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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. DOUGLAS R. STANKEWITZ, Defendant	Case No.: CF78227015 **MOTION FOR RELEVANT DATA PURSUANT TO PENAL CODE SECTION 745(d) of the CALIFORNIA RACIAL JUSTICE ACT**

TO THE HONORABLE ARLAN L. HARRELL, JUDGE, SUPERIOR COURT FOR THE COUNTY OF FRESNO AND TO THE DISTRICT ATTORNEY FOR THE COUNTY OF FRESNO:

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I. Introduction

YOU WILL PLEASE TAKE NOTICE that Defendant DOUGLAS R. STANKEWITZ, through counsel, that on the above date and time, or as soon thereafter as counsel can be heard, will move pursuant to Penal Code section 745, subdivision (d) of the California Racial Justice Act of 2020 ("CRJA"), for the above-named Court to issue an order directing the District Attorney to gather and disclose all data requested from the Fresno County District Attorney's Office (hereinafter FCDA) as described below. The Fresno District Attorney's office, through a California Public Records Act has stated that it can provide some of the data needed for analysis.[1] Mr. Stankewitz has a statistician who is able to analyze the data.[2] Therefore, Mr. Stankewitz is asking that the court expedite the consideration of this motion.

II. Requests for information from the Fresno District Attorney's Office:

1. Any information, whether written or oral, relating to an instance in which a judge, attorney, law enforcement officer, or juror involved in Douglas Stankewitz's case exhibited bias or animus toward Mr. Stankewitz because of his race.
2. Defense requests that all categorical items requested below in items 3 - 22 include:
    a. the names of all defendants,
    b. the case number,
    c. the date of the offense,
    d. the date of the filing,

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[1] Exhibit 30e, Fresno DA CPRA letter dated 2/24/25.
[2] See Declaration of Alexandra Cock, Section III., *infra.*

e. the date of birth of the defendant,

f. the race, ethnicity, or national origin of the defendant,

g. list of all charges filed,

h. results of any plea bargain settlements (charges and sentence);

i. which of these defendants had no prior juvenile or adult prosecutions;

j. list of Co-Defendants, including other cases and charges.

k. all such data for the periods 1/1/1972 through the present.

3. All cases where a 19-year-old defendant (at the time of the offense) was charged, at any point during the prosecution, with a Special Circumstance per Penal Code sections 190.2(c)(3)(i) or (ii) (prior to 6/5/1990] or 190.2(a)(17)(A) or (B) [between 6/5/1990 to 3/26/1996] or 190.2(a)(17)(i) or (ii) [between 3/26/1996 to 1/1/2019] or 190.2(a)(17)(A) or (B) from 1/1/2019 to present.

4. All cases where the defendant was 19-years-old at the time of the offense and the District Attorney's Office reviewed the matter for a possible filing of Special Circumstances per Penal Code sections 190.2(c)(3)(i) or (ii) [prior to 6/5/1990] or 190.2(a)(17)(A) or (B) [between 6/5/1990 to 3/26/1996] or 190.2(a)(17)(i) or (ii) [between 3/26/1996 to 1/1/2019] or 190.2(a)(17)(A) or (B) from 1/1/2019 to present but declined to file such special circumstances.

5. All cases where the Special Circumstance of Penal Code section 190.2 190.2(c)(3)(i) or (ii) [prior to 6/5/1990] or 190.2(a)(17)(A) or (B) [between 6/5/1990 to 3/26/1996] or 190.2(a)(17)(i) or (ii) [between 3/26/1996 to 1/1/2019] or 190.2(a)(17)(A) or (B) from 1/1/2019 to present was alleged at any point during the prosecution.

6. All cases where a Deputy District Attorney reviewed a matter for a *possible* filing of

Special Circumstances per Penal Code sections 190.2(c)(3)(i) or (ii) [prior to 6/5/1990] or 190.2(a)(17)(A) or (B) [between 6/5/1990 to 3/26/1996] or 190.2(a)(17)(i) or (ii) [between 3/26/1996 to 1/1/2019] or 190.2(a)(17)(A) or (B) from 1/1/2019 to present and recommended to another prosecutor not to file or s/he declined to file special circumstances.

7. All cases where a Deputy District Attorney reviewed a matter for a *possible* filing of Special Circumstances per Penal Code sections 190.2(c)(3)(i) or (ii) [prior to 6/5/1990] or 190.2(a)(17)(A) or (B) [between 6/5/1990 to 3/26/1996] or 190.2(a)(17)(i) or (ii) [between 3/26/1996 to 1/1/2019] or 190.2(a)(17)(A) or (B) from 1/1/2019 to present and recommended to another prosecutor to file or s/he chose to file special circumstances.

8. All cases where the District Attorney's Office went to trial and sought the Death Penalty via the Special Circumstance of Penal Code section 190.2(c)(3)(i) or (ii) [prior to 6/5/1990] or 190.2(a)(17)(A) or (B) [between 6/5/1990 to 3/26/1996] or 190.2(a)(17)(i) or (ii) [between 3/26/1996 to 1/1/2019] or 190.2(a)(17)(A) or (B) from 1/1/2019 to present.

9. All cases where a 19-year-old was charged (at the time of the offense), at any point during the prosecution with Penal Code § 12022 et. seq., including all subdivisions and violations of Penal Code § 12022.3, 12022.5, 12022.53, 12022.55, 12022.7, 12022.75, 12022.8, 12022.9, 12022.95 from 1/1/1972 to present.

10. All cases where the defendant was 19-years-old at the time of the offense and the District Attorney's Office reviewed the matter for a possible filing of Penal Code § 12022 et. seq., including all subdivisions and violations of Penal Code § 12022.3, 12022.5, 12022.53,

12022.55, 12022.7, 12022.75, 12022.8, 12022.9, 12022.95 from 1/1/1972 to present.

11. All cases where Penal Code § 12022 et. seq., including all subdivisions and violations of Penal Code § 12022.3, 12022.5, 12022.53, 12022.55, 12022.7, 12022.75, 12022.8, 12022.9, 12022.95 was alleged from 1/1/1972 to present.

12. All cases where a Deputy District Attorney reviewed a matter for a *possible* filing of Penal Code § 12022 et. seq., including all subdivisions and violations of Penal Code § 12022.3, 12022.5, 12022.53, 12022.55, 12022.7, 12022.75, 12022.8, 12022.9, 12022.95 and recommended to another prosecutor not to file or s/he declined to file any of said Penal Code sections from 1/1/1972 to present.

13. All cases where a Deputy District Attorney reviewed a matter for a *possible* filing of Penal Code § 12022 et. seq., including all subdivisions and violations of Penal Code § 12022.3, 12022.5, 12022.53, 12022.55, 12022.7, 12022.75, 12022.8, 12022.9, 12022.95 from 1/1/1972 to present and recommended to another prosecutor to file or s/he chose to file any of said Penal Code sections from 1/1/1972 to present.

14. All cases where the District Attorney's Office went to trial and prosecuted Penal Code § 12022 et. seq., including all subdivisions and violations of Penal Code § 12022.3, 12022.5, 12022.53, 12022.55, 12022.7, 12022.75, 12022.8, 12022.9, 12022.95 from 1/1/1972 to present.

15. Any office policies during the years 1972-2025 regarding the decision to pursue the death penalty. These policies may include a list of factors considered in determining whether to seek death against a defendant, a list of individuals who made the final decision on whether to seek death during this period, what information about a case or defendant is considered before the decision to seek death was made. Further, this includes a request

for any special precautions taken to avoid the effect of race on the decision to seek death. Please provide the dates for when these policies described above were instituted and the dates of any amendments or subsequent changes to these policies.

16. Any policies in the office of the Fresno County District Attorney, written or informal, during the years 1972-2025, related to the promotion of employees of the Fresno County District Attorney's Office during the years 1977 - 2019, who tried capital cases. This request includes any policies that provided incentives, financial or otherwise, for Fresno County prosecutors to seek and obtain a death verdict.

17. Any training materials during the years 1972-2025, written or informal, regarding the prosecution of capital cases that include any discussion of consideration of race, religion or national origin in any aspect of these prosecutions. Please provide copies of all responsive materials from trainings and MCLE programs, including written materials such as handouts, binders and notes, as well as CDs or DVDs provided at trainings attended by members of the Fresno County District Attorney's Office. The request includes training materials and digital resources produced by or otherwise made available to Fresno County prosecutors of capital cases.

18. All cases where the District Attorney's Office got a special circumstances conviction which resulted in the death penalty.

19. All cases where the District Attorney's Office got a special circumstances conviction which resulted in a life without the possibility of parole.

20. All cases where the District Attorney's office has retried the defendant and asked for a sentence of death after the defendant got a penalty phase reversal and what the race of the defendant was.

21. All cases where the District Attorney's office has retried the defendant and asked for a sentence of life without the possibility of parole after the defendant got a penalty phase reversal and what the race of the defendant was.

22. All cases where a defendant was resentenced by the court or District Attorney's office where the defendant was previously convicted of murder 1, what the resentence was, how much time the defendant had served at the time of the resentencing and what the race of the defendant was.

23. We request the Fresno County District Attorney provide to this Court for a confidential, in camera review, of any and all notes and other information during jury selection, including juror *voir dire* during defendant's second trial in 1983. We ask this Court to review the documents in camera and release to counsel for defendant any information relevant to a potential claim under the CA Racial Justice Act, Penal Code section 745.

This motion is made based upon the facts and grounds set forth in this Motion, the accompanying Memorandum of Points and Authorities, any Exhibits attached thereto, documents on file with this Court in the above captioned matter, as well as any additional evidence and/or testimony that this Court deems just and proper.

III. Declaration of Alexandra Cock, Appointed Paralegal

I, Alexandra Cock, do declare:

I have worked as a paralegal on this case, under the supervision of Curtis L. Briggs and Peter Jones, starting in 2017. During that time, I have read the trial court transcripts, appellate record, evidentiary documents and assisted with the drafting of motions, writs and the petition for writ of habeas corpus filed in 2021. I base this declaration on my extensive review of the case file, as well as my subsequent independent research and investigation.

I have endeavored to find the information requested herein from the District Attorney by utilizing the resources available and known to me. In 2022, I submitted a CPRA request to the Fresno County District Attorney's office for data pertaining to this case. That request was denied primarily because I asked for statistics, not records and because the period of time for statistics requested was approximately 45 years.

As part of ongoing discovery requests starting in 2017, and because Mr. Stankewitz is Native American, the defense has made discovery requests for juror notes. The prosecution has never produced any juror notes. I recently submitted a new CPRA request to the Fresno County District Attorney for records pertaining to special circumstances charging, filing and convictions.[3] I have also submitted a similar request to CA DOJ.[4] I submitted a request to CDCR regarding Fresno prisoners currently serving LWOP, by race.[5]

In the interim, I have attended numerous trainings on the California Racial Justice Act, including but not limited to trainings from O.S.P.D. and California Public Defender Association. I have utilized the sources and references from these seminars to the best of my ability. The discovery requests I have made in this motion follow extensive research I have conducted, and consultation with experts, so to limit these discovery requests to what needed information I still lack and cannot gather on my own, despite my best efforts. In preparing this motion, here is what I have learned:

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[3] See Exhibit 30e, FCDA CPRA response, dated 2-24-25.
[4] See Exhibit 30f, CA Dept. Of Justice response, dated 2-14-25.
[5] See Exhibit 30g, CDCR request, dated 1-13-25; and Exhibit 30h, CDCR Response dated 3-11-25, (final response expected on 3/19/25).

IV. United States Has a History of Genocide Against Indigenous People

The United States has a history of genocide against indigenous people which traces back to the time of the first colonizers appearance here. Some have theorized that the root of the genocide was the Anglo-superiority that was part of the discourse brought by the colonizers. "When scholars add tribal sovereignty to their concerns, extrapolating multi-threaded histories of territorial investigation and anti-"Indian" logic permeate the discourse of western expansion and its laws. Those of Native American, Mexican and African descent statistically bear the burden of the war over hegemonic dominance that informs both the institutional and social imaginaries.[6]

"Native Americans on reservations remain those positioned in the most liminal of states".[7] Unfortunately, the "Indian problem", as characterized by the colonizers throughout US history, has perpetuated the justification for their killing and treatment as subhumans by the dominant culture. This mentality continues to manifest and appears as implicit bias toward indigenous people in the criminal legal system, government programs and in the social order.

V. California Has a History of Genocide Against Indigenous People

California likewise has a deep history of genocide against indigenous people. In addition to genocide, the genocide has taken the form of erasure of the existence of indigenous people in the United States over the last 300 years, either through extermination of the people themselves or through the elimination of their religion and cultural practices. Much of this history is not

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[6]Contemporary Modernity and 'Death Ethics': Antecedents and Impacts of Western Expansion as War in the Northern Plains, 1820 – 1880, doctoral dissertation by Dr. Leece LeeOliver at 1, refers to fn 2: See Jordan Winthrop 1974; Tomás Almaguer 1994; Michael Omi and Howard Winant 1994; Thomas Gossett 1997; Peter Wade 1997; Immanuel Wallertein 2004; David Roediger 2005; Robert Williams 2005; Audrey Smedley 2007; Stephen Silliman 2008; Steve Martinot 2010.)

[7] *Ibid*.

widely known to the general public. Many people think that Native Americans no longer exist. As a result, they have not been counted as a distinct racial group.

As explained in the 1886 case *United States vs. Kagama*:[8] "(b)ecause of the local ill feeling, the people of the states where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealings of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has been recognized by this court, whenever the question has arisen."[9]

Some books and compilations discuss genocide and extermination it in great detail, using available information that has not been re-historicalized[10]. Specific to the Fresno area, An American Genocide: The United States and the California Indian Catastrophe,[11] describes one such brutal attack against the Ahwahanees in Yosemite. In one killing spree in 1951, Ahwahanee villages and food stores were systematically torched, making survival difficult for retreating survivors.[12] Their Chief was taken captive. Eventually they faced death and starvation at Fresno Reservation.[13] In 1856, a militia supported with rifles and ammunition by the California

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[8] 118 U.S. 375.
[9] [a]s cited in "Implicit divestiture of Tribal Powers: Locating Legitimate Sources of Authority in Indian Country," American Indian Law Review, Vol. 19, No. 2 (1994). Bruce Duthu 1994: 373-74).
[10] Dr. Lee uses this term to describe how history regarding Native Peoples has been re-written with a colonizer perspective. [10]Contemporary Modernity and 'Death Ethics': Antecedents and Impacts of Western Expansion as War in the Northern Plains, 1820 – 1880, doctoral dissertation by Dr. Leece LeeOliver at 1.
[11] Benjamin Madley, An American Genocide: The United States and the California Indian Catastrophe (2016) at 194.
[12] This massacre is also described in a comprehensive list of Indian Massacres in Wikipedia: https://en.wikipedia.org/wiki/List_of_Indian_massacres_in_North_America
[13] *Ibid*, at 194

governor, carried out a genocide on Yokuts Indians. They were further assisted by federal troops.[14]

As demonstrated by the following charts, this historical discrimination continues to the present day. For example,

A. Current Demographics of California's Death Row Show Discrimination Against People of Color

As of 2021, according to CDCR Office of Research, as demonstrated by the chart below, 68% of the people on Death Row are people of color. The Other category includes American Indians and Asian Americans among other groups.[15]

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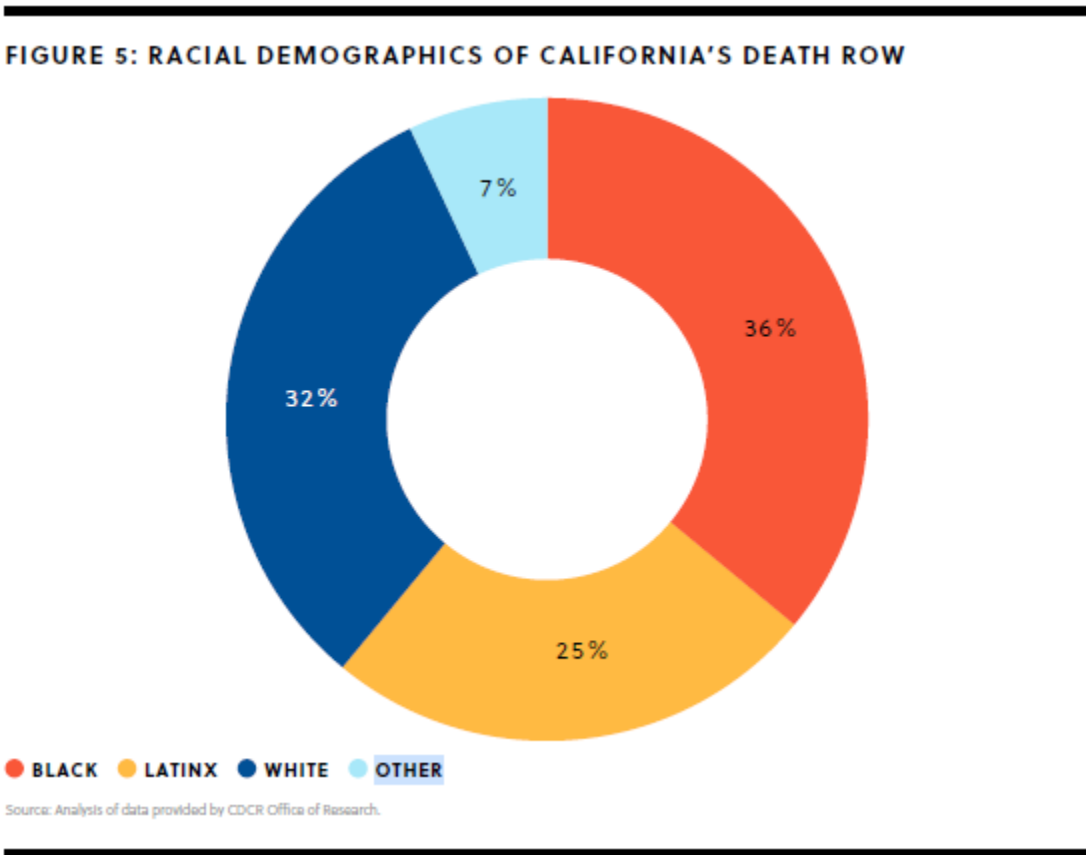
[14] *Ibid*, at 245.

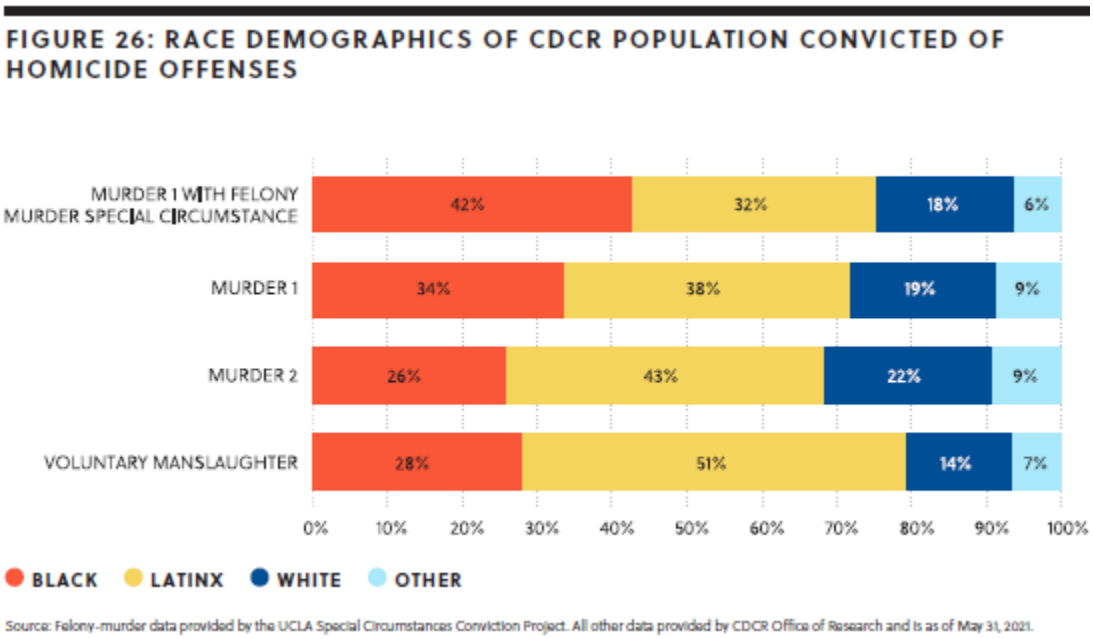
[15] Racial Demographics of California's Death Row – Cttee on Revision of the Penal Code: Death Penalty Report - 2021 Annual Report CRPC Race Demographics of CDCR Population convicted of homicide, p.22, found at: //efaidnbmnnnibpcajpcglclefindmkaj/https://clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf



Source: Figure 5 – Death Penalty Report – Racial Demographics of California's Death Row.

