Asian Ancestry-Filipino." *Id.*, p. 544. Julio Massad was described as having "Lebanese/Mexican extraction." *Id.*, p. 550. Audrey Parker was also described as a "middle aged black." *Id.*, p. 572. The prosecutor noted that David Roetman "swishes." *Id.*, p. 580. The prosecutor described Robert Sanchez as a "short, chubby, Mexican." *Id.*, p. 582. Betty Shimanski was described as a "neat looking oriental." *Id.* at 586. Rabon Tadena was described as a "Filipino-Hispanic looking." *Id.*, p. 596. Fumiye Takagi was described as a "neatly dressed oriental lady." *Id.*, p. 598. Sandra Trujillo was described as a "young Mexican." *Id.*, p. 600. Johnny Valdiviez was described as "Mexican." *Id.*, p. 602. Anna Wong was described as an "attractive oriental." *Id.*, p. 610. Shari Wong was described as a "mousy looking oriental." *Id.*, p. 612.

Apart from African American jurors, the prosecutor struck three jurors with Asian surnames (Wong (RT 9973), Ashahiro (RT 9967) and Takagi (RT 9984)) and two jurors with Spanish surnames (Sanchez (RT 9967) and Moreno (RT 9984)).[15] As noted above, the

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[14]In responding to the *Wheeler* challenge, the prosecutor also noted that Haynes carried a purse and admitted that he had "difficulty with that kind of juror." RT 9987.

[15]The prosecutor struck three other jurors whose surnames indicate possible Hispanic or Middle Eastern heritage: Tadena (RT 9975), Mez (RT

court acknowledged that the jury, as finally constituted, was all white. RT 9988.

These facts lend additional support to the conclusion that the prosecution used race based peremptory challenges, despite his protestations that his reasons for excusing minority jurors were race neutral.

The prosecutor's deliberate decision to pre-designate the race of each of the African American jurors, and only the African American jurors, on the sheet he was employing for the purpose of making peremptory challenges, is evidence that his given reason for challenging these jurors was a pretext for race. *See Miller-El v. Dretke (Miller-El II)*. 545 U.S. 231, 264-65 (2005) (fact that the prosecutor marked the race of each prospective juror on their juror cards, cited as evidence that the prosecutor was selecting and rejecting jurors because of race); *Miller-El v. Dretke (Miller-El I)*, 537 U.S. 322, 347 (2003) ("[t]he supposition that race was a factor could be reinforced by the fact that the prosecutors marked the race of each juror on the juror cards").

In *Adkins v. Warden*, 710 F.3d 1241 (11th Cir. 2013) disapproved on other grounds in Lee v. Comm'r, Ala. Dep't of Corr., 726 F.3d 1172 (11th Cir. 2013), the Eleventh Circuit recently cited *Miller-El II* for the proposition that:

> the fact that the prosecution explicitly noted the race of every black veniremember, and only black veniremembers, on the jury list the prosecutor relied upon in striking the jury, marking each of them with a "BM" or "BF" . . . .is strong evidence of discriminatory intent.

9977) and Lampa. RT 9979. The questionnaires do not reflect the race of any of the jurors, but the prosecutor's notes reflect his belief that Tadena was "Filipino-Hispanic looking" that Lampa was of "Asian Ancestry-Filipino," and that Mez was "swarthy." Exhibit 16, pp. 544, 554, 596.

Id. at 1253.

In *Bell v. Haley*, 2001 U.S. Dist. LEXIS 22794 (M.D.Ala. 2001), the court granted relief on a *Swain* claim against prosecutor who placed a "B" next to the names of black jurors.[16] The court noted that "Where race plays no role in the district attorney's calculus, there is no need to identify jurors on the basis of their race." *Id.* at *60-*61. The court found that the prosecutor's practice of racially designating each potential African-American juror, along with other evidence, supported the conclusion that race played a role in the prosecutor's use of peremptory challenges. *Id. See also Whitsey v. State*, 796 S.W.2d 707, 725-28 (Tex. Crim. App. 1989), (granting *Batson* claim when prosecutor marked the letter B next to the name of black venirepersons on his juror information sheets, but made no notations on the cards of non-blacks); *Garcia v. State*, 802 S.W.2d 817, 819 (Tex. App. 1990) (same); *Diggs v. Vaughn*, 1991 U.S. Dist. LEXIS 3945, *3-*4 (E.D. Pa. 1991) (the fact that "[t]he record demonstrates conclusively that, at each trial, the prosecutor kept careful *records of the race of each prospective juror, and a running tally of how many persons of each* race remained on the venire for possible selection" while not a *Batson* violation itself shows that "in this case race seems to have featured very prominently in the thought processes of the trial prosecutor"). Moreover, the prosecutor's note cards, together with the official transcript, reflected his clear focus on race, his outmoded views on race, as evidenced by his use of

[16]Because *Bell* was tried before *Batson* was decided, the court decided his claim under the more demanding standards established by *Swain v. Alabama*, 380 U.S. 202 (1965). *Bell*, 2001 U.S. Dist. LEXIS 22794 at *47, n. 26.

the outmoded term oriental,[17] and his homophobia.

In light of this new evidence, together with the weakness of the prosecutor's initial justification for excusing Ms. Parker, there is no doubt that the reasons given for challenging Audrey Parker were pretexts for race based discrimination. Pursuant to *Batson v. Kentucky*, petitioner's conviction and sentence should be reversed.

C. DELAYS IN THE IMPLEMENTATION OF CALIFORNIA CAPITAL PUNISHMENT VIOLATE THE EIGHTH AMENDMENT

In *(Ernest) Jones v. Chappell*, 31 F.Supp.3d 1050 (C.D.Cal. 2014), United States District Court Judge Cormac Carney concluded that delays in California's imposition of the death penalty constitute cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. In reaching this conclusion, the court noted:

> [T]he dysfunctional administration of California's death penalty system has resulted, and will continue to result, in an inordinate and unpredictable period of delay preceding their actual execution. Indeed, for most, systemic delay has made their execution so unlikely that the death sentence carefully and deliberately imposed by the jury has been quietly transformed into one no rational jury or legislature could ever impose: life in prison, with the remote possibility of death . . . . That is the reality of the death penalty in

---

[17]The term Asian "gained popularity in the mid-to-late 1970s. It replaced the now derogatory term 'Oriental'." Nilda Rimonte, *Women Of Color at the Center*, 43 STAN.L.REV. 1311, 1312 (1991). *See also* Aaron Schwabach, *Kosovo: Virtual War and International Law*, 15 LAW & LITERATURE 1, 7 (2003) ("To Americans 'Oriental' is an outmoded term once used to refer to the countries, cultures, inhabitants, and artifacts of East Asia"); Richard Delgado & Jean Stefancic, *Imposition*, 35 WM. & MARY L. REV. 1025, 1036 (1994) (describing the word "oriental" as "slightly derogatory").

> California today and the system that has been created to administer it to [Ernest] Jones and the hundreds of other individuals currently on Death Row. Allowing this system to continue to threaten [Ernest] Jones with the slight possibility of death, almost a generation after he was first sentenced, violates the Eighth Amendment's prohibition against cruel and unusual punishment.

Id. at 1053.

At the time Judge Carney issued his decision in *(Ernest) Jones*, he had been awaiting execution of his 1995 death sentence for 19 years and his federal habeas petition was fully briefed before the district court and awaiting decision. *Id.* at 1060. At this time, Jeffrey Jones has been awaiting execution of his 1989 death sentence for more than 25 years and briefing on the merits of his federal petition before the district court has yet to be scheduled. Given Mr. Jones' severe mental illness and the complexities involved in litigating his case, there is no end in sight. The reasoning of the *(Ernest) Jones* case applies with equal, if not greater, force in this case.

Of the more than 900 individuals sentenced to death in California since reinstatement of the death penalty in California, only 13 have been actually executed. *Id.* at 1053. As the size of California's death row has increased, so too have the delays associated with it. *Id.* More than seven times the number of inmates who have died of execution (94) have died from other causes. *Id.* Three times the number of inmates who have been executed (39) have been granted relief from the federal courts and not re-sentenced to death. *Id.* "For those whose challenge to the State's death sentence is ultimately denied at each level of review, the process will likely take 25 years or more." *Id.* at 1054.

The California Commission on the Fair Administration of Justice

issued a report on the causes of this extraordinary delay that constituted "a stern indictment of the State's death penalty system" (*id.* at 1055), noting that California's dysfunctional death penalty system was plagued with excessive delays in the appointment of counsel and a severe backlog in the resolution of appeals and habeas petitions by this Court. *Id.* at 1055-56.[18] Former Chief Justice Ronald George reached similar conclusions (*id.* at 1056),[19] as did Ninth Circuit Judge Arthur Alarcón in studies of the same issue. *Id.*[20]

Judge Carney surveyed problems at every stage of the state appellate and habeas process and the federal habeas process, including underfunding in direct appeal and habeas cases, shortage of available counsel, agency staffing cuts, the enormous size of the litigation, delays in direct and collateral review, the need to investigate cases during federal habeas proceedings, federal exhaustion requirements and this Court's use of unexplained summary dispositions for the vast majority of federal habeas petitions. *Id.* at 1055-60.

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[18]*See* CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE, FINAL REPORT at 114-15 (Gerald Uelmen ed., 2008), available at http://www.ccfaj.org/ documents/CCFAJFinalReport.pdf

[19]*See* Ronald M. George, *Reform Death Penalty Appeals*, L.A. TIMES, Jan. 7, 2008 ("The existing system for handling capital appeals in California is dysfunctional and needs reform. The state has more than 650 inmates on death row, and the backlog is growing.")

[20]*See* Arthur L. Alarcón & Paula M. Mitchell, *Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle*, 44 LOY. L.A. L. REV. S41, S61 (2011) (describing California's "broken" death penalty system). See also Arthur L. Alarcón, *Remedies for California's Death Row Deadlock*, 80 S. CAL. L. REV. 697, 734 (2007).

Viewing California's death penalty system as a whole, Judge Carney concluded that "California's death penalty system is so plagued by inordinate and unpredictable delay that the death sentence is actually carried out against only a trivial few of those sentenced to death." *Id.* at 1062. Whether or not an individual is executed depends on "how quickly the inmate proceeds through the State's dysfunctional post-conviction review process." *Id.* Judge Carney concluded that:

> For [Ernest] Jones to be executed in such a system, where so many are sentenced to death but only a random few are actually executed, would offend the most fundamental of constitutional protections--that the government shall not be permitted to arbitrarily inflict the ultimate punishment of death. *See Furman [v. Georgia]*, 408 U.S. [238,] 293 [(1972)] (Brennan, J., concurring) ("When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system.").

(Ernest) Jones, 31 F.Supp.3d at 1063. Judge Carney concluded that in its current form, California's death penalty serves neither the purpose of deterrence nor retribution. *Id.* at 1063-65. In the absence of any legitimate penological purpose, California's death penalty "is antithetical to any civilized notion of just punishment" and constitutes cruel and unusual punishment. *Id.* at 1063.

Judge Carney's conclusions are correct. In its current form, California's death penalty constitutes arbitrary punishment that violates the Eighth Amendment. For this reason, Jeffrey Jones' death sentence should be set aside.[21]

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[21]Claim C is an entirely new claim premised on the recent federal district court decision in *(Ernest) Jones*. Petitioner did not previously assert this claim on appeal or during the course of any previous state or federal

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re	)	No. S230239
	)	
JEFFREY GERARD JONES,	)	[Related to prior cases No.
	)	S009141, S050483 and S093647]
Petitioner,	)	
	)	(From Sacramento County Case
On Habeas Corpus.	)	No. 77173, Hon. Allen P. Fields)
	)	
_____	)	

EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

VOLUME 3

MICHAEL R. SNEDEKER, Bar #62842
Snedeker, Smith and Short
4110 SE Hawthorne Blvd., PMB 422
Portland, OR 97214
Telephone: (503) 234-3584

Attorney for Petitioner
JEFFREY GERARD JONES

EXHIBITS IN SUPPORT OF PETITION WRIT OF HABEAS CORPUS

VOLUME 1

VOLUME 2

VOLUME 3

EXHIBIT 15

JONES

JURY SELECTION

(SHOOT OUT LIST)

FILL OUT BELOW..GIVE REASONS
JUROR WAS EXCUSED...

JURORS EXCUSED BY PEOPLE & COMMENT (IF ANY)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

JURORS EXCUSED BY DEFENSE & COMMENT (IF ANY)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

JURORS EXCUSED BY COURT & COMMENT (IF ANY)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

π: ~~||||~~ ~~||||~~ ~~||||~~ ~~||||~~ |

Δ: ~~||||~~ ~~||||~~ ~~||||~~ ~~||||~~ ~~||||~~

DISTRICT ATTORNEY SACRAMENTO COUNTY
JURY INFO SHEET

Fill out and return after jury selection; return second copy after verdict

PEOPLE VS. Jones

OFFENSE 187

VERDICT

JUDGE Fields

DEPARTMENT 22

TIME (Jury out)

DEPUTY D. A. Wilson

DATES OF TRIAL

DEFENSE COUNSEL

1	2	3	4	5	6
~~[illegible]~~ π5 J. Mose OK++	~~[illegible]~~ ~~Pierce~~ Northcutt/Nunez	~~[illegible]~~ ~~[illegible]~~ ~~Sanchez~~ π7 ~~[illegible]~~ π4 ~~[illegible]~~ Δ16 ~~Watson~~ π17 ~~Kaufman~~ Δ17 ~~[illegible]~~ ~~Davidson~~ π19 ~~[illegible]~~ π20 ~~[illegible]~~ Δ Cunningham OK	~~[illegible]~~ Δ21 Parker π21 ~~[illegible]~~ Δ22 Urbik π22 ~~Duncan~~ π23 Elkin OK+ Pogle +	~~[illegible]~~ π3 ~~[illegible]~~ Δ6 ~~[illegible]~~ π ~~[illegible]~~ Blanchette OK	~~[illegible]~~ π6 ~~[illegible]~~ ~~Faccia~~ π12 ~~[illegible]~~ ~~Lindsay~~ ? π24 ~~[illegible]~~ Δ24 ~~Faki~~ π25 ~~Mosnier~~ Δ25 ~~[illegible]~~ ~~Minden~~ McKenzie
7	8	9	10	11	12
~~[illegible]~~ π4 ~~[illegible]~~ π8 ~~Lastra~~ π11 Bwion OK OK+	~~[illegible]~~ π2 ~~[illegible]~~ ~~Art~~ ~~Bengtson~~ π13 Hart OK+	~~[illegible]~~ π1 ~~[illegible]~~ Δ2 Donald Scott + [redacted]	~~[illegible]~~ Δ10 ~~Pike~~ π15 ~~Lachure~~ Δ15 ~~Smith~~ π16 ~~[illegible]~~ π17 Polansky OK OK	~~[illegible]~~ π4 ~~[illegible]~~ π7 ~~[illegible]~~ π10 Sundberg OK+	~~[illegible]~~ Δ1 ~~[illegible]~~ π7 ~~[illegible]~~ π5 ~~[illegible]~~ π16 ~~Speed~~ π17 Chamness ?

FILL OUT BELOW..GIVE REASONS JUROR WAS EXCUSED...

JURORS EXCUSED BY PEOPLE & COMMENT (IF ANY)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

JURORS EXCUSED BY DEFENSE & COMMENT (IF ANY)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____

JURORS EXCUSED BY COURT & COMMENT (IF ANY)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

T III)

DISTRICT ATTORNEY SACRAMENTO COUNTY
JURY INFO SHEET

Δ III

Fill out and return after jury selection; return second copy after verdict

PEOPLE VS. _____

OFFENSE _____

VERDICT _____

JUDGE _____

DEPARTMENT _____

TIME (Jury out) _____

DEPUTY D. A. _____

DATES OF TRIAL _____

DEFENSE COUNSEL _____

1	2	3	4		
~~[illegible] out~~ 4, ~~Edwards~~ T2 ~~Sotina Stockman~~ T5 HUBBARD	~~[illegible]~~ T1, ~~[illegible]~~ 3 ~~Gomez~~ WOMACK	MURRAY OUT	MURPHY OUT		

Seek Am OK+ to +

1. ~~Janet Nolan~~ OK+
2. Robt. Carturight OK to OK+
3. ~~Tracy Johnson~~ ~~OK to +~~
4. Louis Gainey ±
5. ~~Donald Haynes~~ = KICK+
6. ~~Robt Thomas~~ +? KICK ... BUT Δ MAY DO IT FIRST
7. ~~Harry Green~~ OK to +
8. ~~Thomas Meeus~~ +? KICK
9. ~~Raymond Keeley~~ +? KICK+
10. Donald Owen •? (Δ MAY KILL?) TOO BRIGHT CHUCK DOESN'T LIKE HIM ?
11. ~~Theodore Peters~~ = KICK+
12. ~~Donald Amadori~~ +
13. ~~Rose de Andrade~~ OK+ ++
14. ~~Ramon Cano~~ ±
15. John Hatfield OK+ to ±
16. Donald Scott OK+ to ±
17. ~~Julia Howard~~ OK+ to +
18. ~~William Champlin~~ +? KICK
19. ~~Donna McDonald~~ +? OK KKK (NEAR END • KEEP ONLY IF ALIVE
20. ~~Henry Wong~~ + KICK (NEAR END - KEEP ONLY IF MAKING $!
21. Albert Mez •? to OK ?
22. Jeff Moore OK++
23. ~~Diane Kennedy~~ OK+? ?
24. ~~Margaret Emmons~~ OK+
25. Robin Batten = (Δ MAY KILL?) KICK (NEAR END - Δ MAY KILL)

26. Kirby Bonds ±
27. Georgia Jastor ± KICK (LAST. A WAY BACK?)
28. JoAnne Blanchette °OK? ? to OK
29. Rabon Tadena °OK? ?
30. Robt. Sanchez °OK? ?
31 Ronald Sundberg OK+
32 Barbara Birt − to OK− ?
33 Darlene Binion OK to OK+
34 Russell Bergwam OK++
35 Norman Lamb OK+ to +
36 Norvall Hart OK+
37 Nancy Arashiro − to OK− KICK
38 Margie Lindsay °? to OK ? DP - ONLY IF CERTAIN
39 Janice Varnelman OK+
40 Charles Wilson, Jr. OK+ to +
41 Johnny Valdivieso OK+ to +
42 Betty Shimisaki OK to OK+
43 Phyllis Speed ± KICK
44 Glenn Scribner ± KICK
45 Jacqueline Chamness °OK? to OK?
46 Shirley Kaufman OK+
47 Linda Polanshek OK to OK+
48 Judgada Tampa ± KICK
49 Patricia Davidson OK to OK+
50 Gene Oakes °OK? ?+

57 Harold Brix OK to OK+

52 Gene Courtwaite OK! ?+

53 Audrey Parker = OK KICK!

54 Venice Nyvall OK+ to +

55 Judith Credic = KICK

56 Sandra Duncan = KICK

57 Clifford Elkins OK+ to +

58 Fred Fogle OK+ to +

59 Frank Rodriguez OK+ to +

60 Fumiye Takagi = to? KICK (LAST)

61 Louis Moenen OK+ to +

62 Pamela Moreno OK??

63 Virginia Minden OK+ to +

64 Donald McKenzie OK to +

65 Jane Klenke OK to OK+

66 Jeff Kerin - [KICK]

67 Bill Murray OK to OK+

68 Donald Murphy OK+

69 Tina Hayes OK ?

70 Sandra Trujillo - to? (A MAY KICK?) [KICK]

71 Shirley Lojka OK to OK+

72 Melissa Thompson - [KICK]

73 Wayne Hubbard OK to OK

74 Mark Herig - [KICK]

75 Sue Womack OK

4 challenges Boos not

EXHIBIT 16

(+) (++)

DONALD AHADORI DP+ Strong Juror

47 SINGLE OK PSYCH

NO. HIGHLANDS

REPUBLICAN EX ARMY

2 YRS JR COLL.

X SR. COMPUTER OPER

BROTHER - LOP 23 YRS

* PSYCH - FAMILY MEMBER TREATED / HOSPITALIZED ——— ?OK

younger brother suicided after death of father

⊖ PUBLICITY

ATHLETIC LOOKING
GLASSES / DARK HAIR
SMALL MUSTACHE
BRIGHT / QUICK ANSWERS

QUICK TO SAY YES ON D.P. + ——— +

VIEWS "SYSTEM" TO PUNISH Δs.

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(D)

DP +
INSAN ??
GUILT
~~0~~ ON NEWS

HARRY AMES - CLERK @ STATE ASSEMBLY +15½ YRS
CATHOLIC, PRAT + ON D.P.
37, MARRIED

* SEE'S SHRINK FOR DEPRESSION

could impose D.P. (favors) — rather strongly
could consider LWOP

open on idea of mental defenses

Comment (Observations)
*relatively bright
*relatively strong personality
family educated

*Strong feelings pro psychiatrists but wouldn't absolutely believe them
feels society may be cause of a lot problem?

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(OK +)

BENAVIDA ANDRADE

73 WIDOW

REPUB

CATHOLIC

12 GR.

MECHANIC (A.F.)

≥ SHE WINS!

OK HDP

OK PSYCH

~~O~~ PUB

N: Worked for City Parks & Rec.

COULD GET SOMEONE

Silver Haired (short)

Pearls round face

little bit dumb

would probably go along w/ crowd.

