

March 2, 2016

Please reply to the Encino Office

Via First Class Mail and
Email: CRU@da.lacounty.gov

Mr. Ken Lynch
Assistant Head Deputy District Attorney
Los Angeles County District Attorney's Office
Conviction Review Unit
211 W. Temple St.
Room #1125
Los Angeles, CA 90012

CONVICTION REVIEW REQUEST FOR RAYMOND JENNINGS

Dear Mr. Lynch:

On October 2, 2015, I sent you a letter requesting that Conviction Review Unit (CRU) review the conviction of my client, Raymond Jennings. The letter was 34 single-spaced pages long, and was supported by a separate compendium of evidence ("compendium") that provided the documentation for the factual statements in the letter.

I have received in response to the letter the CRU's "Conviction Review Request" form. I have re-typed the 23 questions posed on the form below, and have answered each question. Accordingly, please consider this letter to be Jennings's response to the form, and consider my earlier letter as a supplement to his request for review of his conviction.

1. *Convicted person's name:* Raymond Lee Jennings
2. *Convicted person's date of birth:* May 8, 1974
3. *Is the convicted person incarcerated:* Yes.
4. *Information about incarceration location and identification:*
 - a. CDC Number: AD0123
 - b. Prison: California State Penitentiary Centinela
 - c. Cell location: D5-210
 - d. PO Box: 931
 - e. City, State, Zip: Imperial, CA 92251
5. *Court where Jennings was convicted and sentenced:* Los Angeles County Superior Court, Antelope Valley Courthouse, 42011 4th St., Lancaster, CA 93534

6. *LA Superior Court case number:* MA033712
7. *Convicted of violating following Penal Code sections:* 187(a); 12022.53(b), (c), and (d).
8. *Date of conviction:* December 18, 2009
9. *Date of sentencing:* February 18, 2010
- 10: *Sentence imposed:* 40-years to life
11. *Expected release date:* Not before February 2045
- 12 *How was person convicted?*
 - a. Jury trial. (Case was tried 3 times, ending in a hung jury the first two times.)
13. *Is the conviction currently being challenged on appeal?* No. The conviction was affirmed on appeal, in an unpublished opinion in case no. B222959, dated Dec. 19, 2011.
14. *Is there a habeas corpus petition currently pending before a court?* Yes. U.S. District Court for the Central District of California, *Jennings v. Miller*, Case No. CV 13-4692-SJO (AGR)
15. *Has a habeas corpus petition ever been filed regarding the conviction?* Yes. U.S. District Court for the Central District of California, *Jennings v. Miller*, Case No. CV 13-4692-SJO (AGR)
16. *Did the person who was convicted give a statement to law enforcement when arrested?* No. Jennings voluntarily spoke at length with Sheriff's investigators about the case before he was arrested. He has, at all times, maintained his innocence and has denied any involvement in the crime.
17. *Did the person who was convicted testify at trial?* No. However excerpts from his testimony in a civil deposition were played to the jury, as were excerpts of his interrogation/interviews with the Sheriff's investigators.
18. *What new evidence, if any, exists that was not known at the time of trial.*

18(a) New evidence concerning the absence of gunshot residue on Jennings on the night of the shooting.

(1) Evidence concerning the state of Jennings' uniform jacket:

The victim, Michelle O'Keefe, was shot in a Park-and-Ride parking lot in Palmdale, at approximately 9:30 p.m. on February 22, 2000. The night of the shooting was cold and blustery. Three days after the shooting, Jennings quit his job and turned in to his employer the security-guard uniform that he had worn on the night of the shooting. It was collected by the employer and provided to the Sheriff's Department for testing that day. The Sheriff's Department Scientific Services Bureau notes concerning the uniform jacket specifically state that when it was examined, it was "worn and dirty" and did not

look like it had been washed. (Compendium pp. RLJ 166, 167.) Likewise, the uniform pants collected from Jennings were also described as “worn and dirty” by the criminalist who examined them. (*Id.* p. 167). There is no evidence that Jennings washed his uniform jacket or pants after the night of the incident before releasing them to All Valley Security, which then provided them to the sheriff.

Yet, in closing argument, the prosecutor told the jury that, because Mr. Jennings had been in possession of the uniform jacket for a few days before it was collected, “that destroys any value any evidence of this forensic evidence could have ever had. Okay? Big surprise, there is not a lot there. He had it for six days.” (20 RT 7290.) Mr. Blake later argued that, “the type of evidence that we were searching for is the type of evidence that could be easily destroyed or rendered undetectable or even brushed or washed away. You are talking about blood evidence. You are talking about hair, fiber. You are talking about gunshot residue. There is no surprise that there is none of this stuff in this case that points anywhere on either side.” (7 RT 7290, 7291.)

Unfortunately, Jennings’s defense counsel appears to have been unaware that the crime lab’s notes showed that the clothing, and the jacket in particular, had not been washed. He therefore failed to present that evidence to the court or to the jury during the trial. Accordingly, the fact that the jacket had not been washed — and hence that no GSR had been washed off — is new evidence.

(2) New expert testimony concerning the significance of the absence of gunshot residue on Jennings’s uniform jacket

As part of my investigation of the case for Mr. Jennings’s habeas petition, I have retained Technical Associates, Inc. (TAI), a company that provides criminalistics services, including DNA analysis, gunshot-residue (GSR) analysis, and crime-scene examination and reconstruction. The President and Lab Director for TAI, Marc Taylor, has reviewed the evidence in the case concerning the gunshot residue, and will be providing me with a report. I do not yet have the final report, but will forward it when it is complete. Mr. Taylor’s conclusions will include the following new information concerning the absence of GSR on Mr. Jennings’s uniform jacket:

“During the trial, one of the Sheriff’s criminalists who worked on the case, Ms. Gonzales, testified on behalf of the prosecution that she had examined the uniform jacket that Mr. Jennings was wearing on the night of the shooting, and that all of her tests for blood spatter were negative. She also testified that the jacket had been collected from Mr. Jennings six days after the shooting, and that two GSR stubs were collected, one from each of the jacket sleeves, though she made no mention of whether or not those GSR stubs were ever tested using Scanning Electron Microscopy/Energy Dispersive Spectroscopy (SEM/EDS) analysis. She did state that no evidence of gunshot residue was observed using low power light microscopy.

“Ms. Gonzales also testified that gunshot residue can be removed from clothing by rubbing the clothing or washing it. She further testified that, “after a certain amount of time, you just can’t -- can’t detect the G.S.R. [gunshot residue] if it was deposited.” But she further elaborated that lightly brushing might be sufficient to remove gunshot residue that had been deposited on someone’s hands. She added that brushing could “possibly” remove it from clothing, but that because of the weave of the material in the jacket that Jennings was wearing on the night of the shooting, the residue was more likely to adhere to the jacket than to his hands.

“Based on my training and experience, and the information that I have reviewed in this case, I have formulated the following opinions concerning the absence of gunshot residue on the uniform jacket and its relevance to the case.

a. I agree with Ms. Gonzales’ testimony that the fabric nature of the uniform jacket that Mr. Jennings was wearing on the night of the shooting would have made it likely that gunshot residue would have adhered to it if Mr. Jennings had fired a gun while wearing the jacket.

b. I strongly disagree with the prosecutor’s statements to the jury that the fact that the uniform jacket had been in Mr. Jennings’s possession for six days before it was collected for testing “destroys any value” of gunshot residue testing; specifically that the absence of gunshot residue sheds any light on Mr. Jennings’ guilt.

c. The Sheriff’s Department Scientific Services Bureau notes concerning the uniform jacket specifically state that when it was examined, it was “worn and dirty.” Likewise, the uniform pants collected from Mr. Jennings were also described by the criminalist who examined them as “worn and dirty.” Accordingly, there is no evidence that Mr. Jennings washed his uniform jacket or pants after the night of the incident and prior to releasing them to Sheriff’s possession.

d. In light of the Sheriff’s Department’s notation of the condition of the uniform jacket and pants as “worn and dirty,” I would expect that, if Mr. Jennings had fired a gun while wearing the jacket on the night of the shooting — particularly if he had fired a gun multiple times as the assailant did in this case — that GSR would have been deposited on the jacket, and likely would have been detectable six days later if the jacket was not washed in the interim. Accordingly, the absence GSR on the jacket is evidence that Mr. Jennings did not fire a gun on the night of the shooting, while wearing the jacket.

18(b) New evidence undermining the prosecution theory that the shooting was committed by someone with tactical firearms training and expertise

During the trial, the prosecution’s theory was that various aspects of the shooting suggested that it had been committed by someone who was highly trained and proficient in handling a firearm. As the Court of Appeal explained it in its opinion:

Finally, the shooter displayed skilled marksmanship. O'Keefe's three head wounds particularly required skill because O'Keefe was a moving target as the Mustang rolled backward. A firearms expert testified training and practice was required to inflict those wounds, the type of training and practice appellant received in his National Guard service. Additionally, the type and sequence of bullets used showed sophistication involving firearms. The shooter used two types of bullets: The first two, the first of which was apparently misfired into the ground and the second into O'Keefe's chest, were hollow point bullets, which flare out upon impact to cause greater incapacitating trauma than a full metal jacket bullet, which does not flare out; the last three, which were aimed at O'Keefe's head, were full metal jacket bullets.

Members of the military are taught to shoot first at a target's upper body because it offers a large surface area to hit. If shots to the upper body do not incapacitate the target, members of the military are taught to shoot at the target's head. For someone experienced with guns through military training, the sequence of two hollow point shots, one of which was aimed at O'Keefe's chest, followed by three full metal jacket shots to her head, was not by chance. (2011 WL 6318468, at p.*8.)

Putting aside for the moment that the trial record did not actually support the court's statement, Jennings's trial counsel did not retain any type of firearms expert to evaluate or comment on the state's theory and evidence. I have retained firearms expert, Mr. Ronald R. Scott, the owner of Forensic Firearms & Ballistics, in Phoenix, Arizona. Mr. Scott was a 25-year veteran of the Massachusetts State Police, and spent half his career in the Ballistics Section. He was the Commanding Officer of the main and sub labs, supervising 7 forensic examiners. Accordingly, he is extraordinarily qualified to render opinions relating to firearms use. Mr. Scott has completed his report, and I have enclosed a copy with this letter. His report provides the following new evidence that was not presented or considered at trial:

- (1) The first shot fired by the shooter was into the ground, at his feet, but there was an absence of the forensic evidence on Jennings or his clothing that should have been present if he had fired such a shot. At pages 8 to 10 of his report, Mr. Scott explains that if Jennings had fired this shot into the ground, there would have been forensic evidence on his clothing. But there was none, which demonstrates that he was not the shooter.
- (2) *Nothing* about the shooting suggested that it had been committed by someone with firearms expertise or tactical training. To the contrary, the evidence suggested that the shooter had no training or expertise. Hence, Jennings's training was exculpatory, not incriminating. At pages 3-7 and 10-13, Mr. Scott explains that virtually every aspect of the State's theory about the nature of the shooting

indicating that the shooter had been well-trained and proficient with firearms was wrong.