Further, Figure 26 below shows that in 2021, for Murder 1, 81% of those convicted of homicide are people of color.[16]

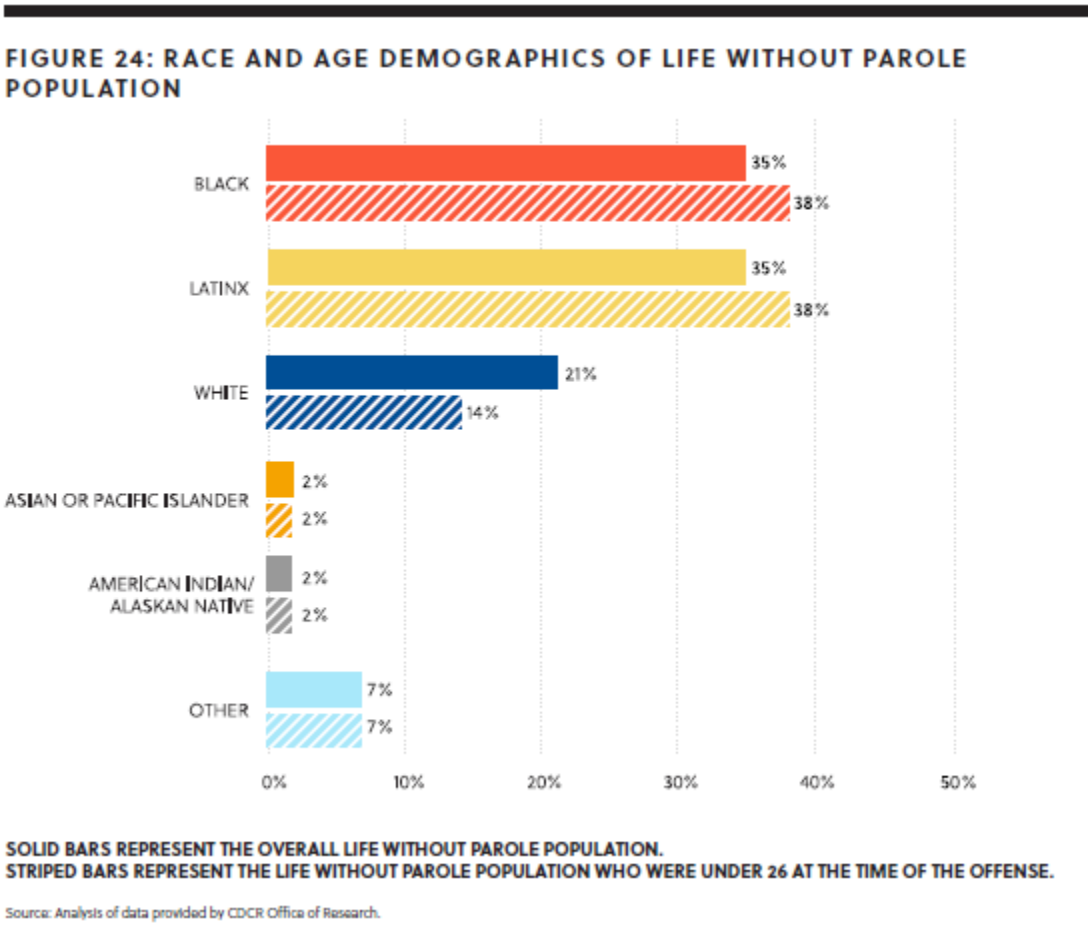
[16] Racial Demographics of California's Death Row – Cttee on Revision of the Penal Code: 2021 Annual Report CRPC Race Demographics of CDCR Population convicted of homicide, p.52, found at: //efaidnbmnnnibpcajpcglclefindmkaj/https://clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf



Source: Figure 26 – 2021 Annual Report CRPC Race Demographics of CDCR Population convicted of homicide.

B. Race and Age Demographics of Life Without Parole Population Show Discrimination Against People of Color.

Another example of continued discrimination is the population of people of color serving LWOP sentences, which is almost two times as many as whites serving LWOP. Specifically, this chart shows that American Indians make up 2% of the Life Without Parole population, and that American Indians make up 2% of the Life Without Parole population who were under age 26 at the time of the offense.



Source: Figure 24: 2021 Annual Report CRPC Race and Age Demographics of Life Without Parole Population.[17]

C. Race and Age Demographics of Youthful Offenders Show Discrimination Against People of Color.

Lastly, the disproportionate number of people of color who were youthful offenders, at the time of their offense. This chart shows that youthful offenders of color are given the death penalty more than three times as often than their white peers.

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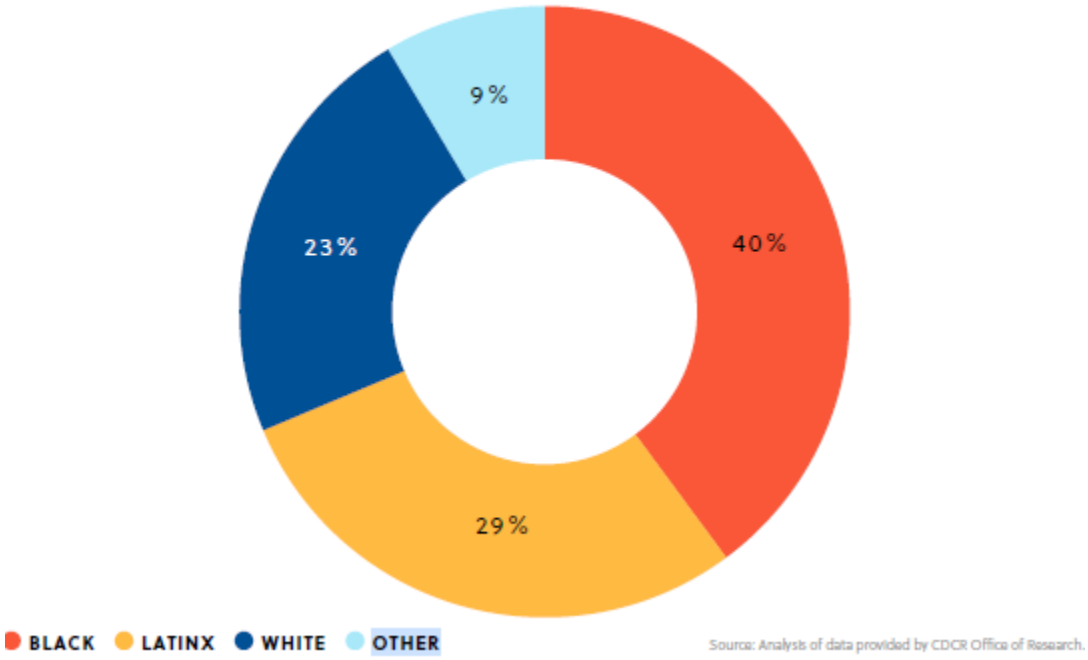
[17] 2021 Annual Report Committee Revision Penal Code Race and Age Demographics of Life Without Parole Population, p. 51, found at: //efaidnbmnnnibpcajpcglclefindmkaj/https://clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf

FIGURE 12: RACIAL DEMOGRAPHICS OF PEOPLE ON DEATH ROW WHO WERE 25 OR YOUNGER AT THE TIME OF THEIR OFFENSE



Source: Figure 12: Racial Demographics of People on Death Row Who were 25 or Younger at the time of Their Offense – Cttee on Revision of the Penal Code: Death Penalty Report – 77% people of color who were 25 or younger.[18]

VI. Fresno County Has a History of Racial Discrimination Against Native people

According to the 2010 U.S. Census, the "Other" population in Fresno County was 1.7%. The Other number includes Native American who list it as their only race. Between 1990 – 2010, per the U S Census, as a part of Other, the Native American population went from 1% to 3.3%. Because Native Americans were included as part of a mixture of races, prior to 1990, it is impossible to know what percentage of the population they were. This chart provides the

[18] The report was released in 2021, p. 30. It and the other charts cited can be found at: https://clrc.ca.gov/CRPC/Reports/Annual_Reports.html

breakdown:

RACE/ETHNIC POPULATION
FRESNO COUNTY
1970 - 2010

Race/Ethnicity	1970		1980		1990		2000		2010	
	Population	Percent Share	Population	Percent Share	Population	Percent Share	Population	Percent Share	Population	Percent Share
White	268,418	65.0%	316,895	61.6%	338,595	50.7%	317,522	39.7%	331,144	33.7%
Hispanic	104,177	25.2%	150,790	29.3%	236,634	35.5%	351,636	44.0%	492,449	50.1%
Black	20,370	4.9%	24,557	4.8%	31,311	4.7%	40,291	5.0%	46,797	4.8%
Asian	20,088	4.9%	22,379	4.3%	54,110	8.1%	63,029	7.9%	92,099	9.4%
Pacific Islander							682	0.1%	802	0.1%
Other					6,840	1.0%	26,247	3.3%	20,187	2.1%
Total Non-White	144,635	35.0%	197,726	38.4%	328,895	49.3%	481,885	60.3%	652,334	66.3%
Total Population	413,053	100.0%	514,621	100.0%	667,490	100.0%	799,407	100.0%	983,478	100.0%

Sources: 1970-2000, U.S. Census
2010, State of California Department of Finance

The foundation of US genocide and California genocide form the demonstrate how widespread racial discrimination against the indigenous people is in the US and California. The discrimination in the Fresno area is no less insidious. There is evidence of racial discrimination against Native Americans in Fresno, both past and current. This discrimination, described below, is shown in the community at large, and through the actions of government officials in both the executive and judicial branches.

A. Fresno County Imposes A Higher Death Sentence Rate Than Two Thirds Of California Counties.

This following chart shows that during the period from 2000 – 2020, Fresno County imposed approximately seven death sentences compared to the homicide rate. This put the County in the top third of California counties.

FIGURE 8: DEATH PENALTY USAGE RATE COMPARED TO HOMICIDE RATE

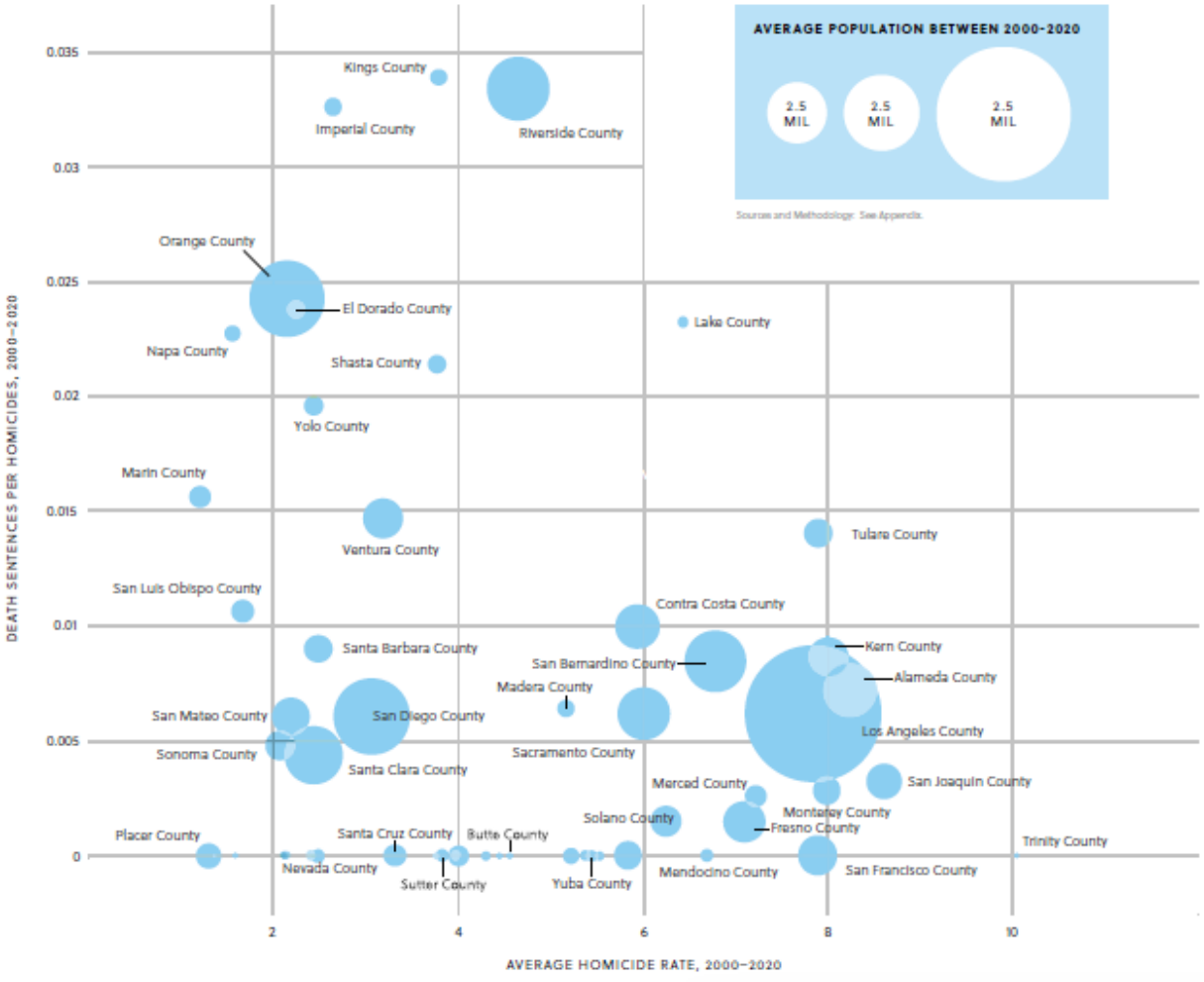


Figure 8: Death Penalty Usage Rage Compared to Homicide Rate - Cttee on Revision of the Penal Code: Death Penalty Report.[19]

B. Two Native American Fresno Men Convicted of Special Circumstances Murder and Sentenced to Death

On California's Death Row, before it was 'disbanded' in 2024, there were two known

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[19] Death Penalty Usage Rage Compared to Homicide Rate - Cttee on Revision of the Penal Code: Death Penalty Report, Released 2021, p. 26. Found at: //efaidnbmnnnibpcajpcglclefindmkaj/https://clrc.ca.gov/CRPC/Pub/Reports/CRPC_DPR.pdf

Native American men from Fresno. Clarence Ray Allen who said that he was Choctaw and Cherokee. Allen was executed at San Quentin in 2006. The other is the defendant, who has been labeled as "Condemned" for over 47 years[20] and housed on Death Row for over 46 years. As discussed in Mr. Stankewitz's Motion for Relief Under RJA Sect. 745(a)(1) and (2),[21] implicit bias in his second trial is demonstrated by two specific circumstances: first, the elimination of the only Indian juror on the panel; and second, his defense lawyer and the DDA eliciting negative testimony regarding Indian reservations.

In addition, I have consulted with Beth Redbird, a professor of sociology at Northwestern University[22] who has advised me of the information she needs to conduct an analysis as to whether racial disparity or bias in this case could have resulted in a more severe offense, e.g. the special circumstance of robbery and kidnapping (Pen. Code §190.2) or more severe sentence (i.e. the death penalty) than similarly situated Caucasian defendants. She informed me that she can definitely do an analysis, but the first thing that she needs to do in every case is figure out what data is needed to produce careful, reliable conclusions, and that takes time. Because it is an academic process which is inherently slow, the defendant will need time to provide Ms. Redbird's analysis.

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[20] Despite the fact that Mr. Stankewitz was sentenced to LWOP on 5/3/2019, CDCR has continued to list him as 'Condemned' on its website: https://ciris.mt.cdcr.ca.gov/details?cdcrNumber=B97879

[21] Concurrently with this Motion, Mr. Stankewitz's Motion for Relief Under RJA Sect. 745(a)(1) and (2) is being filed in this Court.

[22] Dr. Redbird is a computational methodologist, with an expertise in survey design and analysis, big data, and the measurement of invisible or hard to quantify processes. Her research focuses on law, race, place, and inequality, and is an expert that i plan to use for this 745(d) motion.

C. Fresno County Legal Cases Demonstrate Bias Against Native Americans:

1. Judicial Bias: Patty Dawson Assault Case

In 2011, a Navajo and Apache Elder nurse was attacked and badly beaten by a white woman in Clovis. The attacker then fled the scene, leaving Mrs. Dawson unconscious. It is well known locally that numerous white supremacists movements have been active in Fresno and the adjacent town of Clovis since the 1980s including the Ku Klux Klan, Aryan Nations, Aryan Terror Brigade, Bay Area National Anarchists and Blood and Honour America Division, among others. Local law enforcement failed to take any action for months. Despite the fact that law enforcement was given the attacker's license plate number and car description by witnesses, it took the Native community protesting to get them to investigate the attack.[23]

The attackers had visible white supremacist symbols/markings and spewed racists rhetoric during the attack. Based on the language of the attackers, the local Native community said that it was a hate crime. Nonetheless, a defendant was charged, but not with a hate crime. The attackers subsequently threatened the victim and her family and the public defender. Based on the crime, she could have been sentenced to 2 – 4 years of jail time; however, the trial court suspended imposition of sentence and placed appellant on probation for three years. A condition of probation was that appellant serve 365 days in county jail, with custody credits of 73 days.

2. Sheriff's Office Bias: Missing and Murdered Indigenous Woman case: Bessie Walker

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[23] Indian Country Today, 1/20/2012, found at: https://ictnews.org/archive/hate-crimes-charges-unlikely-in-patty-dawson-case

Bessie Walker was a 27-year-old Indigenous mother of three murdered in Fresno County in August, 2021. Her relatives reported her missing within a few days. The Fresno County Sheriff's Office allegedly searched for her without success. After a limited and fruitless law enforcement 'search' by the Sheriff's office, approximately two weeks after she disappeared, her friends and family organized a search party. She was found dead by friends and relatives right near her home. To date, no charges have been filed regarding her death.

D. Recent Fresno Community Discrimination Against Native Americans:

1. Yokuts Valley Name Change

In 2023, the State of California, as part of an initiative to eliminate derogatory place names in the State, renamed "Squaw Valley" (the word Squaw is widely acknowledged as being a derogatory name to Native American women) to Yokuts Valley, after the local tribe. The Fresno County Board of Supervisors sued the State to get the name change reversed. The lawsuit was filed notwithstanding local residents voting in favor of the name change. "Today's historic victory represents decades of work led by Indigenous people in Fresno County and across the nation to convey the harm that racist place names inflict on our communities," Theodora Simon, Navajo, Indigenous justice advocate with the ACLU of Northern California said in a statement. "For over two hundred years, the stereotype of Indigenous women that the s-word conveys – as unfit mothers, disposable, available to be used and abused by settlers – has been used to excuse violence against them. The "squaw," as a particular biological "Indian" in its female form, was and remains the lowest common denominator of "the Indian" racial strata.[24] As such, it has been

[24] LeeOliver dissertation, *supra*, at 43.

used historically (and still is) to denigrate female Indians. It also justifies the forced removal of Indigenous children to boarding schools, indentured servitude, and today into the foster care and juvenile justice systems." (Read more at: https://www.fresnobee.com/fresnoland/article271072387.html#storylink=cpy)

In late 2023, the County lost its lawsuit against the State regarding the name change, when a court determined that it should have sued the federal government, not the State. Voters in Fresno County rejected Measure B in early 2024. Measure B would have reversed the naming of Yokuts Valley from Squaw Valley, removing a term known to be a racist slur against Native American women. The County spent tens of thousands of dollars to bring the lawsuit, which it is now appealing. It also spent tens of thousands of dollars to put Measure B on the ballot, which was defeated by the voters.[25]

2. Fresno County Native American Maternal Mortality Is 50% Higher Than The State Average

According to a 2021 study, Fresno County lags behind the rest of the State in virtually every category that contributes to infant death. In 2018, 6.5 infants died for every 1,000 births in Fresno County, a rate over 50% higher than the state average. Native American families in the county suffer a twofold health crisis: Policies leave them at greater risk for medical complications and death; and public institutions essentially make them disappear.

While Native families are known to have significant health problems during pregnancy, birth and toddlerhood, officials consider the 37,000 Native people living in Fresno County to be

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[25] Roman Rain Tree, Monache – fought for name change, see SF Chronicle story, found at: https://www.sfchronicle.com/bayarea/article/Two-California-towns-were-just-renamed-by-the-17713879.php

too small a population to collect solid data on. According to Rose Mary Rahn, director of maternal, child and adolescent health at the county Department of Public Health, "When you're thinking about Native American, our population numbers are not significantly high, so we can't really drill down on that population specifically on their outcomes."

But none of the funds are specifically earmarked for programs to support Native women or their children, even though the Urban Indian Health Institute found the rate of infant mortality for Native babies in Fresno County is more than three times that of white babies. The county, for its part, says the Native infant mortality rate for 2015 to 2019 was 11% higher than the white rate.[26]

3. Fresno High School Had a Native American Mascot until 2021

It wasn't until 2021 that the Fresno Unified School District changed the Fresno High School Native American warrior mascot. The mascot was removed after several years of action by the local Yokuts tribe. Prior to the change, there were public protests opposing the change. The protests happened despite the fact that the school kept the name 'warrior.'