Facts of killings would appall her

(Wouldn't like Jones)

Blue collar

Take husband's brother in mental institution

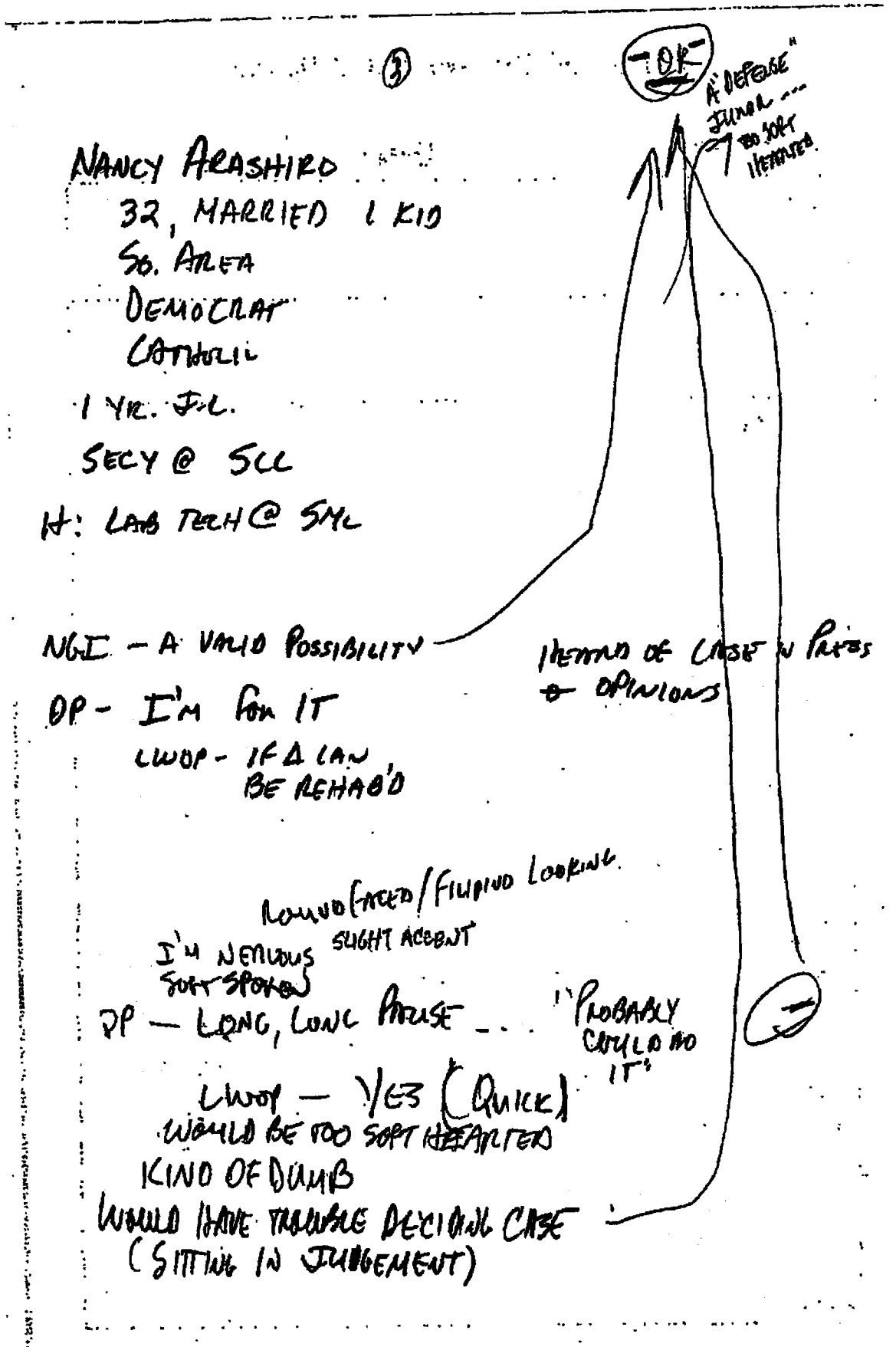
Feels sorry for people w/ mental probs.

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54


3
NANCY ARASHIRO
32, MARRIED 1 KID
So. AREA
DEMOCRAT
CATHOLIC
1 YR. J.C.
SECY @ SCL
H: LAB TECH @ SMC
NGI - A VALID POSSIBILITY
DP - I'M FOR IT
LWOP - IF Δ CAN BE REHAB'D
ROUND FACED / FILIPINO LOOKING
SLIGHT ACCENT
I'M NERVOUS
SOFT SPOKEN
DP — LONG, LONG PAUSE . . .
LWOP — YES (QUICK)
WOULD BE TOO SOFT HEARTED
KIND OF DUMB
WOULD HAVE TROUBLE DECIDING CASE
(SITTING IN JUDGEMENT)
"DP"
"A" DEFENSE
JURY ... TOO SOFT HEARTED
HEMMED OF CASE IN FACTS & OPINIONS
PROBABLY COULD DO IT

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

OK+

OK on D.P.
OK on NGI

RUSSELL BERQUAM
40, MARRIED, 1 KID
ELVERTA
REPUBLICAN

BS - COMPUTER SCIENCE USAF Mstr. Sgt.
McCLELLAN - ELEC. SPVR

LAWS TOO LENIENT

ANTI - NGI?

DP- JUSTIFIED IN SOME CASES

+ PUBLICITY

KNOWS SPD DET. GENE BURDETT

GOOD SIZED GUY
CLEAN CUT - CONSERVATIVE LOOKING
SOFT SPOKEN / SERIOUS LOOKING
USAF MASTER SGT.
Generally pro prosecution
VIC: WIT IN PERSONAL CASE - A FRIEND M.G.
HAS GOOD SENSE OF RIGHT & WRONG

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

~~OK~~

~ DP

BARBARA BIRT — NGI -

34, MARRIED, 2 KIDS

SO. NATOMAS AREA

HAS MYASTHENIS GRAVIS - IN REMISSION 6 YRS

JOB: OFF. SPVR - STATE PERSONNEL

HUSB - TRUCK DRIVER

F-IN-LAW - CHP (DOESN'T TALK TO HIM VERY OFTEN)

ARRESTED FOR DUI

~~O~~ PUBLICITY

BELIEVES IN NGI

DP - OK IN SOME CASES

HISPANIC LOOKING GF

SOFT SPOKEN

"YES SIR" "NO SIR"

LONG TIME STATE WORKER - SPVR - GYM

POSS SOFT ON NGI/DP?

LITTLE GIRLISH DEMEANOR WHEN SHE GIGGLES

PRETTY GOOD LOOKIN GF

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(+)

OK DP
OK+ NGI

KIRBY BONDS
44, MARRIED, 1 KID @ HOME
E. SAL.
REPUBLICAN
3 YRS COL - BUSINESS ADMIN
MGR OF BLDG CONST SUPPLY CO
WIFE - RN @ SMC
IN SPD?
LAWS TOO LENIENT +
JOB PROBS W/ F/E

Ø PUBLICITY

OK NGI
OK+ D.P.
USED TOO SELDOM

CONSERVATIVE LOOKING
GREY HAIR/SUIT/GLASSES
DP - YES SIR LWOP (HARD TO SAY)
STRONGLY FAVORS D.P.!
ALMOST AN ADP
STRONG PROS. JUROR

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

OK+

HAROLD BRIX

47 DIVORCED

12 GR. - BLUE COLLAR WAREHOUSEMAN 21 YRS

GTW - PFISTER INVEST.

? OK ON DP

OK ON PSYCH

0 ON PUBLICITY!

COULD GAS Δ IN A MINUTE! +

grey w/ black hair

glasses

small stach

good sized man

serious looking +

well groomed +

Doesn't like Jesse Morris!

Tends to Pun LWOP?

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(–) Δ MAY KICK?

– DP
OK NGI

ROBIN BUTLER
28 DIVORCEE
So. AREA
(KNOWS INTERN IN OUR OFFICE)
PEACE & FREEDOM PARTY ——
12th GR.
SECY TO ARCHITECT

EX-NEIGHBOR = COP
LIBERAL ——

FAMILY/FRIEND ARRESTED 148 ——

DP – ONLY UNDER EXTREME CIRCS
NGI OK

FRIEND MURDERED (SUCCUBUS PENNY CASE) → PUBLICITY

DP? HONESTLY DON'T KNOW ------
NO PROBS W/ LWOP

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(+)

OK+ DP

OK+ NG I

RAMON CANO

50, MARRIED

FAIR OAKS

REPUBLICAN

12th GR + A.F. SCHOOLS

DIR. OF PERS. @ CA AIR NAT'L GUARD +

EX-USAF 33 YRS

WIFE – TA @ HIGH SCHOOL

LAWS TOO LENIENT

PRO PROSECUTION ++

JOB PROB W/ JURY DUTY

– PUBLICITY

NG I (SKEPTICAL)

DP (STRONGLY FAVORS)

VERY CONSERVATIVE LOOKING

QUICK TO SAY YES – COULD IMPOSE D.P. +

HESITATES ON LWOP

VERY MULTI-F "STRONG PRO-PROS JUROR!

HARD-ASS FRIEND IS COP

KNOWS DOUGHERTY VERY WELL!

HAS A LOT OF ANTI-D ATTITUDE

ALSO ANTI-SYSTEM

DOES NOT LIKE JESSIE!

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

500 JONDA_102065

WILLIAM CHAMPLIN — ? DP (CRAZY SWOOP)
25 MARRIED 1 KID — ? PSYCH
CARMICHAEL
CATHOLIC
BS - COMPUTER SCI.
SOFTWARE ENGINEER @ TRW (DEFENSE KIND) (HUGHES IS JOB SITE)
W! PERRIER

FRIEND REL - MENTAL DIS ——— ?
PROBS W/ INSANITY ? ——— ?
FATHER HAS MENTAL PROBLEMS
DREAMS OF BEING A PROPHET FOR GOD ??? — PUBLICITY
RELIGIOUS FANATIC

DP - ONLY IF Δ
WILL DO IT ——— ?
AGAIN IF SET FREE

LOOKS v. 25 Y.O.
SMALL MUSTACHE / BROWN HAIR
PARTED DOWN MIDDLE
WORE TIE TO CT (FROM WORK?)
TOOK 2 PSYCH COURSES W COLLEGE ——— ?

doesn't look you in the eyes when he talks

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(-)

CREDIK
GREDIC
JUDITH ~~CEDRIC~~
40 SINGLE 2 KIDS ?? ON D.P.

2 YRS COLLEGE - BUSINESS OK† ON PSYCH
CONSULTANT FOR LEGIS (assembly comm rules)

EX H RETIRED DMV CLERK

FRIENDS
FAMILY INCLUDES COPS

FAMILY / FRIEND A Δ IN CRIM CASE X

KNOWS WIT - LAURIE WIES (RT)

WORKED AS PARALEGAL FOR LEGAL AID SOCIETY 6 YRS - ?
→ SOCY FOR ATTY'S WHO DEFENDED 187 CASE
(JOE RUSSELL) ~~O~~ PUBLICITY

"MIDDLE AGED BLACK at ORANGE" HAIR

IF CHOICE b/t LWOP

Judge Q - impose D.P.? LWOP? "I don't know" (5 times) - ?
Yes (immediate)
∆ home based time w/ death

Q'ans - Neither D.P. or LWOP serves a Constructive purpose

Friend accused of aggravated assault (wit) — ?
Questions whether she could sit in judgement of another's life. TROUBLED WITH THIS.

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message
DA-54

(+)
OK 1st DP
OK NGI

PATRICIA DAVIDSON
25 MARRIED
CARMICHAEL
REPUBLICAN
12TH GR + AR

* WAS LEGIS ASST FOR CA PEACE OFF. ASSN 6-7 yrs +
HUS : SELF EMP. CARPENTER
CLOSE FRIENDS W/ COPS
LAWS TOO LENIENT
18 — 1983 OKI ——————— ?

- PUBLICITY

OK NGI
+ DP

LOOKS A LITTLE LIKE KATHY GRAHAM
QUICK TO SAY SHE COULD IMPOSE D.P. ! +
RELATIVELY BRIGHT ; ARTICULATE
VERY PRO PROSECUTION)

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(—)

SANDRA DUNCAN

* 21 SINGLE

3 YRS COLLEGE

COUSIN = CHP

RELIGIOUS SCRUPLES A D.P

TOO YOUNG

ETC

poss W.E.

± ON PSYCH.

WAY TOO FAIR

EX-BRO IN CRIM 211 1

SISTER: BRO - 11358 ATL

PRAYS A LOT

CHRISTIAN

~~0~~ PUBLICITY

LONG CURLY BROWN HAIR

GLASSES

NOT DRESSED SUPER -

RELATIVELY SMART

FAST PITCH SOFTBALL ENTHUSIAST

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(+)

CLIFFORD ELKIN

+ ON D.P.
OK + PSYCH

65

REPUBLICAN BLUE COLLAR

WALDS ~ TV REPAIRMAN
(RETIRED)

I/E WENT TO VENDICT

PUBLICITY

OLDER
BALD/GLASSES
MUTTONCHOPS W/ STACH
RELATIVELY SOFT SPOKEN
PLAYS PIANO @ SAMS TOWN
FORMER COUNTRY MUSIC BAND MEMBER 1940's-1950's
EX TEXAS BOY

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DA-54

OK+

OK+ DP
OK+ NGI

MARGARET EMMONS
45 MARRIED
CIT. HGTS
12th Gr.
HOUSEWIFE
H: MCCLELLAN - ELEC TECH
COUSIN - TEXAS DOP

LOWS FOR LENIENT

FAMILY MEMBER DOM - 261
187 —— ??

HEALTH PROBS.?

DISADVTGES W/ NGI
FOR D.P.

+ PUBLICITY

SLIM / CONSERVATIVE LOOKING
GLASSES / OK+ DRESSED
SOUTHERN ACCENT ?
KIND OF DUMB?
STRONGLY BELIEVES THAT
PERSON RESPONSIBLE FOR ACTIONS
COUSIN - IN PRISON FOR RAPE & MURDER —— ~~NO~~ CONVICTIONS
BLUE COLLAR BUT STRONGLY PROSECUTION ORIENT FOR JUSTICE DON'T
NOT TOO WELL EDUCATED

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From
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OR ? USE ONLY IF NECESSARY (A HAIRY KICK?) ?

OK DP TOO BRIGHT.
?OK PSYCH

ROBERT FLEENOR
19
CAUC.
REPUBLICAN
X CHRISTIAN 3X's/WK — NO COMMON SENSE — ?
12th GR. DEL CAMPO
CLERK (FULL-TIME)
ANSWERS SHOW SOME COMMON SENSE? ——X

PSYCH - SKEPTICAL? MIDDLE OF ROAD FEELINGS ——— ?
DP - FEELINGS SHOW SOME INSIGHT? ——— ?

CAN HE IMPOSE D.P.? ——— YES ?
RELIGIOUS VIEWS RE DP? — PUBLICITY

GAVE WISHY/WASHY ANSWERS ON QUAIRE
WANTS TO BE A MINISTER??
THIN/SERIOUS LOOKING
LEVI'S

QUICK TO SAY HE COULD IMPOSE D.P.
FAVORS D.P.

TOO BRIGHT?

WOULD TRY: IMPRESS OTHERS W/HIS KNOWLEDGE?

PRO D.P.
ANTI-NG!
WOULD REALLY THINK IT OUT

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LEWIS GAINEY
51 MARRIED
ARDEN FAIR ARDEN
REPUBLICAN
BS - BUS.
EX - ARMY - MST. SGT 21 YRS
AEROJET
W: TEACHERS AID
COUSIN - CHD

+ ON D.P.
OK't ON PSYCH

+

+

PSYCH (NGI) - SKEPTICAL
DP - PRO D.P. - USED ON SELDOMLY

+ PUBLICITY

SOMEWHAT BOY
GREY HAIRED / GLASSES
COAT & TIE
SERIOUS / TOUGH LOOKING
(CONSERVATIVE)

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From
Message

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KICK!

- OK on Psych
- ~~O~~ on Publicity

MARK GERIG

39 DIVORCEE

BA IN COMMUNICATION

GOOD WORK HX

BELIEVES IN NGR DEF.

PhD D.P.

* RELUCTANT ALCOHOLIC 5 YRS AA.

?? 32 B/C - DISAGREE W/ IDEA THAT IF PROS PROVES CASE BYD -- FIND D GUILTY

WHITE COLLAR

REALLY INTO EXCUSING RESP BECAUSE OF MENTAL PROBS

Never used us!

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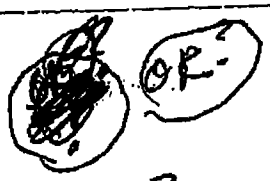

SUSAN GRENWELGE
43, MARRIED
CIT. NOTS
DEMOCRAT
2 YRS COLL - A.R.
JOB: MCCLELLAN SAUR - RENTINZES FOD PMP
HUSB - SAFEWAY GROCERY CLK
FRIENDS - SSD

WORK ON D.P.? TO OK
NOT SUPER COMFORTABLE W/ ITEM

J/E JAIL ESCAPE V
2/10/3 NO V.? _____ ?

HUSBAND HAD MENTAL PROBS IN ARMY? _____ ?

? NG I
? OP

HEARD OF CASE
COULD PUT ASIDE

CHUNKY / SHORT DARK HAIR / GLASSES
LOOKS LIKE BOB'S WIFE - ALICE
DP - I THINK I COULD ... I SUPPOSE I COULD
LWOP - QUICK YES
FAIRLY ARTICULATE

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To
From
Message

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DEPENDS ON CRIME

? ON DP... ! & OK
PREFERS LWOP

OK ON PSYCH STAFF
Ø PUBLICITY

TAMMY GUESS

26 DIVORCEE

OK on guilt: sanity

[AUBURN NOW @ CSUS - ACCTING MJR. NW. EXT @ MONTGOMERY]

HAS WORKED AS BKPR

WEAK ON D.P.

Unsure of feelings on capital punishment

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From
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(+)
OK+ DP
OK++ NGI

JOHN HATFIELD
36, MARRIED, 2 KIDS
FAIR OAKS
METHODIST
BS - + POST GRAD IN BUS. ADMIN
SR ENGR @ AEROJET
WIFE - TEACHER
FATHER IS RETIRED NAVY CAPTAIN

WANT OFF J/E DUE TO JOB ——————

0 PUBLICITY

PSYCH - VERY SUBJECTIVE +
NGI - COP OUT
DP - COULD DO IT

BIG GUY / CONSERVATIVE ATTIRE
IMPOSE DP ~ "SURE"
GOOD + COMMON SENSE

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From
Message

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OK to OK? Youth
Strong D.P. views

LISA HAYES
(24) SINGLE
NO. HIGHLANDS
REPUBLICAN
12th Gr. + 1 YR JR. COLL. "SIGN LANG."
WORK - SECY / CASHIER @ INV. CO. FOR INS. CO. 2 YRS
UNCLE - CHP
PARENTS BOTH DEAF
INSANITY DEFENSE - DEPENDS ON E
D.P - OK WHEN NEEDED

OK? D.P.
OK PSYCH
& AMBICITY

7
0
WALNUT CREEK

QUICK TO SAY
YES I COULD IMPOSE D.P.

GREAT UNCLE = HERB JACKSON
YOUNG -- BUT FAIRLY SERIOUS!

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From
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JONDA_102091

I MIGHT BECOME TO [redacted] GUY BUT

DON HAYNES
40, MARRIED, 3 KIDS
SO. AREA

1 YR. COLLEGE

MECHANIC @ ARMY DEPOT 10 YRS EX ARMY
INSTALLS COMMUNICATIONS EQUIP.

LAWS TOO LENIENT

WIFE - DEPT OF CONSUMER AFFAIRS ARRESTED!

FAMILY/FRIEND A DEFENDANT ——— ?
BROTHERS

FAMILY/FRIEND MENTAL ILLNESS! ?
COUSIN - BELIEVE HOSPITALIZED
w/ BROAD AX
PERSON KILLED

DP - SOME CASES ITS NECESSARY
USED TOO SELDOMLY

SAME AS ~~A~~ ON MEDS OK TO ?

WOULD DP FROM LWOP PSYCH

PRECAUTIONS IN VOIR ... BUT SOMETIMES DEFENSE IS USED AS A WAY OUT (RAPE)

~~NO~~ PUBLICITY ? NORMA SOMETHING
~~O~~ OPINION

MALE - PURSE / GOLD CHAIN
BLACK SHORT AFRO / SMALL STATURE

OTHER BROTHER 664/187 RAPE

IMPOSE DP? CONG HOUSE "I THINK I COULD"
LWOP — QUICK YES

RESPONDS WELL TO Q's - TO THE POINT ANSWERS

BOTH BROTHERS ARRESTED 1. CONV. OF 187 DID TIME
2.

CLEANING - TERRIBLE THING TO BE ACCUSED OF (& CONVICTED!)

BELIEVES IN BLACKS STICKING TOGETHER ... BUT WOULD "DRAW THE LINE" SINCE A CLEANING W/ 187's

DOESN'T FAVOR OR DISFAVOR D.P.

WOULD RATHER LWOP

WOULD CUT & SLICK ON D.P. DUE TO HEALTH PROBS

BAD FOR STATE TO HAVE TO TRIAL PERSONS LIFE

527

JONDA_102092

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From
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DA-54

528

JONDA_102093

BARBARA HILL

50 WIDOW

CATHOLIC

CLERK @ INS. Co. (Fin. Docs)

#34 – PROBS SITTING AS JUROR

OK ON D.P.?

0 ON PUBLICITY

2 ON PSYCH

"SANE, RATIONAL PEOPLE DON'T COMMIT MURDER"

would do D.P. in right case

but thinks all murders insane →

Kind of ~~goofy~~!

LIKES ME!

{ if has mental disease no D.P.!

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From
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JUDITH JACKSON

49 DIVORCEE

O'VALE

12 GRADE + Bus Col.

(3) due to D.P. reluctance? but would

3 ON D.P.

OK ON PSYCH

Ø PUBLICITY

BARTENDER ——— ?

EX H: MACHINIST

FRIENDS = COPS

FRIEND ARRESTED ON 2000! ——— ?

MAYBE CAN'T IMPOSE D.P.? ——— ?

SHORT BROWN HAIR

DRESSED OK

DP - "PROBE" I "SUPPOSE" I COULD ----

RELUCTANT TO IMPOSE D.P.

BUT COULD IN RIGHT CASE

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JONDA_102097

OK FO OK?

OK DP LIKES TO TALK KINDA PHILOSOPHICAL

OK++ ON NGL

TRACY JOHNSON
30, SINGLE
FAIR OAKS
REPUBLICAN.
BA - LIBERAL ARTS
JOB - ACCT ANALYST - INS. CO.
GIRLFRIENDS DAD - RET. CHP
WANTED TO BE FBI AGENT

PSYCH - SKEPTICAL
NGL - SKEPTICAL
DP - FAVORS ?

+ PUBLICITY

SMITHISH / VERY WELL DRESSED / BLND HAIR
QUICK TO SAY YES ON IMPOSING D.P.
TOO BRIGHT? BUT CONSERVATIVE
i.e., TOO EDUCATED

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OK+ OK+

OK DP
OK+ NGL

SHIRLEY KAUFMAN
58, MARRIED
NO. AREA
DEMOCRAT
JEWISH
2 YRS @ J.C.
LIBRARY CLERK
HUSBAND - OPTOMETRIST
FRIEND WORKS FOR DOT AS INV.?

~~O~~ PUBLICITY

NGL - SKEPTICAL (JUST AN EXCUSE)
DP - "FOR IT"

GLASSES / THINNISH / OK+ OBSESSED
D.P. — QUICK TO SAY YES ON IMPOSING D.P.