The facts that the shooter loaded his gun with two different types of ammunition, and fired the first shot into the ground, strongly indicated that the assailant was completely inexperienced with firearms. Anyone 18 years old can walk into a gun shop and legally purchase a box of bullets. Hence, the fact that the assailant used two different types of ammunition suggests someone too young or otherwise lacking the resources to simply purchase hollow-point ammunition. Mr. Scott explains that not only would no one with firearms training or expertise load two different kinds of ammunition into the same magazine; but that, contrary to the prosecution's theory, the particular combination used was not indicative of tactical training. He also disagreed with the State's theory that the order in which the shots were fired into the victim (chest first, then the head) was consistent with the kind of tactical training that Jennings received in the National Guard, or that anything about the way the shooting occurred demonstrated that the shooter was skilled with firearms or either had or employed any type of tactical training.

In sum, the fact that Mr. Jennings was well-trained and proficient with firearms was actually *exculpatory* evidence that suggested that he was *not* the shooter. Unfortunately, Mr. Jennings's trial counsel failed to present that argument, or any critique of the state's theory on these points to the jury.

18(c) New evidence that Jennings acted consistently with his security-guard training after the shooting

After Mr. Jennings radioed his supervisor and the police that there had been shots fired in the parking lot, and while he was waiting for the police to arrive, his supervisor, Iris Malone, arrived on site and told him to accompany her to the shooting scene at the other end of the parking lot. Mr. Jennings declined to accompany her, because he was concerned that the shooter was still at large. Ms. Malone then drove directly to the crime scene and illuminated it with her vehicle's headlights. She then got out and directed Mr. Jennings to join her. He then walked to the scene. At trial, the prosecution argued that his reluctance to accompany Ms. Malone was incriminating, because it suggested that he was fearful of being identified by the victim (whom, if he had been the shooter, he would have known had been shot point blank in the chest and three times in the face).

At trial, Mr. Jennings's trial counsel did not call any experts of his own. As part of my investigation, I have retained an expert on security-guard training, Robert A. Gardner, with offices in California, Nevada, and Arizona. Mr. Gardner will be providing me with a report that shows that, before he began work for All Valley Security, Mr. Jennings received the California-mandated 4-hour training course for unarmed security guards. He watched the material on video, passed an exam on it, and was waiting for issuance of his permanent credential. This training instructed Mr. Jennings that, if an incident occurred while he was on duty, he was *not to get involved*. Rather, he should find a safe spot,

observe, and report to his supervisor and the police. Mr. Jennings acted in complete conformity with his training on the night of the incident. Ms. Malone, however, grossly violated the standards of care for security guards when she drove directly to the crime scene before the police had secured the site. I will provide the CRU with a copy of the final report when it has been completed.

Mr. Gardner's opinion illustrates how the prosecution was so focused on its conclusion that Jennings was guilty that it viewed anything that he did as incriminating and ignored any exculpatory explanations for his behavior.

18(d) New profiling evidence that shows that the crime was not a sexual assault, as the prosecution theorized, and that demonstrates that the prosecution's profiling expert ignored critical evidence in formulating his opinion

As the Court of Appeal's opinion explains at pages *9 through *11, the prosecution relied extensively on the testimony of Mark Safarik, an expert consultant in behavioral and forensic analysis of violent crimes. Mr. Safarik purported to explain in his testimony how and why the killer had acted during his encounter with the victim. He concluded that the crime was an attempted sexual assault, and when the victim resisted, the killer panicked and shot her because he was afraid she would report him.

As the Court of Appeal acknowledged in its opinion, "[Safarik's] testimony may have been crucial to the prosecution's case because, without it, there was no evidence from which the jury might infer the motive or the perpetrator's intent in killing O'Keefe." (2011 WL 6318468, at *8.)

Mr. Jennings's trial counsel did not expose the myriad ways in which Mr. Safarik's testimony was at odds with the actual facts in the record. This information is detailed at pages 20 through 22 of my prior letter to the CRU. But I have also retained a profiling expert, Peter Klismet, who had a 20-year career with the FBI as a special agent. Mr. Klismet, like Safarik, did criminal profiling for the agency. He has not yet completed his final report, but he is highly critical of Mr. Safarik's methodology and conclusions. I will provide the CRU with a copy of his final report when it has been completed.

Mr. Klismet's opinions include the following points:

1. Contrary to Mr. Safarik's conclusion, Mr. Klismet believes that the record clearly demonstrates that Ms. O'Keefe's murder was the result of a robbery, not an attempted sexual assault. He believes that Safarik based his entire theory on his belief that Ms. O'Keefe's tube top had been pulled down before she was shot. Mr. Klismet points out that it is not clear that it was pulled down at all; rather, given its small size and the physical trauma that Ms. O'Keefe sustained in the attack, it may have simply slipped downward slightly. He notes that if the top had actually been pulled down, there would likely have been scratch marks on the victim's chest, or a DNA transfer -- but there were none.
2. Mr. Safarik's opinion seems to ignore the fact that the assailant actually took the victim's cell phone. Likewise, his reliance on the fact that her wallet and cash were not

stolen fails to recognize that the wallet was found wedged between the seat and the center console, out of view in the darkened car.

3. Mr. Klismet finds it difficult to believe that anyone wearing an easily-identified security-guard uniform would be likely to attempt either a sexual assault or a robbery in the parking lot they were hired to guard.

4. He notes that the crime appeared to be highly impulsive, which suggests that the person who committed it was most likely a younger offender, in the range of 16 to 20 years old. Jennings was 25, and therefore the statistical likelihood favors someone with much less maturity as the assailant.

5. Mr. Klismet believes that Mr. Safarik overlooked the testimony that Jennings had a predilection for black women. The testimony was that he dated black women exclusively; he was married to a black woman, and even now currently engaged to a black woman. The transcript reflects that he told his friend, Michael Parker, that that he had never been attracted to and had never dated a white woman. Of course, Michelle O'Keefe was white. This makes Safarik's sexual-assault theory less plausible.

6. The fact that Ms. O'Keefe's window had been rolled down only 4.5 inches before the shooting suggests that she had not been approached by Jennings in the parking lot. If she had been approached by someone wearing a security-guard uniform, she would likely have rolled her window down much further.

7. Mr. Klismet believes that the investigation and prosecution of the case against Jennings exhibits the hallmarks of tunnel vision. In particular, he is deeply troubled by the way that the prosecution failed to subject Victoria Richardson, or her companions in the car on the night of the shooting, to the same type of scrutiny as Jennings. The State's case proceeded as though Jennings had been the only person in the parking lot at the time of the shooting other than the victim, and yet there is no dispute that Richardson and her companions were present as well, and left immediately after the shooting. He notes that even Safarik referred to this as a "serious error," and he agrees with Safarik on this point.

Likewise, he notes that investigators relied heavily on inconsistent statements by Jennings, which were not necessarily lies, but a lack of recollection by Jennings. The passage of time between the crime and the interviews could easily have clouded his recall of facts. For example, Deputy Longshore testified at trial that the victim's wallet was found inside her purse on the center console. This testimony completely contradicts known evidence. The wallet was found between the passenger seat and the center console. Whenever Jennings failed to recall anything about the night of the murder clearly, the prosecution treated that as evidence of his guilt.

8. Mr. Klismet believes that Safarik failed to acknowledge that the circumstances of the murder closely meet the criteria for a "situational felony murder" described in the Crime Classification Manual, which is the gold-standard for criminal profiling. The Manual says that a murder occurring when the victim's money is not stolen indicates a

situational felony murder. This type of crime often includes blunt force trauma to the victim, and/or contact wounds from a firearm. Often, it can be triggered if a robbery is interrupted, such as when an alarm is triggered. Here, the record shows that the victim's car alarm sounded, and then turned off when she started her car. The manual explains that typical offenders involved in a situational felony murder would be "youthful and inexperienced" and abusers of drugs or alcohol. Victoria Richardson was a juvenile at the time of the shooting, and it appears that her companions were, as well, and they were in the parking lot to smoke marijuana. The fact that Richardson self-identified as a gang-member in her social-media posts, and later went on to be convicted of serious felony offenses, strongly suggests to Mr. Klismet that the likely killer was someone in Richardson's car.

18(e) New evidence showing that, between the time of the shooting and the arrival of the police, a car driven by a gang-related individual left the scene

Much of the State's case proceeds as though Ray Jennings was the *only* person in the parking lot where Ms. O'Keefe was shot at the time of the shooting. But in reality, it is undisputed that there were at least three other people in the lot at that time, all in one car. Victoria Richardson testified that she was in a rented car in the lot, with her friend, Kensasha; Kensasha's boyfriend, Andrew; and her godson. They were smoking marijuana and listening to music. Richardson drove out of the lot after the shooting, but before the police arrived.

What was not presented at trial was that, in the 15 years since the shooting, Richardson has been convicted of two serious felonies and served prison time for both: one for a role in a major heroin-trafficking scheme, and another for assault with a deadly weapon (which was originally charged as attempted murder and pled down.) In addition, on her social-media posts, Richardson self-identified as a member of the "Bloods" gang, stating that she only wanted to date "Bloods." The fact that Richardson was involved with the Bloods suggests that her friends in her car at the time of the shooting were also gang affiliated. But for reasons unknown the Sheriffs never took a DNA sample from "Andrew" to see whether it matched the blood under Ms. O'Keefe's fingernail. It would be interesting for the District Attorney's Office to check at this point to see whether the passengers in Richardson's car went on, like Richardson, to commit serious felonies.

19. *Please state the reasons the conviction should be reviewed.*

My earlier letter of October 2, 2015, can be seen as a comprehensive answer to this question. I respectfully request that the CRU consider that letter as part of Jennings's response to this question. But to assist the CRU in its work, I will summarize below the main reasons why Mr. Jennings's conviction should be reviewed.