4. Clovis High Discriminated Against Pit River Tribe Member (2015)

In 2015, Christian Titman, an 18-year-old member of the Pit River Tribe and a senior at Clovis High School in California, sought to wear an eagle feather on his graduation cap to honor his Native American heritage. The District tried to him from wearing a religiously and culturally important ceremonial eagle feather at graduation, saying that his "accessory" was

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[26] Source: Native Americans Underserved, 'Erased' in Fresno County Health Data, Investigation Finds – USC Schaeffer, found at: https://healthpolicy.usc.edu/article/native-americans-underserved-erased-in-fresno-county-health-data-investigation-finds/

not "acceptable." The Clovis Unified School District initially denied his request, citing dress code policies. Once the ACLU, California Indian Legal Services, and the Native American Rights Fund took legal action, the CUSD backed down. Titman's lawsuit asserted that the district's actions violated his rights to freedom of expression and religion under the California Constitution. The case was settled, allowing Titman to wear the eagle feather during the ceremony. However, the District didn't change their discriminatory dress code.

5. Clovis High Discrimination Against Native Student regarding regalia (2025)

At present, ten years later, another Native student has been told that she cannot wear her regalia to graduation this Spring, despite state law which allows it.

Based on my training, education, experience, and review of the entire record in this case I believe there exists good cause to believe that Douglas Stankewitz's death sentence was influenced by his race; he is an enrolled member of the Monache Tribe. (Penal Code §745, sub. (a)(1)(2)(3) and/or (4))

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 23, 2025, at Sebastopol, California.

Alexandra Cock

VII. Case Background and Procedural History

The defendant here was originally charged with first degree murder with special circumstances, gun enhancement, robbery and kidnapping. He was convicted of all the crimes charged and given the death penalty in 1983. The crime had racial overtones: Petitioner is Native American, the victim, Ms. Graybeal, was Caucasian. This was a death penalty case until May 3,

2019. On that date, the defendant was sentenced to LWOP. Therefore, both the death penalty and LWOP statistics are relevant.

VIII. Specific Bias in the Stankewitz Case

The Stankewitz family was well known to Fresno law enforcement as being Indian/Native American. This was due in large part to their living in an impoverished state on the Auberry reservation.[27] Given this knowledge by law enforcement, Mr. Stankewitz should be allowed to review any information, whether written or oral, relating to an instance in which a law enforcement officer involved in Douglas Stankewitz's case exhibited bias or animus toward Mr. Stankewitz because of his race.

A. Implicit Bias #1 in the Stankewitz Case: Elimination of Only Native American Juror in Second Trial[28]

In defendant's 1983 trial, the prosecution used a peremptory challenge to remove the only known Native American juror, Rosemary Moreno. Ms. Moreno, Panel 33, number 157, was asked hardship *voir dire*, Hovey *voir dire* and general *voir dire* questions. The transcript of her *voir dire* refers to question numbers. These question numbers refer to the questions on the juror questionnaires. The answers to these questions give counsel information regarding the juror's race and ethnic background, experience with law enforcement and position on subjects related to the crimes that are the subject of the prosecution. The juror questionnaires in this case have been lost and are no longer available. Therefore, we cannot match up her answers to specific questions asked.

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[27] See Exhibit 30i, Declaration of Vincent Schiraldi, dated 3-14-2025, paragraph #37.

[28] This implicit bias discussion is taken from Mr. Stankewitz's Motion for Relief Under RJA Sect. 745(1)(1) and (2), filed concurrently with this Motion. The Motion for Relief, includes the exhibits for this discussion.

Prospective juror Rosemary Moreno stated that she was Indian. (In this case, 'Indian' was used in place of 'Native American', as was used by many people at the time). There may have been other prospective jurors who were Native American but we do not know because we do not have the juror questionnaires. Ms. Moreno also stated that she worked for Indian counsel. The prosecution specifically asked her whether she would tend to favor Petitioner, because he is Indian. She answered "No, why should I? Because he is a human being like everybody else."

As discussed above, Native Americans are a very small percentage of the population in Fresno County. Given the limited sources for prospective jurors, the number of Native Americans who are called to jury duty is far less. Prospective jurors are generally contacted using voter registration rolls. Native Americans living on the reservation and in poverty in 1983, may not have been registered to vote. Another way to determine whether there was racial discrimination is to look at jurors who were struck and not struck, including whether similarly situated jurors were removed for cause and a juror of the same race was removed using a peremptory challenge. In this case, there were several jurors who, like Rosemary Moreno, knew members of Petitioner's family. In this case, a survey of 233 of the prospective jurors shows that of the four who said that they knew the Stankewitz family, three were removed for cause and only one, Rosemary Moreno, was challenged with a peremptory.

In a capital case, one criterion in determining whether a juror of the same race was excused for racially discriminatory reasons is to look at how s/he answered death penalty related questions. If the prospective juror answered the death penalty questions the same as other jurors, but was still removed using a peremptory challenge, then it raises racial basis as a possible reason. In this case, throughout numerous death penalty related questions by the attorneys and

the court, Ms. Moreno stated that she would be able to vote for the death penalty. (T2 Vol. V RT 2685 - 2691) Therefore, she couldn't be eliminated for cause as to voting for death.

B. Implicit Bias #2 in the Stankewitz Case: Defense Lawyer Elicited Damning Discriminatory Testimony from a Native American woman during the Second Trial penalty phase. The testimony was then reinforced to the jury during the defense and the Prosecutor during their closing arguments.[29]

During the second trial penalty phase, defense counsel called only four witnesses. One witness was Theresa Montgomery. Prior to her testimony, defense counsel gave a brief statement where he stated that he was going to call Mrs. Montgomery to give background on Indian reservations and what the defendant was exposed to. (T2 Vol. V RT 1038). Mrs. Montgomery's testimony included negative characterizations of reservation life for young people, stating that they were into drugs and alcohol. (T2 Vol. V RT 1044, ln. 8 – 13) Further that due to youth involvement in drugs and alcohol, they drop out of school and just do nothing. (T2 Vol. V RT 1045, ln. 2 – 7) She also testified that the drug and alcohol situation on the reservation led to destruction in their lives. (T2 Vol. V RT 1046, ln. 12 – 1047, ln. 3) She went on to describe how drugs and alcohol abuse led to suicide on the reservation. (T2 Vol. V RT 1048, ln. 19 – 21)

During the closing argument in the penalty phase, referring to Mrs. Montgomery's testimony, defense counsel stated that the defendant was raised on an Indian reservation. He told the jury "if you're going to be really honest, I think you would have to conclude that being raised on a reservation is certainly drastically different than the way you were raised and in the way that we would want people generally to be raised". (T2 Vol. V RT 1114, ln. 20 - 24) He also said

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[29] This implicit bias discussion is taken from Mr. Stankewitz's Motion for Relief Under RJA Sect. 745(1)(1) and (2), filed concurrently with this Motion. The Motion for Relief Under RJA Sect. 745(a)(1) and (2), includes Exhibits 30a – 30d, for this discussion.

"[s]he mentioned about the extent to which alcohol and drugs just permeate the whole reservation. And that from what she said, it could easily be concluded that this is the atmosphere in which those people who live on a reservation are raised". (T2 Vol. V RT 1114, ln. 25 – 1115, ln. 3) He portrayed reservation kids as being raised without morals. (T2 Vol. V RT 1115, ln. 10 – 1116, ln. 1) The DA repeated defense counsel's statements from Mrs. Montgomery about how "drugs and alcohol pervaded Indian reservations locally". (T2 Vol. V RT 1124, ln. 8-10) He further stated "It's really insulting to Mr. Stankewitz and maybe to Indians on reservations to suggest that they can't be law abiding". (T2 Vol. V RT 1124, ln. 26 – 1125, ln. 2)

IX. Memorandum of Points and Authorities

A. The Legal Framework

In 2020, the California legislature passed the RJA, which added Section 745 to the California Penal Code. The Legislature declared in the RJA its intent "to eliminate racial bias from California's criminal justice system" and "to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing." (See Stats. 2020, Ch. 317, § 2, subd. (i).) The RJA was amended in 2024 to add retroactive application. The Legislature expressed its intent "to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences."[30] In addition to evidence of intentional discrimination, the Act allows defendants to bring challenges to charging decisions and sentencing based on statistical disparities in race, ethnicity, or national origin.

Penal Code Section 745(d) authorizes the defense to file a motion requesting disclosure

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[30] *Id*. § 2, subd. (j).

to the defense of all evidence relevant to a ***potential*** violation of subdivision (a) in the possession or control of the state. Under this provision, a court "shall order" the release of records requested by a defendant relevant to a violation of section 745(a) "[u]pon a showing of good cause…"[31]

The failure to release even confidential records that could be exculpatory (i.e. indicative of racial bias) would be reversable error as was found by the First District Court of Appeal in *People v. Stewart* (2020) 55 Cal.App.5th 755, which reversed a rape conviction for prosecutorial misconduct in failing to disclose confidential juvenile records of a key prosecution witness that the Court deemed exculpatory. The Court of Appeal balanced the need for confidentiality of the juvenile records of the witness against the defendant's right to a fair trial and determined the right to a fair trial must be considered paramount.[32] In camera review by the lower court was suggested as a viable means of protecting confidentiality of records not found to be relevant at trial. We agree that any confidential records can be submitted to this court for *in camera* review, released only on a finding of relevancy to a RJA claim and thereafter subject to a protective order.

The CRJA is aimed at *implicit* bias, which the legislature found is pervasive throughout every stage of the criminal justice system:

> Even though racial bias is widely acknowledged as intolerable in our criminal justice system, it nevertheless persists because courts generally only address racial bias in its most extreme and blatant forms. Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias.

AB 2542, § 2, subd. (c).

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[31] *Id.*

[32] *Stewart, supra*, at p. 784-86.

An RJA motion must be brought initially at the trial court level. *People v Singh*, (2024 5DCA) 103 Cal. App.5th 76, 114-115, citing *People v Lashon* (2024 1DCA) 98 Cal.App.5th 805, 813 – 815.

Here, the defendant is seeking records to show RJA violations of (a)(1) and (a)(2) as to bias in jury selection; and records to show RJA violations of (a)(3), (a)(4)(A)/(4)(B) as to bias in getting a death penalty conviction of defendant by charging special circumstances, along with getting additional increased incarceration by charging a gun enhancement.

B. The Racial Justice Act Prohibits Prosecutors From Barring Members Of A Defendant's Own Race From Serving As Jurors.

The RJA prohibits those involved in a criminal trial from "exhibit[ing] bias or animus . . . towards the defendant because of the defendant's race," "whether or not purposeful."[33] And as the seminal cases addressing racial discrimination in the composition of criminal juries have made clear, barring jurors of the defendant's race from serving as jurors when the defendant is facing criminal sanction is itself discrimination against the defendant. The point was already well-established when the high court reiterated, nearly a century and-a-half ago, that, [I]t is a right to which [a person of color] is entitled, "that in the selection of jurors to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them, because of their color." *Neal v. Delaware* (1880) 103 U.S. 370, 394; accord, e.g., *Miller-el v. Dretke* (2005) 545 U.S. 231, 237 ["Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by impartial jury"], citing *Strauder v. W. Va*. (1879) 100 U.S. 303, 308; and *Batson v. Kentucky,* 476 U.S. 79, 86 (1986) ["The Equal

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[33] Penal Code § 745, subd. (a)(2).

Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race."].

While there is a dearth of case law discussing the impact of the RJA on closed cases with evidence of bias in jury selection, eliminating bias in the composition of juries was at the forefront of the Legislature's thinking when it enacted the RJA. When, in framing its findings and declarations in support of the new law, the Legislature noted that "[m]ore and more judges in California and across the country are recognizing that current law, as interpreted by the high courts, is insufficient to address discrimination in our justice system," three of the four cases it cited in support concerned allegations of racial bias in jury selection.[34] If, as declared, it was "the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable," and "the further intent of the Legislature [was]. to provide remedies that will eliminate racially discriminatory practices in the criminal justice system" (Assem. Bill 2542, § 2, subds. (i) & (j)), the provisions of the RJA must have been intended to remedy racial discrimination in the jury selection process.

Code of Civil Procedure, section 231.7, it provides the mechanism for addressing discrimination in the use of peremptory challenges in criminal cases where jury selection began on or after January 1, 2022.[35] The RJA, however, is now both prospective and retrospective in application, and there is no danger of its provisions conflicting with the "Better than Batson" law in cases tried before 2022. It thus remains consistent with the intent of the Legislature—and

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[34] Assem. Bill No. 2542 (2019-2020 Reg. Sess.), § 2, subd. (c) (Assem. Bill 2542)).
[35] Code Civ. Proc., § 231.7, subd. (n).

indeed, necessary to effectuate that intent—for the remaining provisions of the RJA to be applied to address all forms of racial discrimination in jury selection in those earlier cases, including Mr. Stankewitz's case. The RJA thus provides a tool for courts to retrospectively "remedy the harm to the defendant's case" resulting from exhibitions of bias or animus—including the markers of implicit bias identified in Assembly Bill 3070—in jury selection.[36]

Here, the prosecution secured a jury free of any members with ties to Native Americans. How the prosecution achieved that result—and the role it played in racializing the entire trial—evinces invidious discrimination, conscious or otherwise.

C. Both The State And Federal Constitutions Prohibit Racial Bias During Jury Selection.

Jury selection has long been recognized as a critical stage of any criminal trial, and one particularly susceptible to racism. "Jury selection is the primary means by which a court may enforce a defendant's right to be tried by a jury free from ethnic, racial, or political prejudice . . . or predisposition about the defendant's culpability."[37]

. "[T]he use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community under article I, section 16, of the California Constitution." *People v. Wheeler* (1978) 22 Cal. 3d 262, 276–77. It "also violates the defendant's right to equal protection under the Fourteenth Amendment to the United States Constitution." *People v. Hamilton*, (2009) 45 Cal. 4th 863, 898, citing *Batson*, *supra*." Group bias is a presumption that jurors are biased merely

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[36] See Assem. Bill 2542, § 2, subd. (i); Code Civ. Proc., § 231.7, subd. (d)(3).
[37] *Gomez v. United States*, (1989) 490 U.S. 858, 873.

because they are members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds." *People* v. *Fuentes* (1991) 54 Cal.3d 707, 713. "At issue in a *Batson/Wheeler* motion is whether any specific prospective juror is challenged on account of bias against an identifiable group distinguished on racial, religious, ethnic, or similar grounds. [Citation omitted.] Exclusion of even one prospective juror for reasons impermissible under *Batson* and *Wheeler* constitutes structural error, requiring reversal. *People v. Gutierrez* (2017) 2 Cal.5th 1150, 1158. In its most recent significant opinion on the matter, the Supreme Court noted that "'the central concern' of the Fourteenth Amendment 'was to put an end to governmental discrimination on account of race.'" *Flowers v. Mississippi*, (2019) 139 S. Ct. 2228, 2240–41 (2019), citing *Batson*, *supra*, at 85.

The CRJA's ban on decisions based on race that have a deleterious effect on a defendant, even if they are not explicitly racist, applies here. The fact that the prosecution used a peremptory challenge to exclude Ms. Moreno because she was a Native American could have been racist. One important factor is whether the prosecution intended to use challenges to eliminate jurors of the same race as the defendant. This has been proven in other cases by using notes taken by the prosecutor in preparation for or during jury selection.[38] The District Attorney has previously stated that their file content prior to 2017 has been lost. Therefore, it is unknown whether jury selection notes exist.[39]

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[38] The Discovery Order issued in 1978 (T1 CR Vol. I CT 116) and still in effect, includes DA file notes.

[39] The loss of the DA's file of all documents prior to 2017, admitted to by their office, is not completely true. During the habeas evidentiary hearing in January 2024, a review of the DA's boxes uncovered documents from prior to 2017. The court conducted an in-camera review of the boxes but no juror notes were turned over to the defense. The court did not issue an order to show cause for habeas Claim 14 – THE PROSECUTION ELIMINATED THE ONLY NATIVE AMERICAN JUROR IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE SIXTH AMENDMENT TO AN IMPARTIAL JURY AND HIS RIGHT TO DUE PROCESS AND EQUAL

D. Jury Selection Records Are Relevant To A Potential Violation Of Section 745(A)(1) And 745(A)(2)

In *People v Superior Court (Jones)* (2021 12 Cal.5th 348), the Ca Supreme court discussed post-conviction discovery under PC 1054.9. In that case, the court held that jury selection notes taken by a District Attorney are not attorney work product and are subject to disclosure. The court further stated that if the District Attorney is concerned about overbroad discovery, then upon a proper showing, the court can conduct an *in camera* review and determine whether an absolute work product protection applies to some or all of the material.[40]

E. The Racial Justice Act Prohibits The Racially Derogatory Descriptions Used About Indian Reservations Used At Defendant's Second Penalty Phase Trial

The second type of conduct that violates the CRJA involves the use of discriminatory language.[41] The question is whether an attorney or government actor "used racially discriminatory language" or otherwise exhibited racial bias towards the defendant, whether or not intentional.[42] The language must be used "during the defendant's trial, in court and during the proceedings."[43]

The CRJA says two things about "racially discriminatory language." First, the phrase is defined: language that "to an objective observer, explicitly or implicitly appeals to racial bias,

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PROTECTION UNDER THE FOURTEENTH AMENDMENT. Query: Did the court decide that the juror notes should not be turned over because the jury selection issue was not the subject of the evidentiary hearing?

[40] *Jones*, *supra*, at 366.

[41] The full text reads: "During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect." (Pen. Code § 745(a)(2).

[42] Pen. Code, §745(a)(2).

[43] *Ibid.*

including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or that language that references the defendant's physical appearance, culture, ethnicity, or national origin."[44] Second, we're given a hint at how to spot it: "evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race…is relevant to determining whether language is discriminatory.[45]

There is one exception to CRJA's prohibition on racial language: no violation occurs if the speaker is describing language used by another that is relevant to the case.[46] The exception is therefore narrow: the secondhand description must have a tendency in reason to prove or disprove a disputed fact of consequence in the action.[47]

The use of derogatory descriptions of life on the reservation of Mr. Stankewitz's tribe to the jury, no doubt had an effect on how they thought of Mr. Stankewitz and whether his life was worth saving. The description of drug and alcohol use and the youth being school dropouts likely perpetuated and reinforced the negative beliefs that an all-white jury had about Indians. These extensive remarks, repeated by both Mr. Stankewitz's counsel and DDA Robinson likely did irreparable damage to his reputation, which motivated the jury to sentence him to death.

F. The Records Are Relevant To A Potential Violation Of Section 745(A)(3), 745(A)(4)(A) And 745(A)(4)(B)

Evidence is relevant if it "ha[s] any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."[48] This standard is a "very broad"

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[44] Pen. Code, §745(h)(4).
[45] *Ibid.*
[46] *Ibid.*
[47] Evid. Code, §210
[48] Evid. Code, § 210.

one. *People v. Scheid* (1997) 16 Cal.4th 1, 16. The text of subdivision (d) otherwise underscores that the standard here is especially broad. Indeed, the provision authorizes a defendant to seek "all evidence relevant to a potential violation of subdivision (a)." *Cf. People v. Safety National Casualty Corp*. (2016) 62 Cal. 4th 703, 712 [explaining that the phrase "all other proceedings" was a "broadly phrased term" which "suggests the provision's reach is inclusive"]. That the provision qualifies that the evidence need only be relevant to a "***potential violation***" underscores that the defendant need not prove a section 745, subdivision (a) violation has occurred to request disclosure of relevant evidence.

Here, Mr. Stankewitz seeks data and records relevant to prove a violation of section 745(a)(3) by a preponderance of the evidence that: "[T]he defendant was charged…with a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution ***more frequently sought or obtained convictions*** for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained."[49]

Section 745 defines "[m]ore frequently sought or obtained" to mean when "statistical evidence or aggregate data demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity."[50] Thus, whether the requested evidence is relevant turns on whether it has a tendency to prove or

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[49] Penal Code § 745(a)(3), emphasis added.
[50] *Ibid,* § 745(h)(1).

disprove a violation of section 745(a)(3)/(a)(4).

The data and records that the defense seeks easily satisfy this standard. As a general matter, all the data and records that Mr. Stankewitz seeks will determine whether:

1. The District Attorney charged Mr. Stankewitz with a more serious offense—i.e., special circumstances murder—than defendants of other races; and
2. There exists a significant difference in how the Fresno County District Attorney's Office charges special circumstances murder against Native American defendants, compared to defendants of other races or ethnicities who committed similar offenses and are similarly situated to Mr. Stankewitz.
3. There exists a significant difference in how the Fresno County District Attorney's Office requests the court to impose sentences death or LWOP sentences against Native American defendants, compared to defendants of other races or ethnicities who committed similar offenses and are similarly situated to Mr. Stankewitz.

A review of each request shows why this is so. For example, the requests seek a list of all persons charged with murder, which identifies, in relevant part, the race and ethnicity of such individuals. The request further asks that the other charges and enhancements for persons charged with murder be broken down.[51] This will allow the defense to identify the set of individuals who committed a similar offense as Mr. Stankewitz allegedly did, but who were not charged with special circumstances or gun enhancements. In other words, one could not make the comparison that the RJA requires without knowing who else *could* have been charged with

[51] See Requests No. 2 – 8, *supra*, at Section II.

certain charges or enhancements but were not. *See* PC § 745(a)(3), requiring the defendant to show that he "was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated."; See e.g. Catherine Grosso, et. al., *Death by Stereotype: Race, Ethnicity, and California's Failure to Implement Furman's Narrowing Requirement*, 66 UCLA L. Rev. 1394, 1418-1421 (2019), explaining the need to code all cases where special circumstances *could* have been charged in order to determine whether special circumstances were imposed in an arbitrary and racially biased manner.

