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5 **BEFORE THE VICTIM COMPENSATION BOARD**
6 **OF THE STATE OF CALIFORNIA**
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8 In the Matter of the Application of:

9 **George Souliotes**

10 16-ECO-01

Board Decision of May 18, 2017

11
12 At the May 18, 2017, Board meeting, Board Members Ramos and Chivarro were present.
13 Chairperson Batjer was absent. Final arguments were heard from Mr. Souliotes's attorney, Caitlin
14 Weisberg of the law firm Kaye, McLane, Bednarski and Litt, LLP, and Kathleen McKenna, Supervising
15 Deputy Attorney General on behalf of the California Department of Justice, Office of the Attorney
16 General (AG). Following argument, before the Board voted unanimously to reject the Hearing Officer's
17 recommendation to approve Mr. Souliotes's claim filed pursuant to Penal Code section 4900.

18 McKenna argued there was not substantial independent corroborating evidence that showed
19 Mr. Souliotes is innocent of arson. Specifically, none of the evidence relied upon by Mr. Souliotes
20 proved that the fire was not arson or that he was not the person who committed the arson. McKenna
21 argued experts on both sides agreed that arson could not be ruled out as the basis for the fire and, in
22 fact, the physical cause and origin of the fire does not prove innocence.

23 McKenna further argued that Monica Sandoval (Sandoval), the eyewitness at trial, was never
24 found to be incredible. Sandoval testified at trial: not before the federal court or at the section 4900
25 hearing. Furthermore, when Sandoval testified at trial, the jury was hung—11 to one in favor of
26 conviction. McKenna argued the jury found the eyewitness's testimony credible and factually accurate.
27 The eyewitness described "very accurately" Mr. Souliotes's Winnebago. Sandoval saw the vehicle park
28 across the street from Ronald Avenue and an individual who was about 5'9" to 6' tall exit the vehicle.
29

1 Sandoval contended the person who exited the vehicle fit Mr. Souliotes's description: square
2 eyeglasses, a prominent nose, and a pointy chin. Sandoval saw the driver exit the vehicle with a white
3 pillowcase and walk towards the house. The Ronald Avenue house went up in flames minutes after
4 Sandoval saw the driver walking away from the house.

5 According to McKenna, witnesses reported that the garage, kitchen area, and dining room were
6 engulfed in flames. The fire department, and later an insurance company, inspected the home for
7 possible accidental causes. They examined the oven, wall heater, water heater, electrical outlets, fuse-
8 box, washer and dryer, and refrigerator and found no evidence that these were the causes of the fire.
9 Investigators collected medium petroleum distillates found in samples taken from the fire scene. Dr.
10 DeHaan, fire expert for the AG, reviewed the materials and found no accidental cause that would
11 explain the manner in which the fire burned in the house. To that point, the firewall that remained
12 standing between the garage area and the living area indicated that the fire burned in two separate
13 locations.

14 McKenna noted that two years before the fire at Ronald Avenue, another tenant of Mr. Souliotes
15 had a fire in her home, and although it was not investigated or determined to be arson, it provided an
16 opportunity for Mr. Souliotes to evict the tenant from the residence.

17 McKenna argued there had been no finding of factual innocence and that a finding under
18 *Schlup*¹ referred to a procedural ground that allowed Mr. Souliotes to present the claims presented in
19 his habeas petition, which was based on ineffective assistance of counsel.

20 McKenna then listed the circumstantial evidence before the jury at the two trials below. First,
21 the Joneses notified Mr. Souliotes they would be moving out of Ronald Avenue. He immediately began
22 the eviction process. Mr. Souliotes was "very disturbed" to learn that the sheriff would not serve the writ
23 of eviction due to scrivener's error. Second, when Mr. Souliotes's home was searched after the fire, a
24 piece of scrap paper was found where he had jotted down several ways he could relieve himself of the
25 financial burden of Ronald Avenue. McKenna argued Mr. Souliotes's financial position was in dispute
26 and that although Souliotes may have had equity in Ronald Avenue, his monthly cash-flow at the time
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29 ¹ *Schlup v. Delo* (1995) 513 U.S. 298, 327 (*Schlup*).

1 of the fire was precarious. According to McKenna, Mr. Souliotes had limited income and could barely
2 meet his financial obligations, which left him with little money to live on day-to-day.

3 Based on the above arguments, McKenna on behalf of the AG asked that Mr. Souliotes not
4 receive compensation.

5 Weisberg, on behalf of Mr. Souliotes, presented the following argument before the Board. At
6 the time of the fire, Mr. Souliotes was partially retired due to a work-related injury. He relied on
7 Workers' Compensation, disability, rental income from various properties purchased with his life's
8 earnings, and income from other investments to support his lifestyle. On the day of the fire, Mr.
9 Souliotes was preparing to go on a camping trip with his girlfriend, who he met while ballroom dancing.

10 Regarding *Schlup*, Weisberg argued that Judge Seng found that Mr. Souliotes was actually
11 innocent under *Schlup* which she argued the United States Supreme Court has said, in no uncertain
12 terms, is a finding of factual innocence. Weisberg contended the *Schlup* finding by Judge Seng, as well
13 as his other factual findings and credibility determinations, are binding on the Board. As a result of
14 Judge Seng's findings, Judge Ishii was required to conduct a de novo review of the case and
15 concluded, as did Judge Seng, that Mr. Souliotes had met his burden of proving innocence under
16 *Schlup*.

17 Weisberg noted that Mr. Souliotes was administered a polygraph test by a polygraph examiner
18 who had worked for the FBI and had conducted over 5,000 examinations. The examiner concluded
19 that Mr. Souliotes was truthful when he denied causing the Ronald Avenue fire. Furthermore, Mr.
20 Souliotes testified at the Penal Code section 4900 hearing and stated his innocence. The Hearing
21 Officer properly relied on Mr. Souliotes's testimony.

22 The district court found that Carman, the arson expert who testified on the behalf of Mr.
23 Souliotes, was the most credible and objective expert who testified. Weisberg argued the experts
24 agreed, and the AG conceded, that the cause of the Ronald Avenue fire was undetermined, which
25 means it was not arson. There are three classifications of fire causes: accidental, intentional, i.e.
26 arson, and undetermined. By classifying the fire as undetermined, the experts have stated that it does
27 not fall in the category of arson. The AG's assertion that it could still, theoretically be arson is nothing
28 more than speculation. Statistics for fire causes show that the vast majority of residential fires are
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1 accidental. Only a small minority of fires, around four percent, have intentional causes. A
2 preponderance of the evidence is a little over 50 percent and statistics show that the great likelihood,
3 over 80 percent, of undetermined fires are in fact accidental. From a practical standpoint, if an
4 investigator approaches a District Attorney with a fire and tells him that the cause is undetermined, the
5 District Attorney would not file charges.

6 Sandoval's original description of the suspect, including the Dodge Caravan and the checkered
7 shirt, did not match anything owned by Mr. Souliotes. Sandoval's initial statement to law enforcement
8 was that she could not really see the person and could not make an identification. Sandoval did not
9 identify Mr. Souliotes and the Winnebago, in fact at the first trial she was shown a picture of Mr.
10 Souliotes's Winnebago and she said that was not the vehicle she saw. She described the suspect
11 vehicle as a Dodge Caravan, during which time she included various other features that did not match
12 Mr. Souliotes's Winnebago. When the officers felt the engine of Mr. Souliotes' Winnebago soon after
13 the fire, the engine was cold.