Preliminary Statement

Ray Jennings is innocent. He did not kill Michelle O'Keefe. The jury that convicted him was never made aware of critical exculpatory evidence, and never received a clear explanation of the myriad logical and factual flaws in the State's case. In light of the new exculpatory information that has been developed, which is summarized in the answer to paragraph 18, above, and the glaring flaws in the prosecution's case, which are outlined below and are explained in greater detail in my prior letter, the CRU cannot have any confidence that Jennings was guilty or that his conviction was valid.

A. The absence of physical evidence both fails to tie Jennings to the crime, and is exculpatory

Deputy DA Michael Blake, who tried the case for the District Attorney's Office, drafted and circulated a memo to his superiors on April 17, 2006 — six years after the murder, and five months *after* the District Attorney's Office had filed the case — which flatly admits that none of the physical evidence in the case implicated Jennings. Specifically, Mr. Blake wrote that, although he viewed Jennings's conduct and statements to the police as "highly suspicious, examinations of the physical evidence have yet to directly link Jennings to the murder of Michelle O'Keefe." (A copy of this April 17, 2006 memo is attached as one of the documents provided in response to question 20, below.)

Mr. Blake's memo details the painstaking forensic evaluation made of all the physical evidence recovered at the scene from the victim, from her car, and from Jennings. Despite the detailed scrutiny of all the evidence, no physical evidence, and no direct evidence ever linked Jennings to the crime. In other words, no evidence gathered from the crime scene pointed to Jennings, no witness claimed to have seen him commit the crime, no witness claimed to have heard him admit to the crime, and Jennings himself has at all times adamantly maintained his innocence.

What Mr. Blake's memo fails to mention (and what Mr. Blake appears not to have appreciated) is that the absence of evidence is exculpatory. If Jennings had fired a gun on the night of the murder, he would have GSR on his jacket. Its absence means that he did not fire a gun that night. Likewise, if Jennings had fired a gun into the asphalt at his feet, as the shooter had, then there would have been evidence of pseudo stippling on his shoes or pants. There was none. Finally, there was evidence of blood and DNA from an unidentified male (but not Jennings) under the victim's fingernail.

B. The core inferences that underlie the State's case are circular and unreasonable

Because of the absence of any physical evidence to tie Jennings to the murder, the State's case against Jennings was completely circumstantial; that is, it is based entirely on *inferences* drawn from various facts. But all of the inferences underlying the State's case

are flawed because they are either without factual support, wholly unreasonable, or there are competing inferences that are far more likely.

The defects in the State's case become clear at the outset. The victim was shot with a 9mm pistol in the Park-and-Ride lot that Jennings patrolled as a security guard. Hence, the State's case proceeds from the premise that Jennings brought a 9mm pistol to work on the day of the shooting, and then used it to shoot the victim.

What evidence supports this inference? That is, what basis is there to believe that (a) Jennings owned or otherwise had access to a 9mm pistol; and (b) he brought that pistol to work on the day of the shooting? Other than the fact that the victim was shot with a 9mm pistol in the lot where Jennings patrolled, there is none. But the *conclusion* that the State wants to prove (that Jennings brought a 9mm gun to work and shot the victim with it) cannot provide the *evidence* that supports the inferences the State's case relies on. There must be other evidence to support these inferences, or the case must fail.

One confounding fact for the State's theory is that Jennings owned a lawfully registered .380 pistol; not a 9mm pistol. There is no evidence that Jennings ever owned, or had access to, a 9mm pistol. The State's case therefore *infers* that he must have, because that was the type of weapon used to shoot the victim. But this is not a reasonable inference. There are only two reasons that Jennings would bring a pistol with him to work: (1) for self-protection; or (2) to commit crimes.

If Jennings' motivation for bringing a gun to work was self-protection, he would have brought his lawfully-registered .380 pistol. That way, if he was required to use it for self-defense, or to protect a third party, he would not face potential criminal liability for using an unregistered gun.

The State therefore must assume that Jennings brought a gun to work to commit crimes. But this theory is unreasonable for several reasons: (1) Jennings was not a criminal. He was a married 25-year old man with a wife and 3 children he was supporting. He had *no* criminal background; no arrests, no convictions. He had enlisted in the National Guard when he was 17 to serve his country. He held a security clearance. He was studying to become a federal marshal. (2) Even if Jennings had some criminal intent, the State's theory assumes that he would have committed his crimes at his place of work, while wearing an easily-identified security-guard uniform.

In short, the basic premises that underlie the entire case make no sense. There is no evidence that Jennings owned or had access to a 9mm pistol, that he would have brought an unregistered weapon with him to work, or that he would have used it to commit crimes at his place of work while wearing his security-guard uniform.

A second confounding fact: The State's case proceeds as if Jennings had been the only other person in the parking lot at the time of shooting. But it is undisputed that he was not. Richardson and the occupants of her car were in the parking lot when the shooting occurred. They were admittedly using drugs, and fled the scene before the police arrived.

Since Richardson was gang-affiliated, it is likely that her friends in the car were as well. Richardson went on to be convicted of two major felonies, including assault with a deadly weapon. Hence, Richardson and her companions should have been potential suspects.

Moreover, according to Richardson, she saw another person in the lot at the time of the shooting: a white male, wearing a red baseball cap backwards, who was driving a black 1997 or 1998 Toyota Tercel, with tinted windows, a spoiler on the trunk, and stock wheels. This man left the lot between the time of the shooting and the time that Richardson left.

Based on these facts, the most reasonable inference is that the killer was either someone in Richardson's car or the person driving the black Tercel. By contrast, the inferences necessary to conclude that Jennings was the killer are neither supported by the facts nor reasonable.

C. The State's case was tainted by tunnel vision

I am sure that the CRU is familiar with the concept of "tunnel vision" — the tendency of investigators to seize on an early piece of evidence that appears to implicate the defendant, and to hold on to their belief in his guilt even as other evidence points to his innocence. Social-science research suggests that tunnel vision is a pervasive cause of wrongful convictions. *See e.g.* Findley & Scott, *Tunnel Vision*, Univ. of Wis Law Rev. (2006).

The State's case against Jennings is replete with examples of tunnel vision. These include the way that the absence of physical evidence against Jennings was not considered to be exculpatory, and the failure to follow up on other potential leads — like running DNA samples on the occupants of Richardson's car. But perhaps the clearest examples of tunnel vision are the inconsistencies in the State's theory of the case.

- The State's theory was that Jennings shot the victim "in a panic" after attempting to accost her, because he was fearful that she would identify him. This theory attributes a logical fear of being identified based on his security-guard uniform to Jennings — but only *after* he had supposedly committed a crime. It then concludes that he panicked so badly that he shot the victim multiple times point blank, but then radioed in the "shots fired" call, stayed on the scene to speak to the police for hours, and maintained a demeanor that gave the investigating officers no cause to suspect him.
- The State argued that the man in the red baseball cap, driving the Tercel, could not possibly be the killer because he did not drive out of the parking lot through the closest exit to him. The prosecutor argued that it was not reasonable to believe that the driver of the Tercel was involved because "if you just committed that crime, that atrocious crime, would it makes sense that you would drive around the northern lot . . . No. You drive out the lower exit, the west end of the lot. It makes no sense at all." (20RT 7322.) Hence, the prosecutor argued that the rational thing

for the killer to have done was to flee immediately — yet Jennings stayed at the scene and made no effort to leave.

- The State argued that the crime was committed by someone with firearms training and expertise, like Jennings. Yet the State ignored the fact that the shooter fired the first shot into the ground, which is not something that someone with firearms skill or training would have done.

In sum, the State made no effort to harmonize the positions that it took in the case, beyond consistently arguing that whatever Jennings did was incriminating, and that any evidence that was not congruent with its theory should be disregarded. This approach is the hallmark of tunnel vision.

D. The seven “incriminating circumstances” relied on by the State did not establish Jennings’s guilt

According to the Court of Appeal opinion, the State relied on seven “incriminating circumstances” as the key circumstantial evidence that proved that Jennings was guilty:

(1) It was implausible that if Jennings was standing 400 feet away from the scene when the shooting occurred, that he would not have seen the shooter. But at trial, the prosecution’s key ballistics witness admitted that, although she could determine the path of the bullets fired into the victim, *she could not determine where the shooter had been standing when he fired the shots*. The State failed to call any other witness who supplied this information. In light of its inability to prove where the shooter was standing as the shots were fired, the State had no basis to attack Jennings’s explanation that he could hear but not see the shooter because the shooter was screened from view by a large commuter van parked next the victim’s car. (Jennings’s appellate counsel failed to explain this to the appellate court.)

(2) Jennings told the investigators that he did not see anyone leave the parking lot after the shooting, yet he was contradicted by Richardson’s statement that she asked him “what happened?” as she was leaving, and he said, “I don’t know.” The problem here is that the investigators were often imprecise in their questioning. Both Jennings and Malone saw Richardson leave the scene, but neither of them told the investigators about her. This suggests that the way the investigators framed their questions was unclear. Even after Jennings told the investigators about the encounter with Richardson, during his cognitive interview he continued to omit any reference to her in answering their questions. Plainly, Jennings believed that their questions referred to the time that he was alone in the parking lot after hearing the shots — before either Malone or the police had arrived.

(3) Jennings stayed near his car after the shooting, refusing to accompany Malone to the crime scene. As noted above, this was consistent with how Jennings was trained. It was unreasonable for the State to argue that Jennings incriminated himself by acting in accordance with his security-guard training.

(4) Jennings told the police that the next time he was on duty after the shooting, he was approached by two men in a red truck, who asked him about the shooting. He said that this made him nervous, and he reported the encounter to the sheriff's department. He claimed that a deputy checked out his story, spoke to the men, and returned to the lot to assure Jennings that they were no threat. But at trial, the sheriff's witnesses claimed to have no record of such a call by Jennings. Hence, the State argued that Jennings made up the encounter to somehow re-direct suspicion away from him. It is unclear how, even if Jennings had made a false report about being contacted the day after the shooting, this would mean he had been the shooter. The prosecution seemed wholly untroubled by and uninterested in Richardson's claim that she saw a man leave the lot immediately after the shooting.

More importantly, in his prior trials, Jennings successfully called as a witness a sheriff's department employee who corroborated that she had seen the "hot sheet" about Jennings's report. So in those trials, this point would not have been an issue. But in the third trial, Jennings's trial counsel failed to call this witness, and instead tried to elicit the testimony that she had given through other Sheriff's Department witnesses. This effort was thwarted by Mr. Blake's hearsay objections.