The requests also ask for the data concerning persons charged with gun enhancements as well. Although this request is primarily concerned with the charging of special circumstance murder, the request for gun enhancements similar to the ones Mr. Stankewitz charged with will allow him to determine which persons may have engaged in similar *conduct* but were not charged with the same specific enhancements and allegations as Mr. Stankewitz.

Request No. 1 seeks information that will allow Mr. Stankewitz to assess whether any of the attorneys or law enforcement in this case exhibits racial bias or animus towards Mr. Stankewitz because of his race. Requests No. 2 - 8 above seek information that will allow Mr. Stankewitz to assess the District Attorney's charging decisions according to a defendant's race, ethnicity or national origin, and to compare that information with the charging data that Mr. Stankewitz seeks. It will also help him determine whether the District Attorney can demonstrate a racially neutral reason for any significant racial differences that the data reveal. See PC § 745(h)(1) [a showing of racial disparity requires that "the prosecution cannot establish race-neutral reasons for the disparity."

Requests No. 9 - 14 above seek information that will allow Mr. Stankewitz to assess the District Attorney's charging decisions for gun enhancements according to a defendant's race, ethnicity or national origin, and to compare that information with the charging data that Mr. Stankewitz seeks. It will also help him determine whether the District Attorney can demonstrate a racially neutral reason for any significant racial differences that the data reveal. See PC § 745(h)(1) [a showing of racial disparity requires that "the prosecution cannot establish race-neutral reasons for the disparity."

Requests No. 15 – 17 above would allow Mr. Stankewitz to see Fresno County's policies, training and incentives regarding capital case decisions, and how they may have influenced charging decisions. It will also help him determine whether the District Attorney can demonstrate a racially neutral reason for any significant racial differences that the data reveal. See PC § 745(h)(1) [a showing of racial disparity requires that "the prosecution cannot establish race-neutral reasons for the disparity."]

Requests No. 18 - 19 above would allow Mr. Stankewitz to see where the prosecution has gotten convictions for the death penalty or LWOP. It will also help him determine whether the District Attorney can demonstrate a racially neutral reason for any significant racial differences that the data reveal. See PC § 745(h)(1) [a showing of racial disparity requires that "the prosecution cannot establish race-neutral reasons for the disparity."]

Requests No. 20 - 22 above would allow Mr. Stankewitz to see whether the prosecution has pursued the death penalty or LWOP in resentencing cases. It will also help him determine whether the District Attorney can demonstrate a racially neutral reason for any significant racial differences that the data reveal. See PC § 745(h)(1) [a showing of racial disparity requires that "the prosecution cannot establish race-neutral reasons for the disparity."

Finally, Request No. 23 is for Fresno County District Attorney jury selection notes from the 1983 trial.

G. Status Of CPRA Requests For Data

In response to a recent CPRA request, the Fresno District Attorney's Office stated that they have records responsive to the request.[52] .Therefore, they should be ordered to provide the documents that they describe.

In response to a recent CPRA request to the CA Department of Justice (DOJ), the DOJ asked for more time to respond.[53] To date, no response has been received.

In response to a recent CPRA request to CDCR regarding Fresno inmates serving LWOP, CDCR is preparing the records at this time.[54] The records are expected to be available on March 19.

Lastly, the periods selected were used because it is contemplated that the defense, at a hearing pursuant to PC 745(c), will provide "statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses" to support any charging disparities. The periods were also selected they cover key dates[55] in defendant's case:

A. Original charging date

B. First trial date

C. Second Trial date

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[52] *See* Exhibit 30e, Letter from FCDA, dated 2/24/25.
[53] *See* Exhibit 30f, Letter from CA DOJ, dated 2/14/25.
[54] *See* Exhibit 30h, Email from CDCR, dated 3/11/25.
[55] THE KEY DATES IN DEFENDANT'S CASE ARE: INFORMATION, AMENDED INFORMATION, PRELIMINARY HEARING 2/27 – 2/28/1978; FIRST TRIAL: 1978; SECOND TRIAL: 1983; SENTENCING 11/18/1983; SENTENCING 5/3/2019; SCHEDULED RESENTENCING 3/6/2025.

D. 1983 sentencing

E. 2019 sentencing

F. 2025 resentencing

Here, Mr. Stankewitz seeks records relevant to a potential violation of sections 745(a)(1), 745(a)(2), 745(a)(3), 745(a)(4)(A) and 745(a)(4)(B) and good cause exists for this court to order the District Attorney to release such records.

Accordingly, the court should conclude that the requested records are relevant.[56]

Specifically, California Penal Code Section 745(a)(3) makes it a violation for the defendant to be "charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained." The Legislature made clear that its intent with the Act is to "provide remedies to eliminate racially discriminatory practices in the criminal justice system in addition to intentional discrimination," as well as "to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences."[57]

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[56] Note in this regard that in *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746, the Court of Appeal granted Mr. Weaver's CPRA request for *all* charging documents in homicide cases filed by the District Attorney between January 1977 and May 1993, a 26-year period of time, in a county, San Diego, that has a current population of 3,359,630, in comparison to San Mateo County's current population of 1,982,645. (See https://worldpopulationreview.com/us-counties/states/ca (accessed Aug. 10, 2023) The court rejected the prosecution's claim that the request was too burdensome. (*See Weaver, supra,* 224 Cal.App.4th at 752, "The approximately $3,400 expense of generating the list of cases at issue here is substantially less of a reason and pales in comparison to the interests of Weaver and the public in disclosure.")

[57] Stats. 2020, ch. 317, § 2, subd. (j).

H. The Defense Meets the Very Low "Good Cause" Standard

In *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, the First District Court of Appeal discussed the "good cause" requirement in detail. The *Young* Court held that "Client may claim entitlement to discovery under section 745(a) if he makes a plausible case, based on specific facts, that any of the four enumerated violations of section 745, subdivision (a) could or might have occurred." *Young, supra*, at 144. To be entitled to discovery under the RJA's good cause standard, a defendant need not present specific facts of a strong case, but only a "plausible one."[58] The RJA's good cause standard thus invites a forgiving standard of judicial review. (Id. at 158-59 [stating that where good cause under the *Pitchess* standard is a "relatively relaxed standard," the good cause standard under the RJA is "***even more relaxed***."] (emphasis added). To satisfy this plausibility threshold, the defense need only present a "broad and flexible" showing that an alleged violation of "any of the four enumerated violations" under the RJA "could or might have occurred."[59] Because the RJA's enumerated violations work "in tandem," information and records relevant to one violation "may be corroborative" of another violation.[60]

The scope of permissible discovery under the RJA is also broad. Information and records requested only need be "***reasonably calculated to lead to the discovery of admissible evidence*** probative of an RJA violation." (*Young, supra*, 79 Cal.App.5th at 160 [Emphasis added].) The scope of discovery thus permits a demand for statistical evidence and even aggregate data as

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[58] *Id*. at 168.
[59] *Id*. at 158-60.
[60] *Id*. at 163-64.

both forms of evidence are statutorily deemed appropriate to prove up an RJA claim.[61] For this reason, the *Young* court held that the type of information that the RJA authorizes for discovery includes "a written summary of information."[62]

The information and records that the Petitioner seeks here are relevant to potential violations of PC § 745(a)(1) (the prosecution exhibits bias by seeking the death penalty because of defendant's race); (a)(2) (Defense counsel and possibly the Prosecution, as well, exhibited bias or animus toward petitioner because of his race); (a)(3) (Petitioner was charged or convicted of a more serious offense than defendants of another race) and (a)(4)(A)/(B) (Petitioner received the most severe sentence possible, the death penalty, than was imposed on other similarly situated individuals because of his race).

In *Young,* the Court of Appeals found the following information relevant to the question of good cause: "(1) that the Defendant, a member of a marginalized racial group, presented circumstances raising concerns of officer bias; and (2) any local and statewide studies that suggest racial disparities in arrests, charging or sentencing are potentially at play in the county.

I. Here, Petitioner Has Offered Specific Facts To Support The Claim That A Violation Of The Racial Justice Act Could Or Might Have Occurred

After a thorough discussion of the uncodified legislative findings that the California Legislature made when it passed the Racial Justice Act, the *Young* court concluded that a defendant seeking discovery pursuant to the RJA "is required only to advance a plausible factual foundation, based on specific facts, that a violation of the Racial Justice Act 'could or might have

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[61] See Penal Code § 745(c)(1).
[62] *Id*. at 158.

occurred' in his case."[63] The *Young* court summarized the defense's argument as follows: "Client argued he established good cause for discovery because (1) he is black, (2) studies in California have shown black drivers are more likely to be stopped by police than any other racial group, and (3) the circumstances of this traffic stop leading to Client's arrest suggest the traffic stop here was racially motivated."[64]

Historical, social and economic disparities partially underlie these issues as well.[65] AB 256 specifically compels the court to "consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall." Pen. Code, § 745, subd. (h)(1).

Here, we have presented evidence in the attached declarations, supporting references that there were and are incidents of discrimination against Native Americans in Fresno. Additionally, Figure 8: Death Penalty Usage Rage Compared to Homicide Rate - Cttee on Revision of the Penal Code: Death Penalty Report, in Section VI.A., *supra*, raises the inference that there are a disproportionate number of Native American men on Death Row from Fresno County. This statistic, taken along with the youthful offender statistics,[66] of which Mr. Stankewitz was one, demonstrates the relevance of the data of the Fresno County District Attorney's office, regarding the prosecution of youthful offenders of color. Currently, there is no publicly available data or county-level statistics regarding racial disparities in charging decisions to seek the death penalty

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[63] *Young, supra,* at 159.
[64] *Id*. at 161.
[65] *See* Declaration of Alexandra Cock, *supra,* Sections IV, V and VI.
[66] See Section V.C., supra, Figure 12 Youthful Offender Chart.

in Fresno County.

Native Americans have historically been subjected to racial discrimination in criminal courts. (See, e.g. Native Incarceration in the U. S., Prison Policy Initiative (2025) https://www.prisonpolicy.org/profiles/native.htmlHeuvel, Opinion**:** *The injustices endured by Native American youths continue to this day,* Washington Post, May 31, 2022. https://www.washingtonpost.com/opinions/2022/05/31/injustices-native-american-youth/; *The U.S. criminal justice system disproportionately hurts Native people: the data, visualized,* Prison Policy Initiative (Oct. 8, 2021), at: https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/; Sawyer, Avelar & Utaraite**,** *Report: Analyzing the 'Over Incarceration of Native Americans*, The Davis Vanguard (Jan. 30, 2023) https://www.davisvanguard.org/2023/01/report-analyzing-the-over-incarceration-of-native-americans/.)

Statewide studies cited in Section V., *supra*, assessing racial disparities that relate to circumstances in this case further support good cause for Petitioner's discovery request. *See e.g. Young v. Superior Court*, *supra*, at 166, which held that where statewide studies may not provide strong proof of a claim, they nevertheless have relevance to determining whether there is "good cause" for defendant's discovery request.

The Court in *People v. Garcia,*[67] explained *Young* required only a minimal showing, a "plausible justification" standard as a low threshold "minimal" and even more relaxed than the "'relatively relaxed'" good cause standard for *Pitchess* discovery, which requires a logical link

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[67] (DCA1, Div. 3 2022) 85 Cal.App.5th 290.

between the charge and a proposed defense.[68] In *Garcia,* the defendant also sought discovery "to show that a longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed." In support, the brief cited and attached various reports, articles, and research on racial disparities in the criminal justice system.[69] *Garcia,* while noting the "plausible justification standard is "minimal," made it clear that it must still be "based on specific facts."[70]

J. Discriminatory Effect is Sufficient, Discriminatory Intent is Unnecessary

Laws like this, that have a discriminatory impact on people of color, are precisely what the RJA was designed to address. Prior to the passage of the RJA, in order to prove race-based selective prosecution, defendants had to prove both discriminatory effect and discriminatory purpose. *Oyler v. Boles* (1962) 368 U.S. 448; *People v. Keenan* (1988) 46 Cal.3d 478, 506; *see also People v. Montes* (2014) 58 Cal.4th 809, 829. Courts had denied defendants' attempts to make such a showing and to obtain discovery, even in the face of robust statistical evidence of racial disparities like the ones at issue here. *See e.g., United States v. Armstrong* (1996) 517 U.S. 456, 458, 469. "Most famously, in 1987, the United States Supreme Court found that there was 'a discrepancy that appears to correlate with race' in death penalty cases in Georgia, but the court would not

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[68] *Garcia*, citing *Young* at pp. 159-160.
[69] *People v. Garcia*, *supra,* 85 Cal.App.5th at p. 294.
[70] *Garcia, supra*, at 297, citing *Young*, *supra*, at 159-60.

intervene without proof of a discriminatory purpose, concluding that we must simply accept these disparities as 'an inevitable part of our criminal justice system'"[71]

It is with this precedent specifically in mind, the Legislature sought to provide remedies to eliminate racially discriminatory ***practices***, in addition to ***intentional*** discrimination.[72] During the legislative consideration of the bill that would become the RJA, the author of the bill, Assemblymember Ash Kalra explained that "[t]he California Racial Justice Act is a countermeasure to [the] widely condemned 1987 legal precedent established in the case of [*McCleskey*][.]"[73]

In passing the RJA, the Legislature explicitly stated that "even though racial bias is widely acknowledged as intolerable in our criminal justice system, it nevertheless persists because ***courts generally only address racial bias in its most extreme and blatant forms***."[74] The RJA sought to combat the existing precedent that "accepts racial disparities in our criminal justice system as inevitable."[75] "More and more judges in California and across the country are recognizing that ***current law, as interpreted by the high courts, is insufficient to address discrimination in our justice system***."[76] ***Even when racism clearly infects a criminal proceeding***, under current legal precedent, proof of purposeful discrimination is often required, but ***nearly impossible to establish***.[77]

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[71] Stats. 2020, ch. 317, § 2, subd. (f), *citing McCleskey v. Kemp* (1987) 481 U.S. 279, 295-99, 312.
[72] Stats. 2020, ch. 317, § 2, subd. (j), emphasis added.
[73] See Assem. Floor Analysis of Assem. Bill No. 2542 (2019–20 Reg. Sess.), as amended Aug. 25, 2020, pp. 3–4 (Assembly Floor Analysis of Assembly Bill No. 2542).
[74] *Id.* at subd. (c), emphasis added.
[75] *Id.* at subd. (f).
[76] *Id.,* emphasis added.
[77] *Id.,* emphasis added.

With the RJA, the Legislature has expressly declared that disproportionate charging practices will no longer be tolerated. Consequently, Mr. Stankewitz has shown good cause for the requested discovery. Further, we have raised the specific facts of trial counsel's and the DDA's use of the derogatory term "Indian reservations" and solicited testimony regarding drug and alcohol use on the defendant's reservation to describe Indian youth as sitting around and failing to be productive. We seek discovery to learn what other issues of which we are unaware.

K. The *Young* Court's Six *Alhambra* Factors

In addition to the threshold showing of plausible justification, the *Young* Court sets forth a six-part balancing test that this court must undertake at the hearing on this Motion for Relevant Data under Penal Code Sect. 745(d) to decide whether the defense shall be permitted to obtain the material it is requesting. The Court delineated that six-part test as follows: "(1) whether the material requested is adequately described, (2) whether the requested material is reasonably available to the government entity from which it is sought, (3) whether production of the records containing the requested information would violate (i) third party confidentiality or privacy rights or (ii) any protected governmental interest, (4) whether the defendant has acted in a timely manner, (5) whether the time required to produce the requested information will necessitate and unreasonable delay of defendant's trial and (6) whether the production of the records containing the requested information would place an unreasonable burden on the governmental entity involved."[78]

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[78] *Young*, *supra,* at p. 144-45.

1. The Discovery Requested is Adequately Described

Request No.1 is directly relevant to whether any of the attorneys or law enforcement in this case exhibits racial bias or animus towards Mr. Stankewitz because of his race. Each of requests No. 2 - 8 is directly relevant to an assessment of whether there has been a racially disparate decision to seek the death penalty in this case, by charging special circumstances or if any of the attorneys or law enforcement in this case exhibits racial bias or animus towards Mr. Stankewitz because of his race. Each of requests No. 9 - 14 is directly relevant to an assessment of whether there has been a racially disparate decision to seek a gun enhancement or if any of the attorneys or law enforcement in this case exhibits racial bias or animus towards Mr. Stankewitz because of his race. Requests No. 15 – 17 are directly relevant to an assessment of whether Fresno County District Attorney's policies regarding capital cases are discriminatory or allow discriminatory charging of Native Americans. Requests No. 18 – 19 are directly relevant to show the cases in which the FCDA got special circumstances convictions so that the data can be analyzed regarding the race of those convicted. Requests No. 20 - 22 are directly relevant to show the resentencing cases and what sentence the FCDA has sought the death penalty, LWOP or other sentences, including the race of the person being resentenced. Request No. 23 is for jury selection notes from the Fresno District Attorney's office.

2. The Discovery Requested Is Available To The Government

As demonstrated by the Declaration of Alexandra Cock, *infra*, Mr. Stankewitz has researched all of the readily available data regarding racial disparities in seeking the death penalty that are available from public sources. The information the defense requests regarding which individuals were chosen to be eligible for the death penalty and how those decisions were made cases is uniquely available to the government, that is, to the Fresno County District

Attorney, the prosecuting entity in this jurisdiction. Since 81% of those convicted of murder 1 on death row are people of color, there appears to be a racial disparity in the decision to seek the death penalty and the criteria for making these decisions should be examined. Further, youthful offenders of color are disproportionately given the death penalty and the criteria for making these decisions should be examined.[79]

3. No Confidentiality or Privacy Rights Would Be Violated

Although the District Attorney's office will almost certainly cite third party confidentiality in arguing that the records should not be disclosed, this claim was squarely rejected in *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746. A public agency cannot withhold records related to criminal prosecutions where it has publicly filed those records in court. (*Id.* at 751.) Furthermore, PC § 13302 was modified in 2012 to state that, "[n]othing in this section shall prohibit a public prosecutor from accessing and obtaining information from the public prosecutor's case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act." As such, a public prosecutor cannot withhold otherwise publicly disclosable information. Moreover, Mr. Stankewitz has made his request in a timely manner, the time required to produce the requested information will not necessitate an unreasonable delay of defendant's sentencing, and the production of the records containing the requested information would not place an unreasonable burden on the governmental entity involved.

Should any of these requests contain confidential information belonging to a third party, the government has the option to redact any such information.[80] As to the jury selection notes by

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[79] *See* Section V.C., *supra.*

[80] See Exhibit 30e, FCDA CPRA response, dated 2/24/25.

the prosecutor, we have requested that the court review the documents *in camera* and release to the defense any information it deems appropriate. Should other requested material be deemed confidential, we ask the court for in camera review of the confidential materials to limit discovery to those relevant under a RJA motion.

The California Supreme Court in *People v. Superior Court* (2021) 12 Cal.5th 348, held that a prosecutor's confidential notes during jury selection were discoverable to show a potential *Batson/Wheeler* violation and suggested in camera review to protect irrelevant, but confidential work product from disclosure. We agree to follow the same procedure utilized in *Stewart* wherein disclosure is limited to necessary parties and any pleadings referencing confidential materials is filed under seal.

4. Defendant Acted in a Timely Manner

Petitioner became eligible to file a petition under the Racial Justice Act on January 1, 2024.[81] This motion is timely.

5. Time Required Will Not Necessitate an Unreasonable Delay

There is no delay in any trial. Petitioner remains incarcerated.

6. Production of Records Will Not Cause an Unreasonable Burden

Collecting and producing data regarding forty-seven years of charging patterns for this very specific criteria, the decision to seek the death penalty based on only one special circumstance, will not place an unreasonable burden on the government. This data could foreseeably be regenerated much more easily for future requests that are such to come from future defendants as

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[81] *See* Penal Code Sect. 745(j)(1)(3).

well. In fact, the defense recently received RJA records from another Fresno case which covered some of the same data that we are requesting but which covers a period of just 10 years.

Mr. Stankewitz's discovery requests are designed to determine whether Native American individuals like himself are charged more harshly than people of other races or ethnicities. State and county-wide statistics demonstrate that there may be merit to these contentions.[82] Moreover, it bears repeating that this is merely a "Motion for Relevant Discovery." The defense is merely seeking to ***gather*** the requested discovery in order to ***determine*** whether there has been a ***potential*** violation of the RJA. The defense need only show ***good cause***. The defense need not ***prove*** an RJA violation at this stage.

X. Conclusion

For the foregoing reasons, the defendant respectfully requests an order compelling the District Attorney to produce the requested discovery forthwith, specifically, within 30 days of the issuance of the court's order.

Dated: March 23, 2025

Respectfully Submitted,

J. TONY SERRA
PETER JONES
CURTIS BRIGGS
MARSHALL D. HAMMONS

Attorneys for Defendant
DOUGLAS RAY STANKEWITZ

Curtis L. Briggs

By Curtis L. Briggs, Attorney at Law, Attorney for Defendant

[82] *See* Declaration of Alexandra Cock, *supra*, Sect. III; & Sections V. & VI., *supra.*

PROOF OF SERVICE

The undersigned declares:

I am a citizen of the United States. My business address is P. O. Box 7225, Cotati, CA 94931. I am over the age of eighteen years and not a party to the within action.