14 Evidence showed that Mr. Souliotes was financially comfortable. He had \$16,000 in the bank.
15 He had assets. He had investments. He had regular income, including income from his rental
16 properties, from social security, and from Workers' Compensation. Thus, he lacked a financial motive
17 to burn the house down.

18 According to Weisberg, Mr. Souliotes was convicted because the arson case presented to the
19 jury was built on three bodies of evidence, all of which have been proven to be either false or wholly
20 unreliable. First, the investigators at the original trials told the jury the fire was caused by arson and
21 described a number of features of the fire that they claimed proved it was arson. Experts agree that the
22 features described in the original trial are not evidence of arson. Second, the prosecutor emphasized
23 that the MPDs found both at the fire scene and on Mr. Souliotes's shoes proved Mr. Souliotes was
24 there, and the shoes tell the tale. After Mr. Souliotes's conviction, advances in forensic testing proved
25 that the MPD's were not a match. The new evidence severed the connection between Mr. Souliotes
26 and the scene of the fire that was presented to the jury. This evidence is undisputed.

27 Third, evidence shows that Sandoval's testimony was wholly unreliable. Weisberg contended
28 that the federal court found Sandoval incredible or unreliable. In particular, Weisberg argued the court
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1 found Sandoval's testimony regarding the identification of petitioner is so unreliable, even bizarre, that
2 her testimony must be viewed with focused skepticism when she goes on to describe other events and
3 objects that she witnessed that night. The court's conclusion was that it could not and did not credit her
4 testimony in any meaningful way. The Hearing Officer properly relied on this conclusion in reaching her
5 decision. The prosecutor at the original trial repeatedly discounted the significance of Sandoval's
6 testimony in closing argument and, instead, relied on false arson evidence.

7 Weisberg addressed the AG's assertion that Mr. Souliotes lied at the section 4900 hearing
8 regarding a previous incident involving another rental property where it was alleged a fire occurred. At
9 the hearing, when Mr. Souliotes was asked whether there was a fire at the other property, he said no, it
10 was smoke damage. The AG's office introduced an insurance claim document that was not presented
11 at the hearing that documented Mr. Souliotes's belief that there was a fire at the residence. Weisberg
12 argued that had Mr. Souliotes been confronted with the document at the hearing, he would have
13 explained that it was not until the report came out that he learned it was smoke damage from an
14 electrical failure and not a fire. Weisberg concluded her closing argument.

15 Board Member Ramos asked whether Mr. Souliotes's girlfriend at the time testified about the
16 camping trip. Weisberg responded that she believed the girlfriend testified at the first trial and no
17 witnesses were called at the second trial, which formed the basis for Mr. Souliotes claim of ineffective
18 assistance of counsel.

19 After argument from both sides, Board member Ramos made the following conclusion:

20
21 "I went back and forth several times. I appreciate the presentations today. I think everybody
22 has agreement that we cannot say how the fire started, which means we cannot rule out
23 arson. I would say the experts in this matter were on both sides and all over the place, and
24 that happens in many trials, and I do have to say with all the circumstantial evidence, what
25 really keeps in my mind is Mrs. Sandoval and the eyewitness testimony that was—who
26 testified in front of two trials, one that was hung for 11 to one for guilty and then the other for
27 guilty, who—when you have a witness in front of you, you can look at and determine whether
28 or not this person is being credible by factual expressions, by body movements, by
29 statements, by cross examination, all those factors that you have in a court of law that we
didn't have in the habeas proceeding or even here in the hearing, because—whether a judge

1 says she's unreliable or not, that judge—she wasn't in front of that magistrate, so I have some
2 concerns. I would use her testimony as they indicate the weight of the evidence when you
3 add it all together, so when I look at all this, can we prove this case beyond a reasonable
4 doubt? I'm not sure, but that's not the standard here. I think when you look at the standard
5 and what we have here, I don't believe the Claimant has reached that point. Another factor, of
6 course, as—well, it is factual. You got two babies and a mother that—bless you—two babies
7 and a mother that lost their lives and I appreciate—but that is something that is discussed at
8 least on the one side, horrendous fact (inaudible) and their lives are gone, so you take all
9 those factors into consideration and the circumstances that I took into consideration, it is the
10 Board's feeling and motion that I am going to move against the Hearing Officer's
11 recommendation and support the Attorney General in the denial of this claim.”

12 (Exhibit 1, pp. 36-38.)

13 Board Member Ramos and Board Member Chivarro then voted to reject staff's
14 recommendation.

15 Dated: July 21, 2017

16 _____
17 Jasmine Turner-Bond
18 Hearing Officer
19 California Victim Compensation Board
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5 **BEFORE THE VICTIM COMPENSATION BOARD**
6 **OF THE STATE OF CALIFORNIA**
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8 **In the Matter of the Claim of:**

9 George Souliotes

**Proposed Decision
(Penal Code § 4900 et seq.)**

10 **INTRODUCTION**

11 A hearing on this claim for compensation as an erroneously convicted person was conducted
12 on May 4 and May 5, 2016, by Jasmine Turner-Bond, Hearing Officer assigned to hear this matter by
13 the Executive Officer of the California Victim Compensation Board (CalVCB). George Souliotes
14 (Souliotes), requests payment in the amount of \$841,820.00, as compensation for the 6,013 days he
15 served in custody from the day of his arrest on January 15, 1997, until his release from prison on July
16 3, 2013. Souliotes appeared and testified at the hearing represented by attorneys Marilyn Bednarski
17 and David McLane of the law firm of Kaye, McLane, Bednarski, and Litt, LLP.

18 Supervising Deputy Attorneys General (AG) Kathy McKenna and Michael Canzoneri
19 represented the California Department of Justice, Office of the Attorney General.

20 As explained below, Souliotes has met his burden under the statute because he has proved
21 by a preponderance of the evidence that he did not commit the crimes with which he was charged
22 and convicted, and that he suffered injury as a result of his erroneous conviction and imprisonment.
23 Souliotes is entitled to \$841,820.00, for being incarcerated 6,013 days after his arrest.

24 **PROCEDURAL HISTORY**

25 On January 15, 1997, at approximately 3:00 a.m., a fire occurred at 1319 Ronald Avenue in
26 Modesto, California, a residential property owned by Souliotes. The fire resulted in the deaths of three
27 of the four tenants: Michelle Jones, and her two children, Daniel Jones Jr. and Amanda Jones. The
28 deceased are survived by Daniel Jones, who was working a graveyard shift at the time of the fire.
29

1 The same day, the Modesto Police Department arrested Souliotes and charged him with one
2 count of arson and three counts of murder. Souliotes' first trial began on February 16, 1999. The
3 prosecution presented approximately 50 witnesses. Souliotes' trial counsel presented several expert
4 witnesses and lay witnesses. After three days of deliberation, the jury was unable to reach a verdict
5 and the trial court declared a mistrial.