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To
From
Message

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JEFF KERN
33 SINGLE
DOWNTOWN SACTO
1 YR COLLEGE
EED - KEY DATA OPER. - 9 YRS

DP OK ?
OK on PSYCH
~~O~~ PUBLICITY

WEIRDO AFFECT BUT RELATIVELY BRIGHT
LOOKS LIKE A NERD
SURF T SHIRT
WIRE FRAME - GLASSES
SHORT ~~HAIR~~
ROUND FACE

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To
From
Message

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JANE KLANKE'

78 WIDOW

2 YRS BUS. COLLEGE

RETIRED BOOKKEEPER

FORMER H - WELDER

OK ON D.P.? (+)

OK ON PSYCH

~~0~~ PUBLICITY

OLD CAJY

GREY HAIR / GLASSES

DARK LENSED ~~AMBER~~ GLASSES

VERY LUCID OLD GAL

WENT TO WHARTON SCHOOL OF FINANCE

TEXAN

GOOD OLD GAL!

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To
From
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⊕

OK++DP
OK NGI

NORMAN LAMB
70, MARRIED
So. LAKE PARK
REPUBLICAN ⊕
PROTESTANT
MASTERS DEGREE IN MUSIC (?) Julliard
SACTO SYMPHONY - presently; might be distraction (pt)
EX PROF @ CSUS - semi-retired
WIFE - EX TEACHER
NEPHEW = COP ← see sister → Neighbor = atty
LAWS TOO LENIENT ⊕ Violent Crime = "very" serious prob.
Army Air Corps - Sgt WWII
PSYCH - UNRELIABLE
NGI - OK
DP - OK+

⊖ PUBLICITY

Phys. [redacted]
GLASSES / BALDING
SERIOUS LOOKING

Low Ent Offer reliability? - 15, E
Use for shrinks

QUICK TO SAY YES ON DP
PAUSED ON LWOP
STRONGLY FAVORS D.P.

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From
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O/— Not hopeless but could do better — DP WITT?

LUTGARDA LAMPA — OK NGI

61, MARRIED

FLORIN RD AREA

DEMOCRAT

– CATHOLIC – weekly or holidays

⊖ HEALTH PROB – HYPERTENSION ——— ? Medication Used Type = Hydralin Hydralazine History = 15 yrs Headaches?

– BS – ACCTNG – JOB – AMER CAN CITY

HUSBAND – MERCHANT MARINE (RET)

Might ask Dr.

⊛ FAMILY/FRIEND ARRESTED (SEX CRIME) — ?

dist. Sac Co. 10yrs Vacaville

? SEEN SOMETHING BEFORE ——— ? Positive experience Non-Forensic

NGI – SKEPTICAL ⊕ ⊖ PUBLICITY

– DP – STRONGLY AGAINST – based on religion

FAVORS LWOP STRONGLY

Friend on prior jury — ⊖ Bright-thought than D.P. questions but tearful — Sister worked at Mercy Hosp – saw mentally ill — – spoke in sensitive manner

Prior jury D PG. – This one PNG — – I could not tell because I don't belong to medical profession

Worked for welfare at Family Support – casual contact w/ DA – passed but "I had nothing to do with that work"

23 yrs w/ Gilead, then – when Gilead trans. to Des Moines

Supervised @ 7

operation made her infertile

Depression – 2 Psych's helped her out

Stigma to Asian Ancestry – Filipino

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From
Message

DA-54

JONDA_102109

(-) DON'T KEEP TEACHERS UNLESS ABSOLUTELY HAVE TO

-DP

NGI

GEORGIA CASTER
44, MARRIED
CIT. HGTS
REPUBLICAN
M4 - ED
SCHOOL PRINCIPAL (ELEM.) TEACHER -
H: X RAY TECH

KNOWS LOTS OF COPS

LAWS TOO LENIENT

Δ GIVES HER THE CREEPS

⊖ PUBLICITY

FAMILY/FRIENA - SAW SUICIDE / HOSPITALIZED } GRANDMOTHER - PARANOID SCHIZ.

NGI ± SOMETIMES A LOT OUT

DP ? SOMETIMES FOR — NOT REALLY
LOOOP PRETENDAGE? THEY SHOULD NOT KILL

DP — LONG PAUSE ... I DON'T KNOW IF I COULD DO IT

LWOP - NO PROBS

HAS MASTERS IN LEARNING DISABILITIES (-)

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To
From
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JONDA_102111

OK?

Toc DP
OK PSYCH

MARGIE LINDSAY

31, MARRIED, 2 KIDS
SO. NATOMAS
REPUBLICAN
BAPTIST
1 YR. COLLEGE
JOBS - DEPT HEALTH - ANALYST
HOUSE - MCCLELLAN
FRIENDS = COPS

OK NGI
DP - MIXED FEELINGS + PUBLICITY
[BUT NO RT TO TAKE LIFE]

FACE LOOKS LIKE TERRY APPLING
YOUNG LOOKING, ATTRACTIVE OF
DP - ONLY IF ABSOLUTELY CERTAIN
RELATIVELY BRIGHT/ARTICULATE

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DA-54

JONDA_102113

(4) A WILL KICK

OK+ DP

OK+ NGI

JULIO MASSAD
31, MARRIED
LAND PARK
DEMOCRAT
BS/MA - "PUBLIC POLICY" UNIV. TEXAS
MGR @ PRICE-WATERHOUSE (CONSULTANT FOR BUS PLUS & GOVT.)
JOB PROBS
WIFE - INVEST. CHILD ABUSE CASES (SOC GY)
FRIEND > GOP
PRO PROSECUTION

ANTI-NGI
OK+ DP - BELIEVES IN IT

- PUBLICITY

STRONGLY BELIEVES IN D.P.
LEBANESE/MEXICAN EXTRACTION
VERY BRIGHT

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To
From
Message

DA-54

JONDA_102115

OK - (DP) only if stuck
- DP & with LAMPA

DONNA MCDONALD
54, DIVORCED
CIT. HGTS.
DEMOCRAT
METHODIST
2 YRS COLL. - BUS.
WEINSTOCKS - STORE MGR.

OK NGL

~~DP~~ PUBLICITY

OK NGL - OPEN MIND
ANTI-DP

MR. WEINSTOCK'S MOM

TINY / SPRY / MOD HAIR DO / GLASSES

DP - WOULD BE DIFFICULT
I COULD NOT DO THAT
changed to - I'd go by & if had enough love I would do it.
VERY "STRONG" WOMAN
BELIEVES SPANKS ARE OK TO DISCIPLINE & NOT

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To
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Message

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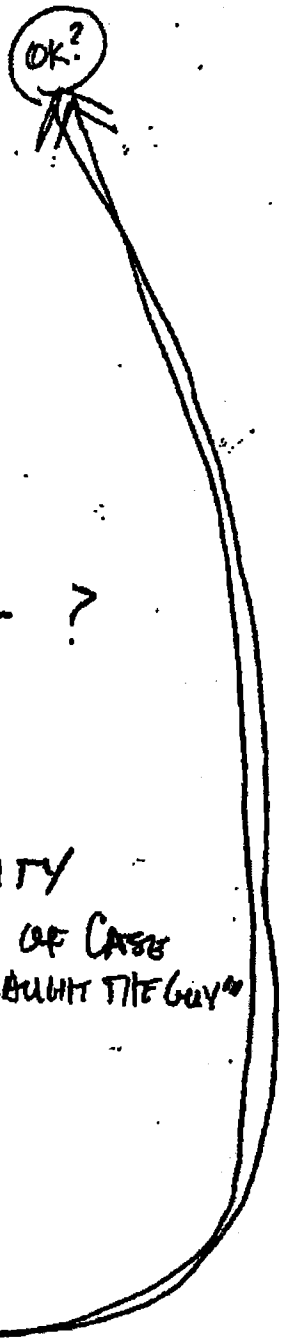
JONDA_102117



ALBERT MEZ
56, MARRIED
SO. AREA
CATHOLIC
10TH GR
McCLELLAN (BLUE COLLAR) 31 YRS
WIFE - SORTER @ CANNERY
POPPED FOR DUI ——— ?

OK NGI
DP - OK DEPENDS ON CRIME ? PUBLICITY
HEARD OF CASE
"THEY CAUGHT THE GUY"

SWARTHY / TATTOO'S ON ARMS / GLASSES
MUSTACHE
DUMB?
DP - "I THINK SO"

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To
From
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(OK++)+

OK+ON DP (ADP?)

?ON PSYCH

VIRGINIA MINDEN

52 WIDOW

REPUBLICAN

MORMAN

- PUBLICITY ?
FROM ACCTS - FEEL GUY INSANE

2 YRS College

MOR - ALARM CO. ——— WORK FOR IN? NIV

FAMILY/FRIENDS IN LAW ENF.

LAWS TOO LENIENT +

PRO PROSECUTION +

FAMILY/FR - MENTAL PROB ——— ?

MIDDLE AGED
HEAVY-SET
SHORT HAIR
GLASSES

"PREJUDICED & ATTORNEYS"

VERY PRO LAW & ORDER

STRONG ANT-D FEELINGS

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Message

DA-54

(?OK)

PAMELA MORENO — ?OK ON D.P.

25 — [redacted] ON PSYCH

NO. HIGHLANDS

REPUBLICAN BAPTIST

1 YR COLLEGE - A.R

SECY / BANK TELLER

H: IN A.F. E-7

MONITOR - SECURITY GUARD

SEEN SHRINK FOR MORALE PROBS

~~&~~ PUBLICITY

NEED TO BE ABSOLUTELY POSITIVE ON D.P. — COULD IF ABSOLUTELY ~~NOT SURE~~ — CERTAIN

HAS CONCERNS ABOUT INNOCENT PERSON GETTING CONVICTED —

DRESSED OK
SHORTER BROWN HAIR
LITTLE PUDGY
RELATIVELY ARTICULATE
GOOD SENSE OF JOB RESPONSIBILITY

W GERMANY (H IN SERVICE) SECY TO CHIEF OF HOSP.

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To
From
Message

DA-54

(+)

LOUIS MOSNIER
65 PHYSICIAN
REPUBLICAN
GAIL OAKS

OK+ ON D.P.
OK++ ON PSYCH

(EX CYA M.D.)

LAWS ~~DO~~ LENIENT

PSYCH - OIL FOR TREATMENT ++
USELESS FOR PREDICTING FUTURE BEHAVIOR / PUBLICITY ~~=0~~

PSYCH IS AN ART
NOT A SCIENTIST

VERY LAW & ORDER CONSERVATIVE

HAS TREATED SCHIZOPHRENICS

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To
From
Message

DA-54

RAYMOND NEALEY

56

CARMICHAEL

DEMOCRAT

2 YRS COLL SCC

WIFE RN 2 KIDS

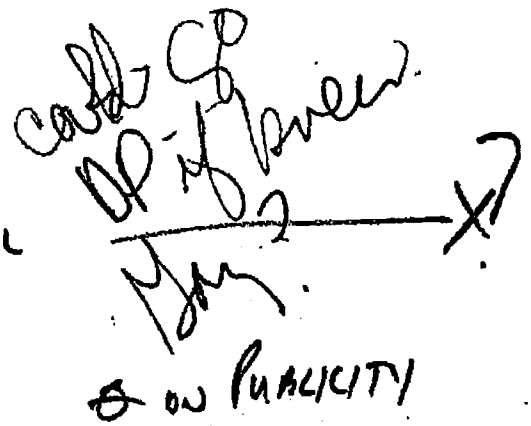
RN

IF PERSON WAS MENTALLY ILL @ TIME = INSANITY

? WOULD CUT & SLACK ON D.P.? OPEN Q

OK? ON D.P.

? to - ON PSYCH



COUNSELS / TEACHES AIDS PREVENTION

MIDDLE AGED / GLASSES / STARCH SHIRT UNBUTTONED HALF-WAY DOWN

NICE CLOTHES (YUPPIE) TASSLE LOAFERS

"GAY" SOUNDING VOICE

PREFERS LWOP

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From
Message

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(+ OK)

JANET NOLEN — OK DP + PSYCH

32, SINGLE
DOWNTOWN SAC
DEMOCRAT
BA - CRIM JUSTICE ——————— +
REP FOR BLUE SHIELD / ~6 YRS IN THIS FIELD
FAMILY/FRIENDS ARE COPS
APPLIED → CHP?

NGI - SKEPTICAL OF IT! ——— +
D.P. - BELIEVE IN IT +
FAVORS DP OVER LWOP

~~-~~ PUBLICITY

PLUMP GF, ROUND FACE
DRESSED WELL - MID-LENGTH
CURLY BROWN HAIR

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OK ++ (+)

OK DP I LIKE HIM
+OK PSYCH HE'S ON MY SIDE

VINCE NYVALL

33, MARRIED
ROSEMONT
PROTESTANT

BS - AGRICULTURE —— +

WORK - AG COMMISSION - BIOLOGIST + COMPLIANCE ENF. —+
(WORKED AS LABORER BEFORE) GOOD BLUE COLLAR BACKGROUND

W: CLERK - SAC CTY HEALTH DEPT

B-IN-LAW ARRESTED FOR CTM — DOGS OF LIFE, HIS GUY! HE DESERVED IT (+)

NGI - PSYCH NOT EXACT —— OK
" IF INSANE ONCE, ALWAYS INSANE"

DP - AGREES WITH IT
FAVORS D.P. OVER LWOP
HESITATES BUT THINKS HE ⊖ PUBLICITY
COULD DO IT WITH NE APPROPRIATE
EASY TO TALK ABOUT--- TOUGH TO ACTUALLY DO!
POT BELLIED, COWBOY BOOTS
"COUNTRY BOY" LOOK STRIVER

HAS A "LAW ENFORCEMENT" TYPE JOB.
ENFORCE COMPLIANCE W/ REGS

DOESN'T LIKE CHONG!!

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DA-54

OK (BUT ONLY IF IN A BIND!)
-? D.P.
OK PSYCH

JEANNE OAKS
52, MARRIED, 2 KIDS (25/29)
WILTON
JEHOVAH'S WITNESS 3X's/WK
MED PROBS? ——————————— ?
BS - TEACHING DEGREE
JOB - EED - SR. PLCTNG OFFICER
H: RETIRED RESTAURANT WKR
SON - DEPUTY SHERIFF ——— +
IN LAW
LAWS TOO LENIENT ——————— +
FAMILY ARREST — WWII REFUSING MIL SERV — ?
NGI - SKEPTICAL
DP - ~~PERSONAL PROBS DOING IT~~ ——————
FAVORS D.P.

+ PUBLICITY ΔGUILTY
? IF SET ASIDE
(WOULD THAT Δ ADMIT IT?)

LOOKS MIDDLE AGED/SLIM
WELL DRESSED
SLIGHT ACCENT (FRENCH)
HAND WRINGER BUT SETTLED DOWN AFTER A BIT.
(I DON'T THINK SHE COULD ACCURATELY DO IT. ———
BUT QUICKLY SAID YES ... SHE COULD DO IT IN AN APPROPRIATE CASE.
FORMER TEACHER - IN FRANCE
LOTS OF CORRELATIVES / FRIENDS
WOULD LOOK TO & LEAN ON "EXPERTS"

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From
Message

DA-54

DONALD QUEN

29 SINGLE

TOWN & COUNTRY AREA

DEMOCRAT

COLLEGE GRAD - ENGINEERING

ENGN'R - STATE WATER RESOURCES

ENEMIES = COPS

KNOWS WIT - JIM STREETER

SCHOLARLY LOOKING
THIN BUILD
GLASSES
WIMPY LOOKING BEARD

BIAS A PSYCH'S

-016 ONLY IF ABSOLUTELY NECESSARY!
CHONG DOESN'T LIKE HIM
A MAY KILL
TOO BRIGHT.
2 ON D.P.
HOLD OFF
OK ON PSYCH

PUBLICITY
HEARD OF CASE,
NO OPINIONS

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DA-54

? TOOL?

Δ MAY KICK?

AUDREY PARKER — OK+ D.P.

37, DIVORCEE, 3 KIDS (16/13/10) — OK PSYCH

So. AREA

DEMOCRAT

PROTESTANT — PHIL SCOTT

1 YR. COLLEGE SAC CITY

DOJ – PROGRAM TECH SOUR. 16 YRS +

H: SGT @ ARMS @ STATE CAPITOL +

BROTHER: BY COP

OK NGI

OK D.P.

(USED TOO SELDOMLY)

PUBLICITY

HEARD OF CASE

NO OPINIONS

MIDDLE AGED, BLACK Ø+

NO HESITATION RE ABILITY TO IMPOSE D.P.

SCREENS APPS FOR DOJ (PROVIDING CII INFO) PLUS UNIT – GLENN

RELATIVELY SMART LADY

BROTHER – FORMER SHERIFF NOW UNEMPLOYED ? —— ??

INVESTMENTS FT. SUTTER 187 FROM NEWS

FAVOR D.P. IN SOME CASES

"IF MURDER NO INSANITY" *

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

JONDA_102137

(—)

CHRIS PETERS
43
So. Land Park
Democrat
2 Yrs College (1 yr. Psychology)

?to - on D.P.
? on Psych
5 yrs Sgt. Army

Window Clerk @ Post Office —

W: Secy @ A.R.

Family = Cops

J/E - 288/207 Verdict
459 Plea

D.P. too extreme
Absolute last alternative

Publicity
Heard of Case, no opinions

Wanted to become a teacher or counselor "Help People"

TREMENDOUSLY DUMB!

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

574

JONDA_102139

(+)

OK+ DP
OK PSYCH

ROBERT RADER
34, MARRIED, 1 KID
So. AREA (ELK GROVE)
REPUBLICAN
12th GR.
MAINTENANCE MAN - SCHOOL
WI: BOOKKEEPER

WANTED TO BE COP / PRISON GUARD?
FRIENDS - COPS

LAWS TOO LENIENT +

HONEST - DUI ~~old beef~~ → Rader
Friends Cops +

CAN'T SIT ON THIS CASE ? —— # 74

NGI - SKEPTICISM

D.P. - GROUND
(USED TOO SELDOMLY)

- PUBLICITY

COWBOY
HAT/SHIRT / BEARD (BUT BALD ON TOP)
BLUE COLLAR +
PRO PROSECUTION
THIS GUY CAN'T BE BULLSHITTED

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(+)

FRANK RODRIGUEZ
33 MARRIED 4 KIDS — OK+ ON D.P.
FOOTHILL FARMS — + ON PSYCH
DEMOCRAT
CATHOLIC

2 YRS COLLEGE (ELECTRONICS)
BLUE COLLAR – McCLELLAN —+
W: CHILD CARE WORKER

FAMILY = COPS +

NEAT LOOKING — ⊖ PUBLICITY
SHORT HAIR / TRIMMED MUSTACHE
TOUGH LOOKING GUY
PRO D.P. "YES-SIR" ANSWERS
NOOS TWIN GIRLS

NOT A ROCKET SCIENTIST – BUT GOOD STREET SMARTS
BUT – IF Δ DID IT – GOES HIM

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(-)

DAVID ROETMAN

35 SINGLE (DIV.) ~~OK~~ OJ D.P. BUT PLEPERS LWOP

DOWNTOWN OK OJ PSYCH

1 YR. COLLEGE

BILLER @ SMC

GOOD WORK HX

EX WIFE - LOAN OFFICER

SHORTS

TENNIS SHOES

"SWISHES"

BROUGHT COKE CAN INTO CT.

Pub.

HEARD OF CASE, NO OPINIONS

Office of the District Attorney

Route Slip **Date:** _____

To

From

Message

DA-54

OK ??. I'm not sure about OK DP this guy OK NGI

ROBERT SANCHEZ
24, MARRIED
SO. NATOMAS
REPUBLICAN
1 YR. COLL. RIO LINDA HI - SCC/A.R.
WIFE PG - BLUE CCT?
HELD @ BUDGET CAR RENTAL SUP. 5 PEOPLE

ARRESTED FOR 488 WIDEN 18 ⟶ ?

NGI — NO FEELINGS ⊘ PUBLICITY
DP — IF THEY DESERVE IT

SHORT/CHUBBY MEXICAN MALE
GLASSES - WHITE SHIRT & TIE
RENTED CAR TO PARMA SHARMA → DOESN'T KNOW PERSONALLY (MEXICANS & COPS) — ?
WORKED FOR WASHINGTON NEIGHBORHOOD CENTER
HAS GOOD STREET SMARTS
TOOK CRIM. JUSTICE IN HI SCHOOL

Office of the District Attorney

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To
From
Message

DA-54

[redacted] only
OK DP absolutely
OK PSYCH. Shuck
I'M UNCOMFORTABLE
WITH THIS GUY

GLENN SCRIBNER.
22 "SINGAL"
NO. HIGHLANDS
* 11th GRADE HIGHLANDS HI
LABORER

ARRESTED FOR PETTY THEFT

+ For DP
OK PSYCH

DAD IN A.F.
N 20 YRS.

- PUBLICITY

(CAN'T WRITE OR SPELL)
BUT GIVES PRETTY RESPONSIVE ANSWERS
NEUTRAL ON DP - COULD IMPOSE IT
COULD GO LIFE
DUMB -

IT WOULD BE A HORRIBLE DECISION
TO IMPOSE THE D.P.
HAS SEEN A SHRINK BEFORE

Office of the District Attorney

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To
From
Message

DA-54

OK+

D WILL KICK?
OR DP
OR? PSYCH

BETTY SHIMASAKI
57, MARRIED
ELK GROVE
REPUBLICAN
SO. BAPTIST
12TH GR
W: ACCT/ CONTROLLER
HUS: CHEMIST

BROTHER = PAROLE OFFICER +

LAWS TOO LENIENT +

NGI - NOT AN EXCUSE — PUBLICITY

PERSON MUST BE INSANE
TO COMMIT A CRIME ——————— ?

D.P. - NECESSARY AS DETERRENT

- NEAT LOOKING ORIENTAL O+
- GLASSES + "REDDISH" SHORT HAIR

THINKS NGI IS NOT AN EXCUSE? BUT MUST BE CRAZY TO MURDER — ?
VERY JOB RESPONSIBLE → CONSERVATIVE .....

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

JONDA_102151

(-)

△ HAY KICK??

MELISSA SHOOPMAN — OK't on D.P.

19 SINGLE — ? to OK on PSYCH

SO. AREA

DEMOCRAT

HEALTH PROB ——— ?

12th GR

RETAIL SALES

MOM - WORKS @ SSD

FAMILY/FRIENDS MENTAL PROBS ——— ?

⊖ PUBLICITY

VERY EMOTIONAL
CRIES FOR NO REASON
GOOFY ?
TOO YOUNG

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

OK

OK on D.P.
OK+ on Psych

RICK A. SMITH
32 MARRIED 1 CHILD
TOWN & COUNTRY AREA.
DEMOCRAT
12 GRADE - COOK @ MCCLELLAN BLUE COLLAR
W: WENDY'S ASST MGR
B-IN-LAW - SSD
EX AIRBORNE-RANGER
+ PUBLICITY

SHORT CURLY HAIR / SMALL MUSTACHE
AVG + SIZED
DRESSED OK
MILITARY TYPE ARM TATTOOS
LIKES MARTIAL ARTS
SOFT SPOKEN
NOT A ROCKET SCIENTIST

LITTLE SKEPTICAL OF SANITY DEFENSES

* SHOT SELF IN STOMACH DURING DRUNKEN FIGHT W/ WIFE ?