(5) Jennings told the investigators that he thought that when he saw the victim's body, he saw a faint pulse, and that her hands twitched. The State argued that Jennings had seen this occur when he shot Ms. O'Keefe, and he gave himself away by recounting this information in his statements to the investigators. In reality, Jennings was simply wrong. The medical evidence introduced by the State demonstrated that the shots fired into the victim would have prevented her from having a pulse or twitching as Jennings described. Given this evidence, Jennings's wrong information could not have been incriminating. He was simply mistaken about what he saw at night, in a dark parking lot, after a traumatic event.

(6) The victim had been struck in the head by a blunt object. This might have been Jennings's flashlight, which he did not have with him when he came to the crime scene with Malone. The problem with the flashlight theory is that the shooter took the victim's phone after the shooting. So it was unclear how he could have held a gun in one hand, a flashlight in the other, and then also grabbed the phone. The prosecution abandoned this theory at trial, arguing instead that the wound was inflicted by the shooter's pistol.

(7) The detectives supposedly "held back" from public disclosure certain details of the crime that would only be known by the person who committed the crime. And Jennings supposedly knew this information. The reality is that the record shows that Jennings did not know critical information that "only the killer would know."

One piece of information that had supposedly been "held back" was that the murder weapon had been a 9mm pistol. But at trial, the first Sheriff's Deputy on the scene, Deputy Cox, testified that he *told* Jennings that the shell casings on the ground were from a 9mm pistol. Another piece of vital information was that all the shots came from the

same gun. But Jennings heard the shots fired, and could tell as a result that they all sounded the same, and that there were no simultaneous shots — hence a single gun. He knew that the victim had been shot at close range because he saw her body and the obvious close-contact wound in her chest, which had powder burns around it. In sum, there was not a single piece of information that Jennings knew that could only have been acquired if he had been the killer.

Again, these points — and every element of the prosecution's case — was examined and refuted in my October 2, 2015 letter. Simply put, the conviction should be reviewed because there is no reason to believe, based on the new evidence and on the exceptionally weak circumstantial evidence presented by the State, that Jennings was the killer.

20. *Attached documents.* As noted above, I have attached a copy of the report by the firearms expert, Mr. Scott. Other reports will be provided as the experts deliver them to me in final form. I would ask the CRU to consider the evidence in the compendium of evidence that was provided in support of the October 2, 2015 letter. I have also attached a copy of the April 17, 2006 memo by Assistant District Attorney Blake.

22. *Has the person who was convicted provided written permission to seek review of his conviction?*

Yes. I have been retained by Mr. Jennings as his counsel to represent him in his habeas-corpus proceedings and to seek review of his conviction by the CRU.

23. *Contact information for person submitting this request:*

Jeffrey I. Ehrlich
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Based on the foregoing, I urge the CRU to review Ray Jennings' conviction.

Respectfully yours,

Jeffrey I. Ehrlich
Counsel for Raymond Jennings



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Toolmarks & Comparison Microscopy ▪ Dynamics of Shooting Incidents ▪ Crime Scenes ▪ Gunshot
Distance ▪ Daubert Consultation ▪ Gunshot Wounds ▪ Hunting & Firearms Safety ▪ Trajectory Analysis***

January 15, 2016

Attorney Jeffrey I. Ehrlich
16130 Ventura Blvd.
Suite 610
Encino CA 91436

Re: Raymond Jennings

Dear Sir:

1. Purpose

The purpose of my involvement in this case is to review source materials which have been provided to me regarding issues involving evidence and testimony which contributed to the conviction of Mr. Raymond Jennings.

The scope of my investigation is related to firearms, ballistics, shooting reconstruction, shooting incident dynamics, crime scene analysis, and any related factors.

2. Credibility of Facts and/or Witnesses.

It is to be understood that the credibility of facts or witnesses alleged as true in any case is determined by the finder of fact.

3. Qualifications.

I am a 25-year plus retired Commissioned Officer of the Massachusetts State Police with over half my career in the MSP Ballistics Section and was the Commanding Officer of the main and sub-labs with 7 forensic examiners; I conducted, supervised, and trained personnel in forensic investigations, shooting reconstruction, and the dynamics involved in shooting incidences. I have also conducted criminal investigations related to shooting incidences and other crimes. The lab provided crime

scene investigation and forensic examination services to 350 cities and towns, all State agencies, all Federal agencies except the FBI, and the military services in Massachusetts.

I was appointed a member of the MSP Firearms Review Board which evaluated departmental officer involved shooting incidences. As a member of the Staff Inspections Unit, I conducted agency shooting investigations, claims of excessive force and/or police misconduct, and violations of Policy & Procedure and Rules & Regulations.

I have investigated approximately 400 police involved shootings including incidents of friendly fire, involuntary accidental discharge, and inappropriate use of firearms.

I have personally conducted thousands of forensic investigations, including crime scenes, attended post-mortems, trained with prominent forensic pathologists in gunshot wounds, attended the Bureau of Alcohol, Tobacco, Firearms National Firearms Investigation course, FBI courses, state law enforcement courses, medico-legal death seminars, thousands of hours of in-service training at the State Police Academy, numerous crime scene shooting reconstruction courses, forensic seminars, etc.

As an expert witness I have testified approximately 280 times in the areas of firearms, ballistics, shooting reconstruction, crime scene analysis, and shooting dynamics at all levels of the court system including Federal Court and Military Hearings. Testimony has been given before the Massachusetts Legislature and consultation provided to Massachusetts Congressmen to assist with legislative issues.

U.S. Army active duty career was within the Ordnance Corps and included extensive training and assignment in the testing, evaluation, repair and research of small arms and training in Explosive Ordnance Reconnaissance. I attended the U.S. Army Ordnance School at Ft. Dix and Small Arms Repair School, at Aberdeen Proving Ground, MD.

I have trained with the MSP Special Tactical Operations (STOP) team and with the 10th Special Forces Group at Fort Devens, MA for purposes of familiarization with special weapons and tactics.

For over 20 years I competed at the professional level in several shooting sports including Precision Pistol Competition (PPC) for police officers, shotgun trap and skeet, long range rifle, and metallic silhouette; I conducted extensive research and development by custom loading of various projectile designs, weights, and propellants. I have won numerous competitions and awards and was the 1980 World Champion of the IHMSA Competition held at Camp Curtis Guild in Wakefield, MA.

In 2002 I became an independent forensic consultant and provide services including firearms, ballistics, shooting reconstruction, ballistic testing, gyroscopic stability; internal, external, and terminal ballistics; reaction time, analysis of time and motion in a shooting incident, trajectory and drag model analysis and other specialized services. I have been retained by the U.S. Military, engineers, insurance companies, attorneys, prosecutors, authors, architects, Innocence Projects, and conducted work for both sides in legal issues. Since 2002 I have been involved in over 500 investigations requiring shooting reconstruction and/or forensic investigation in approximately 45 of the U.S. states, and in Haiti, Virgin Islands, United Kingdom, Israel, Afghanistan, Iraq, Canada, Nigeria, the Philippines, and Pakistan.

My forensic training, education, and experience are over 35 years, and my overall experience with firearms, ballistics, etc., exceeds 53 years.

I am a member or former member of several professional organizations.

4. Source Materials.

- A. Letter (34 pages) dated October 2, 2015 from Attorney Jeffrey Ehrlich to Mr. Ken Lynch at the Conviction Review Unit of the Los Angeles County District Attorney's Office.
- B. Transcript of the testimony of Prosecution Firearms Instructor Deputy Sheriff Michael Winter, Los Angeles County Sheriff's Department at trial, date unknown.
- C. Transcript of Prosecution Closing Statement.
- D. Crime Lab Report on Examination of Security Guard Uniform.
- E. Transcript of Firearms Examiner James Carroll.
- F. Transcript of Medical Examiner, Dr. Scholz.

5. Brief Summary.

Raymond Jennings was convicted in the third trial after jurors in trials held in 2008 and 2009 could not reach a verdict.

The victim, Michelle O'Keefe, was shot in the darkened area of a parking lot which Raymond Jennings had been assigned to as a security guard.

She was shot at close range in the chest and several times in the head which were determined to be within two to three feet.

6. Testimony of Deputy Sheriff Michael Winter.

Deputy Winter testified that he was primarily a firearms instructor; that he repaired and researched weapons for the Sheriff's Department, and that he taught tactics. It does not appear that this training is for forensic shooting reconstruction, firearms identification, ballistics (internal, external, terminal), or shooting dynamics as it relates to the elements of time and motion in a shooting incident. The testimony of Deputy Winter was apparently conducted in an attempt to connect Mr. Jennings experience in the National Guard with the prosecution theory that the defendant possessed an exceptional degree of skill and proficiency which would have been required by the shooter in this incident.

In reality, the issues which were presented to the jury were just the opposite and some of the testimony was purely inaccurate and misrepresented the known generally accepted training methodology and scientific principles.

The following areas are addressed:

- Raymond Jennings's purported National Guard training which allegedly provided a high degree of tactical training.
- That Jennings's National Guard signified that he possessed exceptional marksmanship skills with a 9mm pistol that was loaded with mixed types of ammunition.

- That the type of hollow point ammunition used in the shooting, Federal Hydra-Shok, is designed with a post in the center of the hollow nose so that the projectile will maintain a straighter wound path in the body.
- Purported National Guard training that would have provided Jennings with significant skill and proficiency that would enable him to load a pistol so that the type of ammunition (full metal jacket and hollow nose projectiles) was stacked in a specific manner that would provide a greater degree of fatal wounding.
- That it is common training methodology for both the police and military to aim at the head and shoot to stop the threat if the shots to the main upper torso (center mass) are not successful.

Since there are several overlapping issues for each area it will be more efficient and effective to address these matters in the aggregate.

Testimony suggesting that the military conducts the same type of training as that of the Los Angeles Sheriff's Department is clearly not accurate since police are using P.O.S.T. training modules and the military has completely different mission objectives.

Police officers carry handguns as their primary weapon, the military carries hip or shoulder fired weapons as the standard issue. The average trained police officer does not perform police duties carrying a long arm; that is usually reserved for special tactical teams such as SWAT.

On the issue loading different types of ammunition so that the shooter could fire the first shots that had the most wounding effect, this contradicts the overwhelming recommended procedure of using the same make, design, weight of bullet, velocity and kinetic energy. This is directly related to the areas known as internal, external, and terminal ballistics and forms the foundation of producing replicated accuracy for each and every shot fired.

Mixing different ammunition risks jams occurring in the pistol and since the bullet weight, velocity, shape, and propellant are different it causes problems in accuracy. The generally accepted practice for all experienced shooters, police departments, and the military is to qualify with the same ammunition that you intend to carry. This provides for consistent firearms operation and consistent accuracy with each shot.