6 Souliotes' second trial began on April 3, 2000. The prosecution presented the same 50
7 witnesses it had presented at the first trial. Souliotes' trial counsel did not present any witnesses. On
8 May 8, 2000, the jury returned a guilty verdict on arson and all three counts of murder.

9 On October 20, 2000, the trial court sentenced Souliotes to life without the possibility of parole.
10 Souliotes' conviction was affirmed on direct appeal, and his state petitions for habeas corpus were both
11 denied.

12 On May 30, 2006, Souliotes filed a federal petition for writ of habeas corpus under the
13 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).² The district court dismissed the
14 petition as untimely. On August 17, 2011, the Ninth Circuit Court of Appeals reversed the dismissal of
15 the petition of habeas corpus under AEDPA in light of the intervening *en banc* decision in *Lee v.*
16 *Lambert* (9th Cir. 2011) 653 F.3d 929, and remanded the matter to the district court for an expedited
17 hearing to determine when an inmate in Souliotes' position could have discovered new medium
18 petroleum distillate evidence with due diligence, with instructions that if the district court concluded that
19 Souliotes satisfied the diligence requirement under AEDPA, the district court should adjudicate the
20 merits of Souliotes' habeas claims on an expedited basis.

21 On April 26, 2012, the district court found that Souliotes made a sufficient showing of actual
22 innocence to serve as an equitable exception to the one-year statute of limitations set forth by AEDPA.
23 Souliotes was allowed to proceed to the merits of his claims for habeas relief.

24 On March 6, 2013, the district court found that Souliotes was entitled to relief on claims two,
25 three, and seven,³ and was granted conditional release from prison. The grant of habeas relief allowed
26 the state to retry Souliotes.

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28 ² 28 U.S.C. § 2244, subds. (d)(1), (d)(2).

29 ³ Claim Two: Trial counsel rendered ineffective assistance of counsel in failing to present an arson expert in petitioner's defense. Claim Three: Trial counsel rendered ineffective assistance of counsel in

1 Souliotes remained in custody pending possible retrial. The Stanislaus County District Attorney
2 elected to enter into a plea agreement with Souliotes. In exchange for his immediate release from
3 custody, Souliotes entered a *nolo contendere* plea to three counts of involuntary manslaughter with the
4 following stipulated factual basis for the plea:

5 “The defendant was the owner and landlord of a residential property located at 1319 Ronald
6 Street located in the City of Modesto, and also in Stanislaus County. As such, Mr. Souliotes
7 had a duty to have an operable smoke alarm as required under Health & Safety Code, section
8 13113.8, in the rental property. On January 15, 1997, a fire occurred at the rental property
9 which resulted in the deaths of Michelle Jones, Daniel Jones, Jr., and Amanda Jones. There is
10 a factual basis to conclude that the defendant did not have an operable smoke alarm as
11 required in the house and as a result of his negligent maintenance of the 1319 Ronald Street
12 property, the three occupants died in the fire.”

13 (Change of Plea Transcript, pp. 4-5.)

14 On July 2, 2013, the arson and murder charges against Souliotes were dismissed. On July 3,
15 2013, Souliotes was released from custody. (Reporter’s Transcript from Trial Two (1 RT), p. 9050.)

16 On April 10, 2015, Souliotes timely filed his erroneously convicted person claim form with the
17 CalVCB.

18 **SUMMARY OF THE EVIDENCE⁴**

19 **Preliminary Hearing**

20 Daniel Jones, Monica Sandoval, and Thomas Reuscher testified at the preliminary hearing on
21 July 16, 1997.

22 **A. Daniel Jones, husband and father of the deceased**

23 Daniel Jones testified to the following in summary:

24 He went to work around 4:00 p.m. on January 14, 1997. When he returned home the following
25 morning, his home had burned to the ground and his wife and two children were dead. He was renting
26

27 failing to present additional witnesses in petitioner’s defense. Claim Seven: Cumulative error. (First
28 Amended Writ of Habeas Corpus, pp. 9-16; 33-35.)

29 ⁴ The procedural background and summary of evidence is comprised of crime reports, trial testimony,
court transcripts, and other claim related documents.

1 1319 Ronald Avenue from Souliotes. The house had a sliding glass door that could only be opened
2 from the inside. There was no key. The garage had a back door that was braced shut by a two-by-
3 four. The two-by-four always remained in place. The door between the garage and the kitchen had a
4 deadbolt, which Jones did not have a key for.

5 The furnace in the house ran on gas. He had problems with the thermostat. Jones replaced the
6 thermostat because Souliotes would not replace it. The door to his daughter's bedroom was
7 constructed of thin wood, and a small pin was used to lock the door.

8 **B. Monica Sandoval, eyewitness**

9 Sandoval testified to the following in summary:

10 At around 1:00 a.m. on January 15, 1997, she saw a male driving a Winnebago up and down
11 Ronald Avenue. The driver drove up and down Ronald Avenue for a couple of hours. The Winnebago
12 finally stopped at 1346 Ronald Avenue, directly across from 1319 Ronald Avenue. From the distance
13 between her balcony and 1346 Ronald Avenue, Sandoval could not determine whether the driver was
14 male or female. When the driver exited the Winnebago, he was carrying a white pillowcase/bag. The
15 driver crossed the street and went into the backyard of 1319 Ronald Avenue. Around three to five
16 minutes later, the driver emerged from behind the house without the bag. The driver then drove toward
17 the corner of Ronald and Tully. From this vantage point, she was able to see the driver, who she
18 described as male. About three to five minutes later, Sandoval heard a loud boom and 1319 Ronald
19 Avenue exploded.

20 Later in the morning, Sandoval was taken to identify a Winnebago that was parked in Souliotes'
21 driveway. Sandoval did not recognize the Winnebago because it was pulled into the driveway. Once it
22 was pulled on the street, Sandoval recognized it as the Winnebago she saw on the night of the fire.

23 After this line of questioning, the prosecution rested. Following a 10-minute break, however, the
24 prosecution resumed questioning and asked Sandoval to describe the driver of the Winnebago. She
25 testified that during her interview with law enforcement at the scene of the fire, she had described the
26 driver as a man with a narrow face, wearing square glasses, a pointy nose, thin build, and in his 50s.
27 The driver was approximately 5 feet, 9 inches or six feet tall. Sandoval identified Souliotes as the
28 driver. She was able to do so because his features matched those of the driver of the Winnebago.
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1 On cross-examination, defense counsel elicited the following testimony in summary:

2 On the night of the fire, Sandoval did not see anyone riding a bicycle.⁵ She did not see a gray
3 Taurus driving in the neighborhood at the time of the fire.⁶ There is an alley near Ronald Avenue that
4 goes behind a shopping center. The shopping center has a Save Mart, AM/PM, and Buy-Rite.

5 Sandoval was unsure whether the headlights of the motor home she saw on the night of the fire
6 were on or off. She did not notice any lights other than the brake lights. She did not notice whether the
7 motor home had running lights. The driver did not appear to be in a hurry.

8 Sandoval believed the driver did a loop around the neighborhood approximately 10 to 15 times
9 for two and a half hours, prior to stopping and getting out of the motor home. She had not seen the
10 driver's features before this point. From this distance she was able to determine the color of the
11 driver's clothing.