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

590

JONDA_102155

OK +

SHIRLEY SOJKA
42 SINGLE
OVALE / FOLSOM
12th GR + JR COLL.
CLERK W/ STATE

OK ON DP
? ON PSYCH

FRIENDS – LAW ENF. FIELD

HAS SEEN A PSYCHIATRIST — PUBLICITY X

REDDISH PERMED HAIR
LITTLE HEAVY
DRESSED OK
RELATIVELY BRIGHT / ARTICULATE
SSD VOLUNTEER
APPLIED FOR LAW ENF. JOBS (DIDN'T GET) +
"RESPECTS LAW ENFORCEMENT" +
DISLIKED THE DAN WHITE SPECTACLE +

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

⊖ KICK!

PHYLLIS SPEED — ON D.P. WE?
63 MARRIED 2 CH. 27/26 ON PSYCH?
FAIR OAKS
REPUBLICAN — ? PUBLICITY — ? OPINIONS
12TH GRADE
RET. FROM ARMY DEPOT

* DAUGHTER IS PARA-LEGAL FOR DA ATTY — ? SEARS ; POINDEXTER

HUSBAND SAW PSYCH ——————— ?

ANTI - D.P.
↓
BUT WAFFLED ON THIS DURING VOIR DIRE

HUSBAND HAD MENTAL HX LIKE DAs !

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

? Δ likes this guy?
OK DP
? NGI

RABEN
RABON TADENA
29, DIVORCED, 2 KIDS
So. AREA
12th GR → MCCLATCHY

VOCATIONAL COUNSELOR — ?
WORKS W/ JUV. DELINQUENTS
, SCHOOL DROP-OUTS
(SOCIAL WORKER)
LIKES TO HELP PEOPLE
WORKED SUICIDE PREV. → PUBLICITY
AS A VOLUNTEER

? NGI
? DP

BLUE JEANS / POLO SHIRT
FILIPINO / HISPANIC LOOKING - SMALL STACH
TRYING TO GROW BEARD
QUICK TO SAY YES ON D.P.
FAIRLY ARTICULATE
EX NAVY
HAS WORKED W/ PEOPLE WHO HAD MENTAL PROBS.
* WOULD GO LWOP DUE TO HIS MENTAL PROBS
WOULD HAVE TROUBLE W/ NGI ??

Office of the District Attorney

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To
From
Message

DA-54

(2)

?? on D.P. — ?

OK on Psych

FUMIYE TAKAGI
51 MARRIED
So. AREA
REPUBLICAN
12th Gr + 2 yrs Jr. Coll.
STENO - SECY - STATE
H: HWY ENGINEER

+ PUBLICITY

LAWS TOO LENIENT +
I/E CRIM JURY VERD +
STRONG PROSECUTION BIAS ++

D.P. - "DON'T THINK STATE HAS RIGHT TO KILL ... BUT"

WW II - IN CAMPS

NEATLY DRESSED ORIENTAL LADY

GOOD GRANT PROOF JUROR
BUT
WON'T DO D.P.!
UNLESS // other
JURORS WOULD
(Followers)

597

JONDA_102162

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

(-) BUT — Δ MAY KILL YOUNG ?

SANDRA TRUJILLO
20 - SINGLE
So. AREA
CATHOLIC
12th GRADE + 1 YR LEGAL SECY SCH.

? ON D.P.
? ON PSYCH

⊖ PUBLICITY

RELATIVE ARR. FOR DUI ——— ?

FRIEND / RELATIVE HOSPITALIZED FOR MENTAL PROB — ?

" NOT REALLY FOR D.P. - BUT OK
LWOP MAY BE TOUGHER ON Δ'

IF ITS REALLY PROVED ; THEY DID IT
ITS THEIR TURN - - -

SHORT / GOOD LOOKING
YOUNG MEXICAN GF

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

600

JONDA_102165

(4)

DP OK ?

PSYCH

JOHNNY VALDIVIEZ

55, WIDOWER 1 KID 18 @ HOME

NO. AREA

REPUBLICAN

CATHOLIC

3 YRS COLL.

EX – A.F. 24 YRS. MST. SGT.

McCLELLAN –

LAWS TOO LENIENT +

1985 MAJ PLAND PROBLEMS

RELATIVES: MENTAL ILLNESS HOSPITALIZED

+ PUBLICITY ——————— ?

NGI – NO OPIN

D.P. – BELIEVE IN IT
USED TO SELDOM

GOOD SIZED/RIBALD/TORD
MEXICAN O →
EX USAF 24 YRS. (SOP SGT)
BLUE COLLAR – OK ON COMMON SENSE
EX MILITARY → CONSERVATIVE
+ LAW + ORDER

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

602

JONDA_102167

OK++

JANICE VARRELMAN
45, MARRIED
FAIR OAKS
REPUBLICAN
JC - 1 YR
PACIFIC BELL - PERS. SPVR.
HUS: PAC BELL - SUPER.

DP OK+
PSYCH - OK

NEIGHBOR = SHERIFF

~~0~~ PUBLICITY

* FAMILY MEMBER WIT ON CHILD MOLESTATION BY YAS MOO — SHEPPARDS VIC - NO PERP RECOLLECTION

PSYCH - NOT SCIENTIFIC
DP - BELIEVE IN IT

VERY TAN Q+
GOOD LOOKING, CURLY PERM
WELL DRESSED
DP - * PAUSE ... "I BELIEVE SO"
DOESN'T LIKE D.'S BEATING SYSTEM DUE TO TECHNICALITIES
NGI - "EXCUSE ... FOR D TO GET OUT OF IT"
PRO LAW ENFORCEMENT
HAS FRIEND WHOSE SON WAS MURDERED BY GALLEGO

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

OK++

CHARLES WILSON
69 DIVORCED
SO. AREA
DEMOCRAT NRA MEMBER

OK ON D.P.
OK ON PSYCH
~~&~~ PUBLICITY

PROBS W/ HEARING ——— OK

12th GR. + 1 YR. COLL.

RETIRED S.P. ELECTRICIAN 4/3 YRS

EX-W : CLERK

SON - WAS COP

LAW DO LENIENT +

ARRESTED FOR BEING DRUNK ——— ?

SALT & PEPPER / ALERT
GREY HAIR / DRESSED
CONSERVATIVE LOOKING
"YES SIR" / "NO SIR"

NO PROBLEMS
GASSING Δ

QUICK TO SAY YES - COULD IMPOSE D.P.

GOOD OLD REDNECK COMMON SENSE BOY !

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

606

JONDA_102171

(+)

DP - OK
NGI - OK

DOROTHY WINTER
63, MARRIED
GREENHAVEN AREA
REPUBLICAN
CATHOLIC
12th GR.
RET - COUNTY ADM. ASST
HUS - (RETIRED SSD (24 YRS))
CONDUCTED DA RUNS

MEMO of CASE
NO OPINIONS

NGI - OPEN MIND - NO OPIN
DP - SHOULD BE USED

OLDER/CONSERVATIVE APPEARING
WELL DRESSED
PRO PROSECUTION
CLEAR VOICE - NO NONSENSE ATTITUDE
BRIGHT LADY

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

GATEKEEPER GOOD

OR DP
DKT PSYCH

ANNA WONG
27, SINGLE
SO. AREA
BS - BIOLOGY CSUS
MED TECH @ KAISER (ILLEGIT SCHEDULE)
HAS - PRINTING ESTIMATOR

LAWS TOO LENIENT ——+

FAMILY/FRIEND - MENTAL ILLNESS —— + PUBLICITY
MOM SLIGHTLY SCHIZ.

PSYCH - VERY SUBJECTIVE FIELD
NGI - SKEPTICAL

DP - COULD DO IT

ATTRACTIVE ORIENTAL GF
DRESSED SIMILAR TO 1960-70's COLLEGE STUDENT
BRIGHT/SOFT SPOKEN

HEARS VOICES
PARANOID
~ 5 YRS

Office of the District Attorney

Route Slip **Date:** _____

To
From
Message

DA-54

610 JONDA_102175

(OK) ONLY
Δ KICK?

OK? ON D.P.
? to OK on PSYCH
- PUBLICITY

SHARI WONG
26 SINGLE
So. AREA
ACCTNG MAJOR @CSUS

DV: STATE VICTIMS OF VIOLENT CRIMES (CLAIMS SPECIALIST) ——— X

PSYCH ? OK? ——— ?

DP OK IF LOTS OF E TO SHOW Δ BAD IN PAST; WOULD DO 187 AGAIN

D.P. RESERVATIONS: WHEN PERSONALLY... PROBABLY COULDN'T DO IT / BUT COULD ON MULTI-187

MOUSY LOOKING ORIENTAL
GLASSES
LAUGHS KIND OF INAPPROPRIATELY (OUT OF FEAR OR EMBARRASSMENT?)
RELATIVELY BRIGHT

Office of the District Attorney

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To

From

Message

DA-54

612

JONDA_102177

Exhibit D

Excerpts from Petition for Writ of Habeas Corpus, *In re George Brett Williams* (Sept. 27, 2007, S156682.)

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re	Case No. S030553
GEORGE BRETT WILLIAMS,	(Los Angeles Superior Court No. TA 006961)
On Habeas Corpus	

PETITION FOR WRIT OF HABEAS CORPUS

VOLUME 1

DANIEL N. ABRAHAMSON
California State Bar No. 158668
819 Bancroft Way
Berkeley, CA 94710
(510) 229-5212

Attorney for Petitioner George B. Williams
Under Appointment by the California Supreme Court

TABLE OF CONTENTS

I. CLAIMS RELATED TO PROSECUTORIAL MISCONDUCT IN THE SELECTION OF PETITIONER'S CAPITAL JURY – BATSON-WHEELER/SWAIN VIOLATIONS

65. Petitioner's confinement is unlawful, in that his conviction and death sentence were unlawfully and unconstitutionally imposed in violation of the his rights under the Sixth and Fourteenth Amendments to the United States Constitution, and under Article 1, section 16 of the California Constitution, specifically his rights to due process, equal protection and a fair jury trial.

66. The following United States Supreme Court decisions, *inter alia*, are presented in support of this claim: Batson v. Kentucky (1986) 476 U.S. 79; J.E.B. v. Alabama ex rel. T.B. (1994) 511 U.S. 127; Swain v. Alabama (1965)380 U.S. 202; Berger v. United States (1935) 295 U.S. 78, 88; Strauder v. West Virginia (1880) 100 U.S. 303; Taylor v. Louisiana (1975) 419 U.S. 522; Carter v. Jury Commisison of Greene County (1970) 396 U.S. 320; Peters v. Kiff (1972) 407 U.S. 493; and Rose v. Mitchell (1979) 443 U.S. 545.

67. In support of this claim, Petitioner hereby incorporates by reference as if fully set forth herein the facts, law, and argument set forth in Claim I of Appellant's Opening and Reply Briefs on direct appeal, as well as Claims II, III, IV and VIII of this Petition.

A. Factual Background

68. Six African American women were summoned to Petitioner's jury pool. The prosecutor struck five of them.

69. On the first panel of twenty prospective jurors called, three of the prospective jurors were African American women. The prosecutor struck all three. (15 RT 1099-1100.)

70. The next panel consisted of nine prospective jurors, one of whom was an African American woman. She was struck by the prosecutor. (15 RT 1202.)

71. In the next panel, two of the nine prospective jurors were African American women. The prosecutor struck one of them. (15 RT 1214)

72. The pattern was clear: the prosecutor used his peremptory challenges to strike black women jurors. Even voir dire counsel, who was woefully inexperienced and who had never before selected a capital jury, complained to the trial court "it is clear to the jury and clear to everyone here that we are up here on the blacks getting kicked off . . . ." (15 RT 1235.)

73. In the end, eighty three percent of the African American women called to serve as jurors were systematically culled by the prosecutor from Petitioner's jury pool, peremptorily challenged by the

Deputy District Attorney notwithstanding these jurors' avowed ability to impose the death sentence.

74. The prosecutor's unconstitutional exercise of peremptory challenges was not limited to Petitioner's capital case. Seven months before Petitioner's trial, the same prosecutor, in front of the same court, successfully purged the vast majority of African American females from the jury of another African American male defendant facing capital charges.

75. As explained further below, Petitioner's prosecutor violated the state and federal constitutional rights of Petitioner and of the African American women improperly excluded from jury service.

B. Prosecutors Have a Special Duty to Pursue Justice Through Constitutional Means

76. In criminal cases, prosecutors have the duty to pursue justice and, as state actors, to respect the Constitutional rights of individuals. These particular duties have long been recognized by the Supreme Court: "[The prosecutor] is the representative not of an 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...is not that [he] shall win a case, but that justice shall be done... He may prosecute with earnestness and vigor -- indeed, he should do so.

But, while he may strike hard blows, he is not at liberty to strike foul ones." Berger v. United States (1935) 295 U.S. 78, 88.

77. The Deputy District Attorney ("DDA") who prosecuted Petitioner committed injustice in his aggressive pursuit of a conviction and death sentence by unlawfully striking African American female jurors from the venire for reasons none other than the jurors' race and gender, thereby poisoning the proceedings with repeated acts of discrimination and causing irreparable, cognizable, and constitutional harm to Petitioner and the wrongly purged jurors, requiring reversal of Petitioner's conviction and death sentence.

78. This Court's decision in People v. Wheeler (1978) 22 Cal.3d 258, and the United States Supreme Court's subsequent decision in Batson v. Kentucky (1986) 476 U.S. 79, were meant to eradicate precisely the kind of discrimination that infected the selection of Mr. Williams' jury. "[T]hat African-American women comprise a cognizable class for Wheeler purposes is clear." People v. Boyette (2002) 29 Cal. 4th 381, 422 (citing People v. Clair (1992) 2 Cal.4th 629, 652). (In 2000, the California legislature codified the core principles of the Wheeler decision. (Cal. Code Civ. Proc. § 231.5.))

79. In Batson v. Kentucky, supra, the United States Supreme Court, partially overruling Swain v. Alabama (1965) 380 U.S. 202, condemned the racially discriminatory use of peremptory challenges as

violating the equal protection clause of the Fourteenth Amendment. In so doing, the Batson Court re-examined the "crippling burden of proof" which had made a "prosecutor's peremptory challenges largely immune from constitutional scrutiny" under prevailing interpretations of Swain. Specifically, The Batson Court ruled:

> The Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable to impartially consider the State's case against a black defendant.

(Id. at 89.)

80. The Court in Batson set forth standards for proof of discriminatory use of peremptory challenges, rejecting the evidentiary requirements for purposeful discrimination articulated in Swain, 380 U.S. 202 and announcing a revised formulation. Under the revised Batson standard, the defendant must first establish a prima facie case of discrimination in the use of peremptory challenges:

> To establish such a case, the defendant first must show that he is a member of a cognizable racial group . . . and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits "those to discriminate who are of a mind to discriminate."

Batson, 476 U.S. at p. 96 (internal citations omitted.) The defendant must show that these facts and another other relevant circumstances raise an

inference that the prosecutor used that practice to exclude the venire-persons from the petit jury on account of their race. Batson, 476 U.S. at p. 97. These factors together raise an inference of purposeful discrimination. The burden then shifts to the State to justify the prosecutor's peremptory challenges. The prosecutor "must articulate a neutral explanation related to the particular case to be tried." (Id. at p. 98.) Finally, the trial court then must determine if the defendant has established purposeful discrimination. (Id.)

81. While the Batson Court "reject[ed] th[e] evidentiary formulation" set forth in Swain, it did not reject the type of proof which had previously sustained Swain claims. Rather, the Court supplemented the proof which could be offered: it did not replace it. In Swain, the defendant failed to meet the evidentiary burden of establishing a prima facie case, because "he offered no proof of the circumstances under which prosecutors were responsible for striking black jurors beyond the facts of his own case." Swain, 380 U.S. at 92.

82. Petitioner herein offers proof to this Court of the same prosecutor impermissibly striking black jurors beyond the facts of his own case. The proof is in the form of the record from People v. Carmen Ward, Case No. S142694 (habeas corpus), S019697 (automatic appeal), Los Angeles Super. Ct No. A647633. This material, together with additional material to be added following adequate funding and discovery, makes it

clear that Petitioner's prosecutor committed both Batson-Wheeler and Swain error. For these reasons, habeas relief is appropriate.

83. For the black women jurors struck, the prosecutor proffered two types of justification. First, the prosecutor claimed that the answers given by these women during voir dire conveyed their purported equivocation regarding their support of, and ability to impose the death penalty. The prosecutor also claimed that the demeanor of these women in answering questions, regardless of their responses, also conveyed equivocation.

84. The prosecutor's first reason, however, is disingenuous. The responses provided by the prospective black women jurors regarding their views about capital punishment were, in all relevant respects, virtually identical to the answers provided by several of the (non-African American female) jurors seated by the prosecutor. All six African American women in the jury pool agreed that it was appropriate for governments to have the death penalty and all agreed that if aggravating evidence outweighed mitigating evidence they could impose the death penalty

85. With respect to the prosecutor's second proffered justification, the jurors' purported demeanor, the prosecutor was given a free pass by the trial court. The court made no sincere and reasoned attempt to assess the prosecutor's subjective "demeanor" claim. Indeed, the court itself could not recall the demeanor of at least some of jurors in

question and deferred to the prosecutor's vague default excuse. As a result, the prosecutor, over the repeated objections of defense counsel, successfully struck five of these women.

86. Batson-Wheeler violations cause harm on multiple levels. "Although Batson primarily focused on the constitutional harm suffered by the criminal defendant as a result of race-based peremptory challenges, the Court also identified two additional harms arising from discriminatory peremptory challenges: the harm to the excluded juror, and the harm to the integrity of the justice system as a whole." Exh. 202 at bates 6348 (Sutphen, True Lies: The Role of Pretext Evidence Under Batson).

87. Indeed, as the Supreme Court noted in one of its decisions interpreting the scope of Batson, "[t]he community is harmed by the State's participation in the perpetuation of invidious group stereotypes and the inevitable loss of confidence in our judicial system that state-sanctioned discrimination in the courtroom engenders" J.E.B. v. Alabama ex rel. T.B. (1994) 511 U.S 127, 140.

88. The target of the prosecutor's discrimination—African American women—is particularly troubling given their status as a uniquely vulnerable and oppressed group throughout our nation's history—a group situated at the intersection of two of the most historically entrenched and repugnant forms of discrimination: race and gender. The prosecutor's

pattern of challenging African American women sent the message to all in the courtroom that he viewed them as categorically unfit for jury service.

89. As Professor Barbara Babcock of Stanford Law School has written, the invidious exercise of peremptory challenges "in the case of minority women . . . subjects them to the most virulent double discrimination: that based on a synergistic combination of race and sex . . . ." Exh. 200 at bates 6302 (Babcock, A Place in the Palladium). The dual status of African-American women is a combination of two degraded statuses and results in a particularly low-ranking position in our society. Exh. 261 at bates 9946 (Scales-Trent, Black Women and the Constitution). Consequently, "[t]he economic, political, and social situation of black women in America is bad, and has been bad for a long time." Id. at bates 9941. The two statuses "have often combined in ways which . . . create a condition for black women which is more terrible than the sum of their two constituent parts." Id. This double discrimination "essentializes the prospective juror" based on the immutable traits of gender and race, and "ignores her ability to act as an autonomous individual." Exh. 201 at 1936 (Beyond Batson: Eliminating Gender-Based Premptory Challenges). Cf. id. at p. 1932 (noting that "jury selection guides upon which attorneys frequently rely . . . are riddled with crude stereotypes and categorical assumptions about the influence of gender" on juror impartiality.) ("[T]hat African-American women comprise a cognizable class for Wheeler

purposes is clear." People v. Boyette (2002) 29 Cal. 4th 381, 422 (citing People v. Clair (1992) 2 Cal.4th 629, 652.) See also, People v. Cleveland (2004) 32 Cal.4th 704, 734; People v. Motton, (1985) 39 Cal.3d 596, 605-606.)

90. Batson-Wheeler violations are considered critically harmful on several levels. Tainting a defendant's trial with racial discrimination violates the Constitutional rights of the accused. "Purposeful racial discrimination in the selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." Batson, 476 U.S. at p. 86. The jury serves as the defendant's primary protection against the invidious influence of race in the decision whether he lives or dies. "[I]t is the jury that is a criminal defendant's fundamental 'protection of life and liberty against race or color prejudice.' Strauder v. West Virginia (1880) 100 U.S. 303, 309. Specifically, a capital sentencing jury representative of a criminal defendant's community assures a "diffused impartiality," Taylor v. Louisiana (1975) 419 U.S. 522, 530, in the jury's task of "express[ing] the conscience of the community on the ultimate question of life or death," Witherspoon v. Illinois (1968) 391 U.S. 510, 519.

91. The harm to the accused is just one type of damage done by Batson-Wheeler violations. "Although Batson primarily focused on the constitutional harm suffered by the criminal defendant as a result of race-

based peremptory challenges, the Court also identified two additional harms arising from discriminatory peremptory challenges: the harm to the excluded juror, and the harm to the integrity of the justice system as a whole." Exh. 202 at bates 6348 (Sutphen, True Lies: The Role of Pretext Evidence Under Batson).

92. The prosecutor's improper exclusion of African American women as unfit for capital jury service, ensured that not only would Petitioner not be tried by a representative cross-section of his community, but also that African-American women would be deprived of an equal opportunity to fulfill a fundamental aspect of citizenship; namely, to participate in the administration of the law, and to not be stigmatized as a result. Strauder v. West Virginia (1880) 100 U.S. 303, 308. Without a doubt, when an African-American woman is struck from a jury because of her race and gender, history and culture make her keenly aware that the strike likely stems from invidious motives or erroneous stereotypes. "To be told that you are unfit because of your race and/or gender to judge your fellow citizens is to be told unequivocally that you are a second-class citizen. Your voice is not considered to be a voice of common sense to be interposed between the government and the accused. Your intelligence, your ability to be fair, your life experiences, your understanding of your society, and your integrity are all denigrated. People excluded from juries because of [invidious discrimination] are as much aggrieved as those

indicted and tried by juries chosen under a system of [invidious discrimination]." Carter v. Jury Commisison of Greene County (1970) 396 U.S. 320, 329.

