

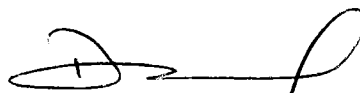
documents pursuant to Evidence Code §§ 452(c),(d),(g) and (h), as authorized at this stage of the proceedings by Evidence Code § 459 and *People v. Archerd* (1970) 3 Cal. 3d 615, 638; *Carleton v. Tortosa* (1993) 14 Cal. App. 4th 745, 753 n.l; *People v. Maxwell* (1978) 78 Cal. App. 3d 124, 130; *People v. Preslie* (1977) 70 Cal. App. 3d 486, 489-90; *People v. Terry* (1974) 38 Cal. App. 3d 432, 433; *Shaeffer v. State of California* (1970) 3 Cal. App. 3d 348, 354; *Jordan v. Los Angeles* (1968) 267 Cal.App. 2d 794, 798; *Hills Transportation Co. v. Southwest Forest Industries, Inc.* (1968) 266 Cal. App. 2d 702, 709:

1. State Bar Court of California, *In the Matter Of Peter S. Waite*, Bar # 100436, STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL, filed January 14, 2009.
2. "HOMICIDE DA REBUKED" by Howard Mintz, San Jose Mercury News, 01/22/2009.

Dated: February 21, 2012

Respectfully submitted,

LAW OFFICES OF DORON WEINBERG



DORON WEINBERG
Counsel for Appellant LOI TAN VO



(Do not write above this line.)

State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Robin B. Brune Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538-2218 Bar # 149481	Case Number (s) 06-O-11208	(for Court's use) <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED <i>LOS</i></p> <p style="text-align: center;">JAN 14 2009</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
Counsel For Respondent Allen J. Ruby 125 S. Market Street #1001 San Jose, California 95113 (408) 998-8500 Bar # 47109	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: Peter S. Waite Bar # 100436 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 1, 1981**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(Do not write above this line.)

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
 - case ineligible for costs (private reproof)
 - costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(Do not write above this line.)

- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ o n i n restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(Do not write above this line.)

- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

(Do not write above this line.)

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reprobation.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reprobation.
- No MPRE recommended. Reason:
- (11) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

Attachment language (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW & DISPOSITION

In the matter of: PETER S. WAITE, ESQ.

Case Number: 06-O-11208

FACTS AND CONCLUSIONS OF LAW.

Facts

On September 11, 1996, the District Attorney of Santa Clara County charged David Blackstone by way of an Amended Information, with a violation of Penal Code § 187, murder, with the special circumstances of burglary, rape, forced oral copulation and robbery pursuant to Penal Code §§ 460, 261, 288(a), 211 and 190.2(a)(17), in the matter of *People v. Blackstone*, Case Number 189066, filed in Santa Clara County Superior Court. The victim of Blackstone's crime was his mother. Blackstone's defense was a claim of not guilty by reason of insanity.

There were two trials in the *Blackstone* matter. Blackstone was first tried in or about April 1998. At that time, the People were represented by DDA Joyce Allegro. Blackstone was represented by defense attorney Steve DeFilippis. The first trial was bifurcated between the guilt and innocence phase, and the sanity phase, pursuant to Penal Code § 1027. During the first phase (the guilt phase) of the first trial, Blackstone was found guilty of first degree murder with the special circumstances of having committed the murder during the course of attempted rape. During the second phase (the sanity phase) of the first trial, the jury hung on the issue of sanity, with a vote of nine in favor of sanity and three in favor of insanity.

For the sanity phase of the first trial, three experts examined Blackstone and formed expert opinions as to Blackstone's sanity or insanity at the time of the offense. One of the experts, Dr. Rhawn Joseph was retained by the defense. Two of the experts, Dr. Edward Duncan and Dr. Vitali Rozytko were appointed by the Court pursuant to Penal Code § 1027. The two Court-appointed experts varied in their opinion. In Dr. Rozytko's opinion, Blackstone was legally insane. In Dr. Duncan's original opinion, Blackstone was sane at the time of the offense.

In the first trial, Dr. Rozytko, one of the Court-appointed experts, and Dr. Joseph, the defense expert, were called to testify by the defense. DDA Allegro called the second Court-appointed expert, Dr. Duncan, as a witness for the prosecution. Each of the experts testified consistent with their opinion.

Subsequent to the first trial, in about December 1998, the DA reassigned the *Blackstone* case to respondent. The re-trial was for the sanity phase only.

On or about February 17, 1999, at a Court hearing in the *Blackstone* matter, the Court set the re-trial to take place on standby status on the master trial calendar (hereinafter "S/B MTC") for June 14, 1999 at 8:30 a.m. Respondent was aware of the Court's Order setting trial for February 17, 1999 on S/B MTC, at or near the time the Court made the order.