12 Sandoval described the Winnebago as being white or beige, with a window on the passenger
13 side and a large window in the back, covered by a curtain. The motor home had a large "W" was on
14 the passenger side, which was 18 inches tall and dark blue in color. There was a ladder on the back,
15 but Sandoval did not see anything on top of the Winnebago, such as a luggage rack or air conditioning
16 unit.

17 Detective Buehler took Sandoval to a large RV sales lot. She spent 20 minutes to one hour
18 there. None of the vehicles she viewed resembled the shape or color of the motor home she saw on
19 the night of the fire.

20 Sandoval recalled being at the sales lot when Detective Buehler received a call indicating the
21 motor home she had recently identified was out of the drive way and on the street so she could see it
22 completely. She recognized the "W" on the side and the slanted front windshield. In Sandoval's
23 opinion, Souliotes' Winnebago shared the same characteristics as the motor home she saw the night of
24 the fire. She did not doubt it was the same motor home. Sandoval testified that when she was taken to

26 ⁵ This fact is relevant as it relates to Steven Hamilton's testimony that when he approached 1319
27 Ronald Avenue on the night of the fire, he saw a woman on a bicycle. (See p. 16.)

28 ⁶ Whether she saw a gray Ford Taurus driving in the neighborhood is relevant to corroborate Steven
29 Hamilton's testimony that he saw a male in his 30s or 40s parked in front of 1319 Ronald Avenue in a
gray Ford Taurus at the time of the fire. (See p. 16.)

1 identify Souliotes' Winnebago the second time, she "saw the W, but I am not sure as far as color,
2 because I just saw—I saw the whole Winnebago, but I just wanted to get it over with. I just looked at it."
3 (Preliminary Hearing, p. 139.) Although the back of the Winnebago did not look like the Winnebago she
4 saw on the night of the fire, once it was pulled out of the driveway, she recognized it as being the same
5 motor home because of its unique slanted hood.

6 Regarding the photographic lineup, Sandoval testified to the following in summary:

7 The photographs were in a laminated book, with six color-photographs per page. She could not
8 recall how many pages were in the book. All the subjects in the photographic lineup looked similar:
9 pointy noses and narrow chins. Three subjects closely resembled the driver and she could not make
10 an identification.

11 C. Thomas Reuscher, Captain of the City of Modesto Fire Department

12 Reuscher, a fire captain with the City of Modesto Fire Department, believed the fire was caused
13 by arson because there was a significant amount of low burning in areas void of normal fuels, such as
14 furniture. The significance of a low-burning fire is that fires normally burn up; thus, for a fire to burn low,
15 there must be fuel at the base, which is normally a clear indicator that a flammable liquid was used. He
16 found deep charring in the overhead areas in the garage and living room. The frame of the garage
17 door had collapsed, and most of the aluminum frame had melted away.

18 Using a combustible vapor detector, investigators tested areas of the home. Those areas on
19 which the vapor detector alerted were sampled and collected into evidence.

20 After clearing debris from the floors in both the garage and the living room, Reuscher found
21 clear patterns or indicators that a flammable liquid had been poured and used as an accelerant.

22 Reuscher testified that accidental causes were eliminated. Specifically, they first looked to the
23 appliances inside the house. The first appliance examined was the gas heater, which was off at the
24 time of the fire. There were pour patterns near the gas heater. The electrical outlets were examined
25 and eliminated because they looked normal.

26 On cross-examination, Reuscher testified the sliding glass door tested negative for combustible
27 liquids. He did not check the water heater.

1 **The Prosecution's Evidence at Trial One and Two**

2 The prosecution presented the following theory: Souliotes set fire to 1319 Ronald Avenue, a
3 home he owned, because he was in financial distress and angry that his tenants, the Jones family,
4 failed to pay rent and vacate the premises as promised. The case against Souliotes rested primarily on
5 three sources: (1) fire cause and origin analysis that suggested the fire was arson; (2) scientific
6 evidence that Souliotes' shoes were present at the scene of the fire because they tested positive for the
7 same medium petroleum distillates (MPDs) found at the scene, and (3) eyewitness Monica Sandoval's
8 testimony that she saw Souliotes driving his Winnebago in the area immediately before the fire started.

9 A. Fire Investigation

10 1. Sara Yoshida, Senior Criminalist for the California Department of Justice

11 Sara Yoshida (Yoshida), a senior criminalist for the California Department of Justice testified to
12 the following in summary:

13 In her opinion, MPDs were present on two of the items taken from the scene of the crime (one
14 from burned wood and another from burned foam and carpeting), and on Souliotes' shoes, which were
15 taken from his Pearl Street home in Modesto.

16 MPDs are ignitable liquids found in common household items such as charcoal lighter fluid,
17 some camp fuels, some solvents, insecticides, furniture polish, shoe polish, some hand cleaners, some
18 paint thinners, and the glue from shoes made overseas. Yoshida acknowledged that scientific literature
19 reflected that some shoes contain materials producing patterns identified as a petroleum distillate. The
20 presence of an MPD does not necessarily indicate its use to start a fire, however, finding an MPD
21 product is rare because MPD vapors dissipate rapidly. In 95 percent of her cases, when Yoshida
22 detected a substance, it was gasoline.

23 Several liquid samples were collected from Souliotes' home. The tested liquids included a can
24 of Thompson's water sealant, a container of Sunny Select charcoal lighter fluid, and a sample from
25 what appeared to be a gasoline container. Yoshida tested these items and excluded the items as being
26 the source of the MPDs found on the items at the scene of the crime and on Souliotes' shoes.

27 2. Captain Reuscher and Captain Evers

1 Two arson investigators from Modesto County Fire Department, Reuscher, and Captain Evers
2 (Evers), testified the fire was caused by arson. They relied on several factors to support this
3 conclusion, including:

- 4 • The fire was unusually hot;
- 5 • Pour patterns found on the floor where flammable liquids obviously had been poured and
6 ignited;
- 7 • There was deep charring on the walls;
- 8 • There was insufficient combustible material (fuel load) in the house to sustain such an intense
9 fire unless an ignitable liquid, i.e., accelerant, had been added;
- 10 • A hand-held hydrocarbon detector indicated the presence of ignitable liquids at the scene; and
11 • The eyewitness testified that a suspicious person had surreptitiously visited the house just after
12 the fire started.

13 Based on the evidence, Reuscher had no doubt the fire was caused by arson.

14 Reuscher and Evers began their investigation by walking through the house to assess the
15 damage and by talking to the firefighters and witnesses to learn how the fire had behaved and evolved.
16 Both investigators believed the fire started in the garage. The garage, kitchen, and living room were
17 the most evenly burned portions of the house. They believed the extent of the damage was very
18 unusual for an accidental fire due to the lack of furniture, or fuel, to feed the fire. There was a
19 tremendous amount of free burning considering the lack of fuel.

20 Free-burning is flame production. During the free-burning stage, a large amount of heat is
21 produced. The heat ascends, as does the smoke that is being produced. Unburned gases ascend as
22 well, but they eventually descend and radiate heat throughout the room. At some point during the free-
23 burning period, there will be sufficient air, heat, and fuel to cause overhead flashover and the entire
24 room will burn. Something had to fuel the fire, which is one reason Reuscher and Evers believed an
25 ignitable liquid was used.