93. The discriminatory use of peremptory strikes also erodes the integrity of the justice system as a whole and undermines the confidence of the public in the workings of the courts. As the Supreme Court has noted, "[t]he harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community." Batson, supra, 476 U.S. at pp. 79, 87. When the exclusion comes not just in a governmental forum, but at the instance of the government's representatives themselves, the injury is further compounded. Such discrimination "raises serious questions as to the fairness of the proceedings . . . [,] mars the integrity of the judicial system, and prevents the idea of democratic government from becoming a reality." Rose v. Mitchell (1979) 443 U.S. 545, 556. See also Edmonson v. Leesville Concrete Co. (1991) 500 U.S. 614, 628, ("[T]he injury caused by the discrimination is made more severe because the government permits it to occur within the courthouse itself."). Juries are critical to a democratic society: Juries are both a real and symbolic bulwark against the State's misuse of its powers to confine or execute its citizens. "The petit jury has occupied a central position in our system of justice by safeguarding a person accused of crime against the arbitrary exercise of power by prosecutor or judge." (Batson,

supra, 476 U.S. at p. 86.) It is "an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge," Duncan v. Louisiana (1968) 391 U.S. 145, 156, "a prized shield against oppression," Glasser v. United States (1942) 315 U.S. 60, 84, that "fence[s] round and interpose[s] barriers on every side against the approaches of arbitrary power," id. at pp. 84-85. Race-based and/or gender-based exclusion from jury service does violence to the constitutional principle of equal access to government. See Powers v. Ohio (1991) 499 U.S. 400, 407 (race); J.E.B. v. Alabama ex rel. T.B. (1994) 511 U.S. 127 (gender); People v. Boyette, supra, 29 Cal. 4th at p. 422 (race and gender). Such exclusion denigrates fundamental democratic institutions, much as the exclusion of voters due to their race and/or their gender undermines constitutional ideals, whether or not this exclusion affects the outcome of a particular election. Jury service and voting have both been regarded as fundamental incidents of citizenship. See Carter v. Jury Commisison of Greene County (1970) 396 U.S. 320, 330.

94. For these reasons, reversal of a conviction is required even if only one juror is struck for impermissible reasons such as race and/or gender. Batson, 476 U.S. at p. 95. Accord, Eagle v. Linahan (11th Cir. 2001) 279 F.3d 926 ("the striking of one black juror for a racial reason violates the Equal Protection Clause, even where other black jurors are seated, and even when valid reasons for the striking of some black jurors

are shown," quoting United States v. David (11th Cir. 1986) 803 F.2d 1567.) United States v. Vasquez-Lopez (9th Cir. 1994) 22 F.3d 900, 902, *cert. denied* (1994) 513 U.S. 891 ("we have held that the Constitution forbids striking even a single prospective juror for a discriminatory purpose"). Accord People v. Granillo (1987) 197 Ca.App.3d 110, 123 (noting "if a single peremptory excuse is not justified, the presumption of validity is rebutted.") See also Motton, supra., 39 Cal.3d at pp. 607-608 ("If the presence on the jury of members of the cognizable group in question is evidence of intent not to discriminate, then any attorney can avoid the appearance of systematic exclusion by simply passing the jury while a member of the cognizable group that he wants to exclude is still on the panel. This ignores the fact that other members of the group may have been excluded for improper, racially motivated reasons . . . By insisting that the presence of . . . black jurors on the panel is proof of an absence of intent to systematically exclude the several blacks that were excluded, the People exalt form over substance.")

95. Similarly, the fact that some individuals of the targeted class are ultimately seated on the jury does not remedy or disprove the unconstitutionality of discriminatory strikes. As the United States Court of Appeals for the Fourth Circuit has observed, the number of African-Americans who served on the jury "only shows that race may not have been a determinative factor *every* time an African American juror was called to

the jury box." Allen v. Lee (4th Cir. 2004) (en banc) 366 F.3d 319, 359, cert. denied, Allen v. Polk, 543 U.S. 906 (emphasis in original.) In that case the majority of seated jurors were black, 366 F.3d at 327, but the prosecution used 11 of 13 strikes (84.6%) against blacks.

96. The jury which tried and convicted Petitioner and sentenced him to death was comprised, in part, by five African Americans. It also had four women. But, with one exception, Mr. Williams' jury was missing a critical group of persons who were a central part of Mr. Williams' community and his upbringing: African American women. (Notably, African American women comprised the entirety of the witnesses who testified on Mr. Williams' behalf at the penalty phase of trial.) Mr. Williams' prosecutor, however, peremptorily struck 83% of the black women from Petitioner's venire.

97. A democratic society depends on the shared belief of its members that the system is fair and impartial, that verdicts are objective and reliable, and that punishments meted out are punishments deserved. "Wise observers have long understood that the appearance of justice is as important as its reality." J.E.B. v. Alabama ex rel. T.B., 511 U.S. at p. 155 (Scalia, J., dissenting). The striking of prospective jurors from a capital venire on account of their race and/or gender, as happened in this case, disrupts any appearance of justice, destroys the potential for actual justice, and ultimately debases the shared belief that the system is fair and

impartial.

C. The Law No Longer Tolerates Race and Gender Discrimination

98. As Professor Charles Ogletree of Harvard Law School notes, "[r]ace has historically played a role in the ability of black defendants to invoke their right under the U.S. Constitution to a fair and impartial jury of their peers, and the racial composition of the jury is of particular importance in capital cases. These rights are dramatically undermined by the use of peremptory jury challenges as a pretext for discriminating against people of color." Exh. 199 at bates 6262-63 (Ogletree, Black Man's Burden: Race and the Death Penalty in America) Initially, discrimination based on race and gender was explicit and accepted by the courts and public alike. Before the United States Supreme Court began to reign in the more blatant racism with its Swain and Batson decisions, prosecutors routinely struck black jurors out of racial fear, animus or stereotype. Id. The Supreme Court began to regulate the prosecutor's use of peremptory strikes by announcing in Swain that the Equal Protection Clause limits the State's exercise of peremptory challenges in criminal cases. The test for proving purposeful discrimination, however, was exceedingly onerous, requiring the defendant to show that the prosecutor had a history of exclusion in previous cases. As a result, prosecutors were little deterred in misusing their peremptory strikes.

99. More than twenty years after Swain was issued, the United States Supreme Court addressed the continuing widespread problem of prosecutors exercising their peremptory strikes in a discriminatory fashion. In its Batson decision, the Court established a system of legal inquiry for assessing whether unconstitutional discrimination infects the jury selection. The California Supreme Court previously had taken these steps with its decision in People v. Wheeler (1978) 22 Cal.3d 258). (In 2000, the California legislature codified the core principles of the Wheeler decision. (Cal. Code Civ. Proc. § 231.5.))

100. In Mr. Williams case, a close examination of the prosecutor's actions and purported justifications for the apparently discriminatory challenges make clear that the allegedly neutral explanations proffered by the prosecutor for his peremptory strikes were not neutral at all, but rather were the produce of invidious race and gender-based stereotypes that expressed themselves through the prosecutor's exercise of his peremptory strikes.

D. Standard of Review

101. The rules governing a Wheeler challenge are settled. If a defendant believes the prosecution is improperly using peremptory challenges for a discriminatory purpose, he or she must raise a timely objection and make a prima facie showing that jurors are being excluded on the basis of racial or group identity. A prima facie case is made under Wheeler-Batson if the defendant, inter alia, "can show a reasonable

inference that such persons are being challenged because of their group association." People v. Farnam (2002) 28 Cal.4th 107, 135. See also Batson, 476 U.S. at p. 96; Wade v. Terhune (2000) 202 F.3d 1190, 1192-1197.

102. Once the trial court finds that the [defendant] has made a prima facie case, the burden shifts to the [prosecutor] to provide an explanation for the peremptory challenges that is race or group neutral and related to the particular case being tried." People v. McDermott (2002) 28 Cal.4th 946, 970. "The prosecutor need only identify facially valid race-neutral reasons why the prospective jurors were excused." People v. Gutierrez (2002) 28 Cal.4th 1083, 1122. If a race-neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful racial discrimination.

103. The trial court must make "a sincere and reasoned attempt to evaluate the prosecutor's explanation in light of the circumstances of the case as then known, his knowledge of trial techniques, and his observations of the manner in which the prosecutor has examined members of the venire and has exercised challenges for cause or peremptorily." People v. McGee (2002) 104 Cal.App.4th 559, 569 (quoting People v. Hall (1983) 35 Cal.3d 161, 167-168.) "[A] truly 'reasoned attempt' to evaluate the prosecutor's explanations requires the court to address the challenged jurors individually to determine whether any one of them has been improperly excluded." McGee, 104 Cal.App. 4th at p. 569 (quoting People v. Fuentes (1991) 54 Cal.3d 707, 720.)

104. In ruling on a Wheeler motion, "the trial court should state expressly its determination as to the adequacy of the justification proffered

with respect to each peremptory challenge." McGee, 104 Cal.App. 4th at p. 569 (quoting People v. Sims (1993) 5 Cal.4th 405, 431.)

105. As a general matter, the trial court's ruling on a Wheeler-Batson motion on appeal "is reviewed for substantial evidence." (McGee, supra, 104 Cal.App. 4th at p. 569). But this "deferential standard of review" is applied "**only when** 'the trial court has made a sincere and reasoned attempt to evaluate each stated reason as applied to each challenged juror.'" Id. (quoting McDermott, 28 Cal.4th at p. 970.) (emphasis added.)

106. Petitioner's trial court asked the prosecutor to respond to each of appellant's three Wheeler motions, and the prosecutor in turn provided explanations as to each of the five challenged jurors. (15 RT 1211, 1226, 1234.) A review of the record shows that each of these invitations and subsequent explanations constituted an implied finding of a prima facie showing that the prosecutor had struck jurors on the basis of race and/or gender. See People v. Arias (1996) 13 Cal.4th 92, 135; People v. Turner (1994) 8 Cal.4th 137, 167; People v. Turner (1986) 42 Cal.3d 711. After listening to the prosecution's explanations, Petitioner's trial court denied each of the three Wheeler motions.

107. The trial court failed to make a sincere and reasoned attempt to evaluate each stated reason as applied to each challenged juror. As discussed below, a review of the prosecution's explanations further reveals that substantial evidence does not support the trial court's rulings. In short, the prosecutor failed to state adequate neutral grounds for the challenges in question and the trial court side-stepped its duty to assess the validity of the prosecutor's explanations. (See People v. Alvarez (1996) 14 Cal.4th 155, 198, fn. 9.)

E. Petitioner's Prosecutor Challenged African American Jurors in a Purposefully Discriminatory Manner

1. The Wheeler-Batson Motions

108. During jury selection, which commenced August 12, 1991 and continued through September 12, 1991 (3-15 RT 17-1251.), the trial court heard three motions brought by appellant pursuant to People v. Wheeler and Batson v. Kentucky. The trial court denied those motions and a motion to declare a mistrial and dismiss the existing jury panel. (15 RT 1210-1213, 1225-1240.)

a. The First Wheeler Motion

109. After the prosecutor used peremptory challenges to dismiss three out of three African American female jurors in the first three juror panels, the defense brought the first Batson-Wheeler motion. (15 RT 1210-1213.) Specifically, the defense objected to the dismissal of Ms. Harriett Reed, Ms. Theresa Cooksie and Ms. Paula Cooper-Lewis, stating at sidebar: "I think we have the beginnings of a Wheeler situation. Of the five blacks that have been in the 12, as part of the 12, the prosecution has perempted Miss Reed, Miss Cooksie and Miss Cooper-Lewis . . . And I would also like the record to reflect . . . my client is black and . . . I would have liked to have a better cross-section of the community. That is my concern." (15 RT 1211.)

110. The prosecutor responded "I will go ahead and justify." Id. The Deputy District Attorney then explained that he rated prospective jurors by what he perceived to be "their reluctance towards answering questions which I've asked them." With respect to his excercise of

peremptories against Mesdames Reed, Cooksie and Cooper-Lewis, the prosecutor stated:

> Each of them demonstrated a reluctance in terms of answering direct questions which called for the requirement of the imposition of the death penalty with an affirmative answer that they would impose it. They would either say, well, I think I might be able to, or I could, but their reluctance to impose it was evident not only from the answers that they gave from the time that it took them to respond to the question, their general demeanor in answering the questions and my impression from each of them

Id.

111. As explained below, the written and verbal answers provided by these three African-American women were materially the same as the answers provided by persons seated to be jurors. So in actuality it was their "general demeanor" that bothered the prosecutor, or worse. The prosecutor summarized his subjective selective process thus: "**It was just my general impression** from their answers that **in spite of what they said** they wouldn't have the ability to impose it when it actually came down to it. That is my reason for excusing them." (15 RT 1212) (emphasis added).

112. Dismayed that the prosecutor's "general impressions" of jurors resulted in the purging of most of the black females from his client's venire, Petitioner's voir dire counsel re-iterated that "So far only 10 percent of [the persons called up from the jury pool] have been black; only four were black. And 75 percent of those were perempted by the prosecutor. . . .

. I would also [sic] the record to reflect that all the blacks that were kicked were female . . . ." (Id.)

113. The prosecutor then tried another tack. To downplay the significance of his actions the prosecutor suggested that his striking black females from the jury was (somehow) not improper because the State was planning on calling non-white witnesses. "Okay. Just so the record at this point – since he is making his Wheeler objection – is clear," the prosecutor stated, "my victims in this case are a male black and a male Hispanic. **All of my witnesses**, including the three codefendants in this case, are going to be young black males. I have male Hispanics who are going to require interpreters testifying, so I have a great cross-section of people who I am going to be calling to the stand. Not one of them are white." (15 RT 1213) (emphasis added.)

114. The prosecutor's reasoning, such as it is, is not just hollow but utterly erroneous. At first blush it appears that the prosecutor is suggesting that a racially diverse array of State's witnesses can assuage the State's exclusion of persons of color from the jury. But such a claim is legally indefensible (not to mention offensive).

115. A different possible interpretation is that the prosecutor is suggesting that he had little incentive to strike black women from the jury because black women are more likely to credit the testimony of black men

(or men of color), and the State's key witnesses are Mr. Williams' three black co-defendants (and some of its other witnesses are non-white men).

116. But this rationale also backfires when viewed in the larger context of Petitioner's trial. Because Petitioner is also African American, if the prosecutor sincerely believed that black women jurors were sympathetic to black men -- or at least more likely to credit their testimony -- then these jurors would be just as willing, if not more so, to be biased in favor Petitioner. Thus, if Mr. McCormick took his own excuse to heart, that excuse could be viewed as an admission that he was intentionally striking black women jurors and an explanation of his underlying stereotype about black women.

117. Then there is the seriously disturbing fact that the prosecutor just plain lied about the racial backgrounds of "[a]ll of [his] witnesses." (15 RT 1213). In point of fact, all of the witnesses called by the State were **not** of African American descent as the prosecutor claimed. Not even a majority were. (See Motion for New Trial, CT 701-702.) Never mind that the racial make-up of the State's witnesses bears no rational relation to -- and can in no way legally attenuate, much less counteract -- the prosecution's discriminatory exercise of peremptory challenges: the justifying circumstance claimed by the prosecutor simply did not exist.

118. Though hollow and erroneous, the prosecutor's proffered justification for peremptorily striking black women was unwittingly

revealing as it laid bare the fact that the prosecutor conceived of Petitioner's case and of Petitioner's jury selection in starkly racial terms and that this conception underlay and guided his exercise of peremptory challenges. In any case, as Professor Barbara Babcock of Stanford Law School notes, "[r]acial and gender diversity among witnesses, co-defendants or other trial participants does not cure the unconstitutional exclusion of African American women from the jury." Exh. 280 (Babcock Declaration, ¶ 11).

119. For the above reasons, the prosecutor's proffered justifications were specious.

b. The Second Wheeler Motion

120. The second Wheeler-Batson motion occurred during the fourth panel and concerned the prosecutor's peremptory challenge of Ms. Retha Payton, an African American woman. Defense counsel objected to the prosecutor's strike, pointing out that "four out of the six blacks have been perempted and [all] four of them have been women" and that "12 perempts have been blacks, and that is 33 percent right there. We have only had a mix of 10 percent blacks who have come on this jury as potential jurors, and he has kicked 75 percent of them, so those numbers speak for themselves." (15 RT 1226-1227.)

121. The court invited the prosecutor to respond to the objection. The Deputy District Attorney again provided an explanation rich in

subjective "general impressions" but wholly ungrounded in the factual record. In the prosecutor's words:

> Under Miss Payton, even though she was rated initially as a three on my scale, she was downgraded to one. Next to most names I don't write anything but I've written next to her, "ambivalent, no opinions." . . . . I asked her about the death penalty serving a deterrent value to her. She said, "I hadn't really pinned it down." Question: You don't have opinions one way or the other whether it serves a deterrent value or not?" She said, "With some people it would and with some people it probably would not." I asked her, "In terms of your own feelings on the death penalty, you can't give me anymore guidance on how you feel about it other than you haven't really thought about it?" Her answer is "No, I really haven't. It is just something that I would – could say yes, it would, or no it wouldn't." My impression from my conversation with her at that time was apparently that while she was saying that she didn't know whether it had a deterrent value, she didn't know if she could impose it. . . . It was my general impressions from my discussion with her that she didn't have the ability to do it, or I wouldn't have downgraded her so far.

(15 RT 1228-1229.)

122. In rebuttal, the defense pointed out to the court that Ms. Payton had plainly stated she would be fair and impartial on death penalty issues. The prosecutor, by way of reply, again retreated deep into the realm of the subjective, stating "**It was just my impression** she didn't have the ability **in spite of what her answers were** . . . ." (15 RT 1230) (emphases added.)

123. In short, based on a "general impression" that the prosecutor felt but could not articulate, he discounted the veracity of the written and verbal answers given by Ms. Payton—and three other African-American

women—and dismissed these women of color from the jury. As defense counsel noted, the prosecutor's "impressions" resulted in the "systematic[] preempt[ion] [of] black women by an incredible percentage margin" (15 RT 1230-1231.) The prosecutor, in turn, only repeated his pretextual mantra. "It has to do with their demeanor . . . and my perception that they could actually impose the death penalty on George Brett Williams in this case." (15 RT 1231.)

124. In ruling on the Wheeler motion, the trial court made clear it was not able to credit the prosecution's characterization of Ms. Payton. Nonetheless, without further explanation, the court permitted the prosecution to strike Ms. Payton, cryptically stating: "I'm going to say that there is sufficient explanation on Miss Payton. As I indicated earlier, I had made notes on some of them and that was by their demeanor and their manner of responding. **I don't have anything on this one at this time**, but I would accept Mr. McCormick's explanation as to his exercise of the peremptory, so I would not make a finding that there is a Wheeler violation. (15 RT 1231-1232) (emphasis added.)

c. The Third Wheeler Motion

125. Two peremptory challenges after the one exercised against Ms. Payton, the prosecutor challenged Miss Ruth Jordan, an African American female. Petitioner's voir dire counsel again objected. Anticipating the argument, the court asked, "[i]s this another Wheeler

motion?" (15 RT 1232.) The defense responded by observing that from a statistical standpoint the prosecutor's actions were "bizzare":

"five of six black women have been perempted."

Id. What is more, as the defense pointed out, Ms. Jordan was "on the panel at a time when he had accepted them, and then he is invading into the jury after I have accepted them to further make the entire jury that we have less black . . . If she was a problem before why wasn't she perempted? He has accepted her while she was on the jury." Id.

126. The prosecutor responded that although he did not particularly like Ms. Jordan as a juror he kept her on the jury because he feared that if he struck her earlier he would prompt another Wheeler motion and/or lead other African Americans in the jury pool to believe that he was racist. But in the end, he explained, "I've reviewed all my notes. . . . I went down to my office and thought about it, and it doesn't make any sense to me to go through this entire process with a juror that I honestly don't believe because of her responses and the many she answered me during the individual voir dire, . . . to me to try this case in front of that person when I think going in they don't have the ability to render a death verdict if that's what the case calls for." (15 RT 1233-34.)

127. Faced with the State's peremptory exclusion of five of six black women from Petitioner's jury, and the prosecutor's wholly

subjective, factually unsupported reasons for doing so, the trial court made the following, astonishing admission:

> THE COURT: And I have to say **in my other death penalty cases I have found that the black women are very reluctant to impose the death penalty; they find it very difficult no matter what it is. I have found it to be true.**

(15 RT 1239) (emphasis added.) The court then acknowledged that it was unable to assess the credibility of the prosecutor's proffered explanation regarding his striking of Ms. Payton and Ms. Jordan, stating:

> THE COURT: But as I said **I cannot say anything about these.** [sic] **I can only go by what Mr. McCormick is saying because I stopped making notes on my Hovey**.

(Id.). The court then ruled on the third Wheeler motion: "The motion is denied." (15 RT 1240.)

128. By the conclusion of voir dire, the prosecution had exercised 15 peremptory challenges, 13 of which were to females, 5 of whom were African Americans. The prosecutor had successfully challenged 5 of 6 female African American jurors from the four panels. The final jury had seven Caucasians and five African-Americans. Of the five African American jurors, four were male. (CT 696.)

2. Backgrounds of the Five Prospective Jurors Who Were the Subjects of the Wheeler- Batson Motions

a. Harriett Reed

129. Harriett Reed was a 24-year-old single African American female. (14-15 Supp.1 CT 3530-3564.) She was employed by the IRS as a tax examiner. She was a high school graduate with some community college and had no arrest record. On her questionnaire, Ms. Reed answered that she thought the death penalty should be enforced under certain hardcore murders and that she believed that California should have the death penalty under certain circumstances.

130. When questioned during voir dire, the prosecutor asked Ms. Reed what she meant when she wrote "hardcore murders" and in what situations could she see herself imposing the death penalty. (7 RT 390-391.) She responded that she considered hardcore murders to be things like burning of bodies and mutilation, but that she could impose the death penalty in other cases if necessary. (7 RT 391.) The prosecution pressed her on whether she could impose the death penalty on Appellant. She responded that she could, and stated that if after weighing the aggravating factors against the mitigating factors the appropriate verdict was death, she could impose the death penalty. (7 RT 391-392.) The prosecutor passed Reed for cause. (7 RT 392.)

131. The prosecutor did not ask any further questions before exercising his peremptory challenge on her later in voir dire.

b. Theresa Cooksie

132. Theresa Cooksie was a 27 year old married African American female with a five-year old daughter. Ms. Cooksie had some community college, no arrests and was employed as a typist/clerk.