In March 1999, respondent, in preparation for the second trial, contacted Dr. Duncan regarding his expert opinion and testimony. Dr. Duncan expressed some reservations about his original opinion. Respondent sent Dr. Duncan a letter on March 16, 1999, giving Dr. Duncan some additional information regarding the crime.

In April 1999, Dr. Duncan spoke to respondent on the telephone. At that time, Dr. Duncan stated to respondent that he, Dr. Duncan, had in fact changed his opinion regarding Blackstone's sanity, and now would give the opinion that Blackstone was insane at the time of the offense. Dr. Duncan's opinion, made in April of 1999, that Blackstone was insane at the time of the crime was exculpatory. Respondent knew or should have known Dr. Duncan's opinion of April 1999 was exculpatory. During the conversation Dr. Duncan asked respondent if he should submit a written report of his exculpatory opinion and respondent advised him that a written report would not be necessary.

Respondent gave DeFilippis a copy of his March 16, 1999 letter to Dr. Duncan in a disclosure of discovery dated March 31, 1999. Respondent did not update his March 31, 1999 discovery response to DeFilippis in April 1999, or at anytime thereafter, by disclosing Dr. Duncan's exculpatory opinion to DeFilippis.

On or between April 1999 and October 17, 1999, DeFilippis was not aware of Dr. Duncan's exculpatory opinion. On or between April 1999 and September 27, 1999, respondent knew that DeFilippis was not otherwise aware of Dr. Duncan's exculpatory opinion.

In February 1999, the Court set the re-trial in Blackstone to take place on June 14, 1999.

On June 18, 1999, June 29, 1999, and again on July 19, 1999, DeFilippis filed motions to continue the *Blackstone* trial. Respondent received each of these motions and was aware of their contents. As to each of these motions, DeFilippis, in support of the motion, advised the court of problems with securing expert testimony on behalf of the defense, including, but not limited to, the inability to obtain the funds necessary to pay for the expert opinions.

On September 22, 1999, the Court set the *Blackstone* matter for jury trial on September 23, 1999. On September 23, 1999, the Court held further hearing regarding the *Blackstone* matter, and set the trial to commence on September 27, 1999. Respondent was aware of the orders of the Court.

On September 27, 1999, scheduled as the first day of trial, the Court discussed the trial schedule and jury panel size with respondent and DeFilippis. The Court ordered a jury panel for October 4, 1999. The Court further heard the Motions In Limine filed by DeFilippis. During the discussion between the parties and the Court regarding the Motions In Limine, respondent, for the first time, advised the Court and DeFilippis that he was likely not calling Dr. Duncan as a witness for the prosecution.

The jury was sworn in on or about October 5, 1999.

On October 18, 1999, DeFilippis contacted Dr. Duncan directly and obtained the information about Dr. Duncan's exculpatory opinion.

The jury returned on October 19, 1999 and the Court gave jury instructions, the parties gave their opening statements and witnesses were called.

On October 28, 1999, DeFilippis called Dr. Duncan as a witness for the defense, and Dr. Duncan testified to his exculpatory opinion. Dr. Duncan was one of five expert witnesses that were presented by the defense, who testified regarding mental health issues. In addition to Dr. Duncan, the defense presented the following witnesses: 1) Dr. Richard Delmonico, PhD (psychologist) - expert in the field of neural psychology; 2) Dr. Denise Becker - expert in field of psychological treatment and mental health counseling; 3) Dr. Ronald Kim McKenzie, PhD - Neuropsychologist; 4) Dr. Vitali Rozyenko, PhD (psychologist) - expert in the fields of clinical and forensic psychology. Dr. Rozyenko was also a court appointed expert.

Respondent presented one psychologist for the prosecution, Dr. George Barrett.

On November 1, 1999, the Court excused the jury. The Court then, outside of the presence of the jury, discussed the jury instructions with the respondent and DeFilippis.

DeFilippis requested an instruction that respondent had concealed Dr. Duncan's exculpatory opinion. The Court questioned respondent and found that respondent had concealed exculpatory, critical evidence of Dr. Duncan's change of opinion and that respondent had violated his duty to disclose exculpatory evidence. Addressing DeFilippis, the Court stated: "Now, there's no question in my mind that had this issue not arisen as it did serendipitously by you calling the witness and an adverse verdict that that would clearly be grounds for a mistrial, because I think it's so critical, but you caught it in time."

On or about November 4, 1999, the Court instructed the jury that respondent had concealed evidence from the defense by concealing and failing to timely disclose that Dr. Duncan had changed his opinion about the legal sanity of the defendant.

On November 4, 1999, the jury found defendant Blackstone insane at the time of the offense.