26 Reuscher saw evidence that an ignitable liquid had been poured, which explained the burn
27 patterns and holes in the flooring. A pour pattern is the pattern left on the floor when an ignitable liquid
28 is used to start a fire. According to Reuscher, pour patterns indicate the use of an ignitable liquid,
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1 which is the trademark of an arson fire. In this case, Reuscher saw a serpentine shaped pour pattern
2 on the floor at 1319 Ronald Avenue. Reuscher described pour patterns in the following manner:

3 "If you imagine a container of liquid being poured and as it hits the floor, we know that it—it will
4 spread out, and what has happened here is that the lighter areas on the interior of the pattern
5 have been protected by the liquid, the flammable liquid itself. The middle of that pour pattern
6 has a higher concentration of liquid. It thins out, it spreads out, and as it burns, the protective
7 barrier that that liquid forms diminishes right down to the original outline that was made by the
8 original contact liquid. So one side of that line you'll see a shadow which is left by discoloration
9 of heat and charring, basically. On the inside of that line is a protected area and then again on
10 the outside again is that charring, so that this is called shadowing, and we see that in several
11 places."

12 (1 RT p. 2036.) Multiple pour patterns were found: some in the garage that connected to the patterns in
13 the kitchen, which connected to the patterns in the living room.

14 According to Reuscher and Evers, fires normally burn upward. In the absence of an ignitable
15 liquid on the floor, a naturally occurring fire migrates across the ceiling. But at 1319 Ronald Avenue,
16 there was evidence of low burning, indicating the use of an accelerant. Reuscher and Evers testified
17 that the nature of the damage to the floor constituted clear evidence that an accelerant had been
18 poured on the floor and intentionally lit. They asserted that other damage, such as holes in the
19 floorboards and curled floor tiles, also reliably indicated an ignitable liquid had been used.

20 Reuscher and Evers both rejected the theory that the fire was a normal gas fire. Evers
21 acknowledged that the gas stove in the kitchen was found with its door open and a burn inside. All the
22 knobs had been burned off the burners, but all the stems were all in the "off" position. The stove was
23 eliminated because all of the indicators seen by the investigators pointed to arson and not an accidental
24 fire. Evers and Reuscher agreed that if natural gas had caused the fire, the explosion would have been
25 larger.

26 Reuscher testified he was unsure whether the dryer was gas or electric operated. Reuscher did
27 not inspect the wall heater in the living room close enough to know if it was on or off at the time of the
28 fire.

1 Reuscher and Evers used a combustible vapor detector, the Snap-On ACT 8800, to help
2 determine the best places to take debris samples. A combustible vapor detector is used to indicate the
3 presence of a combustible vapor. This detector was taken to Souliotes' Winnebago and swiped around
4 the floorboard, accelerator pedal and driver's seat. It keyed positive for flammable liquids in those
5 areas. It also alerted to Souliotes' home, his body and his clothing, and as a result of the positive
6 readings from those items, there were items of evidence seized and tested by the Department of
7 Justice. The detector alerted positively to holes in the floor in the living room. According to Reuscher,
8 the positive reactions from the combustible vapor detector afforded a significant basis for obtaining a
9 search warrant.

10 Reuscher and Evers disagreed as to the alleged arsonist's point of entry. At the first trial,
11 Reuscher testified that he believed the alleged arsonist entered the house either through the sliding
12 glass door in the living room or through the rear garage door. Reuscher stated that if the sliding door
13 was locked, then the alleged arsonist could have entered by levering it with a screwdriver. The
14 investigators, however, found no evidence of forced entry. Reuscher testified he reviewed his theory
15 regarding the entry point of the alleged intruder due to information he received from Daniel Jones.
16 Reuscher admitted that the main door to the garage was barred, but said that did not change his
17 opinion about the firing starting there. He testified that the alleged arsonist could have lit the fire
18 through the pet door that was carved out of the rear door in the garage. However, no pour patterns
19 were found near the pet door.

20 While Reuscher opined the arsonist entered the garage through the back door to the garage;
21 Evers disagreed because a fireman on the scene stated he had to break down the door to gain entry
22 into the garage. Evers also disagreed that the sliding glass door could be the point of entry. The track
23 of the sliding glass door had not melted and he was unable to locate any pry marks on it. A melted
24 track may have been an indicator that there was a low-burning fire in that area. There was no other
25 way to open the locked door other than to pry it open.

26 Reuscher interviewed Monica Sandoval at approximately 3:45 a.m. on January 15, 1997, 10
27 minutes after arriving at the scene of the fire. Reuscher took notes during this interview. According to
28 Reuscher's handwritten notes, Sandoval described the vehicle she saw on the night of the fire as a
29

1 "Beige RV Dodge van type." (1 RT p. 2196.) She described the driver as a white male in his 30s, thin,
2 with glasses, wearing a blue and white Pendleton shirt. (1 RT 2197.)

3 3. Officer Pimentel, City of Modesto Police Department

4 Pimentel was dispatched to 1319 Ronald Avenue on the night of the fire. Pimentel interviewed
5 Monica Sandoval. She told him she witnessed a man driving an off-white or beige Winnebago down
6 Ronald Avenue for several hours prior to the fire. According to Pimentel, Sandoval described the driver
7 of the Winnebago as a white man, in his late 30s or 40s. Regarding the Winnebago, she reported there
8 was a big blue "W" on the side.

9 4. Officer Burnside, City of Modesto Police Department

10 Burnside was also present at the fire scene. While canvassing the area, one of the neighbors
11 told Burnside that Souliotes was the owner/landlord of 1319 Ronald Avenue. Burnside drove the
12 neighbor to Souliotes' home about 45 minutes after Burnside had arrived on scene. Souliotes
13 answered the door wearing a bathrobe. Souliotes' hair was in disarray and it appeared that he had
14 been asleep. Souliotes followed Burnside to 1319 Ronald Avenue. Souliotes stared at the house and
15 held his chest as if he were having a heart attack.

16 5. Captain Bruce Elliott, Modesto Fire Department

17 Captain Elliott assisted with the fire investigation. He used a combustible vapor detector to
18 check Souliotes' home, person, and vehicle for signs of a combustible vapor. The detector alerted to
19 Souliotes' motor home, driver's side floor, gas pedal, shoes, socks, cuffs of his trousers, and belt
20 buckle.

21 6. Detective Dick Ridenour, City of Modesto Police Department

22 Detective Ridenour inspected Souliotes' motor home at around 10:25 a.m., fewer than seven
23 hours after Sandoval saw a motor home driving up and down Ronald Avenue. Souliotes moved the
24 motor home from the driveway to the street. Ridenour touched the engine of the motor home, which
25 was cold.