It is also important to note that hollow point ammunition is designed to expand and lose its velocity and energy in the body soft tissue so that there is less chance of an exit wound which could permit a projectile to strike a second person.

The post in the center of the hollow cavity of the projectile's nose has absolutely no relationship to the bullet going straight. The post is designed and stated by Federal Cartridge Co as being for the purpose of forcing soft tissue outwards toward the serrated edges of bullet's copper jacket which will then result in more uniform expansion.

The wounding effect of ammunition is not based on the fact that hollow point has expanded, it is based on the velocity and kinetic energy produced by any projectile; a full metal jacket projectile

with greater velocity and energy will produce a larger temporary wound cavity than a heavier projectile with less velocity and energy, and it is this large cavity which pulverizes and shreds tissue and vital organs.

An experienced shooter would never mix ammunition from different manufacturers. When shooting crimes are committed and evidence is recovered which shows that different makes and types of ammunition came from a single firearm, it is a clear and convincing sign that the person simply loaded whatever they could get their hands on.

Persons who cannot legally purchase ammunition and use the same brand and design with the same consistent velocity and energy will acquire whatever they can from other sources. Typically these are persons affiliated with street gangs where resources involving firearms can be shared.

There is no secondary target selection process involving “head shots” for the police, military, or civilian areas as an alternative to standard center mass targeting in general firearms training.

The reason this is not an accepted practice is because the legs, arms, hands, and head are too small and capable of rapid motion while center body mass is the least mobile.

Of interest is the fact that Jennings actually responded to the type of training that would be received regarding cover and concealment. Instead of standing up in the open to be seen and possibly become a target, he reacted like a police officer or soldier is trained – take cover and conceal yourself until the situation is assessed.

7. Shooting Reconstruction Issues and Gunshot Wounds.

The crux of the prosecution’s case in the testimony of Deputy Winter is suggesting that there was some extraordinary proficiency involved by the shooter due to the movement of the vehicle, the door being open, the window down four and one half inches, and the type of ammunition being used.

However, based upon evidence that the victim’s wounds were the result of the firearm being approximately 2 to 3 feet away, this negates any such super skill and proficiency since there is no evidence that gunshot residue was tested for on the exterior side of the driver door window, nor the interior side to determine the density of the pattern to even conclude that these gunshots were even fired in a manner that the projectile passed through the four and one half inch open window space.

If they had then the firearm would have had to be within the 2 to 3 foot distance and if the shooter was firing while standing in front of the open driver door then there would have been little to no skill involved since there would have been a distance of approximately 2 to 3 feet from the door to the victim’s head. If the shooter had been further back then the evidence on the skin would not have been present.

My perception of the testimony of Deputy Winter on the proficiency issue and what the prosecution was presenting to the jury was that the gunshots to the head were accomplished at a distance that would have required superior skill and proficiency in shooting accuracy, but there is a major opposing scientific element that cannot be overlooked. It is not possible to have distance in a gunshot while simultaneously having evidence that they were at 2 to 3 feet. This is completely contradictory from both a logical and scientific perspective.

As a sub-topic of this, the uniform of Mr. Jennings was tested for gunshot residue and the results were negative. Apparently the prosecution wanted the jury to believe the uniform had been washed despite the crime lab indicating that they had knowledge that it did not appear to be. This should have been challenged by defense counsel instead of leaving the jury with the inference that there had been an intentional attempt by Jennings to remove evidence when in fact it apparently was never there to begin with.

8. Dr. Stephen Scholz, Medical Examiner (Pathologist).

Chest wound (Wound D):

Dr. Scholz testified that the sequence of shots into the victim likely started with the gunshot to the chest which had the appearance of a close gunshot due to the searing/charring of the wound area from the flame of the firearm.

The distance from the firearm would be “no more than a couple of inches”.

This was also the first shot because it diminished blood pressure which indicated to him that the other gunshot wounds came after the contact gunshot.

Left side of mouth (Wound B):

Heavy concentration of stippling within a inch and a half of the entry wound.

Other stippling was beyond that well up onto and above the eyebrow.

Concludes the firearm was within about two and half feet when fired.

Left side of neck (Wound C):

Note: I am unable to accurately discern testimony as to presence of stippling for purposes of distance.

Corner of left eye (Wound A):

Note: I am unable to accurately discern testimony as to presence of stippling for purposes of distance.

In the aggregate, depending on the overall elapsed time of the gunshots and the speed at which the victim’s vehicle was rolling backwards (it was found in neutral gear), it appears that all the shots occurred with the driver door open and the shooter located with the open driver door to his rear.

In the alternative, if the shooter was on the exterior side of the door with a four inch window opening it appears that the firearm would be protruding through the window opening or it could be

fired in the V-shaped open space between the windshield A-pillar and the driver door A-pillar, however, this would have to be evaluated in conjunction with the wound paths in the victim to ascertain whether the horizontal angle is possible.

Remaining within the area of the open door is most consistent with the stippling (tattooing) on the victim's facial area and would be within the two and one half foot distance that Dr. Scholz opines would deposit the pattern which he observed and documented.

Note: Firearms examiner James Carroll testifies separately that stippling would normally be found at a distance of less than two feet.

Since Dr. Scholz is opining that the two and one half foot distance is his estimate of the maximum distance, the possibility exists that it could be less which would increase the improbability that the shooter was on the opposite (exterior) side of the door.

The logic of the shooter being other than within the area next to the driver seat with the driver door open and located behind him is addressed in a separate section of this report.

9. Firearms Examiner James Carroll.

Through the transcript of this witness it is learned that the ammunition recovered at the scene was not only of different bullet design but there were different manufacturers involved.

Of interest is that two /2/ of discharged cartridge cases were Federal Cartridge Company consisting of brass with a nickel plating while the remaining three /3/ were of CCI (Cascade Cartridge Industries) cartridges from their "Blazer" line of ammunition which utilizes aluminum cartridge cases.

The Blazer line of ammunition is an economy grade cartridge since the substitution of aluminum reduces the cost where brass is more expensive.

Mr. Carroll testifies to the process of hot gases that exit the muzzle will expand outward very rapidly and to how hollow point ammunition is designed to expand due to its passage through soft tissue.

As part of the prosecution theory concerning the specific design of bullet and how it was loaded into a firearm, Mr. Carroll opines that it would be depend upon the purpose they were being used for and claims that if a shooter was to fire at a person through some type of barrier that it would be prudent to have the full metal jacket projectiles being fired first if you have that type of ammunition and that hollow points would not be the first choice.

Note: What is critical to consider here is that hollow points are designed to expand in soft tissue, they normally do not expand when perforating substrates such as sheet metal, wood, plaster, etc. They will flatten slightly as the nose of the bullet gets pinched inward, not outward.

The fact is that hollow points will usually not expand striking objects other than soft tissue because the hollow cavity fills with the substrate and prevents expansion. In effect, it fills the hollow cavity and actually causes the nose of the bullet to become

indented inward – just the opposite of the mushrooming effect because the serrated copper petals do not peel backward.

The importance of this is that Mr. Carroll is claiming that hollow points would be fired first if no barrier was involved and full metal jackets would be fired first if a barrier was involved when the scientific proof of the matter is that the design of the bullet is insignificant and the kinetic energy is the most important.

This issue goes to the claim that the order in which the ammunition was loaded was related to the skill and training of the shooter, which it is not. There was no testimony about kinetic energy that supports this theory.

10. Jennings Allegedly Fired A Gunshot Into The Ground Near His Feet For The First Shot But There Is Total Absence Of Forensic Evidence Known As Pseudo-Stippling.

According to the evidence and statements made by the prosecutor to the jury, the first shot was fired by Mr. Jennings downward to the ground directly where his feet were located.

The second shot was fired at contact or near contact to the victim's chest.

For the second shot to have been fired at the distance of contact or near contact then the shooter would have to be located so that the open driver door was to the shooter's rear or to the left rear since he/she would have had full access to the victim and since the prosecution claims that the other shots were fired through the window opening as the vehicle was moving backward.

This presents two distinct problems:

- A. Since the door was open the shooter would have to aside out of the way as the door moves backward along with the motion of the vehicle. The shooter then would have to make a return side step in order to be back in alignment with the window opening to complete the sequence of shots.
- B. Of greatest evidentiary value is the fact that the shooter's first shot into the ground would be extremely limited to a very restricted area since he is standing next to the driver seat with the open driver door behind him. The first gunshot is fired which strikes the ground at the shooter's feet and the second shot is then the contact shot to the victim's chest area.

The dominant forensic issue which I will address is the gunshot which strikes the ground at the shooter's feet.

In the prosecutor's closing statement to the jury, he focused on the location of the gunshot strike mark stating that this was where the assailant fired the first shot into the ground directly at his feet.

He stated that the gunshot strike mark to the asphalt happened when the shooter was in the open driver door area and that the muzzle flash would have been so bright that "it's like a camera flash going off down there. It would illuminate the entire base of the lot".

Note: The muzzle flash from a 9mm is a dull orange red glow. It would not provide any significant illumination. The 9mm cartridge does not allow for much volume of propellant and the majority of it has already burned prior to leaving the muzzle.

The pistol used in this shooting was not found; there is no ability to exclude it as having with a muzzle brake or a flash suppressor which merely redirects the hot gases and flash through ported openings at the muzzle.

The propellant was not examined to see if it was low flash type which is made specifically for a reduced muzzle flash.

The prosecutor's claim is factually and scientifically unsound. This should not have been presented to the jury

There is abundant published and video data available refuting the prosecutor's statement.

Uniform Clothing of Raymond Jennings:

The uniform clothing of Raymond Jennings was seized as evidence and examined in the Los Angeles County Sheriff's Department Crime Laboratory (see laboratory examination notes, pages 109-115, dated 4-19-06).

These notes indicate that the clothing was examined in detail using ambient light, magnifying light and high intensity light in conjunction with instrumentation including both macroscopic and stereoscopic methods.

The clothing had the pants cuffs opened and examined, the pockets turned inside out, and the pants legs examined to a length of 12" above the cuffs without finding or documentation of perforations, foreign material related to asphalt, copper jacket, or lead core fragments. The pants are noted as being "worn and dirty".

The examination did not find any embedded asphalt (trace evidence), or the presence of small to medium fabric damage which should also have caused punctuate wounds to Mr. Jennings.

The source of this trace evidence and/or damage and punctated wounds (marked with points or dots; having minute spots or depressions) is the fragmentation of the asphalt surface when struck by a high velocity projectile, specifically like that from a gunshot.

In addition, the projectile itself can fragment with pieces of the copper jacket, the lead core, or both bonded together, and result in significant lacerations, abrasions, or punctate wounds.