133. In her questionnaire Ms. Cooksie wrote that California should have the death penalty "Because when cold-hearted [killers] take People['s] lives then their live[s] should be taken also." (21 Supp. 1 CT 5138-5172.). Ms. Cooksie believed that the death penalty had a purpose, and that purpose was "to stop these cold-hearted killers from hurting innocent people." And Ms. Cooksie "strongly agreed" that persons who killed intentionally without legal justification should be sentenced to death. Ms. Cooksie wrote that she wanted to be on the jury "to give my opinion as fair as I can." (Id.)

134. When questioned during voir dire, Ms. Cooksie stated that she would vote for death or LWOP depending on the evidence. (5 RT 214-315.) She stated she would not automatically vote for the death penalty because she "would have to hear the evidence and see how the trial is. I just can't say, oh, I'll give him the death penalty." (5 RT 216.) Ms. Cooksie also stated that she thought the death penalty would be a more severe punishment than LWOP. (5 RT 215.) The prosecutor asked Ms. Cooksie to explain what she meant by "cold-hearted" killer, a phrase she used in filling out her questionnaire, to which she responded that she meant a senseless killing or a killing with no feelings or just a killing out of a cold

heart. (5 RT 218-219.) Ms. Cooksie reaffirmed that she could and would impose the death penalty if the evidence warranted it. (5 RT 219-220.) Notably, in his closing argument to the jury at the penalty phase of trial, the prosecutor characterized Mr. Williams' crime as a "cold-blooded execution" (35 RT 3423-24), presumably a description that would have resonated with Ms. Cooksie had he not struck her.

135. The prosecutor did not ask any further questions before exercising his peremptory challenge on her later in voir dire.

c. Paula Cooper-Lewis

136. Paula Cooper-Lewis was a 28 year-old separated African American female employed as a supply technician at the Naval Weapons Station. (10 Supp. 1 CT 2447-2480.) She had some community college and had never been arrested. In the questionnaire, when asked about her general feelings regarding the death penalty, Ms. Cooper-Lewis wrote that "it's fair in some cases" and that she hadn't decided whether California should have the death penalty or not. However, she saw the purpose of the death penalty as "to rid society of people that would be a constant threat to society as a whole, i.e., people who commit heinous crimes and if ever released into society would jeopardize society's safety." Ms. Cooper-Lewis also wrote that she "somewhat agreed" that people who intentionally kill another person without legal justification should get the death penalty, but that every case had different circumstances. She wrote that she wanted

to be on the jury because she was open-minded, willing to listen to both sides and judge for herself without any outside influences. (Id.)

137. When questioned during voir dire, Ms. Cooper-Lewis acknowledged that if the case warranted she could impose the death penalty, and in response to a hypothetical from the prosecutor she stated that if she were a dictator on an island she would probably have the death penalty as part of her legal system. (10 RT 758-759.) Ms. Lewis on more than one occasion said she believed she could impose a sentence of death on another person. (10 RT 759, 760.)

138. The prosecutor did not ask any further questions of Ms. Cooper-Lewis before exercising his peremptory challenge on her later in voir dire.

139. After appellant's first Wheeler motion, the prosecutor explained he challenged jurors Reed, Cooksie and Cooper-Lewis because "during the individual questioning of them I rated very reluctantly in terms of their ability to impose the death penalty." (15 RT 1211.) The court then denied the first Wheeler motion. (15 RT 1213.)

d. Retha Payton

140. Retha Payton was a 63 year-old African American female employed as a nurse and married to a disabled fork lift mechanic. (10 Supp. 1 CT 2412-2446.) She had an Associate's Degree in Childhood Education and had five adult children; she had never been arrested.

141. As to the death penalty, Ms. Payton wrote on the questionnaire that "it is sometimes necessary" and that maybe California having the death penalty would make more people think before committing serious crimes and act as a deterrent. She also wrote that it would depend on the circumstances whether someone who killed another without legal justification should get the death penalty. She wrote she would want to be a juror because "I feel I can contribute." (Id.)

142. When questioned during voir dire, the prosecutor asked what her feelings on the death penalty were. Ms. Payton responded that under some circumstances it is necessary and that she would have to follow the evidence, and that she could vote for the death penalty if the circumstances and evidence warranted it. (10 RT 739.)

143. The prosecutor accepted the jury three times with Payton on it, but then used a peremptory to excuse her without asking her any additional questions.

144. After appellant's second Wheeler motion, the prosecutor explained that he challenged Ms. Payton because in spite of her answers

she would be reluctant to impose the death penalty. (15 RT 1228-1230.) The court then denied the second Wheeler motion. (15 RT 1231-1232.)

e. Ruth Jordan

145. Ruth Jordan was a 65-year-old married African American with no children. (5 Supp.1 CT 1049-1082.) She was employed as a supervisor in the California Employment Development Department and had a Bachelor's degree in business administration. She had never been arrested. Ms. Jordan wrote in her questionnaire that she considered being called for jury service a privilege and that her past grand jury experience was "the most enlightening experience of [her] civil service career." On the death penalty, Ms. Jordan stated that she felt that California should have the death penalty and wrote that while she did not believe that the death penalty had been shown to be a crime deterrent, Capital punishment . . . is necessary in our society because so many people think it is.

146. She also wrote that the purpose of the death penalty was: "To let the punishment fit the crime" and to provide "perpetrators and victims families and friends . . . with finality." In declaring that California should have capital punishment, Ms. Jordan explained that executing convicted murderers would be of "solace to the friends [and] family of the victim." (Id.) Ms. Jordan stated she would like to be on the jury because she was "old enough, experienced in life enough and mentally capable of being objective." (Id.)

147. When questioned during voir dire, the prosecutor asked if she had the ability to render a death verdict against another person and she responded that she did and that if the death penalty was warranted after evaluating all the evidence, she would. (12 RT 914-915.)

148. The prosecutor accepted the jury three times with Ms. Jordan on it, but then used a peremptory to excuse her without asking her any additional questions. (15 RT 1235-1238.)

149. The court then denied the third Wheeler motion. (15 RT 1240.)

F. The Trial Court Erred in Denying Appellant's Wheeler Motions Because it Failed to Make a Sincere and Reasoned Attempt to Evaluate the Prosecution's Explanations

150. The trial court erred in accepting the prosecutor's categorical assertion that each of the African American women that he struck would have been unable to impose the death penalty.

151. By the end of voir dire, the prosecutor had exercised 17 of his twenty peremptory challenges and used 13 of those to exclude female prospective jurors. Of those 13, five were to female African American prospective jurors (38.5%). The prosecution successfully challenged five of the six prospective female African American jurors (83%). Only one African American woman was on the final jury. This alone is sufficient to raise an inference of discriminatory motive. Federal decisions have found

prima facie cases established by similar or less disproportionate excusal of minority jurors than this. See United States v. Bishop (9th Cir. 1992) 959 F.2d 820, 822 (finding exclusion of two of four members of cognizable group established prima facie case); United States v. Lorenzo (9th Cir. 1993) 995 F.2d 1448, 1453 (finding three out of nine members excluded established prima facie case); United States v. Power (9th Cir. 1989) 881 F.2d 733, 740 (finding one of two excluded established prima facie case); United States v. Battle (8th Cir. 1987) 836 F.2d 1084, 1085 (holding trial court erred in not finding prima facie case where prosecutor used five of six peremptories to strike five of the seven African American members of the original panel.)

152. There is no "magic number" (United States v. Chinchilla (9th Cir. 1989) 874 F.2d 695, 698), but the exclusion of this many of a prevalent cognizable group cannot be dismissed as coincidental. As defense counsel noted during his Wheeler motions at side-bar: "The chances of [this number of black women being struck at random] would probably be pretty low if you mathematically figured it out." (15 RT 1231.) See also 15 RT 1236 ("If all of these people were the same color and we did a random on that and you said those five are going to be kicked out of those six ladies, the chances would be astronomical. The fact that they happen to all be blacks is more than coincidence.")

153. There is nothing in this record which rebuts the glaring inference that arises from the systematic removal of five of six female African American jurors (83%) from appellant's jury. In the absence of circumstances rebutting the inference, exclusion of five female African American jurors out of seventeen peremptory challenges (29%) when there were only a total of six female African American prospective jurors in the five panels reviewed establishes a compelling inference.

154. In applying the reasonable inference test, it is important to keep in mind that both federal and California courts have held that the exclusion of even a single juror of the group against whom the challenges were exercised may establish the violation. Wade v. Terhune, supra, 202 F.3d 1190, 1198 ("the Constitution forbids striking even a single prospective juror for a discriminatory purpose"); United States v. Vasquez-Lopez (9th Cir. 1994) 22 F.3d 900, 902 (same); People v. Fuentes (1991) 54 Cal.3d 707, 715 ("the striking of a single black juror for racial reasons violates the equal protection clause"). Moreover, a Batson violation may occur notwithstanding the fact that other members of the group are still on the jury. Matthews v. Evatt (4th Cir. 1997) 105 F.3d 907, 917, n. 8.

1. The Prosecutor's Reasons for Striking Black Women from the Venire Were Unsupported Pretexts for Purposeful Discrimination

155. A critical question in determining whether a defendant has proved purposeful discrimination in the selection of the jury is the

persuasiveness of the prosecutor's justification for his peremptory strikes. (Miller-El v. Cockrell (2003) 537 U.S. 322; Purkett v. Elem (1995) 514 U.S. 765, 768) "Implausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination." (Miller-El, supra, at p. 339 (quoting Elem, supra, 514 U.S at p. 768.)) The prosecutor's race-neutral explanations, in short, must be credible.

156. At the first Wheeler motion the prosecutor justified his challenges of Ms. Reed, Ms. Cooksie and Ms. Cooper-Lewis by arguing that as a group he "rated them very reluctantly in terms of their ability to impose the death penalty." The prosecutor argued that "Each of them demonstrated reluctance in terms of answering direct questions which called for the requirement of the imposition of the death penalty with an affirmative answer that they would impose it. They would either say, well, I think I might be able to, or I could, but their reluctance to impose it was evident . . . . It was just my general impression from their answers that **in spite of** what they said they wouldn't have the ability to impose it when it actually came down to it." (15 RT 1210-1213.) In reviewing the answers these three jurors gave on their questionnaires as well as in individual voir dire, no reluctance to impose the death penalty can be found.

157. Harriett Reed wrote on her questionnaire, in response to Question # 97 about whether California should have the death penalty, that it should and it should be imposed in certain circumstances. (14-15 Supp.1

CT 3530-3564.) When the prosecutor asked her if she could impose the death penalty against another person, she answered "Yes, if necessary." (7 RT 391.) When he asked her whether she could impose the death penalty against appellant she answered "Not just by looking at him I can't say." (Id.) When asked if she could impose the death penalty against him if the aggravating circumstances in this case substantially outweighed the mitigating and she thought the appropriate verdict was the death penalty she said "If I thought it was, yes." (Id.) Nothing in her answers showed a reluctance or inability to impose the death penalty.

158. Theresa Cooksie wrote on her questionnaire, in response to Question # 97, about whether California should have the death penalty, that she believed it should "because when [the] cold-hearted take people['s] lives, then their life should be taken also." (21 Supp.1 CT 5138-5172.) When the prosecutor asked her if she could impose the death penalty she answered "yes." (5 RT 219.) When asked if she could impose it against appellant, she answered "If it is the appropriate thing." (Id.) When asked if she could impose the death penalty after listening to all the evidence, she again responded "Yes." (15 RT 320.) Nothing in her answers showed a reluctance or inability to impose the death penalty.

159. Paula Cooper-Lewis wrote on her questionnaire, in response to Question # 98, about the purpose of the death penalty, that she believed its purpose was "to rid society of people that would be a constant threat to

society as a whole, i.e., people who commit heinous crimes and if ever released into society would jeopardize society safety." (10 Supp.1 CT 2447-2480.) When asked by the prosecutor if at the end of the trial, the circumstances warranted it, she could impose the death penalty she answered "I think I could." (10 RT 760.) When asked if she thought she had the ability if it came to that she responded "I think I do." (Id.) Although Ms. Cooper-Lewis' answers could arguably be characterized as equivocal, many other non-female African American seated jurors had just as or more equivocal answers written in their questionnaires. Further, a review of Ms. Cooper-Lewis' questionnaire shows that her answers stemmed more from her need to keep an open mind rather than a reluctance or inability to impose the death penalty. In response to Question # 95 about her general feelings on the death penalty, she wrote that "it's fair in some cases." In response to Question #99 about whether she agreed or disagree that anyone who intentionally kills without legal justification should receive the death penalty she replied "Every case has different circumstances." Finally when asked if she wanted to be on the jury she wrote "I am an open minded person willing to listen to both sides [] and judge for myself without any outside influences."

160. At the second Wheeler motion the prosecutor similarly justified his challenge on Ms. Retha Payton by explaining that "It was my general impressions from my discussion with her that she didn't have the

ability to do it [impose the death penalty]." (15 RT 1228-1229.) However, when the prosecutor asked Ms. Payton if she felt she had the ability to impose the death penalty if the circumstances warranted it, she replied in the affirmative "If the circumstances warrant it." (10 RT 739.) When asked if she could vote for the death penalty against appellant, she responded "I feel I could. I feel I could follow my mind as the case progressed if that is the way the evidence pointed." (Id.) Further, Ms. Payton wrote in her questionnaire that the death penalty was "sometimes necessary" and California should have the death penalty since it would "make more people think before committing a serious crime" and that its purpose was to serve as a deterrent to crime. (10 Supp.1 CT 2412-2446.) Nothing in Ms. Payton's answers showed a reluctance or inability to impose the death penalty.

161. At Petitioner's third Wheeler motion the prosecutor explained that he challenged Ruth Jordan because based on her responses he didn't believe she had the ability to render a death verdict. (15 RT 1235-1238.) The prosecutor's rationale for eliminating Ms. Jordan was also specious. Nothing in Ms. Jordan's juror questionnaire suggested that the prosecution could legitimately have had any concerns about her ability to serve on a capital jury. Ms. Jordan stated that being called for jury duty was a privilege, and looked back favorably on her prior grand jury experience. (5 Supp. 1 CT 1069.) In response to Question 95, which inquired about her

general feelings regarding the death penalty, Ms. Jordan stated that even though she did not believe capital punishment was a deterrent, "[I]t is necessary in our own society because so many people think it is." (Id. at 1075.) Moreover, Ms. Jordan devoutly believed that California should have the death penalty, because it would be "... a solace to the friends, family of the victims." (Id. at 1076.) Ms. Jordan added that the purpose of the death penalty was "to ensure that perpetrators and victims[']families and friends could end experiences with finality. To let the punishment fit the crime." (Id.)

162. Nor did Ms. Jordan's answers on voir dire raise plausible red flags about her ability to impose the ultimate penalty. When the prosecutor asked Ms. Jordan whether she had the ability to render a death verdict against another person, she replied, "[O]f course." (15 RT 914-915.) Ms. Jordan also affirmed that she would listen to all the evidence carefully, and evaluate whether the death penalty was an appropriate punishment. (Id.) In short, Ms. Jordan's written and oral responses conveyed consistency and thoughtfulness, and steadfastly placed her in the camp of persons capable of sentencing the proper defendant to death.

163. The prosecutor nevertheless exercised a peremptory strike against Ms. Jordan, making her the fifth African-American woman struck from the jury box. Petitioner's voir dire counsel, in turn, levied his third Wheeler motion counsel, warning again that it was "clear" that "blacks

[were] getting kicked off." (15 RT 1235.) In exasperation Petitioner's counsel asked: "How can he perempt that juror? If she was a problem before why wasn't she perempted? He has accepted her while she was on the jury." (15 RT 1233.) The prosecutor replied that he feared that he would "offend the blacks [i]n the jury" pool for striking her. (15 RT 1233-1234.) Apparently, though, as voir dire drew to a close, the prosecutor took measure of the court's rejection of the two prior Batson-Wheeler motions and determined (correctly) that his ability to have his subjective, uncorroborated impressions uncritically accepted by the court boded well should he be asked to justify striking Ms. Jordan. What is more, with the vast majority of African-American women already purged from the jury pool by virtue of the prosecutor's strikes, the chances of offending other members of the venire were greatly lessened. So he struck Ms. Jordan.

164. The prosecutor initially tried to justify his peremptory challenge of Ms. Jordan by claiming his strike had "nothing to do with the color of her skin . . . it has to do with her responses." (15 RT 1234.) As discussed, the record is clear, however, that nothing in Ms. Jordan's responses reflected an inability to impose the death penalty. In fact, Ms. Jordan was an unequivocal supporter of capital punishment, stating during voir dire that she was fully willing to consider it as punishment for another human being. (15 RT 914-915.)

165. It is noteworthy that the prosecutor seated as jurors other persons who expressed far more hesitancy about the death penalty than Ms. Jordan. For instance, when juror Billy Haley was asked the same question as Ms. Jordan about whether he could impose the death penalty if the circumstances warranted it, juror Haley offered this highly cautious response:

> Never having done it before I believe I could. Without having the experience, you know, it's kind of a hard thing to say, yeah, I definitely will, but I believe that I could do that if that's what I felt was necessary.

(5 RT 162.) Compared with the sureness and clarity of Ms. Jordan's responses, Juror Haley's relative lack of resoluteness about imposing the death penalty further undermines the prosecutor's professed rationale for striking Ms. Jordan.

166. Ms. Jordan was not sure whether life in prison was a more serious punishment than a sentence of death. But so too were many other members of the venire. Moreover, Ms. Jordan did not come close to expressing the view held by juror Willie Jackson that a life sentence led to greater suffering of the defendant than death. As Mr. Jackson explained during voir dire:

> [L]ife imprisonment, I think it would just let the person, you know, just see how they really mess up, you know. I believe it would be with them all the time, instead of giving them death and it would just be over with.

(6 RT at 266.) Even though Mr. Jackson's views had no basis in California law and might even prompt him to vote against the death penalty for particularly egregious murderers, the prosecutor allowed Mr. Jackson to sit as a juror.

167. Nor could it be claimed that Ms. Jordan's skepticism of the deterrent effect of the death penalty constituted grounds for her removal. Lela Bohn, who sat as a juror, stated on her questionnaire that she disagreed with the position of some people that "use of the death penalty will cut down on crime." (13 Supp. CT 3172.). As it happens, Ms. Bohn's and Ms. Jordan's opinion is corroborated by substantial research. See, e.g., Exh. 213 (Fagan, Capital Punishment and Capital Murder: Market Share and the Deterrent Effects of the Death Penalty); Exh. 262 (Sorensen, Capital Punishment and Deterrence); and Exh. 263 (Peterson & Bailey, Examination of the Deterrence Question).

168. With three peremptory strikes left at the conclusion of voir dire, the prosecution could have removed jurors Haley, Jackson and Bohn. But even though these jurors articulated positions of potentially equal or greater concern than Ms. Jordan with respect to the prosecution's purported criteria for assessing a juror's ability to vote for death, these three jurors, none of whom were African-American-females, were seated by the prosecution. Ms. Jordan, by contrast, was struck.

169. As the Supreme Court has held, "if a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar non-black who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson's third step." Miller-El v. Dretke (2005) 545 U.S. 231, 241. Petitioner's trial court did not require the prosecutor to follow through on his initial justification. Nor did the trial court independently explore the contradictions between the prosecutor's explanations and the actual record. Instead, the court simply admitted "I don't recall [Ms. Jordan's] responses at all" (15 RT 1234.)

170. When it came time for the prosecutor to prove that he struck Ms. Jordan because of her responses, he abruptly changed course. Unable to successfully tap the objective record of Ms. Jordan's juror questionnaire or her voir dire answers, the prosecutor offered a wholly different rationale entirely unrelated to Ms. Jordan's "responses." The prosecutor instead invoked Ms. Jordan's "demeanor." In the prosecutor's words:

> It is my impression not only from her answers to the questions but her demeanor and the fashion in which she answered them, I don't think she can impose the death penalty on any case. It doesn't matter the circumstances regardless. I don't know how to exactly express it for the record. . . . But sometimes you get a feel for a person that you just know that they can't impose it based upon the nature of the way that they say something.

(15 RT 1236-1237, emphasis added.)

171. As one legal commentator has observed, even if the written transcript of voir dire proceedings conveys "evidence of a particular type of behavior"—something distinctly lacking here—"on the record the prosecutor should be able to articulate his reasons for drawing a negative inference from it. Otherwise, general assertions that a prosecutor does not like the looks of a potential juror may present the appearance, if not the substance, of racism." Exh. 264 at bates 10038 (Hopper, Arbitrary and Capricious Equal Protection?).

172. Here, not only was the trial record silent about the behavior of the prospective juror in question, but when pressed to justify his strike, the prosecutor was profoundly (and uncharacteristically) inarticulate. "I don't know how to exactly express it . . . But sometimes you get a feel." (15 RT 1236-1237.)

173. Interestingly, while Ms. Jordan's "demeanor" provoked strong feelings in the prosecutor about her purported deep-seated predilections, the prosecutor chose not to engage in extended voir dire with Ms. Jordan to elicit what he believed were her actual views. "The state's failure to engage in any meaningful voir dire examination on a subject the state alleges it is concerned about is evidence suggesting that the explanation is a sham and a pretext for discrimination." Miller-El II, 545 U.S. at p. 246 (quoting Ex parte Travis (Ala. 2000) 776 So. 2d 874, 881.) See also, Exh. 265 at bates 10059 (Serr & Maney, Racism, Peremptory

Challenges, and the Democratic Jury) ("An attorney who for any reason feels uncomfortable with a particular juror, or feels more comfortable with another, is likely to strike the venireperson who causes the discomfort. It is not surprising that the scarcity of minority jurors mirrors the paucity of minority prosecutors.")

174. For its part, the trial court – as with the striking of Ms. Payton – did not press the prosecutor for more than his subjective, unsubstantiated, and, in this case, impossible to corroborate opinion. The court simply said, "I understand," (15 RT 1237) and denied the defense objection. Cf. Exh. 264 at bates 10138 (Hopper, Arbitrary and Capricious Equal Protection?). ("Courts should closely examine any subjective or impressionistic rationales for the removal of minority venirepersons. This category breaks down into challenges allegedly based on inferences from observed mannerisms and those motivated by idiosyncratic assumptions of the prosecutor.")

175. In sum, the proffered explanation made by the prosecution is utterly unconvincing, consisting as it does of subjective impressions that the prosecutor is at a loss to describe. Although peremptory strikes often depend on instinct, when "illegitimate grounds like race are in issue, a prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives." (Miller-El II, 545 U.S. at p. 252.) Professor Babcock observed that "[t]he rationales advanced by the

prosecutor in the *Williams* case have all the hallmarks of the discredited excuses that I, and my colleagues in the fields of psychology, law, and sociology, have repeatedly come across in research and practice" where it is common practice for prosecutors "who are unable to elicit on-the-record responses by such women that would give rise to a strike for cause, to point to inherently subjective, typically uncorroborated, and often highly ambiguous factors" as their pretextual excuses. Exh. 280 (Babcock Declaration, ¶12). Here, the prosecutor's justification carries the stench of pretext.