26 7. Detective Henry Hendee, City of Modesto Police Department

1 Hendee noted there was very little furniture in the house. The garage, living room, and kitchen
2 were the three most severely burned areas of the house. Eight items were collected and given to
3 Hendee for testing:

- 4 (1) Charred floor taken from the center of the living room;
- 5 (2) Charred wood/ash taken from underneath the dryer,
- 6 (3) Ash from the area near the sliding glass door;
- 7 (4) Ash from underneath the washer in the garage;
- 8 (5) Clothes from inside the washer;
- 9 (6) Clothing from the floor of the garage;
- 10 (7) Liquid sample from the floor of the garage,
- 11 (8) Carpet collected from the same area as sample 3;
- 12 (9) The actual lock located on the floor of the garage that led from the garage to the backyard
13 through the back garage door;
- 14 (10) Lock mechanism from the back garage door and portion of the deadlock bolt.

15 Hendee believed Reuscher had used a hydrocarbon detector which alerted to the area near the
16 patio. Hendee also believed that an alert in this area signified the presence of a petroleum based
17 product such as gasoline.

18 Hendee was told that aftershave will cause the hydrocarbon detector to read positive. Hendee
19 found aftershave in Souliotes' medicine cabinet.

20 Hendee and Reuscher also took a can of Thompson's water seal from Souliotes' home.

21 8. Detective Jon Buehler, City of Modesto Police Department

22 Buehler was assigned to assist in the investigation of the fire at 1319 Ronald Avenue. He
23 arrived at the scene early that morning. Early on in the investigation, Buehler was asked to verify
24 Daniel Jones' location on the night of the fire. He was able to verify that Jones was working.

25 Buehler was asked to stop by Souliotes' house, a few blocks from the fire scene. He noticed
26 there was a motor home in the driveway.

27 Sandoval, Officer Ridenour, and Detective Lee came by Souliotes' home soon after. Later,
28 Buehler drove Sandoval to a motor home dealership to see if she could identify any motor homes that
29

1 were similar in appearance to the one she saw on the night of the fire. This was done because
2 Sandoval could not say to the detective's satisfaction whether Souliotes' Winnebago was the one she
3 had seen on the night of the fire.

4 Buehler received a call requesting that he bring Sandoval back to Souliotes' home to take a
5 second look at his Winnebago. When they first arrived, Sandoval was confused about whether there
6 was a ladder on the motor home she saw on the night of the fire. When they got closer, Sandoval
7 became emotional and stated it was the same motor home.

8 Later in the day, Earl Linam approached Buehler while he was at Souliotes' home. Linam told
9 Buehler he was interested in buying 1319 Ronald Avenue.

10 Souliotes told Buehler he was getting too old to be a landlord. Souliotes also mentioned
11 Linam's down payment.

12 B. Eyewitness Testimony

13 1. Monica Sandoval

14 a) Direct Examination

15 Monica Sandoval (Sandoval) testified to the following in summary:

16 She lived in an apartment building on the corner of Ronald Avenue and Tully Road,
17 approximately the length of a football field away from 1319 Ronald Avenue. Around 1:00 a.m., on
18 January 15, 1997, Sandoval stepped onto her balcony and waited for her boyfriend to return home from
19 work. While waiting, she saw a motor home driving up and down the street on Ronald Avenue. The
20 driver drove down the street for approximately four to five minutes, before making a U-turn, and driving
21 back towards her apartment. This occurred between 10 and 15 times. About two hours later, the driver
22 stopped and parked directly across the street from 1319 Ronald Avenue. Carrying a white sack that
23 looked heavy, the driver walked toward the yard of 1319 Ronald Avenue. The driver soon returned to
24 the motor home without the sack, drove toward Tully Road, and came to a complete stop at the bus
25 stop near her apartment. Sandoval heard a loud swooshing noise and large flames erupted from the
26 residence soon after. Later, Sandoval identified Souliotes and his motor home as the person and
27 vehicle she had seen that night.

1 Sandoval described the driver as male, between 5'9 and 6'0 tall, with a narrow chin, pointy nose
2 and square frame glasses. He was wearing a checkered Pendleton, denim pants, and dark colored
3 shoes. Sandoval made an in-court identification of Souliotes as the person she saw driving the motor
4 home on the date of incident.

5 Sandoval described the motor home as having a solid color "W" on the driver's side. When law
6 enforcement drove her to Souliotes' home for the first show-up identification of the motor home, the
7 motor home was parked in the driveway and the sides were not visible. Because Sandoval could only
8 see the motor home from the back, she was unable to identify whether it was the same vehicle from the
9 night of the fire. Sandoval testified that she had difficulty describing the motor home because the front
10 of the vehicle was uncommon—it sloped down, similar to a Dodge Caravan. Law enforcement took her
11 to an RV dealership to see if she could identify the motor home she saw that night. She looked at
12 between 10 and 50 motor homes. She did not see a motor home that resembled the one she saw
13 driving on the night of the fire. Law enforcement took Sandoval back to Souliotes' home. The motor
14 home was now parked across the street from the Souliotes' house. At which point she made a positive
15 identification of Souliotes' Winnebago LeSharo.

16 b) Cross-examination

17 On cross-examination, Sandoval testified to the following:

18 At the time the fire occurred, there was a pending case against her for stabbing her boyfriend in
19 the back with a switchblade. Sandoval did not pressure or threaten the District Attorney's Office to drop
20 the charges one month after cooperating with law enforcement. On the night of the fire, she was
21 waiting for her boyfriend to return home from work. She chose to wait outside on the balcony, where it
22 was wet and cold.

23 Defense counsel noted a number of discrepancies between Sandoval's testimony at the
24 preliminary hearing and the notes taken by officers during her interview on the night of the fire. Using
25 the transcript from the preliminary hearing, defense counsel asked Sandoval about these
26 discrepancies.

- 27 • At the preliminary hearing, Sandoval testified that the driver of the motor home was in
28 his 50s and that there was only one person present in court that she recognized from the
29

1 night of the fire and that was Souliotes. She remembered his photograph in the photo
2 lineup. According to notes taken by Reuscher on the night of the fire, Sandoval
3 identified the driver as male, in his 30s, with glasses, six-foot tall, skinny, wearing a light
4 blue Pendleton, and glasses. The notes did not mention square glasses, a pointy nose,
5 chin, or thin face. Sandoval testified that Reuscher's notes were a short description of
6 what she told him, implying the notes did not incorporate all the descriptors she listed
7 about the driver.

- 8 • At the preliminary hearing, Sandoval testified that there was nothing on the top of the
9 motor home, although she had a clear, unobstructed view of the motor home. Defense
10 counsel presented her with a photograph showing Souliotes' motor home, which had an
11 air conditioning unit on top. Sandoval did not attempt to explain this discrepancy.
- 12 • At the preliminary hearing, Sandoval testified that the motor home she saw driving back
13 and forth on Ronald Avenue had a ladder, and window with a white drape. Defense
14 counsel showed Sandoval a photograph of Souliotes' motor home. From the size of the
15 window in the photograph, she determined it was Souliotes' Winnebago. She then
16 stated the solid "W" also showed that it was the same vehicle. Souliotes' counsel
17 admonished her to only testify as to what she saw in the photograph. Souliotes' motor
18 home had a ladder, the motor home in the photograph did not have a ladder. The
19 photograph only showed the rear of a motor home, and no "W" was visible. Sandoval
20 testified that the motor home on the evening in question had a white license plate. The
21 license plate in the photograph was blue. Souliotes' motor home had the word
22 "Winnebago" written across the front of the hood, under the windshield. Sandoval did
23 not see this branding on the night of the fire.
- 24 • At the preliminary hearing, regarding the person she saw driving the motor home on the
25 evening in question, Sandoval told the responding officers she could not identify the
26 suspect and would not be able to identify anyone. She stated she did not get a good
27 enough look to identify the driver in the lineup and could not identify someone based on
28 facial features alone. Officers showed Sandoval a photographic lineup of six individuals,
29

1 one of which was Souliotes. The men in the photographs all had the same features and
2 some of them were wearing square or rectangular framed glasses. Most of the
3 individuals in the lineup had narrow chins and pointy noses. She did not see the driver
4 of the motor home in the lineup. At trial, Sandoval stated she remembered Souliotes'
5 photograph in the lineup, however, when the lineup was conducted she told law
6 enforcement the driver of the motor home was not in the lineup.