9mm Luger Ammunition:

There are many major manufacturers of this ammunition both in the U.S. and foreign. It is by far the most common and extensively utilized caliber in semi-automatic pistols in the world. It is not only available in different bullet shapes and weights, but there is also a wide velocity scale.

Commercially available 9mm ammunition velocity can range between 1000 feet per second (fps) to 1650 fps.

A gunshot fired downward into asphalt will create a concentric crater. The projectile strikes the surface from a very short distance at its maximum velocity and kinetic energy. The asphalt surface and any bullet fragments disintegrates into innumerable missiles of varying size which explode outward in a cone shaped pattern at close to the same velocity as the bullet strikes.

It is these asphalt, metallic copper and lead particulates which expand away from crater like water when a rock has been dropped into it. The closer the person is, the greater the energy of the fragments with the resulting appearance of damage (perforations or embedding into clothing) and the development of punctate wounds in what is known as pseudo-stippling.

It is absolutely critical to interpret pseudo-stippling correctly so that it is not mistakenly assumed to be actual gunshot propellant stippling. This is because gunshot propellant stippling is the basis for determining the distance at which a firearm was from the target material when it was fired.

Pseudo-stippling occurs with other materials such as glass, wood, and materials which can fragment as the bullet passes through and carry foreign materials along with fragments of the bullet into the victim essentially at the same velocity as the bullet strikes the surface.

The fragments/particulates which cause wounding such as pseudo-stippling are called “secondary missiles” in forensic science.

Summary Conclusion of Gunshot Fired Into Ground:

One of the foremost evidentiary issues in this case is the complete and total absence of any evidence of high velocity foreign matter in the form of asphalt, copper jacket fragments, or lead core fragments being found during the detailed trace evidence examination of the uniform pants. There were no perforations reported and Mr. Jennings did not exhibit any signs of injury.

This is scientific evidence which refutes the prosecutor’s statement that Mr. Jennings fired a gunshot into the ground while at the driver door of the victim’s vehicle.

In the science of shooting reconstruction there is a phrase “The absence of evidence is as important as the abundance of evidence”.

If Raymond Jennings fired a 9mm bullet downward into the surface of the parking lot, then his clothing and footwear and likely some injuries should have displayed evidence of that action. There were none.

11. Firing A Gunshot Into The Ground Is Indicative Of An Inexperienced and Untrained Person.

“Trigger discipline” is a firearms safety training factor which teaches that your finger must remain off the trigger until you actually make the decision to shoot. This is taught in all firearms safety classes.

It is taught to police and military personnel and by the NRA and other shooting sports organizations.

This is taught to the extent that it is beyond a conscious effort. Qualified and experienced shooters practice this until it becomes natural reflex regardless of whatever firearm is picked up and is committed to muscle memory.

The person who fired the shot into the parking lot surface had to have his finger on the trigger and had to pull the trigger while it was pointed down at his own feet which is an egregious violation of trigger discipline training and firearms safety.

The person who fired the shot into the ground at the parking lot was lacking the most basic safety acumen; it is the act of an untrained, inexperienced, and unpracticed novice.

12. Projectile Found in Parking Lot.

This item of evidence is fundamental in conjunction with the impact on the park lot surface.

Projectiles exhibit specific characteristics when striking a surface like a parking lot and these can be used to determine Angle of Incidence and Angle of Departure.

Very often fragments of the projectile itself, including that of the copper jacket and/or lead core will become embedded in objects (clothing, shoes, etc) that are in close proximity. In some instances they will perforate these items and cause actual wounding with the fragments becoming embedded into the skin and tissue.

This would also have been exculpatory evidence related to the absence of pseudo-stippling or damage to the uniform, footwear, and leg of Mr. Jennings.

It would have been imperative for defense counsel to raise this through cross-examination or to present it as part of the defense case.

13. Mixed Ammunition in Pistol that Fired Shots.

The mixing of ammunition, whether it be by brand, bullet characteristics, shape, and design; or anything other than the exact same brand, bullet weight, shape, characteristics, design, and even from the same box of ammunition is a strong sign of a person who lacks the most basic knowledge in firearms operations.

One of the most common reasons for firearms malfunctions and poor accuracy is the failure to use ammunition which has been manufactured on or about the same day due to the possibility of changes in the propellant, type of primer, and non-uniform crimping of the cartridge case onto the projectile.

The mixing of ammunition results in a significant decrease in accuracy since the aerodynamics are not consistent from shot to shot. There are issues with consistent velocity, different propellants in each cartridge that have various burning rates, the propellant itself can be different in shape and coated with chemicals to retard or increase burning, and bullet weight is important.

Informed and trained shooters like police officers and the military do not use one type of ammunition to qualify (like Winter testified) and then get issued a different type of ammunition to carry on duty. That policy and procedure was dropped decades ago when it became an issue in civil litigation.

Police departments like the Los Angeles Sheriff's Department who may not have moved into the mainstream of police training place themselves at risk in civil matters where it can be shown that the failure to train and qualify with the same ammunition is the basis for negligence.

In a civil case which I was involved in several years ago it is my recollection that officers train and qualify with the same ammunition and that all firearms are the same and issued by the department.

It is my professional opinion that anyone mixing ammunition in a firearm is untrained and ignorant of the many problems with malfunctions and accuracy that can be expected. Every trained shooter will state that it is important to shoot the same ammunition you intend to carry so that you are aware of its interaction in the firearm that you use.

I am in complete and total disagreement with Deputy Winter's testimony that there is any tactical advantage as he claims and there are no known peer reviewed publications which support his view.

14. Gunshot Acoustics.

During the course of an investigation it is common for investigators to canvass the area for eye and ear witnesses when it involves gunshots.

While Mr. Jennings may have some knowledge of firearms, the fact that part of his assumption that there was only one shooter based upon what he heard is of no surprise despite what the prosecution would suggest as being indicative only of a person with some intricate knowledge of the incident.

Over the past 10 years I have been involved in approximately 500 shooting cases of which multiple dozens or more involved reading police reports that questioned ear witnesses on how many shots they heard fired and whether it sounded like the same gun or more than one gun.

It is not difficult to conclude that a shooting incident likely involves one firearm because there is a maximum speed at which the trigger can be pulled and this averages approximately 4 to 5 shots per second for the average trained police officer and 2 to 3 shots per second for a relative novice or with little experience.

When multiple guns are involved there are overlapping shots with some occurring simultaneously.

From an acoustic perspective, it is logical and reasonable to be able to make an informed decision that a series of gunshots appear to be coming from the same gun especially when the firearm is pointed in the same direction and all the shots are of the same caliber.

The most common error made by ear witnesses is how many shots were fired, not how many guns were being fired.

15. Victim Could Have Been Shot by Other Than Through Window Opening..

In determining the shooter's location and proficiency there are more key elements that were missed since the shots would not have had to be fired only through the opening of the window.

When the front doors of a vehicle are open there is a significant V-shaped gap formed by the A-Pillar of the windshield and the A-Pillar of the door (if present). If the door does not have an A-Pillar then it would be the furthest edge of the window glass itself that abuts the windshield pillar.

This opening, referred to as the door jamb, is one of the most used areas when officers are utilizing cover and concealment behind the open door of a vehicle.

This area cannot be excluded and is the more likely area in which gunshots were fired that struck the victim.

The elements of time and motion (shooting dynamics) in a shooting incident must be carefully evaluated to ensure that all possibilities are presented; it appears that the prosecution focused only on the window opening and the defense counsel failed to challenge that theory by presenting the potential that gunshots could have passed between the open door and windshield.

The exterior and interior A Pillar of the windshield and the A-Pillar or window area closest to the hinges should have been examined for gunshot residue (GSR). The failure to take samples from this area is a forensic failure in the investigation and a knowledgeable, competent, and trained investigator would have known, or should have known, that this was an important area that could reveal important evidence.

16. Wound Paths in a Victim.

Wound paths through the victim are dependent on the orientation of the body to the muzzle for each gunshot. The fact that gunshot wounds might be left to right, or front to back does not mean that the shooter was in some specific location. This is an extremely critical element that is often overlooked by uninformed investigators.

The fact that a person may have received a wound which is inconsistent with the location of a shooter must be analyzed to determine whether the variable of the victim's movement or body orientation has created a false assumption that the shooter could not have been where it is believed he was.

In order to accomplish this it would be important to review other information and data from the crime scene such as the location of discharged cartridge cases and the direction in which the victim's vehicle was moving as well as distances and measurements.

There is insufficient data available at this time for me to analyze this.

17. Discharged Cartridge Cases.

There apparently were numerous discharged cartridge cases located in the parking lot and with gunshots being rapidly fired there is little ability for a shooter to move more than a few feet in any direction during such a rapid series of gunshots.

The projectiles and discharged cartridge cases could have been examined to determine a suspected make and model of firearm, but even without this information the information that a van blocked the view of Mr. Jennings being able to see the shooter, it should have been scientifically possible to conclude the general location of the shooter to within a few feet.

Once that location is determined, the trajectory can be extrapolated from that data in conjunction with the location and movement of the victim's vehicle.

A reasonable, competent, and knowledgeable person familiar with shooting reconstruction methodology should have been able to reach conclusions on the location of the shooter and present their opinions to the jury using the scientific method of forensic investigation.

At this point it is unexplainable why the application of generally accepted methodology was not employed by police investigators or why defense counsel did not retain such an expert on behalf of the defendant.

18. Sound of Engine Running.

I feel compelled to address what apparently was an issue that involved the sound of the vehicle that Mr. Jennings stated he heard. Mr. Ehrlich's letter provides some background on this in explaining that the issue was not that he heard the vehicle idling, but that he heard the engine when it was first started, with the possibility that the engine accelerated due to depression of the accelerator pistol during the shooting incident.

This is an area which I have been involved in with many shooting incidents and I have been personally involved in the acoustic reconstruction of sounds heard by ear witnesses.

One of the reasons that police officers are prohibited by their department Policy and Procedure from shooting at a motor vehicle is for the very reason that the operator can become disabled and cause the vehicle to continue on, in many instances accelerating, as they react to a wound and depress the accelerator.

A recent case of such an occurrence was in the City of Dothan, Alabama where a police officer shot the operator numerous times who was stopped. The vehicle then accelerated through a parking lot, over a curbing, crossed a busy roadway nearly missing vehicles and went through the brick wall of a business injuring a person inside.

It would not be unusual for this to have occurred.

Secondly, the fact that a police officer could not hear the vehicle idling and was allowed to testify to that is absurd. Hearing is subjective and speculative.