2. Comparative Analysis Further Exposes the Prosecutor's Rationale for Striking the African American Women Jurors as Pretext

176. The prosecutor's discriminatory motive in this case is also made clear by a comparison of the challenged jurors' qualifications with those of seated jurors.

177. In Miller-El v. Cockrell, the U.S. Supreme Court held that comparative juror analysis was among the evidence reviewing courts could consider. This Court agreed that when the objecting party presents comparative juror analysis to the trial court, the reviewing court must consider that evidence, along with everything else of relevance, in reviewing, deferentially, the trial court's ruling." (People v. Johnson, (2003) 30 Cal.4th 1302, 1325 (cert. dism. sub nom. Johnson v. California (2004) 541 U.S. 428, 124 S.Ct. 1833, 41 USLW 4348.) This Court also

held that although comparative juror analysis for the first time on appeal is not constitutionally compelled, it is not prohibited either. (Id.)

178. In the case at bar, Petitioner's trial counsel argued comparative analysis in the Motion for New Trial, where he asserted "[t]he prosecutor had not challenged any of the 5 [] black female jurors for cause. He claimed that he excused them by peremptory challenge because of his "reading" of their ability to impose the death penalty -- yet, there [sic] answers during 'Hovey' voir dire had not differed from the answers of those Caucasian female jurors who were accepted by the prosecutor." (CT 708.) "Both groups," trial counsel noted, "had undergone the same standard and routine questions and given the same expected answers." (Id.) "In other words, a review of the voir dire examination indicates that the 5 [] black female jurors were excused after giving the same routine, acceptable responses to the prosecutor's questions as those female jurors who were accepted by the DA." (Id.) In sum, Petitioner's trial counsel argued the struck jurors' "standard responses to the voir dire examination disclosed no particular reason for their exclusion – *except their race and gender*." (Id.) (emphasis added).

179. The record of jury selection in appellant's case reveals some striking similarities to the facts in Miller-El, supra, in which the U.S. Supreme Court used comparative analysis to reverse a death penalty case on habeas corpus. In Miller-El, the prosecutor used 10 of his 14

peremptory strikes to exclude 10 of the 11 black venire members. The Court noted that "happenstance is unlikely to produce this disparity." (Id., 545 U.S. 231 at p. 241.)

180. In the case of Miller-El, the Court noted that three of the proffered race-neutral rationales for striking African-American jurors pertained just as well to some of the white jurors who were not challenged and who did sit on the jury. The prosecutors explained that their peremptory challenges against six African-American potential jurors were based on the jurors' ambivalence about the death penalty; their hesitancy to vote to execute defendants capable of being rehabilitated; and the jurors' own family history of criminality. In rebuttal to the prosecutor's explanation, the Miller-El petitioner identified two empaneled white jurors who expressed ambivalence about the death penalty in a manner similar to their African-American counterparts who were subject to the prosecutorial peremptory challenges. And, as in the case at bar, four white jurors had family members with criminal histories.

181. The United States Supreme Court held that even though the prosecutor's reasons for striking African American members from the venire appear race neutral, the application of these rationales to the venire might have been selective and based on racial considerations. The Court observed that "[i]f these general assertions were accepted as rebutting a

defendant's prima facie case, the Equal Protection Clause 'would be but a vain and illusory requirement.'" Batson, supra, at p. 98.)

182. Before Miller-El clarified that comparative juror analysis is appropriate when considering Batson claims, some courts were reluctant to engage in such analysis for the first time on appeal. (See, e.g., Respondent's assertion on direct appeal that "engaging in comparative juror analysis for the first time on appeal is unreliable" (RB 37-38) (citing People v. Johnson (2003) 30 Cal.4th 1302, 1318, rev'd on other grounds, Johnson v. California (2005) 545 U.S. 162).) This argument ignores the difficulty of requiring that comparative analysis be done at trial: How can defense counsel fully undertake such an analysis until the jury is sworn and each member of the venire is known? At any point before the jury composition becomes final, counsel can compare struck jurors only with jurors who have not yet been struck but could be struck at any moment.

183. Significantly, since Miller-El clarified the use of comparative analysis, reviewing courts have undertaken such analysis. See, e.g., People v. Avila (2006) 38 Cal.4th 491, People v. Jurado (2006) 38 Cal.4th 72, People v. Guerra (2006) 37 Cal.4th 1067, People v. Schmeck (2005) 37 Cal.4th 240, People v. Gray (2005) 37 Cal.4th 168, People v. Cornwell (2005) 37 Cal.4th 50, and People v. Ward (2005) 36 Cal.4th 186. (See also, Collins v. Rice (9th Cir. 2003) 348 F.3d 1082, at pp. 1092-93, 1095-96 (conducting a comparative analysis not done by the state trial or appellate

courts, and noting that the prosecutor did not challenge seated white jurors whose answers were similar to the struck juror).) As these cases suggest, this Court does in fact engage in comparative juror analysis on appeal. It should do so here.

184. Comparative juror analysis in this case reveals that the five African-American females peremptorily struck by the prosecution—Harriet Reed, Theresa Cooksie, Paula Cooper-Lewis, Reytha Payton, and Ruth Jordan—were not only avowed supporters of capital punishment but made statements indicating they were as capable of imposing this punishment as any of the jurors who were ultimately seated. Indeed, at least one of the women struck by the prosecution, Ruth Jordan, was substantially *more* consistent and emphatic in her endorsement of capital punishment than several of the jurors who were chosen to sit.

185. In the case at bar, there were seated jurors who expressed as much or greater "reluctance" to impose the death penalty than the black women struck by the prosecutor. The responses of the challenged juror's belie the prosecutor's claim that these prospective jurors were "reluctant" or hesitant in responding to his questions. Moreover, if the prosecutor had genuinely been concerned about the capability of these women to impose a sentence of death, it is highly unlikely that he would have expressed no similar reservations about other panelists who were not African-American females but nonetheless were as or more hesitant in answering death-

qualifying questions. When there are strong similarities between two jurors and the "principal difference between them is race, the credibility of the prosecutor's explanation is much weakened." United States v. Thomas (2d Cir. 2003) 320 F.3d 315, 318. The same is true when the principle difference is gender. For example, when asked if she thought she could impose the death penalty against Appellant if the prosecution asked her to, seated juror Lela Bohn replied: "Well, if he's going to do it that doesn't meant I have to vote for death." (8 RT 520.) When asked if she had the ability to impose the death penalty, Ms. Bohn stated: "Yes, I think so." (8 RT 521.)

186. Seated juror Willie Jackson opined that life in prison without possibility of parole was a more severe sentence than death because "it would be with them all the time, instead of giving them death and it would just be over with." (6 RT 266.) When asked about his feelings towards the death penalty, Mr. Jackson stated that he thought it would apply to real horrible crimes like murder with no feeling or remorse. (6 RT 269-279.) When asked if he came to the conclusion that the death penalty was the appropriate verdict would he be able to impose it, he answered "Yes, I think so." (6 RT 271.)

187. Seated juror Lyle Stoltenberg did not think the death penalty should be imposed for crimes of passion. (8 RT 551-552.)

188. Seated juror Billy Haley told the court that he would prefer not to be a juror because it caused him a little discomfort. (5 RT 153-154.) When asked about his views on the death penalty he stated that he believed some people could be rehabilitated and others couldn't but he would need to decide on a case by case basis. (5 RT 160.) When asked if he would have the ability to impose the death penalty, he answered: "Never having done it before I believe I could. Without having that experience, you now, it's kind of a hard thing to say, 'yeah, I definitely will,' but I believe that I could do that if that's what I felt was necessary." (5 RT 162.)

189. As another example, Wanda Muncey, a white prospective juror, initially claimed during her Hovey voir dire that she would not have "any qualms" about imposing a sentence of death. (10 RT 687.) But shortly after making this statement, she had the following exchange with the prosecutor expressing more tentativeness about sentencing someone to death:

> PROSECUTOR: If you were placed in that situation, are you the type of a person that could impose the death penalty on another person?
>
> JUROR MUNCY: That's something I don't know, I've never had to do.
>
> PROSECUTOR: If we get to that situation where you've heard all the evidence and you believe because of the things that Mr. Williams has done in his life he deserves the death penalty, could you vote for that?
>
> JUROR MUNCEY: I think I could.

(10 RT 690.)

If this colloquy left any doubt that Ms. Muncey harbored qualms about imposing a death sentence, a subsequent exchange laid bare her hesitancy:

> PROSECUTOR: Do you want to be a juror on a case like this? You say it's your first experience.
>
> JUROR MUNCEY: Yes. Well, to be truthful I'm scared to death. I don't know how I would react being the first time on such a harsh case.
>
> PROSECUTOR: Would you be fair?
>
> JUROR MUNCEY: I think I can be fair but I'm just scared because it is my first time.

(10 RT 691.)

190. Yet, unlike with prospective jurors Reed, Cooksie and Cooper-Lewis, the prosecutor never questioned Ms. Muncey's personal commitment to imposing a sentence of death. (Ultimately, Ms. Muncey was peremptorily struck by the defense *after* the prosecution stated that it accepted the jury as presently constituted (15 RT at 1224-1225.) Ms. Muncey was then replaced on the panel by Ms. Retha Payton, an African-American women who was the subject of the defense's second Wheeler motion, discussed below.)

191. None of the five excluded jurors challenged in the Wheeler-Batson motions gave any more equivocal answers than the seated jurors discussed above. The prosecutor, in other words, did not exercise his

peremptory strikes against persons who expressed some equivocation about voting for the death penalty; he struck **black women** who did so. If the prosecutor was indeed so concerned about equivocal answers and purported reluctance to impose the death penalty, with three peremptory challenges left, he would have struck some of the above-mentioned seated jurors. None of these jurors, though, were African American women.

192. That leaves the prosecutor's alternative argument that these three women were struck because of their demeanors: "It was just my general impression from their answers that in spite of what they said they wouldn't have the ability to impose [a death sentence] when it actually came down to it. That is my reason for excusing them." (15 RT 1212, emphasis added.)

193. The prosecutor's gut instinct fails to qualify as the sort of "clear and reasonably specific" explanation contemplated by Batson, 476 U.S. at 98. Moreover, if the prosecutor was relying on the demeanor or behavior of the jurors in exercising his peremptory strikes, it was the duty of the trial court to engage in a reasoned and sincere effort to scrutinize the plausibility of the prosecutor's explanations. (People v. Hall (1983) 35 Cal. 3d 161, 167-168.) The trial court failed to do so, choosing instead to deny the defense's Batson-Wheeler motion without explanation.

194. For the reasons stated above, the only plausible explanation for the prosecutor's exercise of his peremptory challenges against these potential jurors is impermissibly rooted in race and gender.

3. The Trial Court Uncritically Accepted the Prosecutor's Specious Justifications

195. Determining whether the opponent of the strike has proved purposeful racial discrimination "demands of the trial judge a sincere and reasoned attempt to evaluate the prosecutor's explanation in light of the circumstances of the case as then known, his knowledge of trial techniques, and his observations of the manner in which the prosecutor has examined members of the venire and has exercised challenges for cause or peremptorily . . . ." People v. Hall (1983) 35 Cal.3d 161, 167-168. "[A] truly 'reasoned attempt' to evaluate the prosecutor's explanations [citation] requires the court to address the challenged jurors individually to determine whether any one of them has been improperly excluded. In that process, the trial court must determine not only that a valid reason existed but also that the reason actually prompted the prosecutor's exercise of the particular peremptory challenge." People v. Fuentes (1991) 54 Cal.3d 707, 720. "Preferably, in ruling on a Wheeler motion, the trial court should state expressly its determination as to the adequacy of the justification proffered with respect to each peremptory challenge." People v. Sims (1993) 5 Cal.4th 405, 431.

196. The trial court's ruling on this issue is reviewed for substantial evidence. However, "this deferential standard of review" is applied "*only when* 'the trial court has made a sincere and reasoned attempt

to evaluate each stated reason as applied to each challenged juror.' (citations omitted.)" (People v. McDermott, supra, 28 Cal.4th at p. 970) (emphasis added.)

197. Here, because the trial court failed to make "a sincere and reasoned attempt to evaluate the prosecutor's explanation in light of the circumstances of the case as then known,..." (People v. Hall (1983) 35 Cal.3d 161, 167-168.), the trial court's findings are not entitled to deference. (People v. Fuentes, supra, 54 Cal.3d at p. 718.). Far from "address[ing] the challenged jurors individually to determine whether any one of them [was] improperly excluded," (McGee, supra, 104 Cal.App.4th at p. 569), the trial judge (1) acknowledged having no independent recollection of the behavior or demeanor of any of the challenged jurors, (2) accepted the prosecutor's stock explanation that notwithstanding their answers to the contrary in voir dire, the jurors' were unable to impose a death sentence, and (3) reaffirmed that in its experience, female black jurors as a class routinely were unable to render death verdicts.

198. The trial court was obligated to "determine not only that race-neutral grounds to challenge an African American prospective juror exist in the abstract, but also that the prosecutor's statement that he *relied* on those grounds is credible." People v. McGee, supra, at p. 571 (emphasis in original); People v. Tapia (1994) 25 Cal.App.4th 984, 1013-1014. "An explanation that seems credible in isolation may appear pretextual when

viewed against a pattern of race-based exclusion of jurors." People v. McGee, supra, 104 Cal.App.4th at pp. 571-572. "If reasonable grounds exist to justify a challenge, but the trial court does not believe those grounds *in fact* motivated the prosecutor, the Wheeler motion must be granted and a new jury impaneled. Id. (emphasis in original.)

199. Here, the trial court failed to address the challenged jurors individually to determine whether any one of them had been improperly excluded. Specifically, the court failed to "determine not only that a valid reason existed [for the prosecutor's exercise of his peremptory challenge], but also that the reason actually prompted the prosecutors exercise of the particular peremptory challenge." People v. Fuentes (1991) 54 Cal.3d 707, 720. The court did not provide lawfully adequate reasons for accepting the prosecutor's explanations. Accordingly, the court's denial of the defense's Wheeler motions is not entitled to deference on review.

200. At the first Wheeler motion regarding the exclusion of the first three African American women, the trial court first berated Petitioner's voir dire counsel for exercising a peremptory against a prospective juror who, in the court's words "looked like he might be black". (15 RT 1211.) (This juror, it turns out, was not black.) Then the court asked the prosecutor to justify his challenges. The trial court listened to the prosecutor, but instead of assessing the credibility of the prosecutor's proffered explanation, cf. Miller-El v. Cockrell, (2003) 537 U.S. 322, 339;

People v. Johnson (2003) 30 Cal.4th 1302, 1320, the court simply responded: "The motion is denied." (15 RT 1213.)

201. At the second Wheeler motion, the trial court told defense counsel that they couldn't go by the numbers alone and asked the prosecutor to bring up his sheet so he could put his reasons on the record. (15 RT 1227.) The trial court noted that it hadn't made a mark next to Ms. Payton, but that at some point the court had stopped making marks on its Hovey sheet. (15 RT 1228.) After the prosecutor explained why he excused Ms. Payton, the trial court failed to make a credibility determination of the prosecutor's explanation, stating simply that it didn't "have anything on this one at this time," but that it "would accept Mr. McCormick's explanation as to his exercise of the peremptory, so I would not make a finding that there is a Wheeler violation." (15 RT 1230-1231.)

202. At the third Wheeler motion regarding the exclusion of Ms. Jordan who had previously been accepted by the prosecutor, the court was unable to make the necessary credibility determination regarding the prosecutor's proffered explanation; instead the court admitted that it did not "recall her responses at all." (15 RT 1234.) The prosecutor then observed that "sometimes you get a feel for a person that you just know that they can't impose it based on the nature of the way they say something." (15 RT 1237). Such a "gut-level" response, however, is not a race-neutral reason for striking Ms. Jordan; it is no reason at all. See e.g., Weddell v.

Weber, (D.S.D. 2003) 290 F.Supp.2d 1011, 1027. It is apparent by this point in the jury selection process that an understanding had developed between the prosecutor and the court facilitating the acceptance of the "demeanor" pretext. Professor Babcock describes the dynamic thus: "Over time, through experience, prosecutors learn to what extent which trial courts will uncritically accept what subjective excuses, such as a juror's 'demeanor.'" Exh. 280 (Babcock Declaration, ¶12).

203. It does not withstand scrutiny to claim that the trial court's evaluation of the prosecutor's justifications was *reasoned*. Rather, the trial court's own biased predilections against black women in capital cases simply cohered with the prosecutor's subjective reasons for striking such jurors, whether the court made notes of its views of particular jurors in advance of the Wheeler motions (see 15 RT 1228) or failed to make any written record whatsoever. The court did not offer, and the record does not reflect, anything more than a perfunctory acquiescence to the prosecutor's proffered reasons. All that we are left with is the prosecutor's inchoate, subjective feelings that the vast majority of African-American females in the venire could not fairly serve on a capital case. As in Miller-El v. Dretke (2005) 545 U.S. 231 ("Miller-El II"), closer examination reveals the prosecutor's neutral-sounding reasons to be not neutral at all.

204. That Court failed to fulfill its duty to make a sincere and reasoned and timely attempt to evaluate the prosecutor's proffered

rationales is evidenced by the Court's acknowledgement of this fact 462 days after voir dire proceedings ended and its tardy attempt to somehow make things right.

205. At the hearing on Petitioner's motion for new trial, the court expressed concern that its resolution of the *Wheeler* issues over one year earlier were lacking in substance. In the court's words: "...my only concern is that the Wheeler objection, the court did not make a very good record at that time." (54 RT 4163.)

206. The court's solution was to ask the prosecutor to put his notes from voir dire on the record. The prosecutor then proffered what amounted to the same explanations that he provided the previous year in voir dire. What the trial court did not do, however, was what it should have done but didn't do during voir dire – namely, make a sincere and reasoned attempt to evaluate the prosecutor's excuses. As a result, we are left with a record containing the court's candid acknowledgement that it does not think African American women make good capital jurors, and the court's guilty concern that the prosecutor's *Wheeler* defenses needed more grounding, but no sincere and reasoned evaluation by the trial court of the prosecutor's excuses. In short, the trial court merely repeated, and even compounded, its original failure in an attempt to shore up the unconstitutional jury selection process over which it presided and to which it acquiesced.

G. Discovery Provided by the District Attorney's Office Proves the Discriminatory Exercise of Peremptory Strikes

207. During discovery in Petitioner's post-conviction proceedings, the State made available to Petitioner a document from the district attorney's files containing the prosecutor's hand-written notes concerning prospective jurors. Exh. 277 (DDA Voir Dire Notes). Petitioner asserts that the handwriting on the document is the prosecutor's because it matches the handwriting of other documents signed by Deputy District Attorney McCormick, such as his handwritten letter to co-defendant Patrick Linton. Exh. 254 (Handwritten letter from McCormick to Patrick Linton, dated 6-11-92). What is more, the prosecutor, during the Wheeler motion concerning the striking of Ms. Payton, observed that "[n]ext to most names I don't write anything but I've written next to her, ambivalent, no opinions'." (15 RT 1229). This statement accurately describes certain notations on the document at issue here.

208. The prosecutor's voir dire notes list the names of many prospective jurors, have small notations next to some of names, and indicate the resolution of the Wheeler motions. The handwritten notes provide graphic evidence of the race and gender considerations at play for the prosecutor during jury selection. One of the most significant and revealing of these notations is the marking "**F/B**". This marking appears next to the names of those prospective jurors who are **Black Females.**

These markings, and the prosecutor's voir dire notes as a whole, leave little doubt that the prosecutor fixated on and methodically tracked the race and gender of the prospective jurors. No other notation on the page relates to a race or gender other than those singling out African American women. All five of the women whose names appear alongside the "F/B" notation were peremptorily purged by the prosecutor.

209. The prosecutor's voir dire notes also list three instances where a Wheeler motion was made and the resolution of those motions: ("1st Wheeler. (Explanation) Denied"; "Miss Payton (F/B) 2nd Wheeler 'ambivalent; no opinions' CT finds sufficient reason on Payton"; and "3rd Wheeler [...] see notes [...] CT accepts explanation"). That these notes memorialize such details and document the court's acceptance of the prosecutor's proffered justifications indicate that the prosecutor was also tracking what type of justifications the trial court was willing to accept to overcome a Wheeler objection.

210. The fact that the prosecutor fastidiously recorded "**F/B**" next to the names of particular jurors but did not bother to chronicle material characteristics about these or other prospective jurors speaks volumes about the prosecutor's criteria for his exercise of peremptory strikes. The race and gender-conscious notations that dominate his voir dire notes cannot be justified by neutral explanations.

211. In addition to the above-described markings, there is a section that appears to list the racial make-up of the final jury. This portion of the document reads:

5 Black (4 m 1 F)
7 White

Exh. 277 (DDA Voir Dire Notes).

212. This notation further confirms the central role that race and gender played for the prosecutor in selecting Petitioner's jury. It is telling that Petitioner's prosecutor did not see fit to identify the prospective or final jurors by other characteristics, for example, their levels of education, their ages, marriage statuses, or the socio-economic classes to which they belonged. He did not make markings about what books or newspapers they read or TV shows they watched; whether they were employed full-time, part-time, or even at all; whether they owned a gun, their own home, or an RV. Attorneys who conduct voir dire typically look for a slew of constitutionally permissible traits which can provide insight into the predilections, biases, and reasoning abilities of members of the jury pool. The voir dire notes here, by contrast, indicate that of supreme, if not paramount importance for Petitioner's prosecutor was the race and/or gender of the jurors.

213. Racially-motivated conduct by the prosecutor may also have been at the root of a lawsuit brought by the National Conference of Black

Lawyers, Inc., that named the prosecutor, in his official and individual capacity, as a defendant. Exh. 276 (National Conference of Black Lawyers Lawsuit, Civil Docket for Case #95-CV-1204). With the provision of adequate funding, discovery, investigation, and an evidentiary hearing, Petitioner would be able to further develop this claim.

H. The Prosecutor's Pattern of Race and Gender Discrimination Tainted Prior Capital Trials and is Evidence of Purposeful Discrimination in Petitioner's Case

214. Petitioner's prosecutor had a history of exercising peremptory strikes in a discriminatory manner. When this history is taken into account, Petitioner meets the burden of the Swain test in establishing prosecutorial misconduct. Petitioner's ability to prevail under Swain is further enhanced when the systemic violations of Wheeler- Batson by the Los Angeles County District Attorney's office generally, before and during the time of Petitioner's trial, are considered.