- 7 • At the preliminary hearing, the Deputy District Attorney resumed questioning Sandoval
8 regarding the driver's physical appearance. After the break, Sandoval identified
9 Souliotes as the driver. She was able to identify the driver as Souliotes at the
10 preliminary hearing because his facial features were the same as the driver of the motor
11 home on the night of the fire.

12 Sandoval agreed that her memory was better at the preliminary hearing, than it was two years
13 later at trial.

14 c) Re-direct examination

15 On re-direct, Sandoval testified that she had intended to slash her boyfriend's tires, not his lower
16 back. The charges were dropped against her because her boyfriend refused to testify against her.
17 They reconciled two months after the stabbing.

18 Sandoval explained that the best view she had of the driver of the motor home was his profile.
19 The photographs in the photo array were front views, not profiles. Sandoval never noticed the front of
20 the motor home, aside from the way it slanted downward. A Dodge Caravan's slope is similar to the
21 vehicle she saw on the night of the fire.

22 2. Steven Hamilton

23 Steven Hamilton witnessed the fire. When he approached 1319 Ronald Avenue, he saw flames
24 in the garage. The garage door was flattened and on the ground. From across the street, the flames
25 were not "that hot," but the closer he got to the fire, the hotter the fire felt. He ran to the back of the
26 house and noticed the whole living room was full of the flames. He banged on a window, but no one
27 answered. He then went around to the side of the house and banged on the backdoor, there was no
28 answer. There was no glass in the sliding glass door. The entire living room was covered by a
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1 yellowish flame; however, he could still see the upholstery on the furniture. He could tell the fire in the
2 living room had not been burning long because the patterns on furniture were still visible. He tried to go
3 back around the garage the way he entered, but the fire was too hot and the flames were coming out of
4 the sliding glass door. He had to scale the chain-link fence in the back to get out.

5 Before entering the property, Hamilton noticed a dark colored sedan parked directly in front of
6 the house. The driver was a 25 to 35 year old male with long, light-colored hair. The car was stopped
7 and it seemed like the engine was off. When Hamilton and his girlfriend got closer to the vehicle, the
8 driver started the engine and drove away. He testified he was able to get a partial license plate
9 number. Hamilton saw no further vehicles at that time.

10 While Hamilton was outside of the house, a woman on a bicycle rode up to him and told him the
11 Jones family had moved to the trailer park. The cyclist then rode away.

12 3. Lisa Costley, Steven Hamilton's girlfriend who was present at the scene of the fire

13 Costley heard a loud explosion that sounded like a huge firecracker. After the explosion, the
14 flames began to get larger from the back of the house. She called 9-1-1 prior to hearing the explosion.
15 Law enforcement arrived 10 to 15 minutes after she called.

16 4. Raul Ortega

17 Raul Ortega witnessed the fire and attempted to rescue the tenants of 1319 Ronald Avenue
18 from the fire. Ortega smelled a strong odor of gasoline as he got closer to the home.

19 5. Daniel and Georgina Treece, Souliotes' neighbors

20 The Treeces noticed Souliotes' Winnebago was parked on the street when they went to work at
21 11:30 p.m. on the night of the fire. They had never before seen the motor home parked on the street at
22 night. The motor home was returned to the side of Souliotes' house when the Treeces returned from
23 work about 8:30 a.m. the next morning.

24 C. Financial Motive

25 1. Daniel Jones, father and husband of the deceased

26 Daniel Jones (Jones) and his family began renting 1319 Ronald Avenue from Souliotes in April
27 1996. On November 5, 1996, Jones notified Souliotes that he planned to move his family out of the
28 house on December 1, 1996. Jones testified Souliotes did not show any sign of dissatisfaction with the
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1 news, and in fact seemed to understand Jones's economic reason for moving. Souliotes and Jones
2 disagreed, however, on whether Jones had prepaid his last month's rent. Souliotes presented Jones
3 with a three-day "pay rent or quit" notice on the same day Jones told Souliotes he was moving. Jones
4 planned to move his family into a mobile home he had purchased. However, around the first of the
5 year, heavy flooding occurred at the mobile home park and left the Jones's new mobile home
6 completely under water. The Jones family was unable to relocate until mid-January 1997. Accordingly,
7 the Joneses remained at 1319 Ronald Avenue past January 1, 1997.

8 Due to the unlawful detainer action, the Jones family was to be evicted from 1319 Ronald
9 Avenue on January 16, 1997. However, on January 13, 1997, the Sheriff's Office advised Souliotes'
10 eviction agency that the writ of execution erroneously referenced Ronald "Street" rather than Ronald
11 "Avenue." When told it likely would take a week to correct the error, Souliotes was upset, although not
12 "extraordinarily so." The eviction agency also was frustrated with the Sheriff's refusal to overlook the
13 technical error.

14 Jones testified in the tort case against Souliotes' insurance company. He had volunteered to
15 install more smoke detectors in the house because, at the time his family moved in, there was only one.
16 Jones also had a problem with the stove—the pilot light would go out and the gas leaked as a result.

17 2. Bertha Love, Glendale Savings Bank employee

18 Love, an employee at Souliotes' bank, testified that Souliotes came into the bank about a week
19 before the fire to inquire about relinquishing one of his three properties to the bank. According to Love,
20 Souliotes was "very irate" and he "asked her to take back the keys" to his rental house. On cross-
21 examination, Love admitted that her typewritten memorandum said nothing about Souliotes being upset
22 or irate. It simply reflected essential details of his request to voluntarily surrender a loan. Love also
23 refuted a police detective's statement that she said Souliotes had "thrown" his keys at her.

24 3. Louis Bacigalupi, Glendale Savings Bank supervisor

25 Bacigalupi met with Souliotes approximately one week before the fire. Bacigalupi described
26 Souliotes as "a little bit nervous" but otherwise engaged in a conversation about loan options. The
27 bank supervisor was unable to answer Souliotes' questions and referred Souliotes to the loan service
28 department.