Conclusions of Law

Respondent had a legal obligation to produce Dr. Duncan's exculpatory opinion of April 1999 to DeFilippis. Respondent suppressed Dr. Duncan's exculpatory opinion. By suppressing the information that Dr. Duncan had changed his opinion regarding defendant Blackstone's sanity from the defense and by failing to promptly disclose the exculpatory evidence respondent suppressed evidence that respondent or his client had a legal obligation to reveal or to produce, in willful violation of Rules of Professional Conduct, rule 5-220.

The word wilfully implies simply a purpose or willingness to commit the act or make the omission – it does not require any intent to violate the law or to injure another, or to acquire any advantage. Only a general purpose or willingness to commit the act or permit the omission is necessary. *Durbin v. State Bar* (1979) 23 Cal.3d 461.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was December 8, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 8, 2008, the costs in this matter are \$2,558.70. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AGGRAVATING CIRCUMSTANCES.

None.

MITIGATING CIRCUMSTANCES.

Standard 1.2(e) lack of harm

Standard 1.2(e)(v) candor and cooperation

Standard 1.2(e)(vi) demonstration of good character

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

The suppressed evidence was ultimately discovered by the defense counsel and presented at trial, and the jury found the defendant not guilty by reason of insanity.

Respondent has been candid and cooperative in reaching a stipulation in this matter. Respondent has presented nine character reference letters, including references from a former State Bar president, two criminal prosecutors, five members of the criminal defense bar of Santa Clara County, and one member of the San Jose community attesting to respondent's pro bono work for the Campus Community Association Beautification committee.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standard 2.10 specifies reproof or suspension for a violation of the Rules of Professional Conduct according to the gravity of the offense or the harm, if any, to the victim with due regard to the purposes of imposing discipline.

Case law

There are few cases in California that involve prosecutorial misconduct. *Noland v. State Bar* (1965) 63 Cal. 2d. 298; *Price v. State Bar* (1982) 30 Cal. 3d. 537. In *Noland*, the DDA sought to influence the outcome of cases by recommending to the court clerk that various prior jurors, who had, in the past, voted in favor of acquittal in criminal matters, be removed from the court's list of potential jurors. The court clerk eliminated 52 people from the list, based on Noland's recommendation, but the revised list was never implemented. The Court found that Noland's conduct amounted to tampering with the jury, sustained a finding of violation of Business and Professions Code, 6106, and suspended Noland for thirty days. The Court found that Noland had no insight into the grave significance of his actions and "he must be discouraged from attempting any further zealous abuses of judicial administration." *Noland, supra*, at 303.

In *Price*, the DDA was prosecuting a murder case. Shortly after the testimony of an eyewitness cab driver, the DDA obtained the cab drivers "trip ticket" containing entries of dates, times and places of passenger pickups. The trip ticket was inconsistent with the cab driver's testimony. The DDA altered his copy of the ticket to make it consistent with the cab driver's testimony. He then destroyed the original trip ticket and produced a copy of the altered version to the defense. The defense attorney sought production of the original trip ticket. The DDA then had an in chambers ex-parte discussion with the court, and advised the court of his alteration of the evidence. The original version of the ticket (obtained from the cab company) and the altered one were ultimately presented at trial, but not the explanation for the alteration. After the conviction, he sought to negotiate directly with the defendant for a modified sentence in exchange for the defendant forgoing an appeal. This was an effort to conceal the misconduct. The DDA was ultimately charged with a felony by the attorney general, but was acquitted.

In *Price*, the attorney actually altered and fabricated evidence, which is more egregious than respondent's misconduct here of suppressing evidence. As in *Noland*, respondent sought to influence the outcome of a case by improper conduct. However, unlike *Noland*, respondent did not tamper with the entire jury system. Nor did he litigate, but is herein admitting culpability for his misconduct.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

(Do not write above this line.)

In the Matter of Peter S. Waite	Case number(s): 06-O-11208
------------------------------------	-------------------------------

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

12-19-08
Date
12/19/08
Date
12/23/08
Date

Peter Waite
Respondent's Signature
Peter S. Waite
Print Name

Allen J. Ruby
Respondent's Counsel Signature
Allen J. Ruby
Print Name

Robin B. Brune
Deputy Trial Counsel's Signature
Robin B. Brune
Print Name

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on January 14, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

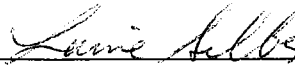
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ALLEN JOEL RUBY
LAW OFC ALLEN RUBY
125 S MARKET ST #1001
SAN JOSE, CA 95113 - 2285

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 14, 2009.