On the date set forth below, I served the foregoing document(s) described as

MOTION FOR RELEVANT DATA PURSUANT TO RJA 745 (d)

On all interested parties in this action as follows:

Elana Aron Smith
Office of the District Attorney
Fresno, CA 93721
Earon@Fresnocountyca.gov

Honorable Arlan L. Harrell
Teresa VanZuyen, Clerk
Dept62@fresno.courts.ca.gov

Mail ____ Overnight mail ____ Personal service ____ Fax ____

___X___ By Email or Electronic Filing/Service) CCP Sect. 1010.6 and California Rules of Court, Rule 2.251. Based upon a Court Order, Local Rules of Court, or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) listed above on the parties listed above who are signed up for electronic service. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on March 23, 2025, at Sebastopol, California.

Alexandra Cock

FCDA CPRA RESPONSE DATED 2-24-25 - EXHIBIT 30e

COUNTY OF FRESNO
Lisa A. Smittcamp
District Attorney

February 24, 2025

VIA NEXT REQUEST

Alexandra Cock
P. O. Box 7225
Cotati, CA, 94931

Re.: Public Records Act Request dated February 3, 2025

Dear Ms. Cock,

On February 3, 2025, the Fresno County District Attorney's Office (the Department) received your request pursuant to the California Public Records Act (the Act) via the NextRequest portal. On February 12, 2025, the Department sent an extension letter to you indicating that the Department required an extension of time to February 27, 2025 pursuant to Gov. Code §7922.535(c)(2), due to the voluminous number of records requested.

Specifically, you request the following records from the Department:

> All information is for the period from 1978 – present: the names and case #'s of all people charged with PC 187, all charges in those cases including special circumstances, race of defendant, race of victim(s), age of defendant at time and what sentence they received.

In your request, you seek a list of all homicide cases (Pen. Code §187(a)), filed by the Department between January 1, 1978 and February 3, 2025, the date of the current request. For these cases, you are requesting a list of all charges and enhancements in the case, including whether special circumstances were alleged. The Department interprets special circumstances to mean you are seeking cases in which the Department charged section 187(a) along with Penal Code section 190.2(a)(1) through 190.2(a)(22.). Further, you are requesting the race of the defendant, race of the victim, age of the defendant, and what sentence the defendant received.

The Department does not maintain a record in response to your request. (Gov. Code § 7920.530.) However, it is our purpose to provide assistance to you therefore, we will provide an explanation explaining how queries apply to our case management system.

The Department uses a case management system called eProsecutor. The primary purpose of this management system is for case management and workload distribution, and to share and store case information across the District Attorney's office. Over the years the capability has been developed to be able to design a query within our eProsecutor case management system to retrieve data from designated fields within the system. A query can be designed for our eProsecutor case management system to retrieve data from designated fields. A query, designed to retrieve information from before 2019, would entail a separate search of both the old and new management systems. Our electronic case management system relies on data entered by different staff on various occasions on cases since 1999. The data from cases prior 1999, as early as the late 1970s was previously stored in a separate system, and while some of the information was transferred over to eProsecutor when the conversion occurred, much of it was not. As such, only limited information is available by query for cases between 1978-1999.

What fields of information were created has evolved over time. Historically, there have been no specific requirements for data collection. So, to the extent we were able, we have attempted to create fields most helpful to the prosecution of crimes. But, the information entered has changed over time and the data entry has been lacking in uniformity and consistency. As a result, the information that we are able to retrieve can be inaccurate and varied in regard to reliability. While the information can serve our Department's interests well, the information was not intended for statistical or certifiable record purposes.

For the time period of January 1, 1978 through June 25, 1999, the Department is able to design a query, run it and compile the gathered records into a usable format. By doing this, the Department can provide the lead charge, the age of the defendant and the Fresno Superior Court number.

The Department is prohibited from disclosing both the case number and defendant name, or other identifying information, along with the case disposition, sentence information, or defendant demographic information. Providing a combination of this data would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. (Gov. Code, § 7927.705; Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 ["Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"].) As such, defendant's name and sentence information would not be provided.

Regarding defendant's race, when the conversion into the case management system in 1999 occurred, defendant race information was not transferred over into the new system. This information might be available if it was updated since 2019. As such, the

Department can attempt to retrieve Defendant race information in the unlikely event that it is available.

Regarding victim race, while this information might be available on cases from 1978-1999, such information is directly and solely derived from the records of investigation submitted by the arresting and investigative agencies. Because records of an investigation are exempt from the PRA, and the records containing demographic information of a victim or victims are not made public in any charging document, these records are exempt under Government Code section 7927.705. Further the records containing this information are not available in an electronic format, and are stored within the attorney case notes for each case. As such, retrieving this information would require a hand search of nearly 20 years of criminal files, many of which are stored off-site, are incomplete, and potentially voluminous, making the inquiry unduly time consuming and burdensome. (Government Code § 7922.000.) Additionally, because the victim race information in this instance would almost entirely sourced from the attorney's own case notes entry, they are privileged as attorney work product and are not required to be provided in response to a request under the PRA. (Gov. Code § 7927.705, and § 7922.000.) As such, victim race information will not be provided.

To obtain a list of cases where PC 187(a) is listed as the lead charge for the time period of January 1, 1978 through December 31, 1999, which includes the Fresno Superior Court number and the age of the defendant, it will take approximately **6 hours** to design the query, run it and compile the gathered records into a usable format. The Department's staff member who is able to create such a query has a salary rate of $77/hour. **For 6 hours at his rate, the estimated amount to generate the lists you have requested will be $462.00.**

Because your Request requires data extraction, compilation or programming, and are not records that we produce on a regular basis, Government Code section 7922.575(b) provides that the requestor shall bear the cost of producing the cost to construct the record.

Regarding the remainder of your request for the time period of June 26, 1999- February 3, 2025, the date of your request, the Department offers the following response:

As mentioned previously, Department is prohibited from disclosing both the case number and defendant name, or other identifying information, along with the case disposition, sentence information, or defendant demographic information. Providing a combination of this data would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. (Gov. Code, § 7927.705; Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 ["Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"].) As such, defendant's name and sentence information would not be provided.

Regarding defendant's race, the Department can provide this information, when available.

Regarding victim race, this information is directly and solely derived from the records of investigation submitted by the arresting and investigative agencies. Because records of an investigation are exempt from the PRA, and the records containing demographic information of a victim or victims are not made public in any charging document, these records are exempt under Government Code section 7927.705. As such, victim race information will not be provided.

Based on what is explained above, the Department can design and create queries to pull information from the requested categories: Charges Filed, Defendant age, defendant race, enhancements filed, and Fresno Superior Court number for the time period of June 26, 1999 through February 3, 2025, the date of your request.

I am advised that it will take approximately **5 hours** to design the query, run it and compile the gathered records into a usable format. The Department's staff member who is able to create such a query has a salary rate of $77/hour. **For 5 hours at his rate, the estimated amount to generate the lists you have requested will be $385.00.**

Because your Request requires data extraction, compilation or programming, and are not records that we produce on a regular basis, Government Code section 7922.575(b) provides that the requestor shall bear the cost of producing the cost to construct the record.

In regard to the records responsive to your Request, the Department requires that you provide payment in advance of the Department's performance of data extraction necessary to produce those records. In the event fewer hours are expended in performing such data extraction, the Department would notify you of the updated total, refund the overpayment, and request payment of the updated amount.

After we receive payment, it is anticipated that the query will be completed within sixty (60) days of the project's commencement. The Department will not begin this data extraction query until it receives the advance payment of $462.00 or $385.00 or the combined total of $847.00.

Please contact the Department to move forward with this request. If the Department does not receive a response within thirty (30) days of the date of this letter, the Department will consider your request withdrawn.

Because your request seems to seek a voluminous number of records, any production may need to be over a period of time, and we may need to ask you whether you wish certain records to be made available before others.

To provide all responsive documents, it might be necessary for the Department to compile data, write programming language or a computer program, or construct a computer report to extract data from the Department's electronic records to respond to your request, at a cost to you. That would take additional time as well. If it

appears that such work is necessary, we will contact you before incurring those costs, to see whether you wish for the Department to proceed with that work.

In addition, the Department is not required to create a record in order to comply with your request. (Gov. Code, § 7920.530; Haynie v. Superior Court (2001) 26 Cal.4th 1061, 1075.)

At the time records responsive to each category of records are produced, if any records are to be withheld, the Department will demonstrate that the records in question are exempt under express provisions of the Public Records Act, or that on the facts present, that the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records. (Gov. Code, § 7922.000)

If you have any questions regarding the foregoing, please contact me.

Sincerely,

LISA A. SMITTCAMP
DISTRICT ATTORNEY

By_____
Jamie Kalebjian
Deputy District Attorney

3333 E. American Ave. / Bldg. 701, Suite F / Fresno, California 93725
(559) 600-3141 / Fax (559) 600-4400
Equal Opportunity Employer

CA DEPT OF JUSTICE CPRA RESPONSE - EXHIBIT 30f

CALIFORNIA
DEPARTMENT OF JUSTICE

Rob Bonta
Attorney General

CJIS Executive Office
Telephone: (916) 210-5368
Fax: (916) 227-3079
E-Mail Address: CJISPRA@doj.ca.gov

February 14, 2025

Alexandra Cock
P.O. Box 7225
Cotati, CA 94931
Sent via email: alexandra@attorneyac.com

Re: Public Records Act Request 2025-00301

Dear Alexandra Cock:

On February 4, 2025, the California Department of Justice (Department) received your request seeking records under the Public Records Act (PRA), as set forth in Government Code section 7920.000 et seq.

Specifically, you requested:

All information is for the period from 1978 – present: the names and case #'s of all people charged with PC 187, all charges in those cases including special circumstances, race of defendant, race of victim(s), age of defendant at time and what sentence they received.

For the reasons set forth below, this office is extending the date for responding to your request to February 28, 2025.

Agencies are permitted to extend the date for responding to a public records request for 14 days beyond the original 10-day deadline for responding under specified circumstances (Gov. Code, § 7922.535). As your request was received by this office on February 4, 2025, the time established for the original response is February 14, 2025. Fourteen days beyond this date is February 28, 2025.

Agencies may invoke the extension for several reasons, which may be summarized as follows:

1. The need to search for and collect records from field offices or other facilities that are separate from the office processing the request.

2. The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.
3. The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
4. The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

In this instance, an extension is needed to consult with multiple components of the Department with substantial interest in the records requested.

Sincerely,

DANIELLE BROUSSEAU, Staff Services Manager I
California Justice Information Services Division

For ROB BONTA
Attorney General

CDCR CPRA REQUEST DATED 1-13-25 - EXHIBIT 30g

From: CDCR Public Records
To: Alexandra Cock
Subject: [Records Center] Data Concierge Service :: C022515-011325
Date: Tuesday, February 4, 2025 2:55:36 PM

Attachments:

INV25-C022515-1_242025.pdf

--- Please respond above this line ---

RE: PUBLIC RECORDS ACT REQUEST January 13, 2025, Reference # C022515-011325

Dear alexandra cock,

This letter is in response to your Public Records Act request dated January 13, 2025 in which you requested the following records:

"Please provide a list of every prisoner who is currently serving LWOP from Fresno County, including their date of admission and age of admission and sentencing date."

CA Department of Corrections and Rehabilitation has identified non-exempt public records responsive to your request.

As stated in PRA C022651-01162, this PRA request will be responding to both C022515-011325 and C022651-01162's request.

As such, CDCR can provide a list of incarcerated individuals currently in CDCR's in-custody population who are serving a Life Without Parole (LWOP) sentence on any offense, and have a Sentencing County of Fresno on the case with the LWOP sentence.

Additionally, CDCR can also provide a list of the above cohort, but for those who have an LWOP sentence on a first degree murder offense, excluding attempts and conspiracies.

For both of these lists, the data elements will include the following:
- First Name
- Last Name
- Admission Date
- Age at Admission
- Sentence Pronounced Date

Pursuant to Government Code sections 7922.000, Government Code section 7927.705, incorporating: the protections enumerated in the Eighth Amendment to the United States Constitution, the holding of the United States Supreme Court in Farmer v. Brennan, 511 U.S. 825, 832-834 (1994), Right to Privacy as stated in the California Constitution Article 1, section 1, and WIC 827, these data will exclude identifying information pertaining to offenders under the age of 18, where disclosure is prohibited by law, and those who CDCR has determined that the release of their information would create an unreasonable risk of danger to themselves.

An invoice with itemized costs is attached. To pay electronically with a debit/credit card (Visa, MasterCard, and Discover) through the CDCR Public Records Portal choose "My Request Center" and then choose "View My

Invoices”. Log in when prompted and then choose “Make Payment”. Please note that there is a non-refundable 2.3% transaction fee associated with each debit/credit card payment.

Please make checks or money orders payable to “California Department of Corrections and Rehabilitation”. Please also include reference to the “PRA No. C022515-011325” in the appropriate section of the check or money order.

Please mail checks or money orders to:

CA Department of Corrections and Rehabilitation
ATTN: CDCR-ASB-Rancho Cucamonga
P.O. Box 6000
Rancho Cucamonga, CA 91279-6000

Records will be provided promptly upon payment.

If you have any questions or need additional information, you can manage your request through the CDCR PUBLIC RECORDS PORTAL.

Sincerely,

Calvin Nguyen
Information Technology Associate
CA Department of Corrections and Rehabilitation

To monitor the progress or update this request please log into the CDCR PUBLIC RECORDS PORTAL

CDCR CPRA RESPONSE DATED 3-11-25 - EXHIBIT 30h

From: CDCR Public Records
To: Alexandra Cock
Subject: [Records Center] Data Concierge Service :: C022515-011325
Date: Tuesday, March 11, 2025 8:48:01 AM

--- Please respond above this line ---

RE: PUBLIC RECORDS ACT REQUEST January 13, 2025, Reference # C022515-011325

Dear alexandra cock,

This letter is in response to your Public Records Act request dated January 13, 2025 in which you requested the following records:

"Please provide a list of every prisoner who is currently serving LWOP from Fresno County, including their date of admission and age of admission and sentencing date."

CDCR anticipates providing you with your responsive records within 30 days of the payment receipt date.

If you have any questions or need additional information, you can manage your request through the CDCR PUBLIC RECORDS PORTAL.

Sincerely,

Calvin Nguyen
Information Technology Associate
CA Department of Corrections and Rehabilitation

To monitor the progress or update this request please log into the CDCR PUBLIC RECORDS PORTAL

DECLARATION OF VINCE SCHIRALDI DATED 3-14-25 -EXHIBIT 30i

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. DOUGLAS R. STANKEWITZ, Defendant.	Case No. CF78227015 DECLARATION OF VINCENT N. SCHIRALDI

I, Vincent Schiraldi, declare under the penalty of perjury, that the following is true and correct to the best of my knowledge:

1. I am a resident of the County of Montgomery, State of Maryland. I am over the age of 18 and if called upon to testify, can competently testify to the facts as set forth in this declaration.

2. I am currently the Maryland Secretary of Juvenile Services, Baltimore, Maryland. Prior to my current position, I was a Senior Fellow and Senior Research Scientist at the Columbia University Justice Lab, New York, New York. During 2021, I was the Commissioner, New York City Department of Correction. From 2017 – 2021, I was a Senior Research Scientist and Adjunct Professor, Columbia University. Prior to then, I was the

Western Regional Director of the National Center on Institutions and Alternatives (NCIA), and founder and Executive Director of the Center on Juvenile and Criminal Justice, both of which were national, private, non-profit organizations working with defendants and formerly incarcerated persons. Through both positions, I have frequently been called upon to assess the impact of particular offenders' backgrounds on their current behavior, and to evaluate how background factors have affected current behavior.

3. In the capacity of Executive Director and President of CJCJ, I founded and direct all facets of the organization's operations. In the year prior to my leaving CJCJ (2004), the organization worked with over 3,000 adult and juvenile offenders either facing sentencing or returning to the community from jail or prison. During the course of my work with NCIA and CJCJ, I have personally prepared over 250 reports for defendants awaiting sentencing in Federal, State and juvenile courts in 13 different states. Nine of those reports were prepared for defendants facing the death penalty in Federal and State Courts in California, Nevada, and Oregon. On each of. those cases, I was court appointed as an expert witness.

4. Additionally, I have supervised the provision of over 500 sentencing reports by personnel in my office. The National Center on Institutions and Alternatives, by whom I was trained and employed for eight years, has prepared over 8,000 reports in all 50 states and 75% of the Federal jurisdictions nationwide. Prior to my position as founder and director of NCIA's Western Regional Office in San Francisco, which commenced in 1985, I founded and directed NCIA's New York City Office from 1983 to 1985.

5. I have attended at least ten workshops on how to prepare background history reports for defendants awaiting sentencing, at least three of which were devoted to the

development of background histories in capital cases. I have also read over 25 articles and reports on preparation of background histories in capital cases. I have lectured at sentencing and criminal justice training workshops before the National Legal Aid and Defender Association, the California Administrative Office of the Courts, the Center for Judicial Education and Research, the American Correctional Association, the American Society of Criminology, the Western Society of Criminology, and the National Community Sentencing Association. I was formerly Vice President of the National Association of Sentencing Advocates, a nationwide professional association for persons who prepare sentencing reports.

6. Additionally, I have written numerous articles about the preparation of sentencing reports, which have been published in the San Francisco Recorder, the San Francisco Lawyer, Federal Probation, and the California Attorneys for Criminal Justice Forum.

7. As part of my employment with CJCJ and NCIA, I have personally performed several system-wide analyses of adult and juvenile correctional systems. Under contract with the U.S. Department of Justice, I performed analyses of the local correctional systems for Santa Cruz and Sonoma Counties. Under contract with the State of Hawaii, I performed a multi-phase analysis of the Hawaii Juvenile Justice System. With funding from a private foundation, I performed an analysis of the unified correctional system for Dodge-Filmore-Olmstead Counties, Minnesota.

8. Prior to my employment with NCIA, from 1980 - 1982, I served in a counselor position with the New York State Division for Youth, where I was responsible for the management of a group home containing seven juvenile delinquent boys. In 1989, I was a

foster parent for a severely emotionally disturbed juvenile delinquent.

9. In 1983, I obtained my Masters in Social Work Degree from New York University. During that time, I was trained over a two year, 60 credit course of study, in the evaluation and treatment of individuals suffering from a variety of psychiatric and emotional problems. From 1977 - 1981, I attended the State University of New York at Binghamton, from which I obtained my Bachelors of Arts Degree in Social Psychology.

10. In 1990, I was appointed as the founding President of the San Francisco Juvenile Probation Commission. This Commission is unique among California counties in that the jurisdiction over the Juvenile Probation Department rests with the commission, rather than with the Superior Court. I served on that Commission until my term expired in 1992.

11. From 1988 until 1990, I was a member of the California Blue Ribbon Commission on Inmate Population Management. That Commission included two Superior Court Judges, the Attorney General, a Police Chief, a Sheriff, a District Attorney, a Chief Probation Officer, a Probation Officer, a Prison Guard, the directors of the Department of Corrections, California Youth Authority, Board of Prison Terms, Youthful Offender Parole Board, and Youth and Adult Correctional Agency, as well as several academics and researchers. The Commission's charge was to examine the California Youth Authority and California Department of Corrections and to make recommendations to the Governor and the Legislature on the most efficient, safe, and cost-effective method of operating those departments. The Commission took testimony from a divergent group of experts during our two-year life-span, producing a widely heralded report in 1990.

12. From 1992 to 1994, I was a member of the Criminal Justice Subcommittee of

the California Commission on the Status of African-American men. The Subcommittee is charged with the duty of evaluating the impact of youth and adult corrections of African American Men. I was also a member of both the Criminal Justice and the Juvenile Justice Advisory Committees of the Commission on California State Government Organization and Economy (Little Hoover Commission).

13. From 2015 to 2017 I served as Senior Advisor to the Mayor's Office of Criminal Justice in New York City. From 2010 to 2014, I served as Commissioner of the New York City Probation Department. From 2005 to 2010, I served as Director of the District of Columbia Department of Youth Rehabilitation Services, D.C.'s executive branch juvenile justice agency. I was also Commissioner of the New York City Department of Correction in 2021 and am currently Secretary of the Maryland Department of Juvenile Services. I am writing this in my personal capacity.

13. In my opinion, the expertise I bring, based upon my training and experience as an expert witness in background history development and testimony exceeds that which either defense counsel or investigators possess by themselves. Neither defense counsel nor investigators are trained to elicit key background information from the defendant, his family, his friends, and even his detractors. The years of counseling experience and interviewing techniques geared toward extracting this type of sensitive information about emotionally difficult events which have transpired in the lives of deeply emotionally disturbed individuals is exactly the realm of the social work profession. Within that profession, I possess specific training and experience relative to criminal offenders in general, and capital cases defendants in particular.