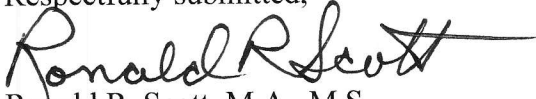
The generally accepted methodology for conducting an acoustic reconstruction is with the type of equipment used for noise recording such as where there is a citizen group complaining of some condition. The testing is conducted by an acoustics engineer with very high end equipment and the test must replicate the exact conditions present at the time of the incident.

The testimony of a police officer giving an expert scientific opinion without any scientific parameters being documented should have been challenged in a Daubert Motion. The defense counsel should have employed an acoustic engineer to document and record scientific acoustic data using generally accepted methodology.

19. Right to Amend.

I reserve the right to amend or add to this report if additional evidence or medical data is received.

Respectfully submitted,


Ronald R. Scott, M.A., M.S.

MEMORANDUM
(Attorney Work Product)

2nd **DRAFT**

TO: KERRY WHITE
Head Deputy District Attorney
Antelope Valley Branch Office

JOHN NANTROUP
Assistant Head Deputy District Attorney
Antelope Valley Branch Office

FROM: MICHAEL BLAKE
Deputy District Attorney
Antelope Valley Branch Office

SUBJECT: **Ongoing Investigation and Request for Additional Forensic Testing**
People v. Raymond Lee Jennings (MA033712)

DATE: April 17, 2006

Procedural Posture

This case was filed for warrant on November 15, 2005 when the defendant was deployed with the Army National Guard in Iraq. After returning to the U.S., he was arrested here in the Antelope Valley on December 13, 2006.

In January 2006, the Los Angeles County Public Defender, and then the Alternate Public Defender, both conflicted in the matter. Attorney David Houchin was appointed to the case in late February of this year.

At arraignment, a preliminary hearing setting date was scheduled for mid-March in the Los Angeles Superior Court's North District, Department A2 (Judge Christopher Estes). When Mr. Houchin asked for more time, the matter was set for April 24, 2006 as day seven of ten, with a continuous preliminary hearing waiver from the defendant.

Last week I telephoned opposing counsel to discuss a potential conflict in my trial schedule, and to arrange delivery of 25 videotapes and hundreds of pages from a related civil lawsuit. Mr. Houchin has known about these materials since March, but naturally he wanted time to review them before the preliminary hearing. He told me that he intends to continue the preliminary hearing to a mutually agreeable date in May. If for some reason Judge Estes denies that motion we must be ready to proceed on April 24.

Ongoing Investigation and Request for Additional Forensic Testing

On February 21, 2000, eighteen year-old co-ed Michelle O'Keefe was found murdered in her car at a local Park and Ride. Raymond Lee Jennings was the only known "witness" to this crime.

CA

coroner's report

Michelle was shot four times at extremely close range, three in the face and once in the chest. This is a very complex and voluminous case, complicated by six years of criminal and civil investigation and an intervening civil lawsuit that was intensely litigated, with numerous depositions. Although his conduct and intimate knowledge of the crime scene, and many inconsistencies in statements to police and others are all *highly* suspicious, examinations of the physical evidence have yet to directly link Jennings to the murder of Michelle O'Keefe.

But the physical evidence has not been fully evaluated. Many items examined years ago may still yield valuable information if subjected to new or different tests. I am convinced that several items with forensic potential may still exist and that other items not yet in our possession should be vigorously sought out. All of these things should be subjected to every appropriate scientific test, whether ultimately they point to Raymond Lee Jennings or not.

Last week I received a summary of evidence collected and testing already performed. After discussions with Assistant Head Deputy Nantroup and our case investigators, I spoke with LASD Crime Lab Division Chiefs Ken Sewell (Biological) and Lew Bolf (Physical) to request specific forensic testing on specific items of evidence. On Friday April 14 these and other items were collected from LASD Central Property, transported by Detective Diane Harris and personally delivered to Sewell and Bolf.

Here is a summary of the key physical evidence with recommendations for further action:

1. Projectiles (5 Items)

a. Evidence Items #1 and #4

i. Two (9mm?) projectiles recovered from scene

1. One associated with an asphalt strike mark
2. One passed through victim

Luger - 9mm

b. Evidence Item #20

i. Three (9mm?) projectiles recovered during autopsy

1. Four GSW documented
 - a. Three GSW to Victim's Head and Neck
 - b. One GSW to Victim's Chest

Luger 9mm

c. Prior Testing

i. Ballistics and Toolmarks

1. Unsolicited report from LAPD re: TEC 9
 - a. Excluded as possible source on 11-15-05

d. Recommendations

i. Ballistics and Toolmarks

1. Determine if all projectiles are from the same weapon
2. Determine if projectiles could be .380 caliber
3. No reference weapon presently to test against
 - a. Locate missing firearm

NO

ii. Reports

1. Need LASD Lab Reports with projectile profiles

2. Cartridge Casings (4 Items)

a. Evidence Items #2, #3, #5 and #8

i. Four 9mm Casings recovered from scene

1. Pattern tracks with backward movement of victim's car

- b. One Missing casing (?)
 - i. Five (?) shots fired—four casings recovered
 - 1. One in strike mark in the asphalt
 - 2. Four documented GSW at autopsy
- c. Prior Testing
 - i. Prints
 - 1. Dusted for prints during initial investigation
 - 2. Negative Results
 - ii. Ballistics and Toolmarks
 - 1. Unsolicited report from LAPD re: TEC 9
 - a. Excluded as possible source on 11-15-05
 - 2. Between 3 and 18 possible weapons of various manufacture
 - a. Based on Ejection and Firing Pin characteristics
- d. Recommendations
 - i. Determine if one cartridge casing is actually missing
 - 1. Locate it
 - ii. Prints
 - 1. Atomized Glue
 - a. Limited results expected due to previous dusting
 - iii. Ballistics and Tool Marks
 - 1. Determine if all casings are from the same weapon
 - 2. Narrow number of possible manufacturers
 - 3. Defendant's Lorcin L380
 - a. Locate this weapon
 - b. Determine if this L380 has been modified to accept a standard 9mm round
 - c. Determine if a 9mm round can be modified to fire in this L380 without altering the cartridge casing
 - 4. Compare ballistics to expended projectiles
 - iv. Reports
 - 1. Need LASD Lab Reports with cartridge casing profiles

3. Victim's Clothing and Personal Effects (14 Items)

- a. Evidence Item #6: Left Sandal
 - i. Gravity Blood on upturned sole
 - ii. Prior Testing
 - 1. DNA Match to Victim
 - iii. Recommendations pending outcome of other testing
- b. Evidence Item #7: Post Earring Back
 - i. Found inside scene but outside victim's car
 - ii. Appears to have separated from Post Earring (#18) due to shooting
 - iii. Prior Testing unknown
 - iv. Recommendations pending outcome of other testing
- c. Evidence Item #9: Green Plastic Wristband
 - i. Rubber-like material removed from victim's right wrist
 - ii. Prior Testing unknown
 - iii. Recommendations
 - 1. DNA profile for any other donors
 - 2. Microscopic Hair and Fiber Analysis

- d. Evidence Item #10: Black Denim Jeans
 - i. Passenger seat next to victim with defect from the projectile that passed through the victim and struck the inner passenger door panel
 - ii. Prior Testing unknown
 - iii. Recommendations pending outcome of other testing
- e. Evidence Item #11: Plastic Bag (Av College Bookstore)
 - i. Rear seat with miscellaneous photos of the victim, her casting cards and a red plastic wristband.
 - ii. Prior Testing unknown
 - iii. Recommendations pending outcome of other testing
- f. Evidence Item #12: Disposable Camera
 - i. Found in victim's purse between front seats
 - ii. Prior Testing
 - 1. Film developed
 - a. Photos of victim and friends
 - iii. Recommendations pending outcome of other testing
- g. Evidence Item #13: Green Plastic Card (Teen Choice Awards VIP)
 - i. Fell out of car when victim was moved by Coroner Investigator
 - ii. Prior Testing unknown
 - iii. Recommendations pending outcome of other testing
- h. Evidence Item #14: Scrap Paper (Rosario)
 - i. Front passenger seat with phone number
 - ii. Prior Testing unknown
 - iii. Recommendations pending outcome of other testing
- i. Evidence Item #15: Small Silver Spiral Notebook
 - i. Front center console
 - ii. Prior Testing unknown
 - iii. Recommendations pending outcome of other testing
- j. Evidence Item #16: Leather Cell Phone Wallet
 - i. Cell Phone missing
 - 1. When last seen alive by a friend who dropped her off, victim was in her car and on her cell phone at the Park and Ride
 - 2. Check Records and Devide ID # to see if used since murder
 - ii. \$111.30 and credit cards still inside with CDL and various papers
 - iii. Prior Testing unknown
 - iv. Recommendations pending outcome of other testing
- k. Evidence Item #17: Scrap of Blue Plastic Material
 - i. Thin plastic material with visible fingerprints on floor behind victim
 - ii. Prior Testing unknown
 - iii. Recommendations
 - 1. Identify finger prints
 - 2. Identify source of material

- l. Evidence Item #18: Yellow Metal Post Earring
 - i. Found inside victim's car
 - ii. Appears to have separated from Post Earring (#7) due to shooting
 - iii. Prior Testing unknown
 - iv. Recommendations pending outcome of other testing
- m. Evidence Item #19: Remote Car Alarm Control
 - i. Removed from victim's key ring by police
 - ii. Prior Testing unknown
 - iii. Recommendations
 1. Prints
 - a. Victim activated alarm but it was off when first responders arrived
 - i. Was defendant the only witness to alarm?
 - b. Check for prints by the most productive method
 2. Hair and Fiber
 - a. Search for possible fibers
 3. DNA
 - a. Swab to obtain profile
 4. Operability
 - a. Duration
 - b. Automatic or Manual shut-off
- n. Evidence Item #33: 2000 Ford Mustang (Blue)
 - i. Car was sold but recently located and is available for further testing
 - ii. Prior Testing
 1. Printed and Released
 - a. Negative results
 - iii. Recommendations
 1. Blood
 - a. Luminol * (see Luminol discussion below)
 - i. Interior and exterior
 2. Reconstructions
 - a. Alarm Function and Horn
 - b. Engine noise
 - c. Transmission and Clutch (Car found in Neutral)
 - d. Positions of Victim and Shooter at various points
 - e. Speed of backward roll
 - f. Interior lighting and visibility with muzzle flash
 - g. Preserve for jury view