215. Seven months prior to prosecuting Petitioner, Deputy District Attorney McCormick sought the death penalty against Carmen Ward. People v. Ward Case No. S142694 (habeas corpus), S019697 (automatic appeal), Los Angeles Super. Ct No. A647633. During Mr. Ward's jury selection, Petitioner's prosecutor engaged in the same discriminatory pattern of exercising peremptory strikes against African American women and Petitioner's trial court permitted these strikes to occur. (See Exh. 275

at 105 (People v.Carmen Lee Ward, Appellant's Opening Brief) [hereinafter "Ward AOB"].) During Mr. Ward's capital jury selection, the prosecutor exercised seven of nine peremptory challenges to remove African-Americans from the jury panel, six of whom were African-American females, prompting the defense to raise six separate Wheeler motions. (Ward AOB at pp. 105, 154). (See also id. at p. 108, citing 19 RT 1918.) (prosecutor acknowledging striking "an extraordinary number of female blacks").* As in Petitioner's case, the justifications offered by the prosecution for these strikes were unsupported by the record and betrayed the prosecutor's deep-seated stereotypical beliefs connected to race and/or gender.

216. The prosecutor's conduct in the Ward voir dire, described more fully below, constitutes powerful evidence pursuant to Swain in support of Petitioner's claim that the selection of Petitioner's jury violated principles of equal protection as set forth in the state and federal constitutions.

217. In the Ward case, the prosecutor exercised his first peremptory challenge against J.D., an African-American woman. (Ward AOB at 106, citing 18 RT 1914.) He levied his second peremptory challenge against an African-American man, L.H. (Ward AOB at 106,

* The portions of appellate briefing in the Ward case cited by Petitioner are included as Exh. 275 but cites are to the Ward documents rather than exhibit.

citing 18 RT 1914-1915.) The defense immediately objected and asserted that "there may be a pattern developing where black jurors would be excused." (Ward AOB at 106, citing 18 RT 1915.) The trial court, without inquiry, stated that it was refusing to find a prima facie case of a Wheeler violation. (Ward AOB at 106, citing 18 RT 1915.)

218. The prosecutor in Ward exercised his third peremptory challenge against someone who was not African-American, prospective juror S.B., but then used his fourth peremptory to strike another African-American woman, C.B. (Ward AOB at 106, citing 18 RT 1916.) The defense made a second Wheeler motion. (Ward AOB at 106, citing 18 RT 1916.) The trial court observed that the prosecutor had used peremptories to remove three of the eight prospective African-American jurors who had been empanelled. The court nevertheless stated that it did not "at this point feel there is a conscious exclusion." (Ward AOB at 106, citing 18 RT 1916.)

219. Counsel for Ward took pains to point out that not only had the prosecutor used three of four challenges against African-Americans, but that two of his strikes were against "black women and that is another identifiable class separate from blacks." (Ward AOB at 107, citing 18 RT 1916-1917.) The following colloquy ensued:

> THE COURT: That is true. But we have had seven black women on the panel and one black male on the panel, so I can't go by that; that is what we have. It is three

out of four. I don't feel that we are excluding them. But, on the other hand, because there are three out of four perhaps you would like to explain.

PROSECUTOR: Well, I don't think it is necessary but I would anyway. Clearly with Mr. [L.H.], when I asked him questions about gangs, he was offended. His answers were antagonistic towards me personally.

THE COURT: Right.

PROSECUTOR: With respect to the first female black who was kicked -- I believe it was Miss [J.D.] -- her answers during the *Hovey* portion were extremely hesitant in terms of imposition of the death penalty. In fact she was brought back by questioning under defense counsel where she said she couldn't impose the death penalty and then she said, well, under the correct circumstances perhaps she could.

THE COURT: Right.

PROSECUTOR: The same could be said for Miss [C.B.], and I don't intend to try this case with people, while they say they can impose the death penalty, my own perception of them during questioning and answering that in reality they can't. And that was my perception of those individuals.

THE COURT: The first two I remembered why. So for that I would still deny the objection or overrule it.

(Ward AOB at 107, citing 18 RT 1916)

220. A few things are noteworthy about this colloquy. First, the trial court suggested that because African Americans remained on the panel after the strikes it was disinclined to find a Wheeler violation. But as previously discussed, case law makes clear that the correct Wheeler-Batson inquiry looks only to whether

jurors who belonged to a protected class were improperly struck, *not* whether other members of the protected class were not (yet) struck. Accordingly, the trial court was erroneously pre-disposed towards finding no Wheeler violation.

221. Second, the prosecutor in Ward struck black females *despite the fact* that they stated they could impose the death penalty. In so doing, the prosecutor was acting upon what he characterized for the court in Ward to be his "perception[s]" of these jurors. The parallels to Petitioner's case are undeniable. In Petitioner's jury selection, the same prosecutor told the same court that "[i]t was just my **impression**" that juror Payton, a black female "didn't have the ability in spite of what her answers were . . ." to follow the law and impose a sentence of death. (15 RT 1230) (emphasis added.) Same with the prosecutor's peremptory dismissal of three other prospective jurors in Petitioner's case -- Ms. Reed, Ms. Cooksie and Ms. Cooper-Lewis. For each of these African American women, according to the prosecutor, "[i]t was just my general impression from their answers that **in spite of** what they said they wouldn't have the ability to impose [a death sentence] when it actually came down to it." (15 RT 1210-1213.) As argued above (and further below), the prosecutors

"impressions" and "perceptions" of these women's abilities were themselves grounded in racial and gender stereotypes.

222. The prosecutor, apparently emboldened by the Court's denial of this Wheeler motion, used his next peremptory challenge to strike an African-American woman, M.E. (Ward AOB at 108, citing 18RT 1918.) This strike prompted the defense's third Wheeler motion which led to the following colloquy:

> THE COURT: I take it this is another Wheeler motion.
>
> MR. SKYERS: Another Wheeler motion. The pattern is consistent in developing more. It is all blacks except for Mr. Brown.
>
> PROSECUTOR: Under some circumstances that might be true. We have an extraordinary number of female blacks who just happened to be grouped in the first pattern. I think my reasons for kicking them are based solely on the Hovey questions that were asked and their responses to those. The fact of the matter is that we still have five female blacks sitting up there.
>
> MR. SKYERS: I don't think that is the criteria.
>
> THE COURT: They can bring their motion to protect their record.
>
> PROSECUTOR: I understand.
>
> THE COURT: I will overrule the objection.

(Ward AOB at 108, citing 18 RT 1918-1919.)

223. This colloquy is noteworthy for a couple of reasons. First, in responding to the Wheeler motion, the prosecutor engaged in a complete

non-sequitur that lacks any foundation in law or logic. The fact that the prosecutor did not peremptorily strike *all*, or even most, of the African America females from the panel does not immunize his strikes from constitutional review and certainly does not render those strikes per se acceptable. See United States v. Vasquez-Lopez, supra., 22 F.3d at p. 902 ("we have held that the Constitution forbids striking even a single prospective juror for a discriminatory purpose"); Allen v. Lee, supra., 366 F.3d at p. 359 (observing that the number of African-Americans who served on the jury "only shows that race may not have been a determinative factor *every* time an African American juror was called to the jury box.) By advancing this non-sequitur, the prosecutor either revealed his ignorance of his constitutional obligations with respect to jury selection, or his willingness to deceive the court about the appropriate standard by which it should assess his strikes.

224. Second, the colloquy demonstrates the lack of scrutiny to which the trial court subjected this—and each other justification—offered by the prosecutor in response to the Wheeler motions. The trial court failed to inquire into the subject matter of the Hovey questions to which the prosecutor was referring, or the responses to those questions. The court did not indicate that it independently recollected what those questions or responses were, or affirm that those responses were sufficient grounds to justify the prosecutor's strikes. It simply overruled the Wheeler motion.

225. After general voir dire of another group of prospective jurors, the prosecutor used his next available peremptory challenge to again strike an African-American women, R.B. (Ward AOB at 108, citing 18 RT 1976.) The defense made its fourth Wheeler motion, to which the prosecutor responded as follows:

> PROSECUTOR: Again I will explain with the others I have already put on the record the reasons I kicked them.
>
> Her, it wasn't so much the questions during the Hovey. Although I thought she was somewhat hesitant, she could impose the death penalty if the circumstances justify it.
>
> I looked back at her questionnaire, though, and she describes the death penalty in all reality as a horrible thing. She says the death penalty may be appropriate for what she describes as hideous crimes. She indicated that she wants to look inside the person's mind. And refers to releasing people committed back into the public.
>
> She was wearing probably thirty silver chains around her neck. She had rings on every finger of one of her hands. She had probably twenty braclets [*sic*] on one of her wrists. And to me it was somewhat unconventional. She didn't fit with the rest of the jurors that were up there, and I didn't feel comfortable as her being able to reach a decision with the other members who are currently on the panel.
>
> MR. SKYERS: I just don't think that is sufficient, to weigh whether someone fits. There is nothing that says they have to fit with anyone else. They just have to be persons. And her jewelry and clothing I think is completely irrelevant to that choice. I see no reason. I see a pattern that is damaging to the defendant in this case.

MR. HIGGINS: Additionally, your honor, there will always be individual differences between jurors, and I think the pattern is very clear that Mr. McCormick is going after blacks and females in particular. I don't see the reasons given as being sufficient to justify excluding her, being a member of the class to which she belongs.

PROSECUTOR: Well, in addition her body language, during the entire time I was talking to her yesterday she had her arms folded. And she didn't seem to have the same rapport that Mr. Skyers had with her; she was smiling and appeared very comfortable with him. She seemed somewhat uptight with me. It was something that I felt personally uncomfortable in keeping her.

MR. SKYERS: I don't think it is enough.

THE COURT: At this point I will accept it and overrule the objection.

(Ward AOB at 109-10, citing 18 RT 1976-1977.)

226. Necklaces, rings, bracelets. On a black woman. The prosecutor's reasons for striking R.B. are quintessential expressions of race-and-gender bias. This apparel that R.B. chose to wear, in all likelihood, was an expression of her cultural heritage. In expressing his discomfort with her attire, the prosecutor was revealing his deeper discomfort with African American women generally, including those serving on capital juries. So too, J.B.'s "folded" "arms," which the prosecutor interpreted to be a sign of hostility, not of positive qualities such as strength and resoluteness.

227. Many academics, including research psychologists and cultural historians, have written widely on how the stereotyped views of African-American women held by persons such as the prosecutor tend to act as a "filter[] that influence" how the subject interprets the answers and behavior of the object—in this case the prospective black women jurors. Exh. 267 at bates 10212 (Whitley & Kite, Psychology of Prejudice and Discrimination). "In general, ambiguous behaviors—those that can be interpreted in more than one way- are assimilated to the stereotype." Id. The prosecutor's justifications which seized on highly ambiguous cues amounted to thinly-veiled expressions of his biases. His strikes rested wholly on his stereotypes, and as such were unconstitutional.

228. The issue of the prosecutor's racial and/or gender animus arose again when he peremptorily struck an African-American woman, H.V., as an alternate juror. The defense again made a Wheeler motion. The following colloquy ensued:

> MR. SKYERS: We are here again for the motion on Wheeler. Again we have a black female and I think that we are seeing the same pattern and continuing rejection of black female jurors.
>
> THE COURT: Do you want to explain? I don't find it at this point. Since we have started the alternates, I'm not going to make a finding of a pattern at this point. Do you wish to explain?
>
> PROSECUTOR: I can explain this one and the next one I'm going to make. There are two jurors who are among the alternates who had extremely weak answers in

terms of the Hovey questions. Both had -- were extremely reluctant in terms of their ability to impose the death penalty. I consider both of them in terms of their demeanor during my questioning to be death skeptics, for lack of a better term. And I excused Miss [H.V.] for that reason. Any my intention is to excuse Miss [C.P.] for exactly the same reason.

MR. SKYERS: And there will be an objection to that. I think the pattern has been clear from the beginning of this case.

THE COURT: I went back and checked my notes on the Hovey questions, and I have a lot of these jurors marked as potential peremptory because of their manner of responding during the Hovey. This is the reason I have been very reluctant to find any type of prima facie violation of the [*sic*] Wheeler because I did notice that they were very reluctant. They tried to give an answer that they would follow the instructions of the court but they did have problems. I think I had Miss [H.V.] marked as a possible and I had a question mark for that very reason, and I think it is only fair that I indicate that I did notice it during the Hovey.

MR. HIGGINS: Your honor, if that is true, I might make an observation that that interpretation of the responses of these people may simply be a cultural factor that Mr. McCormick is interpreting as such. I think that each of the people passed the test, and because they may have difficulty with the question of the death penalty, I don't think that should exclude them.

And to only get people on the jury who belong to a certain sex or racial or ethnic group because of their experiences or because of their cultural background fail to tell us explicitly about the difficulties that they have, so I think that the pattern has been established based upon the sex and ethnicity of these jurors.

THE COURT: I think you are right. It could be cultural. But, on the other hand, we had some who were black

who had no problems. And as I indicated, it could not have excused them for cause at all and I would not have because they did pass Hovey for cause but they did have problems, and I do feel that the cases do not preclude anyone, whether it is the defense or the prosecution, from excusing and exercising a peremptory should they feel that there was a leaning one way or other. If I am wrong, I would be happy to be corrected.

MR. HIGGINS: Although there are individuals remaining of that same ethnic group, I think that it is clear that the pattern is established and this is the thing that we are trying to guard against, establishing a pattern of excluding certain individuals because of their race and ethnicity, not basically because of that but because there is a misunderstanding of the culture.

THE COURT: This is what I am saying. I certainly in making my little notes as I took this, it wasn't because they were black but I gauged it all on their responses and their demeanor, that I sat here and I made my little notes for myself, just for my own information, and I certainly didn't do it because they were black. And I agree with you, we do have a great number of them who are black and this is the reason I invite Mr. McCormick to explain, even if I will not make a prima facie finding.

MR. MCCORMICK: I would like to add also that there are four female blacks who are currently impaneled on our jury and one male black so out of the 12 jurors, five of them are black.

THE COURT: Yes. So at this point I am not going to sustain the objection.

(Ward AOB at 110-12, citing 18 RT 2011-2014.)

229. At his next opportunity, the prosecutor struck the African-American woman "C.P." from the panel of alternate jurors. (Ward AOB at 112, citing 18 RT 2014.)

230. As noted above, the fact that, in the trial court's words, "we had some [seated jurors] who were black who had no problems," is not grounds for crediting the prosecutor's justifications for striking many -- or any -- other African American female prospective jurors from the venire.

231. To the court's credit, though, it acknowledged that the prosecutor's evaluation of the black women jurors' demeanors may have been filtered through the prosecutor's "cultural" predilections (a polite way of saying that the prosecutor perhaps misunderstood and misinterpreted these women's behavior because he harbored racial and/or gender ignorance or bias.) See Exh. 267 at bates 10212 (Whitley & Kite, Psychology of Prejudice and Discrimination) (noting that stereotyped views of race and/or gender act as a "filter[] that influence" how "ambiguous behaviors" are interpreted, so that those behaviors "are assimilated to the stereotype.").

232. But, for all the reasons set forth in Claim II, the trial court, itself, was admittedly laboring under similar ignorance or bias. ("I have found that the black women are very reluctant to impose the death penalty; they find it very difficult no matter what it is." 15 RT 1240.) As a result, the trial court was incapable of fairly and independently assessing the

demeanors of the African American female jurors. Hence, the trial court's affirmation of the prosecutor's justifications—that *despite* the jurors' responses under oath on voir dire, they could not be trusted to impose the death penalty—was deeply suspect and unworthy of credit.

233. In both the Ward case and Petitioner's case, the prosecutor's excuses for systematically purging the majority of African American women from the two capital juries are unsupported or unsupportable by the record, and are belied when comparative juror analysis is undertaken. As Professor Babcock observes: "Although California Supreme Court did not find a *Batson* violation in the *Ward* case on direct appellate review, the prosecutor's apparent pattern and practice—established in the *Ward* case and continued in Petitioner's case—of purging African American women from the capital juries of African American defendants is powerful evidence that (1) the prosecutor's exercise of his peremptory challenges were methodical, not happenstance or coincidence, and (2) that the prosecutor's justifications for his strikes were suspect and, at the very least, should not have been accepted at face value." Exh. 280 (Babcock Declaration, ¶13).

234. With respect to the prosecutor's justifications, Professor Babcock states:

> It is my opinion that the prosecutor's proffered rationales for peremptorily striking the vast majority of African American female members of the *Williams* venire fall within the

category of excuses that have historically been offered up as pretexts for in fact striking the jurors on the basis of their race and/or gender.

Exh. 280 (Babcock Declaration, ¶ 7).

I. The Prosecutor's Pattern of Discriminatory Juror Strikes is Part of a Larger History of Prosecutorial Misconduct During Jury Selection within Los Angeles and Across California

235. The prosecutor's history of race and gender-based peremptory strikes, in the Ward and Williams cases, is relevant to the reviewing court's assessment of Petitioner's Wheeler motions. So too is the pattern and history of discrimination in the Office of the Los Angeles County District Attorney, and in other California D.A.'s offices, with respect to jury selection.

236. As a general matter, "[p]rosecutorial misconduct occurs with some frequency in this state and prosecutors are rarely disciplined for their misconduct," Santa Clara University law professor Cookie Ridolfi concluded after conducting a study of this issue. Exh. 246 (Weinstein, Lawyers Clash Over Prosecutorial Misconduct.) The study, commissioned by the independent California Commission on the Fair Administration of Justice, reviewed cases over a ten year period and found 2130 instances where misconduct was raised on appeal. Misconduct was established in 443 of those cases. Exh. 247 (Ridolfi, Prosecutorial Misconduct – A

Systemic Review) (The study noted several reasons why the reported figure of prosecutorial misconduct was low. Id.)

237. Of particular significance, the report noted that California courts issued 586 decisions involving Wheeler-Batson errors. Id. Of those cases, error was found in twenty cases that resulted in remand or outright reversal. Id. During most of this period, pre-Miller-El, California courts accepted virtually any justification offered by the prosecution for the exercise of peremptory strikes, perpetuating what Justice Breyer describes as the "better organized and more systematized . . . use of race- and gender-based stereotypes in the jury-selection process. . . ." Miller-El II, 545 U.S. at p. 270 (Breyer, J., concurring).)

238. The pattern of prosecutorial discrimination in the selection of juries reported by this study (and evidenced in the selection of the Ward and Williams juries) is reflective of the unlawful jury selection practices that infected the Los Angeles County District Attorney's Office in which Petitioner's prosecutor was employed, before and during the time of Petitioner's trial. This practice of prosecutorial discrimination in the selection of juries by Los Angeles County prosecutors has been documented in several other criminal cases, including cases where court has reversed capital convictions because of it. See, e.g., People v. Turner (1986) 42 Cal.3d 711, 714 (finding Los Angeles County prosecutor used peremptory challenges to strike prospective jurors in a racially

discriminatory manner and reversing capital conviction); People v. Fuentes (1991) 54 Cal.3d 707 (same). Other incidents of discrimination in the selection of juries include:

a. A Los Angeles County prosecutor unconstitutionally struck three prospective African-American jurors on the basis of their race, and more specifically used two of his nineteen peremptory challenges to remove the only two African-American prospective jurors who had been passed for cause and otherwise would have served on the jury in the capital case of People v. Stanley Williams, Los Angeles Superior Court Case No. A194636, California Supreme Court Case No. S004365. See also Williams v. Woodford (9th Cir. 2005) 396 F.3d 1059. In addition, that prosecutor used a peremptory challenge to strike the only African-American who had been drawn as an alternate juror. Id.

b. A Los Angeles County prosecutor unconstitutionally struck at least one Hispanic juror, and possibly four other Hispanic jurors on the basis of race in the 1985 capital case of People v. Silva (2001) 25 Cal. 4th 345/

c. A Los Angeles County prosecutor struck six black jurors on the basis of race in the capital case of People v. Juan Prentice Snow, Los Angeles Superior Court Case No. A560682, California Supreme Court Case No. S018033. See also People v. Snow (1987) 44 Cal. 3d 216.

d. The Los Angeles County District Attorney trained prosecutors to engage in discriminatory and unlawful jury selection practices and prosecutors engaged in a pattern and practice of peremptorily challenging jurors on the basis of race in numerous non-capital prosecutions shortly before and after Mr. Ward's case, including but not limited to the 1986 robbery trial of Andre Johnson; the 1990 murder trial of Robert Turner; trial in the 1990s for murder of Delbert Paulino; trial in the 1990s of Sarina Muhammad for murder; the 1996 trial for robbery of Eppie McClain; the 1998 trial of Terry Williams; the trial in the 1990s of David Jamison; the trial in the 1990s of Joann Turner; the trial in the 1990s of Michael Gray; and the trial in the 1990s of Timothy Smith.

See Exh. 203 at bates 6371-72 (Ward, Amended Pet. For Writ of Habeas Corpus).

239. The documented pattern and practice of the constitutional misuse of peremptory challenges on both a county and state-wide basis provides powerful additional support for reversing Petitioner's conviction. (See, Swain v. Alabama (1965) 380 U.S. 202 (prosecutor's history of racial bias is relevant to support an inference of discrimination); cf., Miller-El II, 545 U.S. at pp. 252-266 (finding Batson error based on cumulative factors, including previous discrimination in jury selection by prosecutor).)

240. With the provision of adequate resources, Petitioner's post-conviction counsel would fully investigate the pattern of discrimination exhibited by this trial court, prosecutor, and the Los Angeles District Attorney's office. Specifically, with adequate funding, counsel would review the voir dire proceedings of the other capital cases tried by the Los Angeles County District Attorney's Office within a relevant time-period surrounding Petitioner's trial, would undertake comparative juror analyses, and would compile a database and use accepted methods of statistical analysis to demonstrate the pervasive use of pretext to peremptorily strike persons of color, particularly black women, from capital juries. Petitioner contends that such an investigation would uncover substantial additional damning evidence of unlawful discrimination in support of Petitioner's Swain claim.

Exhibit E

Order to Show Cause, *In re George Brett Williams* (March 28, 2018, S156682.)

S156682

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re GEORGE BRETT WILLIAMS on Habeas Corpus.

The Secretary of the Department of Corrections and Rehabilitation is ordered to show cause in this court, when the matter is placed on calendar, why the relief prayed for in the petition for writ of habeas corpus filed September 27, 2007, should not be granted on the ground that the prosecutor exercised peremptory challenges against prospective jurors with racially discriminatory intent, as alleged in Claim I.

The return must be filed on or before August 12, 2016.

Cantil-Sakauye
Chief Justice

Werdegar
Associate Justice

Chin
Associate Justice

Corrigan
Associate Justice

Liu
Associate Justice

Cuéllar
Associate Justice

Kruger
Associate Justice