14. At the request of his then habeas defense counsel in the 1990s, Robert R. Bryan, I interviewed Douglas Stankewitz on several occasions. Both prior and subsequent to those interviews, I reviewed extensive background information regarding Douglas Stankewitz. Additionally, I personally interviewed several people who knew Douglas as a youth. The purpose of my work was to develop a full and complete background analysis of Douglas Stankewitz, and to comment on the effect of his background on his actions. I originally wrote this declaration in 1994. I updated this declaration in 2025 primarily to include the current status of Douglas's siblings and to include reference to two articles that I wrote regarding juvenile and young adult brain development.

15. Douglas Stankewitz was reared in an extraordinarily dysfunctional family. Both of his parents and each of his siblings have either died prematurely or have been incarcerated during their lives or, in some cases, both. Doug's mother, Marian Louise Sample Stankewitz, was an alcoholic who was arrested on ~~one~~ two occasions for physically abusing Doug, and was imprisoned on another occasion for homicide. Doug's father, William Stankewitz, was an alcoholic who was largely absent from the home. William was also a member of a violent, substance-abusing motorcycle gang. So chaotic was his upbringing that there was an occasion when Doug could not be returned home from foster care because both of his parents were imprisoned. Further, there was a point in time during 1992 when three of Doug's brothers were imprisoned in Pelican Bay State Prison, California's prison for hard core, incorrigible prisoners.

16. When Doug was not being reared in an abusive atmosphere at home, he was subjected to horrific, but not atypical, abuses in the various state-run institutions in which he

was held. During Doug's 19 placements, he was massively and unnecessarily drugged, tied to beds, beaten, sexually molested, neglected, deliberately tortured, and otherwise abused by staff. Even during his most solid and stable foster home placement with Rosamond Bollmeyer between ages seven and 11, there is evidence of profound sexual abuse.

17. The tragic instant offense occurred less than one month after Doug's release from jail. Prior to that time, from March 23, 1965 when he was first placed in Napa State Psychiatric Facility, until his arrest on the instant offense on February 9, 1978, a period of nearly 13 years, Doug spent all but 16 months in one form or another of government care. During the 48 hours which preceded the murder of Theresa Graybeal, Doug did not sleep, he consumed substantial quantities of alcohol, heroin, and methamphetamine, he was erroneously detained by police for an unfounded motor vehicle theft, and he had learned about the shooting of his brother.

18. Doug's unstable, violent and neglectful early childhood, along with the abuse he experienced in state care, and the disjointed nature of his upbringing, profoundly and very negatively affected his development. Combined with the severe substance abuse, sleep deprivation, and highly emotional nature of the period immediately preceding the instant offense, Doug's background history is critical both with respect to an analysis of his ability to form intent, and to penalty mitigation.

19. Parents

Father - Robert William Stankewitz

Robert William Stankewitz (nickname "Sonny") was born to the union of Irene (nee Page) and William Stankewitz, in Oklahoma, on July 24, 1933. Irene was Caucasian and

William, Sr. was part Caucasian and part Native American. The Stankewitz family moved from Oklahoma to Bakersfield, California in approximately 1938. These were the so-called "Dustbowl" days, when so many Oklahomans (as many as 10,000 per day at one period) moved to the Central Valley of California to flee the abject poverty brought about in Oklahoma by the combination of a record drought and the Great Depression. They were often met in California with tremendous resistance, including police barricades and civilian mobs established to prevent their immigration to Central valley corridor towns.

20. When Sonny was two years old, his parents separated, and Sonny was raised by his maternal grandmother. Although his mother subsequently remarried, Sonny remained with his grandmother until he enlisted in the military, underage, at the age of 16, in 1949. He was honorably discharged for being a minor in 1951. Sonny and his grandmother lived in Bakersfield for a few years before moving to the Fresno area. Both of Sonny' s parents were described as alcoholics.

21. Sonny Stankewitz was himself an alcoholic who spent most of his time on the road as a truck driver. According to Marian Sample Stankewitz, Sonny's wife and Douglas' mother, Sonny came home for a day or week every several months -- "just long enough to get me pregnant and leave. When Sonny was home, he spent most of his evenings in bars or out with friends."

22. Sonny was extremely abusive to Marian and the children. Several of those interviewed talked about the severity of the beatings Sonny inflicted upon Marian. Indeed, according to Marian:

> My husband beat me bad when I was pregnant with Douglas. He beat me so bad one time that he broke my nose. I had a black eye, too. That was

> the worst beating I ever got from him. I was pretty big when it happened. It must have been when, I was five or six months pregnant. He'd kick me in the stomach a lot. He'd hit me in the face. I'd have black eyes and a busted lip.

Sonny was arrested in 1960 for "wife beating" and was convicted on separate occasions of "non-support" and "failure to provide for a minor." For this latter offense, he received a 180-day jail sentence.

23. Sonny married Marian Sample in 1955. In1968, Sonny was sent to Soledad Prison for the offense of armed robbery. This offense occurred when Sonny and six other members of his motorcycle gang -- the Lucifer Knights -- robbed and shot up a local bar. The Lucifer Knights was a gang in the Fresno area known for their violence and substance abuse. In sentencing Sonny Stankewitz for this offense, Honorable L. I. Meyers of the. Fresno County Superior Court stated:

> This defendant has long been identified with an outlaw element of society STANKEWITZ appears to be a man of low intelligence, without education, who sees himself as a criminal. He dislikes law and law enforcement. He has no respect for the rights or feelings of others, and he likes violence. His rehabilitation will certainly tax the resources of the Department of Corrections.
>
> I have no helpful suggestions but feel that he will be definite menace to society until there are substantial changes in his attitude.

24. In addition to his 1968 armed robbery offense, Sonny Stankewitz' rap sheet includes arrests for escape (from a California Youth Authority facility), forgery, disturbing the peace, drunk, contributing to the delinquency of a minor, fighting, probation violation, parole violation, battery, petty theft, and robbery. Mr. Stankewitz spent time in prison, jail, and the California Youth Authority.

25. Sonny and Marian separated when Mr. Stankewitz was sent to prison in 1968.

They were never legally divorced. Approximately five years prior to their separation, Sonny had also begun living with another- woman, Eva Rodriguez, in Reno, Nevada. Mr. Stankewitz fathered two children with Ms. Rodriguez. During the course of their marriage, Sonny also lived with two other women.

26. Sonny Stankewitz was released from Soledad on December 24, 1971. Because Marian Stankewitz was in prison for a manslaughter conviction at the time, Douglas Stankewitz, then age 13, was placed with his father for a brief period. This was the first time Doug had lived with Sonny since 1965, when Doug was age five, and the only time Sonny was Doug's primary caretaker. In less than one month, Douglas was picked up as a runaway because Sonny had beaten Doug's brother Johnnie so badly that Doug left home. Doug was never again placed with Sonny.

27 Sonny Stankewitz died of a heart attack in 7/29/1980. Since he was still legally married to Marian, she was his widow.

28. Mother - Marian Sample Stankewitz

Marian Sample was born on December 25, 1934, to the union of Mae and Sam Sample on the Mono Indian Reservation in Auberry, California, where she was also raised. She had three brothers, Jack, Floyd, and Herbert (who was incarcerated in Folsom Prison, now deceased), and three sisters, Margaret, Wilma, and Arcie. All of Marian's siblings had alcohol problems, including Marian, and all have arrest records. Indeed, Marian's sister Wilma and her oldest son, Frank Montgomery, were arrested as recently as 1993 on rape charges.

29. Marian worked most of her young life as a farm laborer, picking grapes and

vegetables. She was sent to boarding school from age seven to age 12, along with several of her siblings, because their parents were having marital problems.

30. Marian began drinking alcohol and engaging in sexual relations at the age of 15. She left school in the ninth grade when she became pregnant with her first child. Before she was age 20, Marian became pregnant three times and bore two children out of wedlock to different fathers. Her first son Frank Montgomery was born in 1951 when Marian was age 16. After that, at age 17, Marian became pregnant with twins, whom she miscarried. In 1954, when Marian was age 19, Gary Lewis, her second son, was born.

32. Marian met Sonny when he was the foreman on a farm where she was picking grapes. Sonny had recently been released from prison. The couple was married on January 18, 1955, when Marian was 21 and Sonny was 22.

33. When Marian left home to live with Sonny, her mother let her take her second son, Gary Lewis, but not her first son, Frank Montgomery, with her. Frank Montgomery was raised.by his maternal grandmother until he was approximately age 15.

34. On August 17, 1955, fewer than nine months after they were married, Glenda Stankewitz was born to the union of Sonny and Marian Stankewitz. It was during Marian's pregnancy with Glenda that Sonny first began to physically abuse her. Marian caught Sonny in bed with Marian's sister, Wilma Sample. Sonny knocked Marian down and held a knife to her throat at the time.

35. Over the next 11 years, Sonny and Marian bore 9 children. Marian reports that on each occasion, Sonny denied parentage of the Stankewitz children, although he often came to accept that he was their father after they were born. Sonny consistently failed to supply any

child support.

36. Sonny's failure to pay child support and the difficulty with obtaining welfare support when one is married to someone who has a job caught Marian in a bind that left her and her children destitute and poor. This necessitated their moving "every few months" according to Marian and meant that she had to depend on charity often to feed and clothe her children. Marian's sister Margaret Marquez (nee Sample) recalls:

> A lot of times there was no food in the house. Sometimes we'd save our oatmeal for them because they had nothing. Sometimes. I'd give them a bag of potatoes just so they would have something to put in their stomachs.

37. The Stankewitz family's poverty was also documented throughout the years by various human service workers with whom the family came into contact. In a letter dated December 8, 1965 from Deputy Probation Officer Joe R. Walden, he states:

> "Placement of the minor (Doug) with his natural parents is out of the question at this time. The minor's mother is currently living on the Indian reservation in Auberry in a sub-standard dwelling without electricity or running water. The whereabouts of the minor's father are unknown. The minor's siblings have all been temporarily removed from the custody of their parents..."

38. A 1970 letter from James L. Caffee to Probation Officer Roger R. Nelson states that Mrs. Stankewitz "has 10 children at home from three different fathers and that all of the kids are in some kind of problem, either with the school or society and she is now being evicted from her home." In a 1967 probation report relative to Willie Stankewitz, the probation officer noted that:

> ...there were no improvements or efforts made to upgrade the standards of housekeeping and that Mrs. Stankewitz still maintains her negative attitude. The house was found to be infested with cockroaches and fleas. Milk cartons and other articles were strewn all over the floor. That the children often could not eat at the table because the cockroaches over ran it. The sleeping arrangements were inadequate . . . with five children often sharing one bed.

39. Marian describes massive alcohol consumption, before, during and after pregnancies. She also relates that Sonny was consistently abusive of her during his short periods at home. Indeed, during her next pregnancy with twins in 1956, Sonny beat Marian so badly that he was jailed for it. All of the Stankewitz children, including Doug, regularly witnessed these beatings. The children witnessed one occasion when Sonny attempted to run Marian over with the family car. The children all looked on in tears. The couple's oldest daughter, Glenda, recalls often trying in vain to shield her younger siblings from witnessing these violent episodes.

40. Like Sonny, Marian has a criminal arrest record and has spent time in both jail and prison. According to California Department of Corrections ("CDC") records, Marian's record includes arrests for assault with a deadly weapon, grand theft auto, disturbing the peace and drunk driving. In addition, in 1957, Marian served a 90 day-sentence for battery.

41. On October 21, 1971, Marian plead guilty to involuntary manslaughter and was sentenced to six months to 15 years in prison. Marian had been at a July 4th celebration called the "Logger's Jamboree" attended primarily by Native Americans, when she got into an argument with Ray Charles Walker. When Mr. Walker slapped Marian, she produced a gun from her purse and shot and killed him. Marian stated about the celebration "this happened on every celebration. The Indians get together and get drunk and fight and the next day they are friends again. If I wasn't drunk this would never have happened..." Prior to her release from prison, CDC psychiatrist Joseph F. Roh, M.D. wrote "Her violence potential while institutionalized was average and upon release it would probably increase and become moderate to high. She has a serious problem with alcohol and if possible she should attend

AA."

42. While in prison at the California Institute for Women, Marian attended and completed a nurse's aide training course. Marian was able to obtain employment as a nurse's aide upon release. Marian was employed in this profession for approximately the next 10 years until she retired due to bad health (diabetes and arthritis). Marian's diabetes necessitated the amputation of both of her legs and she received dialysis three times per week. She passed away on November 12, 1995.

43. Siblings

In my 45 years practicing in the field of criminal and juvenile justice, I have never seen a group of offspring who document and attest to their family's dysfunction more clearly than is the case in the Stankewitz family. The Stankewitz family is unique because of the high number of siblings, the fact that they have all been incarcerated or died prematurely and the severity of the abuse and neglect that they experienced. With Douglas being among the youngest, he was especially susceptible to be influenced towards criminality. The following is a listing of the children born to Marian and to Marian and Sonny, along with pertinent information about each.

44. Frank Montgomery – half brother - deceased (unknown date)

Frank Montgomery has been incarcerated in both jail and state prison on numerous occasions for both property and violent offenses. He was also a substance abuser at a very young age. He died in prison while serving a life sentence.

45. Frank Montgomery did not live with the Stankewitz family until he was a teenager, when he went to live with his mother because his grandmother could no longer

control him. When Frank moved in with the Stankewitz family, he is described as being violent and sadistic to the younger Stankewitz children, particularly Doug. At the age of 17, Frank was charged with murder.

46. According to Glenda Stankewitz Padilla, Frank would regularly beat her and her younger siblings and actually stabbed her on one occasion. Additionally, Frank would force her and Gary Lewis to steal under threat of abuse. Glenda relates:

> When Frank came home, he was really mean. He'd hit my brothers and sisters. I'd try to protect them, and he'd beat me up. My mom wanted him to take care of us.
>
> The paddy wagon brought me and Gary home one time for stealing sodas. But we couldn't tell my mom it was because of Frank, so we got beat up with boards. My mom did that.
>
> He was a bad role model. He'd sniff airplane glue all the time, and my brothers would see that and there was nothing I could do. I couldn't tell my mom about anything because she thought she needed him. If we told my mom he did it, we'd get beat up by him. So I couldn't tell on him or I'd get beat up twice, by him and by my mom. I don't know if he was her favorite, but she let him do whatever he wanted.

47. Frank Montgomery was released from prison in July 1993 where he was serving time on a parole violation after an original commitment for robbery. What we know from law enforcement and other records is that in May 1973, Frank was serving a sentence in the California Youth Authority, and in 1979, he was in Soledad. During the investigation of my original report, he was living in a bedroll in the woods in a rural section of Fresno County. His parole was again revoked after he was charged with the offense of rape. His co-defendant was Marian's sister Wilma Sample.

48. Gary Lewis – half brother - deceased 5/8/1997

As is the case for several of the Stankewitz children, Gary "Tramp" Lewis has served time in Pelican Bay state prison, California's prison for serious recalcitrant offenders.

According to records, Gary was in juvenile hall in 1965 (age 11) and again in 1971 (age 17). He was in the Fresno jail in May 1973, and in Deuel Correctional Facility in 1978. According to Glenda Stankewitz, she and Gary "hit the streets" and became runaways and substance abusers at the extraordinarily young ages of 13 (for her) and 14 (for Gary). At age 15 (for her) and 16 (for Gary) they both became heroin addicts.

49. Prior to his death, Gary was incarcerated in the Los Angeles County Jail and was described by family members as a violent person with prison gang affiliations.

50. Glenda Mae Stankewitz Padilla – sister - deceased 12/26/2015

Both Glenda and Marian report that Glenda did a good deal of the child rearing in the Stankewitz family, although only a child herself (she was only three years older than Doug, for example). Glenda reports:

> When I left home, my mom wasn't even drinking. But I was fed up. I didn't want that responsibility [of raising all the children]. The first time I left, my mom put me in juvenile hall, but even then I didn't want to go home. I had my first child when I was 15. I lost him when he was a month old. That's when I kind of freaked out. That's when I got into dope.

51. Glenda had numerous arrests and has served time in prison for drug sales~~jail~~. Indeed, Glenda was arrested, tried and convicted for possession of PCP while Doug was going through his second trial in 1983. This arrest occurred in the courtroom in which Doug was being tried.

52. Glenda and her mother often had a volatile relationship. At the time of the instant offense in 1978, Glenda and Marian lived together in Sacramento. During this time, Glenda reports that Marian brandished a gun at Glenda, and Glenda in turn beat Marian up.

53. After a 20-year heroin addiction, Glenda was clean and sober for the rest of

her life.

54. Wilma Roberta Stankewitz – sister - (deceased in 1979 at age 22)

Wilma was placed in foster care from 1965 until 1973. She was killed in an automobile accident in Los Angeles in 1979.

55. William "Willie" Robert Stankewitz – brother - age 68

Willie was known to the Fresno County Probation Department from age seven (1965). Prior to 1974, he appeared before the court on at least seven occasions. Willie committed a series of robberies as a teenager for which he was placed in the California Youth Authority. In 1973, Willie, his friend Emmet Riley, and his cousin, Charlene Marquez were involved in a robbery resulting in the stabbing death of Riley. In a 1973 report from the California Youth Authority relative to Willie, it is noted that lack of supervision and disrespect for authority in the Stankewitz home predisposed the children to delinquency. At that time, five of the eleven Stankewitz children were delinquent wards of the court and Frank Montgomery, an adult, was incarcerated on a homicide charge.

56. Willie reports that he began sniffing glue at the age of eight and that he taught his brother, Doug, to do so when Doug was only five years old. Willie regularly supplied Doug with drugs such as heroin, marijuana, methamphetamine, and alcohol. During the writing of my original report, Willie was incarcerated in California State Prison, Los Angeles County. During his time at Pelican Bay State Prison, a prison for California's worst offenders, he managed to get himself placed in Administrative Segregation.

57. Glenda Stankewitz Padilla reports that, for some reason about which she is not clear to this day, all of Doug's older brothers -- Frank, Gary, and Willie -- used to pick on and

tease Doug constantly. According to Glenda:

> I don't know why they picked on him. He was the quiet one. Johnny was hyper and wild. And Doug was the loving one. He was not like my other brothers. Doug was loving toward animals. I never saw my other brothers love things like that.
>
> The kids never stayed in the house. They played outside and picked on Doug. The boys picked on Doug a lot. They always picked on him. When I would hear him start to cry, I would run out there. I was always out there to stop it because my dad held me responsible. I'd tell him not to cry because my dad didn't like that. And if they didn't stop, I would get beat up for it.

Having been admitted to CDCR in 2003, Willie is serving a life sentence at Kern Valley State Prison.

58. Douglas Ray Stankewitz - age 66

59. John Ray Stankewitz – brother - (deceased 4/4/1990 at age 30)

By the astonishingly young age of eight, Johnnie Stankewitz was a delinquent ward of the court. Johnnie Stankewitz was incarcerated in the Fresno County Juvenile Hall and in the California Youth Authority, Preston Institution, by age 12. Johnnie spent most of his life in foster homes, like so many of his brothers and sisters. Along with Doug, John was involved in the robbery/car chase/shoot-out which resulted in the death of Eddie Davis in 1973.

60. It is important to note here that, in considering Douglas Stankewitz' involvement in this shootout about which the jury heard from witnesses George Key and the arresting California Highway Patrol officer, no mention was made of the fact that Johnnie was also in the vehicle. It was made clear to the jury that shots were fired from the back seat of the car while Eddie Davis was driving. The jury was falsely told that Doug was the only passenger, leading to the inescapable conclusion that Doug had fired shots on police officers. Surely this was a circumstance in aggravation which weighed heavily in the jury's decision-

making.

61. In 1981, John was shot in the back, his spleen was badly damaged, and he was paralyzed from the waist down. Although his family reports that he died in 1990 from complications from this shooting, his death certificate indicates that the cause of death is an overdose of cocaine and heroin.

62. Roger Lee "Lonely" Stankewitz – brother - deceased (unknown date)

Roger recalled when he was placed in a foster home at the age of three when his mother was incarcerated for child abuse as follows:

> All I remember, it was around 2:00 a.m. and the social worker took my brothers and sisters to the hospital to check for bruises and lice. Then I remember sitting in a car next to the window and my sister telling me to run away.
>
> I did not know what she meant, but I guess she knew that we were being taken away and that we were not going to be together.
>
> I was taken to a foster home in Fresno. They raised me like a girl. They taught me how to cook and sew. I never learned sports.

63. Roger was placed in the adolescent section of Camarillo State Hospital in 1978, and has spent time at NORCO, a correctional drug rehabilitation facility, for numerous petty theft and burglary charges. Roger was a transvestite prostitute, living in a single room occupancy hotel in the Chinatown section of Fresno. He evidenced an ongoing substance abuse problem.

64. Rhonda Sue Stankewitz – sister - deceased in 1986 at age 24

Rhonda was also in foster care from 1965 (age two) until 1973 (age 10). Prior to 1972, three dependency petitions were filed on behalf of Rhonda. Rhonda was stabbed to death by her lover at the age of 24.

65. Theodore Floyd "Teddy" Stankewitz – brother - age 60

Theodore was also removed from the Stankewitz home in 1965, at the age of one, and spent the next 13 years of his life in foster care: admitted to CDCR in 2003, Teddy is currently serving a life sentence at Avenal State Prison. He has also served time in prisons in Folsom and Calpatria.