4. Victim's Remains and Items Recovered by the Coroner's Office (9 Items)

- a. Evidence Item #23: Fingernail Kit
 - i. Acrylic Nails and scrapings
 - ii. Prior Testing
 1. None
 - iii. Recommendations
 1. Hair and Fiber
 - a. Transfer during struggle
 2. DNA

- a. Tissue or Hairs deposited during struggle
- b. Evidence Items #24 and 25: Hair and Pubic Hair Kits
 - i. Coroner samples
 - ii. Prior Testing
 - 1. None
 - iii. Recommendations
 - 1. Hair
 - a. Compare to hairs found on Jennings clothing
 - 2. DNA
 - a. Reference sample from Jennings *after* DNA typing
- c. Evidence Item #26 and #27a : Victim Clothing
 - i. Clothing (#27a was collected during autopsy)
 - ii. Prior Testing
 - 1. None
 - iii. Recommendations
 - 1. Hair and Fiber
 - a. Collect and analyze
 - b. Subject to DNA testing
 - 2. DNA
 - a. Identify source
- d. Evidence Item #27: Envelope with Hair
 - i. Two (foreign?) hairs collected from victim's clothing
 - ii. Prior Testing
 - 1. None
 - iii. Recommendations
 - 1. Hair
 - a. Physical comparison to victim hair
 - 2. DNA
 - a. Depends on results of physical comparison
- e. Evidence Items #27b: Reference Blood Sample
 - i. Coroner samples
 - ii. Prior Testing
 - 1. None
 - iii. Recommendations
 - 1. DNA for use Reference
- f. Evidence Items #28: Sexual Assault Kit
 - i. Coroner samples
 - ii. Prior Testing
 - 1. None
 - iii. Recommendations
 - 1. Hair and Fiber

- a. Search for any foreign matter
- 2. DNA
 - a. Possible bite mark swabbed at autopsy? — ?
 - b. Search for foreign profile
 - c. If MALE profile is obtained
 - i. Court Order
 - ii. Obtain Reference and Compare

g. Un-sequenced Evidence Item: Excised Bone Sample

- i. Sample excised beneath blunt force injury above victim's left eyebrow
- ii. Prior Testing
 - 1. None
- iii. Recommendations
 - 1. Toolmark
 - a. Distinctive scoring in the bony surface
 - b. Attempt identification by comparison to
 - i. Angle and Characteristics of the blow
 - ii. ID type of weapon using toolmarks
 - 1. Flashlight?
 - 2. Firearm?
 - iii. Defendant's flashlight
 - 1. determine what type he used
 - 2. Locate flashlight
 - iv. Firearm muzzle
 - 1. Locate firearm
 - 2. Compare to Lorcin L-380
 - 2. Medical Opinion
 - a. How incapacitated from this blow (reconstruction?)

h. Un-sequenced Evidence Item: Spiral Notebook

- i. Originally sent to lab with victim's clothing in 2000 or 2001
- ii. Prior Testing
 - 1. None
- iii. Recommendations
 - 1. Review contents to determine origin
 - 2. Print if warranted

5. Defendant's Clothing (3 Items)

a. Evidence Item #21: Security Guard Uniform (Jacket, Pants and Shirt)

i. Prior Testing

1. Jacket Sleeves

a. Blood

i. Visual examination with negative results

b. GSR

i. Negative results

2. Pants

a. Blood

i. Visual examination with negative results

3. Shirt

a. Hairs removed from shirt

i. Not Tested

b. Blood

i. Stain sampled with negative results

ii. Visual examination with negative results

ii. Recommendations

High Velocity Blood Spatter occurs when a gunshot impacts the victim at close range. Atomized blood particles erupting from the wound travel in a mist, up to 18" to 48" from the impact site. These particles create a conical pattern that expands outward along the bullet path, back toward the shooter. This is commonly known as "back spatter." The area where this spatter is deposited is known as the "target." Individual blood particles are never larger than 1mm in diameter and often cannot be seen on clothing with the naked eye. The higher the velocity of a firearm, the smaller the individual spatter will be.

The amount of blood deposited can vary greatly from scene to scene, sometimes in a clearly defined pattern, sometimes just a few particles. Because it travels in a mist, this spatter can sit on top of and sink down into the weave and fibers of a shooter's clothing, deposit inside gun barrels, in gaps and crevices. Microscopic bits of tissue--yielding DNA--can also be deposited on the target with the blood. Due to the minute size of these atomized particles, high velocity spatter will dry within a few seconds. Transfer and smearing are extremely unlikely because of fast drying time. DNA extraction from single particles is difficult, if not impossible.

Luminol is a water-based chemical that enhances the visibility of blood. It can be used on very faint bloodstains (e.g., a cleaned up or painted over scene) causing the bloodstains to glow in the dark. If a stain is so faint or thin that it is not visible to the naked eye, it can be visualized with Luminol, but no further confirmatory testing is possible. Luminol can give false positive readings because it also reacts to copper and iron compounds, bleach, and certain plants, such as potatoes. See H.C. Lee "Identification and Grouping of Bloodstains" in *Forensic Science Handbook* (1982)

Because Jennings was only on the job for a couple of days before the shooting and his uniform was most likely worn before it was issued to him, the mere presence of blood on this clothing--even in atomized particles--will not answer the ultimate question of whether Raymond Jennings killed

Michelle O'Keefe. If blood is found on Jennings' clothing we must be able to collect it, preserve it and compare it to Michelles' DNA.

If it does exist, we may have only one opportunity to collect and type this fragile blood evidence. I am worried that Luminol, if it is used to visualize a high velocity deposit, could significantly dilute or hopelessly impair genetic markers in any microscopic blood particles we may find. See D.L. Laux "Effects of Luminol on the Subsequent Analysis of Bloodstains" in *Journal of Forensic Sciences* v.36, No.5 (Sep.1991). Also see R.R.J. Grispino "The Effects of Luminol on the Serological Analysis of Dried Bloodstains" in *Crime Laboratory Digest* v.17, No.1 ((Jan.1990)

I am also troubled that Luminol could disturb any GSR that may still be present on this clothing. Because of these concerns I have asked the Crime Lab to conduct a microscopic grid search of Raymond Jennings' uniform for any blood or gunshot residue that may be there.

1. Jacket

- a. Blood: High Velocity Blood Spatter
 - i. Microscopic Grid Search
 - 1. Jacket Cuffs and Sleeves
 - 2. Zipper
 - 3. Pockets
 - a. Blood transfer if any
- b. GSR
 - i. Review prior GSR test on Sleeves
 - ii. Pockets
 - iii. Inner pockets and jacket lining
- c. DNA
 - i. Type any genetic material
- d. Hair and Fiber
 - i. How much contact between victim and defendant at scene?
 - ii. Compare any found material to the victim, her car, clothing or home

2. Pants

- a. Blood: High Velocity Blood Spatter
 - i. Microscopic Grid Search
 - 1. Front of Legs
 - 2. Zipper
 - 3. Pockets
 - a. Blood transfer if any
- b. GSR
 - i. Pockets
 - ii. Waistband
- c. DNA
 - i. Type any genetic material BEFORE obtaining sample from defendant to avoid O.J. planting suggestions by the defense

- ii. DNA samples ever collected from defendant?
 - d. Hair and Fiber
 - i. How much contact between victim and defendant at scene?
 - ii. Compare any found material to the victim, her car, clothing or home
3. Shirt
- a. Hair and Fiber
 - i. How much contact between victim and defendant at scene?
 - ii. Compare two hairs found to the victim, her car, clothing or home
 - b. Blood: High Velocity Blood Spatter
 - i. Results of Hair and Fiber comparison
 - ii. Microscopic Grid Search
 - 1. Shirt collar and front
 - a. Cold and windy
 - b. Short sleeve shirt under jacket
 - c. GSR
 - i. Pockets (missing casing?)
 - d. DNA
 - i. Type any genetic material

I will provide copies of this request to crime lab representatives from the Physical, Biological and Firearms sections today, and will request a meeting at the lab tomorrow morning with case detectives present. Obtaining even preliminary results from the tests on the clothing, hair evidence and cartridge casings is my top priority.

Also, while exploring alternatives last week, I spoke with a representative from the FBI National Law Enforcement Technology Center in El Segundo. Though not a "certified crime lab" or even a crime lab in the traditional sense, this government space shuttle group uses some of the most advanced technology in the world and makes it available to law enforcement agencies free of charge, but this is high-end testing and there is a limited budget for it. NLETC is capable of testing materials and fibers at the molecular level, and they excel at tool mark analysis. This option should be considered as a last resort if our local lab is unable to arrive at any conclusive results.

I hope this update is useful. Please let me know if there are any questions.

mb

c: LASD Detectives Richard Longshore and Diane Harris
LASD Crime Lab (Biological, Physical and Firearms Representatives)

Gonzalez, Cristina C.

From: Sewell, Ken L.
Sent: Friday, April 14, 2006 4:54 PM
To: Gonzalez, Cristina C.
Cc: Taylor, Robert W.
Subject: 000-02442-2602-011

Cris,

Det Harris came in this afternoon and brought several items of evidence. They have no real evidence and a window of 30 minutes unaccountable. You were involved in this case in 2000. I know you have other cases going. I don't have a hard date for the analysis, but I think they have scheduled a prelim date.

The box of evidence is on the table in the exam room. Evidence was closed by the time Harris got all her receipts done so the evidence is in my name in ETS. The case file is on my desk

They would like the following items examined:

1. SA E kit collected from victim examined. Sue Sherman might be able to do this. She needs a coroner's kit to look at. She might be able to do the screening if she had a little supervision by an experienced examiner with knowledge of the case. (Hint, Hint.)
2. Black security jacket looked at for blood. The DA would like a microscopic examination. I suggested mapping followed by luminal but he wants the microscopic examination like they do on CSI. You know where they look at every square inch with a super sensitive microscope with the great graphics, right down to the sub-atomic level. I digress. Needless to say I will discuss this with him.
3. Hair and fibers collected from jacket. Physical will handle. Lou was present and talked to Det. Harris
4. Fingernail scrapings for foreign DNA.
5. Fibers collected from victim's clothing. Hair collected from under victim's index finger. Hair collected from chest. Physical will look at these. If we have a root they might come back to us.
6. Bloodstain from victim's sandal.

I looked at the scene photos. The interior of the mustang is light grey. No sights of high velocity spatter on the seats, door panels or windows. Windows are intact. Manuel Munoz was at the scene. There is no mention of any patterns in this report.

Kenneth L. Sewell
 Forensic Biology Section
 Scientific Services Bureau
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