Laine Silber
Case Administrator
State Bar Court



San Jose Mercury News (CA)

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HOMICIDE DA REBUKED

HIDING KEY TESTIMONY FROM DEFENSE BRINGS REPRIMAND

January 22, 2009

Section: Local

Edition: Valley Final

Page: 1B

Howard Mintz, Mercury News

Correction: SETTING THE RECORD STRAIGHT (Publ. 01/23/09, pg 2A)

An article Thursday in the local section about the state bar reprimanding a Santa Clara County prosecutor for misconduct incorrectly reported that the bar has not publicly disciplined a prosecutor in two decades. The state bar has issued at least four such disciplinary actions in recent years, including one suspension, according to Bar Trial Counsel Scott Drexel.

The state bar has reprimanded a Santa Clara County prosecutor for misconduct in a 1999 murder case, an extremely rare public sanction in California that comes on the brink of a decision in a separate discipline case involving another local deputy district attorney.

In a 10-page complaint filed last week, State Bar of California officials issued a public reproof against Peter Waite, a veteran homicide prosecutor who was

accused of hiding important expert testimony from the lawyer representing murder defendant David Blackstone. The bar has not publicly disciplined a state prosecutor in more than two decades, although over the past year it has ramped up its investigations of prosecutors in Santa Clara County and other offices around the state.

"I see that as the state bar catching up to a lot of things that have happened in the criminal justice system," said Peter Keane, a Golden Gate University law professor. "It's healthy to see they feel confident about going forward with these kinds of proceedings as an incentive to keep prosecutors honest."

The bar's punishment, while a symbolic swipe at **prosecutorial misconduct**, does not affect Waite's ability to continue practicing law. The order minimized his punishment for a variety of reasons, including his willingness to admit his mistakes and strong support for his character in the local legal community. Bar figures show there have been between 95 and 144 public reprimands of lawyers issued in the state in the past three years.

But the rebuke is another black eye for the Santa Clara County District Attorney's Office, which has been the target of several bar investigations, including the high-profile prosecution of Deputy District Attorney Ben Field. A state bar judge must decide the case against Field within the next few weeks after hearing charges during a trial last summer that he violated ethical rules in a series of cases dating back to the mid-1990s.

While Waite believes his conduct did not warrant a state bar proceeding, he conceded this week that he would have handled the Blackstone case differently today.

"I've always agreed it was a screw-up and a mistake, and that the case would be done differently than nine years ago," Waite said.

District Attorney Dolores Carr, who has generally questioned the bar's recent aggressive approach against prosecutors, declined to comment on the Waite order.

The disciplinary case centered on the prosecution of Blackstone, who was originally found guilty of first-degree murder in 1998 for killing his mother. The jury in that trial then deadlocked on Blackstone's defense that he was insane at the time of the crime.

Waite took over the case for the 1999 retrial of the sanity phase. Bar records show that between the two trials, a key psychiatric expert for the prosecution told Waite that he had switched his position on Blackstone's sanity because of new evidence, and would now testify that the defendant was indeed insane at the time of the murder. Waite, however, did not disclose the expert's crucial change to Blackstone's lawyer, Steve DeFilippis.

Prosecutors must disclose potentially exculpatory evidence to the defense under the so-called Brady ethics rules.

After the sanity phase trial began in Blackstone's case, DeFilippis contacted the expert, Edward Duncan, on his own and discovered the change in testimony. Duncan then testified for the defense. The trial judge did not discipline Waite for the misconduct, but did instruct the jury that prosecutors concealed the expert evidence. The jury ultimately found Blackstone insane at the time of the murder.

The bar found that Waite violated ethical rules by failing to disclose the evidence. In deciding against tougher punishment, bar prosecutors noted that the defendant was not harmed by the misconduct because of the jury's finding in his favor.

A 2006 Mercury News review of problems in the local justice system raised questions about Waite's handling of similar expert evidence in the 2005 trial of two Palo Alto police officers accused of beating a motorist. The bar reprimand did not mention that case.

Contact Howard Mintz at hmintz@mercurynews.com or (408)-286-0236.



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PROOF OF SERVICE BY MAIL -- 2015.5 C.C.P.

I am a citizen of the United States, my business address is 523 Octavia Street, San Francisco, CA 94102. I am employed in the City and County of San Francisco, where this mailing occurs; I am over the age of eighteen years and not a party to the within cause. I served the within

APPELLANT VO'S REQUEST FOR JUDICIAL NOTICE

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

Mel Greenlee
California Appellate Project
101 Second Street, Suite 600
San Francisco, CA 94105

Habeas Corpus Resource Center
303 Second Street, Suite 400 South
San Francisco, CA 94107

Alison Pease, Senior Deputy
State Public Defender's Office
801 K Street, Suite 1100
Sacramento, CA 95814

Moona Nandi
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Certificate of Service
Page 2

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San Jose, CA 95110

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2012, at San Francisco, California.