66. Rodney Stankewitz – brother - age 58

Rodney Stankewitz was paroled from Pelican Bay State Prison on July 15, 1992. where he was imprisoned on the charges of robbery and rape. Admitted to CDCR again in 2006, Rodney is currently serving time at San Quentin State Prison.

67. Douglas Ray Stankewitz

1958 - 1966 Chaotic, abusive upbringing at home resulting in placement in a psychiatric facility

68. Douglas Ray Stankewitz was born to the union of Marian and Sonny Stankewitz on May 31, 1958. From even prior to Doug's birth, the chaotic and violent nature of life in the Stankewitz family is evident. According to Marian Stankewitz, she consumed massive quantities of alcohol during her pregnancy with Doug. Marian reports that during that pregnancy, she would often begin drinking on Friday night and drink straight through the weekend, combining beer and mixed drinks.

69. In addition to her alcohol consumption during her pregnancy with Doug, Marian was the victim of numerous savage beatings while Doug was in utero. These included blows to the abdomen as well as to the face. Indeed, when Doug was born, his father was absent because he was serving a jail sentence for battery.

70. In utero abuse and alcohol consumption by pregnant women have been shown to correlate with neurological impairment and fetal alcohol syndrome.

71. Despite these numerous incidents of alcohol consumption and physical trauma, Marian never went to see a doctor during her pregnancy. Marian reports that she never saw a doctor prior to giving birth to any of her children, but that she would "just go in when I was ready to have the baby."

72. Doug was taken to the Emergency Room at Fresno Hospital on three separate occasions prior to his first birthday. At the age of one, he was cared for for a period of time by his aunt Margaret Marquez.

73. As early as age six, in his pre-first grade report from school, it is clear that the effects of Douglas' abuse and neglect at the hands of his parents was taking its toll. According to a report by Mildred Wilkens of Lowell School in Fresno:

> Many behavioral problems...Some days comes in happy and would do work to best of his ability and seem to be enjoying himself. A little later with no visible or apparent reason he would get a stubborn streak, refuse to participate in either group activities or alone...Sometimes, if left alone, he would join his group. Other times he would run out the door, yelling, kicking and screaming.

74. By this time, Douglas' disjointed upbringing was clearly resulting in his being an outcast by his agemates. According to Ms. Wilkens, she would inform the other children in Doug's class that "we have to help Doug with rules, and to be kind to him... The children seemed to understand and not resent it, and they knew that they were not to act like he was acting."

75. Ms. Wilkens went on to note that "surprise" incidents (like a substitute teacher) generally made him embarrassed and then angry and he would misbehave. Further,

she reports that at this age, Doug was unable to sit still for long enough to read and do other tasks that his agemates were doing.

76. Each of these indicators - restlessness, volatility of mood swings, inability to adapt to minor changes, and being perceived even by five-year-old agemates as exhibiting age-inappropriate behavior - are early signs of the abuse, neglect, and general deprivation that Douglas was experiencing at the time. Additionally, Douglas began to exhibit a speech impediment as well. All of these are behavioral manifestations which correlate with neurological impairment.

77. It is common for teachers who are unaware of either physical abuse in their students' homes or of neurological impairments to conclude that misbehavior occurs for "no visible or apparent reason" as Ms. Wilkens concluded. Often such behaviors are treated as controllable misbehavior which the child is simply refusing to alter rather than neurological impairment or fetal alcohol syndrome over which the child has no control. Furthermore, since Doug's physical abuse occurred prior to the passage of the Juvenile Justice and Delinquency Prevention Act of 1974, it was extremely uncommon for school professionals or Child Protective Service workers to "pry" into the private lives of families in which abuse was suspected.

78. In November 1964, Douglas was the victim of a documented, severe beating by his mother Marian. According to the police report dated November 18, 1964, the police received a report that an injured or sick boy was wandering alone in the streets. They picked Douglas up and observed signs of a beating on him. The police stated that "he almost appeared in shock."

79. Marian Stankewitz admitted to police that she beat Doug severely with an ironing chord, and that she was "having trouble with the boy." She stated that she was sick and had just gotten out of bed, and that that may have contributed to her actions. Her husband, Sonny, was in jail at that time. Due to the large number of children in the home (nine) and the fact that her husband was in jail, the police released Marian with a warning.

80. Less than three months later, on February 13, 1965, Douglas was brought to the police station by a citizen who said he found Doug on his doorstep. Less than two weeks after that, Doug showed up on his neighbors' doorstep because he had again been beaten by his mother with an extension cord. Officers found extensive welts on his back and all over his body, and suspected that "possibly some other method was used" as well.

81. Marian again admitted that she had abused Doug, stating that he had dropped his one-year-old brother, Teddy, on the floor. Both William and Glenda Stankewitz report that physical and emotional abuse was the norm in the Stankewitz family, more often at the hands of Marian than Sonny.

82. All of Marian's children were taken from her at this time, and she was jailed for this offense. Douglas remained in the hospital from February 26, 1965 until March 9, 1965. During his hospitalization, Douglas was so distraught that physical restraints were used on him which he frequently chewed through.

83. On March 9, and then again on March 10, 1965, Doug was placed unsuccessfully in two consecutive foster homes. Joe Walden, former Director of Institutions for the Fresno County Probation Department, was Doug's probation officer at the time. He described Doug's life circumstances in a letter dated June 22, 1992, as follows:

My recollection is that you were either 6 or 7 years old when I encountered you. The circumstances of our meeting were that you had been removed from your parents' custody as a result of your mother beating you with an electrical cord. You had been placed in a foster home and kept threatening to run away. The day prior to my meeting you, you had attempted to run away from the foster home while the social worker was visiting you. She had to chase you across the field before she could catch you and bring you back. She sprained her ankle in the process. When your runaway threats continued, she called me and asked for my assistance in moving you to a foster home.

When we arrived to take you to a different foster home, my impressions were of a very small, very cute, and very happy little boy. Your bag was all packed, you appeared very happy to see the social worker again and you eagerly got into the car with us to go. After we began driving, you expressed repeatedly a desire to see your "mommy". We tried to explain to you that your mother was in jail and that you could not see her at that time. You became very upset and were almost hysterical when we arrived at the new foster home. When we arrived there, you agreed that you would go in and meet the people. You looked around and sat quietly for a few minutes, then again became upset indicating that you were going to leave and wanted to see your mommy. At that point, I wrapped my arms around you and sat you in my lap and tried to talk to you...Late that same evening, I received a call from the foster parents asking me to come get you because you had been threatening to throw a chair through their plate glass window in an attempt to run away.

At that point, I obtained the assistance of another social worker and came to pick you up. When you saw me, you came eagerly over and told me you were ready to go. You proceeded to hop right into the car and were happy and talkative. We stopped and bought a soda for you and then drove to Juvenile Hall, where you were placed in custody for being out of control.

While at Juvenile Hall, you were originally placed in the younger boys unit and then were transferred after a few days to the girls unit due to behavior problems. My recollection is that you got along very well in the girls unit and that the girls greatly enjoyed taking care of you and "mothering" you.

84. On March 23, 1965, Doug was ordered to Napa State Psychiatric Hospital for observation for a period not to exceed 90 days. In a report by psychologist Donn Beedle, Ph.D., Doug is described as follows:

Douglas is a rather hyper-active boy who apparently becomes pretty emotional and aggressive at times. He is spontaneous in his talk although his speech is "baby talk" which makes understanding sometimes difficult.

Dr. Beedle also indicated that Doug's figure drawings were "emotionally ...infantile and anxiety ridden," and that Doug reversed most of the letters in his name when printing and reversed his numerals as well. Coupled with his speech impediment, these were considered indicators of neurological impairment by Napa staff.

85. In a June 16, 1965 letter to the Fresno County Probation Department from Napa psychiatric social worker Stephen Graham, Mr. Graham describes Douglas as follows:

> ...Douglas is a very emotionally disturbed child, has experienced the trauma of severe physical abuse by his mother, and has been completely unmanageable in two foster home situations prior to his admission here...
>
> Most of the time he is a charming little boy but frequently has tantrums when he appears to lose control of his actions. These tantrums are becoming less frequent and Douglas understands that he has to work to control them. He is able to talk to the staff about this and with a lot of support it is felt that he will soon be able to exercise more control over them. He likes to put on an apron and be a helper. He makes beds, dust mops floors and helps other children with shoes and socks. He plays well with the other children and is usually willing to take turns.
>
> It seems very difficult to effectively support the work of the staff in controlling Douglas' tantrums with medication. When he is playing well, medication will make him drowsy and sleepy and unable to function. His tantrums come on so quickly that any medication other than the intramuscular injection does not work quickly enough. The intramuscular injection is extremely frightening to this boy who has experienced a great deal of physical abuse from his mother and only contributes to this boy's pathology in the long run.

86. In an interview with Mr. Graham on February 26, 1993, he indicated that Doug's placement in Napa was inappropriate, and that the ward Doug was on had no full-time psychiatrist and was "a dead end place...not a psychotherapeutic place." He also indicated that children were regularly given drugs to control their behavior.

87. Mr. Graham did state that Doug became an informal assistant to many of the staff at Napa, and that he benefitted somewhat from the experience. For example, Doug

befriended another young boy at Napa who would not speak because of something that had happened to him. Doug often played with the boy and they began playing cowboys and exchanging "whispers." Ultimately, the boy came out of his shell and began to communicate with others. Mr. Graham reported that Doug was very proud of this accomplishment.

88. Doug's 90-day commitments were extended twice resulting in him being released on December 15, 1965 after a stay of nearly nine months. He remained at Napa State Hospital an additional 105 days due to an inability to place him. On April 1, 1966, Douglas was placed at the foster home of Rosamond Bollmeyer in Sebastopol, California where he would stay for nearly four years, Douglas' longest residence at one address prior to death row.

89. The first eight years of Doug's life, then, were fraught with abuse, neglect, and chaos. Both parents were not only reported to be violent, but both had received domestic violence-related convictions by the time Doug was eight - an extraordinary fact given the reticence of police to intervene in domestic squabbles during that period. In addition to the more obvious physical abuse, the environment at Doug's home - moving repeatedly due to abject poverty, absentee father, mother overwhelmed by nine young children, alcoholism by both parents coupled with likely neurological impairment, contributed to what was perceived by professionals who met with Doug as impulsive acting out behavior. The system's response to this acting out was placement in juvenile hall for lack of better local options and what is described by the Napa psychiatric social worker as an "inappropriate" placement in a locked psychiatric facility.

90. Nonetheless, Doug was still capable of positive, loving behavior, indicating

that, despite his disjoint upbringing, there was a substantial pro-social core that was seeking a vehicle to live the normal life of a child. Unfortunately, these early traumas, and the inability of Doug's family system to cope with all of its children, including Doug, would set the stage for a lifetime of state care for young Douglas.

91. 1966 - 1972 - Childhood Spent in the Homes of Strangers

92. On April 1, 1966, Doug was placed at the home of Rosamond Bollmeyer in Sebastopol, California. According to Rosamond's daughter, Rosetta Bollmeyer, Douglas was "like a wild animal" when he first arrived at her mother's home. She reported that "it took three teenage boys...two of whom were over six feet tall, to hold Douglas down."

93. Rosetta reports that Doug was tied hand and foot when her mother picked him up from the hospital and that he had been unnecessarily deprived of his medication for several days prior to his discharge. She indicates that he was initially prescribed 1200 milligrams of Thorazine, a dosage that today would be considered extraordinarily high even for a full-grown adult.

94. Rosetta reports learning that Douglas and another of her mother's foster children had been sexually molested while at Napa. Furthermore, Rosetta indicated that her mother sexually molested her when she was a child, although she had no evidence that Douglas was similarly sexually molested by Mrs. Bollmeyer.

95. Rosetta reports that during Doug's four years with her mother, he did make progress and began to become more socialized. She indicated that he received no visits from his natural family during this time, and began to call Rosamond, "mom."

96. Two contrasting stories were given about why Douglas was abruptly removed

from the Bollmeyer's in 1970. In testimony at Doug Stankewitz' 1978 trial, Rosamond Bollmeyer indicated that Doug was removed from her home against her will and that she would have preferred it if Doug would have continued to live with her.

97. By contrast, Doug's probation officer at the time, John Fuchs, indicated that he had been in the Northern California area dropping off another foster child and decided to visit the Bollmeyers. According to Mr. Fuchs' testimony, Mrs. Bollmeyer requested Doug's removal at that time because Doug had been expelled from school that day.

98. In any case, on February 10, 1970, Doug Stankewitz was removed from the Bollmeyers' home with no emotional preparation for this highly traumatic event. Today, Doug could not recall how he felt about this abrupt removal, although a May 1970 psychiatric report sheds some light on how it affected him at the time:

> The boy says that he lived six[1] years in a foster home is Sebastopol - he liked the people there, he liked them very much - but he decided to come home to his mother, and then he didn't go back, and in the meanwhile, since that foster home is licensed for only three children and they have taken in a third child, he cannot go back there although he would like to.

99. It is apparent from this statement that Doug had pathetically created an alternative reality for himself, since the reality of rejection both at his natural home and the Bollmeyers was too much for him to handle at this young age. Later in that same report, Doug informs psychiatrist Mark Zeifert, M.D. that his natural father was dead and that his stepfather was in prison for robbery, when actually it was his father, Sonny, who was in prison for robbery.

100. Dr. Zeifert also observed the "soft" neurological sign that Doug's left hand

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[1] It was actually four years.

grip was 42 pounds and his right hand grip was only 41 pounds. Dr. Zeifert notes "Since the patient is right-handed, he should normally have about 10 pound greater strength in the right hand than in the left. The EEG, as will be seen from the attached report, is abnormal. The disturbance seems to be greatest in the left temporal area."

101. Dr. Zeifert also noted that Doug was still experiencing bedwetting and "an obvious speech impairment." He felt that "It was a real joy to examine him and I can understand how disappointing it must be for those who work with him, when he slips from this pleasant, cheerful attitude into a wild rage."

102. Despite the fact that Dr. Zeifert recommended that Doug should be "kept in one place for a while," from February 10, 1970 (age 11) until his placement in the California Youth Authority on April 26, 1972, (age 13) a 26-month period, Doug was moved no fewer than 13 times, with his most stable address being 5 months.

103. Initially upon returning to the Fresno area from Sebastopol, Doug was placed back at the home of his mother.

104. Doug described his mother's home as complete bedlam compared to the Bollmeyers. Doug slept in the same bed as two of his brothers and in the same room as his sister Glenda. By contrast to the Bollmeyers -- where everything was kept neat and lean, one had definite chores, meal times were orderly, breakfast, lunch and dinner was always prepared and nutritious -- everything at Marian's house was chaos. People came and went as they pleased, attended school if they felt like it, and ate if they could. Doug stated "I felt like I didn't belong at home. I didn't know what the hell I was doing there. I had no great attachment there."

105. It was also at this time that Doug was first introduced to sniffing paint by his older siblings. Both Willie and Glenda Stankewitz recalled that all of the older Stankewitz children were sniffing paint at this time, and they would often come home with their faces covered with paint from sniffing out of spray paint cans. Willie specifically recalls teaching Doug how to sniff paint.

106. From May 20, 1970 until August 11, 1970, Doug was confined in the Fresno Juvenile Hall for being "out of control" (a designation which had resulted from his running away from home to escape violence). At this point, Doug still did not have a sustained juvenile petition as a delinquent. There, upon the recommendation of pediatrician James Caffee, M.D., Doug received very intensive individual treatment from a special tutor, Bob Chrisman. In a June 11, 1970 report, Mr. Chrisman indicated that:

> Although Doug's behavior has not been consistent, his general deportment with me has been good. He is a willing worker and with sufficient encouragement and guidance can work successfully at most tasks. He is critical of his own work and will often stop short of completion on certain tasks. Doug's frustration tolerance is low on independent work and his short attention span sometimes results in an "Oh, I give up" attitude.

107. In a June 30, 1970 memorandum from Doug's probation officer, Frank Bailey, it is noted "The minor has made some adjustments in controlling his emotional outbursts and has appeared to have responded positively toward the special tutor. However, it would appear at this time any treatment and any total change in behavior will require a long-term program."

108. Unfortunately, Doug's next placement was at the Borrego Palms School in Borrego Palms, California. Doug described the daily regimen at Borrego: the children were all extremely regimented and disciplined, like the military. Punishment for failure to obey the rules generally included sweeping a public road in the hot desert sun.

109. The punishment for running away was to be taken to a special punishment cottage. This cottage was run by a man named "Hank." Punishment for misbehavior while in the punishment cottage was particularly severe. They would be marched outside in the winter in just their underwear and made to drink cold water while being lectured by Hank about the importance of following the rules.

110. Despite the maddening silence and sadistic rules at this facility, Doug described Borrego Palms as a "great boys home." This assessment probably says more about Doug's other living environments than about the quality of the Borrego program. Doug recalls that the couple that ran the school would take him home periodically on holidays because Doug had no place to go. This is corroborated by Doug's former Probation Officer John Fuchs as well.

111. Both the Awhanee School, a facility to which Doug was later transferred, and the Borrego Palms School were owned and operated by the same person. According to Doug, both operated in a similar manner. Both were open in 1983 during Doug's second trial. Both have since closed, rendering it impossible to interview personnel who worked there or review facility records which might have shed light on Doug's stay there. According to Fresno County personnel, the Awhanee School's closing was precipitated either by abuse allegations or allegations that the facility staff lost control over the children in the facility. No documentation was available regarding the closure of the Awhanee School.

112. Doug was discharged from the Awhanee School in April 1971 for running away. He had run away from the school, located in Madera, and went to his mother's house. Although he had still not been convicted of a juvenile offense, Doug was returned again to

the Fresno County Juvenile Hall as a status offender.

113. Over the next 10 months, Doug spent approximately 6 ½ months at the Fresno Juvenile Hall (on three separate occasions) and 3 ½ months in the home of his Aunt Maggie Marquez (on two separate occasions).

114. Doug recalls the time he spent in juvenile hall in 1971 as his first "real time" in a correctional setting. He relates that when he was age six, he was placed with younger girls and was treated fairly well. He states that in 1971 "things started to get really violent." Although Doug had experienced violent, impulsive episodes as a child, his placement in the Fresno Juvenile Hall at the age of 12 was the first time when he felt he had to exhibit violence in order to fit in in an institution.

115. From April 15, 1971 until June 15, 1971 Doug was placed in "B cottage" where children age 9 to 16 were held. Upon his return to juvenile hall on August 9, 1971, Doug was transferred to "A cottage" because of fighting. "A cottage" generally held 16 to 18 year olds and a few larger 15 year olds. Doug was age 13 at the time he was transferred there.

116. Doug describes a "Lord of the Flies" scenario in "A cottage." Inmates there would fight for new tennis shoes or clothes when they arrived; for better food; or for a cell with a toilet in it. Doug reports that the fighting occurred more for status amongst institutional peers than for actual material goods. Doug relates that he knew that at that young age, he would have to be particularly violent in order to survive amongst older inmates.

117. Between stays at Fresno Juvenile Hall, Doug lived with his Aunt Maggie on the Mono Indian Reservation. According to a 1972 report by the California Youth Authority "Douglas and some of his siblings have also lived with an aunt on an Indian Mission and this

aunt has also had several arrests. In 1965 to 1966, her children were also removed from her care because she allegedly drank excessively."

118. If possible, life at Aunt Maggie's sounds more chaotic than at Doug's mother's home. During the short time he lived there, Doug recalls that the following 13 people lived in Aunt Maggie's two run-down shacks -- Maggie Marquez; Peter Marquez (her husband); Charlene and Theresa Marquez (her daughters); Johnnie and Willie Stankewitz and Gary Lewis (Doug's brothers); Sammie and Walena [LNU] (relatives of Maggie's); Floyd and Jack Sample (Maggie' s brothers); and Hank Jones and Jerry Johnson (Maggie's friends). Doug always shared not only a room but a bed while living at the Marquez'.

119. On July 4, 1971, approximately three weeks after Doug was placed with his Aunt Maggie, Marian Stankewitz was arrested and charged with the murder of Ray Charles Walker. She was ultimately convicted of manslaughter in this matter and was sent to the Frontera Women's Prison.

120. Doug reports that there was so little supervision at Aunt Maggie's house that he was able to come and go as he pleased. He spent a great deal of his time on the streets, Associating with "winos" in the Chinatown section of Fresno. These men introduced him to the minister who ran a "soup kitchen" in Chinatown. Doug reports that the minister felt sorry for him and used to let him dine with the staff.

121. It was in the company of these men that Doug was arrested for his first delinquent act. Doug reports that he and several older men arrived at the mission on the evening of August 9, 1971 too late to obtain a free meal. The men decided to rob the next passerby to obtain money for food. They grabbed a passerby and Doug went through his

pockets. Doug was arrested for assault and robbery and was detained in juvenile hall. He was released again to his Aunt Maggie's on August 31, 1971.

122. On October 27, 1971, Doug was again returned to juvenile hall for a probation violation for failing to attend school. His probation report at this time noted "the minor's family situation has been very unstable and chaotic for a number of years, and it is noted that both parents are presently incarcerated in state institutions." Doug remained in juvenile hall for nearly four months. On February 22, 1972, he was placed in the custody of his father who had been out of prison for approximately two months.

123. This was the first time in Doug's life that he was in the sole custody of his father. It lasted slightly less than one month, much of which Doug spent at his Aunt Maggie's or "on the streets."

124. During the short time he was with his father, 13-year-old Doug witnessed an extraordinary night of substance abuse and violence. As noted above, Sonny was a member of a violent motorcycle gang called the "Lucifer Knights." Sonny decided to take Doug along on an evening out to the "Why not?" bar – a Lucifer Knights hangout. In the bar, the club members discovered an undercover police officer. The club members took his gun from him, forced him to drink shots of straight liquor with them, and generally ridiculed him.

125. After the club members let the police officer go, they went to the home of one of the club members. The house contained a table full of illicit substances, including methamphetamine, marijuana, LSD, mescaline, and depressant drugs. There, Doug consumed some "purple haze" - what he described as a mixture of LSD and methamphetamine. In the presence of approximately 40 club members, one member announced "we've got a rat here"

and fatally shot one of the other club members.

126. A short while after this incident, Doug witnessed his father severely beat his younger brother, Johnnie, who was also living with them. Doug reports that he warned his father against ever beating his brother like that again, and left his father's home, never to return. In a subsequent report written by the California Youth Authority (May 9, 1972) it is noted "Douglas hates his father because he tries to make them be the same way he is (i.e. criminal) ...He does express hatred of his father for his recent beatings of Johnny." On March 13, 1972, Doug and Johnny were picked up as a runaways and placed in the Fresno Juvenile Hall for being "out of control."

127. On April 4, 1972, Doug was placed in the California Youth Authority despite juvenile Court Referee Sanderson's assessment that "Doug is an unusual commitment in that he has no lengthy delinquency record and little in the way of assaultive offenses."

128. Up to this time in his life, although Doug had witnessed and been the victim of an extraordinary amount of physical and emotional abuse and neglect, his acting out had not escalated to the point of serious delinquent behavior. Astonishingly, Doug continued to show some pro-social attributes, such as rejecting his father's criminality and cruelty, and seeking out the structure of both the Borrego Palms School and the California Youth Authority. Indeed, as late as July 17, 1970, Doug's tutor, Bob Chrisman, offered the following assessment of Doug:

> Doug's personality evidences many good qualities. Douglas has an engaging sense of humor. He is generally courteous and appreciative. He is eager to please and be rewarded. While Doug prefers immediate reward, he can be motivated by deferred gratification. He is fairly easy to get to know and responds to warmth and consideration. In general, Douglas could be described as typical, however he has shown non-typical behavior, such as temper tantrums. Doug has the capacity for

> insight into his own behavior and much of his recent growth has related to his more realistic understanding of the dynamics of his own personality.

129. Unfortunately, Doug's next placement would be in an institution which, although structured, would also place him in contact with youths who were generally older and much more criminally sophisticated and violent than himself. As is the case with so many other California Youth Authority (CYA) graduates, Doug would leave that CYA with a much greater violence potential than he entered, and each successive contact with "correctional institutions" would be followed by an offense more violent than the one which preceded it.

130. 1972 - 1977 Coming of Age in Correctional Institutions

131. Doug Stankewitz would spend all but eight months out of the next six years incarcerated either in the California Youth Authority or the Sacramento County Jail.

132. Doug was placed in the CYA initially on April 26, 1972, at the age of 13. Approximately one month later, he was placed in the Los Guilocos facility. A CYA report written about Doug at the time indicated that:

> Douglas seems to have a considerable amount of guilt of undetermined origin as his behavior has increasingly necessitated his being locked up, and Douglas has asked to be locked up because the other boys who do the same things he does are locked up.

133. During the four years on two occasions that Doug Stankewitz was incarcerated in the California Youth Authority (CYA), he witnessed and/or was the victim of numerous acts of ward on ward, ward on staff, and staff on ward violence.

134. Doug reports that violence in the CYA was so common that it barely became noteworthy after a while. He indicated that the youths slept 25 and sometimes 50 to a dormitory, with a glass enclosed guard's booth protruding into the room. At night, if a fight

broke out, the guard in the booth would not intervene for fear of being overwhelmed by the wards. Instead, he would press a panic button which would signal a flying squad of guards who would arrive sometime later. In the meantime, a preplanned nighttime attack could do substantial damage to the ward who was victimized by it. This was the California Youth Authority's standard operating procedure for such attacks until at least the mid-1990s.

135. Doug also described what would happen in the event of an altercation involving several youth. In those cases, the doors to the dorm or the day room would be sealed, and tear gas pellets would be dropped into the room, until all its occupants, guilty or innocent, were subdued. Doug described one such incident which occurred at the Youth Training School (YTS) in Chino, California:

> YTS is a serious joint, and all the doors are electric. So if a fight breaks out in a day room, everyone tries to rush through the doors to get outside of the room before the gas comes. Once the room gets gassed, everyone goes crazy, even if you weren't involved in the fight before. Chairs start flying, fists start punching, and no one can see anything because of the gas. Your whole body starts to burn from the gas, not just your eyes, but your lungs and skin. You can tell when the door opens, not because you can see it, but because you can feel the fresh air rush into the room. Then they tell everyone to get down on their knees, form a line, and crawl out on their knees. Some of the kids just run out when the door opens because they're new or just freaked out. They get whacked something good. If you come out standing up, you get whacked till you fall down, and sometimes after then too.

136. Doug indicated that YTS was the only facility in which he served time where they had adults in the prison with them. He also indicated that YTS also had tear gas launchers for use in the prison "yard", or recreation area, something that the juvenile-only CYA facilities did not have.

137. Doug estimated that he was "gassed" several times during his time in the Youth Authority. He also indicated that he witnessed several suicide attempts and a

successful suicide. When asked if he was ever "stabbed" in the CYA, he stated that he had not been, but that he was "scratched" with a knife a few times.

138. Doug was questioned about why it was so difficult to avoid violence as a CYA ward. Why, for example, could he not just walk away, or tell a guard. Doug reported that someone who backed down when confronted "wasn't nothin." He had seen what had happened to such wards. They were spat on, other wards knocked their food trays over, or stole their commissary. People would randomly smack them in the head. They would often be physically and sometimes sexually abused. Eventually, they would end up in "P.C." -- protective custody -- by that time stripped of any sense of self-esteem. Doug reported that a very similar scenario awaited any youth who "snitched" on another ward.

139. Perhaps more importantly, Doug reported that his years in the Youth Authority were absolutely devoid of any type of positive emotions. No warmth could be expressed, no vulnerability shown. Doug learned from these years not to depend on people, not to feel too deeply for them, and not to care, lest he be disappointed. He stated that the fewer emotions one allowed oneself to feel, the easier institutional life was. That way, one could not be disappointed by missed visits, cheating girlfriends, disinterested parents and siblings, and unanswered letters. Doug indicated that this is especially true for holidays like Christmas, where institutionalized youth were often tremendously upset because of the absence of any presents, visits or cards. Doug indicated that he tried not to look forward to Christmas in order to avoid disappointment.

140. Doug contrasted his CYA experiences to life in the "outside world." There, people could walk away from conflict without "losing face." There, one did not need to fight

over a carton of milk for fear that failure to prove one's manhood would lead to subsequent attacks.

141. Doug indicated that, as a Native American, membership in a race- or ethnicity-related gang was not really an option for him, since there were not enough Native Americans to form a gang. Doug indicated that this required him to get into more fights than he would have if he were a gang member, since he had no group to protect him.

142. Doug believes that his experiences in the CYA deeply affected him upon release. He remembers a fight in a bathroom regarding a mirror. If a bartender refused to serve him a drink at the age of 18, he would simply demand it louder, a behavior pattern that served him well in the institution. In reflecting on how spending his adolescence in the California Youth Authority affected his life, Doug stated:

> My parents is the system. That's who made me, taught me, molded me. YA, camps, ranches, and jails. All these things (institutions) are negative.

143. Doug was released from CYA on January 11, 1973 and sent to his Aunt Margaret Marquez. At this time, Doug's mother had recently been paroled on her homicide charges and was living in Los Angeles. When she returned from Los Angeles, Doug's parole officer returned Doug to her custody because he felt that Doug should live with his mother. The "parole plan" developed by Doug's parole officer at the time was that the 14-year-old Doug should quit school and get a job.

144. On April 24, 1973, Doug (age 14), his brother John (age 13), and Eddie Davis (age 17) were involved in a robbery and car chase that ended in the death by shooting of Eddie Davis. Doug and Eddie allegedly went to the home of Mr. and Mrs. George Key and asked for help to get their car started. Mr. Key testified that when he went to help them,

Eddie Davis assaulted him and his car was stolen. They then picked up John before the chase began.

145. Recognizing the car as stolen, CHP officers attempted to stop the boys. Eddie refused to stop and a high speed chase ensued, during which shots were fired from the back seat of the vehicle Eddie was driving. John was in the back seat. Doug was returned to the California Youth Authority on May 29, 1973 - two days short of his 15th birthday - for this offense.

146. During Doug's 1983 penalty phase trial, several witnesses testified as to the events of April 24, 1973. No mention was made of the fact that Doug's brother, John Stankewitz, was a passenger in the vehicle that night. However, Johnny told the police that Doug was in the front seat helping Eddie steer, while Eddie was firing a gun. Johnny said that he was in the back seat, from which shots were reported to have emanated. Believing that Eddie was the driver and Doug the only passenger, the jury could not help but conclude that Doug had fired the shots.

147. By the time Doug was furloughed from the California Youth Authority on February 2, 1977, he had spent virtually his entire adolescence in custody. Upon entering the Youth Authority at age 13, he was described in a CYA report as follows:

> Despite his traumatic and unstable background, he must have had people caring for him who were concerned about him and who were able to provide for some of his emotional needs as he seems to be a fairly trusting boy and relates fairly warmly. He does show some evidence of anxiety and insecurity, however.

148. Later in Doug's CYA career, there was mounting evidence of the effects of his institutionalization. According to a CYA report:

On occasion, Doug can be a delightful person to be around, when in a good mood

being helpful, generating happy feelings to those around him. The opposite was also true. Doug when feeling bad having much bitterness at being unable to sort out the real feelings about his family members, particularly his parents. Doug continues to be unstable and explosive, trying to develop a more positive self-image, it being believed the best way of dealing with Doug was to confront him with reality, giving him time to decide for himself about appropriate action without pressure.

...contrary to the statement of parole agent wherein Doug claimed he would kill a youth counselor [if sent to the CYA], Doug gives me the impression that the youth counselors here are his friends. He can recall them by name from his previous sojourn, expresses dislike for none of them, being as glad to see them as if seeing a long lost buddy.

149. Somewhat prophetically, the report goes on to note:

My further impression is that this youth can easily learn to love his cage, should be encouraged his utmost to try his wings instead.

150. 1977 - 1978 Release from CYA until the instant offense

151. On February 2, 1978, Doug was released from the California Youth Authority because, as one CYA report described, "additional time would do him more harm than good." Doug returned to the home of his mother - to a life of unemployment and substance abuse - no better equipped to deal with life in the community than when he entered the CYA.

152. From immediately after his release from CYA until his arrest on April 17, 1977, a period of little over two months, Doug consumed what he describes as massive quantities of marijuana, alcohol, methamphetamine, and heroin. During the booking process for Doug's April 17 arrest, Doug became involved in an altercation with the booking officer which resulted in a charge of assault on a police officer. Although his original arrest charges were dismissed, Doug was sentenced to serve 325 days for this offense.

153. Doug was released from the Sacramento County Jail on January 14, 1978. During the course of the next month, Doug describes himself as constantly walking around in

a stupor, either "strung out" on drugs, or recovering from a night of bingeing.

154. In the four days leading up to the kidnapping and killing of Theresa Graybeal, Doug consumed heroin, methamphetamine, alcohol, and marijuana almost constantly. Because of the stimulant effects of the methamphetamine, Doug reports that he did not sleep during these days.

155. On February 7, 1978, Doug and Jerry Calzedo were informed that Doug's brother, Rodney, had been shot in Fresno. Doug and Jerry were in Sacramento at the time. Doug reports that the news of his younger brother's shooting upset him tremendously. He contacted his mother and younger brother Roger, who were also in Sacramento, and they decided to travel to Fresno together to see Rodney.

156. Along with them were Teena Topping, Marlin Lewis, and Billie Bob Brown, who Doug and Jerry had travelled to Sacramento with in Topping's uncle's car. The group left for Fresno by car at approximately 7:00 pm on February 7.

157. Several hours later, the group pulled into a convenience store in Manteca. A police car spotted their car, deemed it "suspicious", and ran a license check on it. This check erroneously revealed the car to be stolen, and Doug and his passengers were detained. When the police checked further, they discovered that the car was not stolen, but they would not release it to the group anyway.

158. Doug and his passengers proceeded to the Manteca bus station where they would await the next bus to Fresno. Marian only had enough money for 3 bus tickets and said they were for her, Jerry and Roger. The rest of them would have to find their own way home. They arrived at 11:15 pm. Doug recalls waiting all night before he, Teena, Billie Bob, and

Marlin began to hitchhike. They secured a ride as far as a Modesto shopping center.

159. Frustrated, tired, cold, and feeling the effects of the alcohol they had been consuming, the next available car to complete their journey was taken. That vehicle was owned by Theresa Graybeal.

160. The group drove from Modesto to Fresno. Upon arrival in Fresno, Doug and several passengers consumed more alcohol. They picked up Christina Menchaca, a Fresno area prostitute, who supplied Doug and Teena with heroin. Doug describes being "really stoned" after "fixing" (injecting heroin) with Christina.

161. Sometime after the group arrived in Fresno Chinatown, while Doug was inebriated and sleep deprived, the homicide of Theresa Graybeal took place.

162. Conclusions

163. The atmosphere in which Douglas was raised was as crimogenic an atmosphere as I have ever come into contact with. Every member of Doug's immediate family, including both of his parents, have either spent time in correctional institutions, died premature deaths, or both. Most family members have convictions for violent offenses, and Doug's mother was convicted of manslaughter. All but one family member served time in prison. That one died young.

164. Physical abuse was rampant in the Stankewitz family, more often delivered at the hands of Marian Stankewitz, but also meted out by Sonny Stankewitz and Frank Montgomery, the family's father and oldest son, respectively. These beatings were severe enough to have landed both Sonny and Marian Stankewitz in jail for them. Sonny delivered such beatings while Marian was pregnant with Doug and others in the Stankewitz family.

165. Drug and alcohol abuse were rampant in the Stankewitz family. Family members report that older brothers introduced Doug to sniffing paint as early as age five. Marian Stankewitz consumed substantial amounts of alcohol during and after she was pregnant with Doug. She obtained no medical advice prior to Doug's birth, or the birth of any of her other children.

166. In addition to these more obvious signs of abuse and neglect, the chaotic atmosphere of the Stankewitz family and the absence of any semblance of normalcy and love, combined to produce a degenerative atmosphere for Douglas. It is not surprising that, at the astonishingly young age of 6, Doug began to show signs of mental disorders, neurological impairments, and behavior problems.

167. In response to these disorders, Doug embarked upon a lifetime of sequential institutional and out-of-home placements characterized by malaise and sexual and physical abuse. This ranged from an unnecessarily long commitment to Napa State Psychiatric Hospital devoid of rehabilitational benefit and possibly involving sexual abuse; to an abruptly terminated foster care placement with a woman who had sexually abused her own daughter. After these placements, Doug spiraled rapidly through placements in eight years, including a stay at a privately run institution devoid of counseling or testing to address his considerable needs.

168. Doug's out-of-home placements were punctuated by occasional returns home to his dysfunctional parents. There, in a short time with his father, Doug witnessed numerous acts of violence and drug abuse. With his mother, his existence was ignored unless he became problematic, after which he was quickly consigned to the care of others, be that the state or

her sister.

169. Eventually, Doug found himself in the care of the California Youth Authority at the extraordinarily young age of 13, with a minimal prior record. He then got to witness and become a part of the "Lord of the Flies" atmosphere prevalent in such juvenile prisons, an atmosphere he needed to participate in for his own survival. Doug's periods of freedom following his first placement in the Youth Authority to his involvement in the tragic instant offense amount to less than one year in total time, with rearrest after release occurring extremely rapidly.

170. The combination of physical abuse, neurological damage, psychological and emotional abuse and neglect at home and in state care, and substance abuse that characterized Douglas Stankewitz' life is extraordinary. Young people - and Doug was only 19 at the time of the instant offense - who experience such abuse, in combination with neurological impairments and substance abuse, often suffer serious psychological damage as a result. Such damage can often rise to the level of an inability to form intent or understand the ramifications of their behavior. In my expert opinion, this damage, at a minimum, constitutes substantial mitigation in Douglas Stankewitz' case.

171. Young adults are developmentally distinct from older adults. Recent scientific work suggests that the human brain continues to develop well into the 20s, particularly in the prefrontal cortex region, which regulates impulse control and reasoning (Giedd et al., 1999; Paus et al., 1999; Sowell et al., 1999, 2011; Gruber and Yurgelun-Todd, 2006; Johnson, Blum and Giedd, 2009; Konrad, Firk and Uhlhaas, 2013; Howell et al., 2013). Several studies suggest that people do not develop adult-quality decision-making until their early 20s (Scott

and Steinberg, 2003; Barriga, Sullivan-Cossetti and Gibbs, 2009; Bryan-Hancock and Casey, 2010), and others have shown that psychosocial capacities continue to mature even further into adulthood (Steinberg, 2007; Colwell et al., 2005; Grisso and Steinberg, 2003; Cauffman and Steinberg, 2000).

172. Moffitt characterized this gap between cognitive and psychosocial capacities as the "maturity gap," where cognitive function develops in advance of the executive function (Moffitt, 1993; Galambos, Barker and Tilton-Weaver, 2003). Because of this, young adults are more likely to engage in risk-seeking behavior, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of decision-making (Monahan et al., 2009; Mulvey et al., 2004). See Schiraldi, Vincent, Bruce Western and Kendra Bradner. Community-Based Responses to Justice-Involved Young Adults. New Thinking in Community Corrections Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2015. NCJ 248900, which includes citations to the studies referenced. In my expert opinion, this damage, at a minimum, constitutes circumstances of mitigation in Douglas Stankewitz' case.

173. The juvenile justice system exacerbated teenage Douglas's immaturity. Brain science, developmental psychology, and human experience underscore what developing youth in the catchment age of the juvenile justice system need to become mature, successful adults. Adolescents differ from adults in important ways that make adult-model incarceration ill-matched to their needs. Adolescents have less capacity for self-regulation in emotionally charged situations; their sensitivity to environmental influences is heightened and they have not yet learned to make decisions with a future orientation (Bonnie et al., 2013).

174. From 1979 to 2004, lawyers, the media, and advocacy organizations uncovered and documented abuses in state, local, or privately operated youth facilities in the District of Columbia and 23 states, including California. (See McCarthy, Patrick, Vincent Schiraldi, and Miriam Shark. *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model.* New Thinking in Community Corrections Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2016. NCJ 250142.) In my expert opinion, the juvenile justice system exacerbated teenage Douglas's immaturity and constitutes substantial mitigation in Douglas Stankewitz' case.

175. The likelihood of being incarcerated is influenced by individual, family, and social characteristics (Gatti, Tremblay, and Vitaro, 2009). The heavy concentration of boys of color in youth prisons underscores both the effect of socioeconomic disparities in American society on youth outcomes and the impact of race on dispositions. In 2013, rates of confinement were 2.7 times higher for youth of color than rates for white youth (Petteruti, Schindler, and Ziedenberg, 2014). Specifically, Native American youth were incarcerated at 3.3 times the rate of white youth.

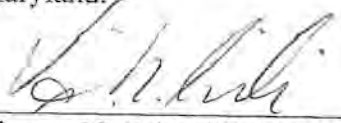
176. These national disparities mask much more profound disparities at the state level. Even after controlling for present offense and prior record, researchers have found "race effects" — evidence of unwarranted racial disparities not explained by factors such as offense severity or prior record — in the youth justice system. A meta-analysis of 46 studies of youth justice processing and minority status conducted by Pope and Feyerherm revealed that two-thirds of the studies showed race effects at varying points in the system (Pope and Feyerherm, 1995). After controlling for other case characteristics, they found unwarranted

disparities in case-processing decisions such as detention, prosecution, and commitments to youth prisons. Furthermore, the meta-analysis revealed that these effects are cumulative. Relatively small differences in outcomes at early stages of the process became exacerbated as black and brown youth progressed through the system. (See McCarthy, Patrick, Vincent Schiraldi, and Miriam Shark. *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model.* New Thinking in Community Corrections Bulletin. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2016. NCJ 250142.) In my expert opinion, Douglas was more likely to be incarcerated due to his family history and the failure of the juvenile justice system to address that history and constitutes substantial mitigation in Douglas Stankewitz' case.

177. As explained above, I have extensive experience in preparing and reviewing presentence reports prepared by probation departments. By law, presentence reports are supposed to be neutral, favoring neither the government's position nor the defendant's. These reports are also supposed to be factual and not include any information that has not been verified.

178. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of March, 2025, at the County of Montgomery, State of Maryland.



Vincent N. Schiraldi, M.S.W.