1 4. Michael Marks, auditor

2 Marks, an auditor with the United States Department of Treasury's Bureau of Alcohol, Tobacco
3 and Firearms (ATF), examined Souliotes' financial status at the time of the fire. As of January 15,
4 1997, Souliotes had assets worth about \$394,000.00, and liabilities of about \$209,000.00. Marks put
5 Souliotes' monthly income at \$2,609.00 and his monthly expenses at roughly \$2,100.00. He noted
6 Souliotes had \$16,579.00 in liquid savings in the bank. According to Marks, Souliotes had a history of
7 paying his bills on time and leaving no balances on his credit cards. Souliotes' monthly mortgages on
8 his properties totaled \$1,504.00, not including taxes and insurance. Marks did not believe 1319 Ronald
9 Avenue was over-insured.

10 5. Hope Warner, manager of the mobile home park

11 Warner, the manager of the mobile park where the Jones family intended to relocate, saw an
12 angry exchange between the driver of a motor home and Mrs. Jones at the mobile home park a day or
13 two before the fire. She identified the driver of the motor home as Souliotes.

14 6. Michael Raymond Vittetoe, Winnebago employee

15 During trial, a Winnebago employee was called to testify regarding the number of Winnebago
16 LeSharos produced. He testified that in the nine years that Winnebago produced the LeSharo, a total
17 of 15,000 LeSharos were produced. In 1986, 2,633 had been produced, 1,068 of which had been
18 shipped to California. In 1986, only 390 of the total 1,068 had been shipped to California. Winnebago
19 has a brand called Itasca. There is a model of Itasca that, with the exception of the outside, the veneer,
20 and the markings, is in all mechanical respect the same as the LeSharo.

21 7. Jesse Molina, adjuster at Allstate Insurance

22 Molina testified there was a significant amount of damage to 1319 Ronald Avenue. The initial
23 insurance claim was made by Souliotes' agent. According to Molina's assessment, the replacement
24 cost of 1319 Ronald Avenue was \$103,000.00.

25 **Defense Case at Trial One**

26 Trial counsel presented four expert witnesses in Souliotes' defense at the first trial. He called
27 an expert in the field of engineering to rebut the testimony of the prosecution's fire experts, a financial
28 expert to explain that Souliotes was not in financial distress, a psychologist to explain factors negatively
29

1 affecting the reliability of Sandoval's identifications, and a forensic psychologist to describe Michelle
2 Jones' unstable mental health history. Because defense counsel called no witnesses at the second
3 trial, only the witnesses presented by the defense at the first trial are summarized below.

4 A. Dr. Donald Myronuk, fire expert

5 Dr. Myronuk, a mechanical forensic engineer with an expertise in collision reconstruction,
6 opined the fire was likely caused by a natural gas leak from the kitchen stove. He attributed the leak to
7 a brass flex hose that connected the stove to a gas line, which is known to be susceptible to corrosion
8 by common kitchen chemicals. Myronuk believed gas from a leak could have been ignited by a nearby
9 pilot light.

10 Based on his examination of the door between the kitchen and living room area and the garage,
11 Myronuk thought the fire traveled from the kitchen to the garage. According to Myronuk, benches,
12 cabinets, and a plywood partition wall in the garage provided significant fuel for the fire.

13 Myronuk explained that the patterns on the floor in the kitchen, living room, and garage were
14 caused by falling tar, not a liquid accelerant. He also challenged the MPD evidence. He theorized that
15 the MPDs on Souliotes' shoes were likely from shoe polish, laminate materials, or adhesives, while the
16 MPDs in the living room were likely from melted polyurethane on the entertainment center or from audio
17 video components. Finally, Myronuk described an experiment he conducted to show that if the motor
18 home had been driven on the night of the fire, its engine would have been noticeably warm to the touch
19 when the police inspected it in the morning. The engine of the motor home was cold, according to law
20 enforcement.

21 Myronuk conducted an experiment during which he allowed the engine of an Itsaca motor
22 home, which is in all mechanical respects the same as a LeSharo Winnebago, to run for approximately
23 three hours and cool for seven to seven and 3/4 hours. After allowing the engine to run for three hours,
24 and sit for approximately seven hours, he could physically feel warmth in the engine area.

25 In 1997, Myronuk asked John Lentini, a certified criminalist, chemist, and arson investigator, to
26 analyze 21 samples of physical evidence from the Souliotes fire investigation. The 21 samples
27 contained evidence collected from the scene of the fire and from Souliotes' person and recreational
28 vehicle. Lentini found that four of the items tested exhibited the presence of an ignitable liquid
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1 belonging to a class of compounds called MPD. Items three and five were carpet and carpet foam
2 collected from 1319 Ronald Avenue. Items 16 and 17 were a pair of Souliotes' shoes. Lentini
3 concluded that the MPD found on the shoes could not be excluded as having come from the same
4 source of MPD found on the carpet and carpet foam collected at the scene of the crime.

5 **B. Dr. Elizabeth Loftus, eyewitness reliability expert**

6 Dr. Loftus, a professor of psychology, testified regarding the fallibility and suggestibility of
7 eyewitness testimony. Loftus focused on factors that affect the retention of memory and explained that
8 post-event information can supplement, distort, and contaminate a person's recollection. She ultimately
9 concluded that "all ingredients were present for a hypothetical witness like Sandoval to be influenced by
10 the post-event information presented to her." (1 RT 3611-3612.) The fact that Sandoval saw Souliotes
11 in a police lineup and at the preliminary hearing, prior to her in-court identification of him at trial, could
12 have influenced the reliability of her identification.

13 **C. Shazad Contractor, financial expert and CPA**

14 Shazad Contractor, a Certified Public Account (CPA) with a master's in Business Administration
15 and financial auditor for Price Waterhouse, testified that Souliotes was not in financial distress at the
16 time of the fire. Contractor based his opinion on a review of Souliotes' financial history for the five
17 years preceding, including December 1996. Souliotes was current, paid his bills automatically from his
18 bank each month, and had significant cash reserves in the bank.

19 **D. Dr. Fred Rosenthal, forensic psychologist**

20 Dr. Rosenthal testified regarding victim Michelle Jones's psychiatric history. Based on his
21 review of Mrs. Jones's medical, psychiatric, and autopsy records, Rosenthal described Mrs. Jones as a
22 troubled individual with a long history of emotional problems starting in childhood. He opined that she
23 had the type of difficult childhood that could lead to adult depression: she had been diagnosed with
24 cancer at an early age, had a below average IQ, was placed in foster care, had run away from home,
25 lived on the streets for some time, had a history of drug use, and had previously attempted suicide.
26 Rosenthal concluded that Mrs. Jones's psychiatric history reflected poor judgment and simplistic
27 thinking.
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1 E. Linda Flores, eyewitness

2 Flores testified that on the morning of the fire she saw a beige or off-white, older Winnebago
3 with an olive green or brownish green stripe and a W on the side, drive around the parking lot of the
4 unopened shopping center where she worked. The center opened to an alley which led to Souliotes'
5 rental property. According to Flores, the driver suspiciously circled the parking lot and repeatedly
6 looked down the alley towards Ronald Avenue. She was positive that the man driving the Winnebago
7 was not Souliotes and that the Winnebago was different than Souliotes' LeSharo. Flores reported the
8 incident to law enforcement that day, however, she was never contacted by the police or other
9 investigators.

10 F. Jill Le Blanc, Souliotes' girlfriend

11 Le Blanc testified that she and Souliotes were planning to drive the Winnebago to the Bay Area
12 on the day of the fire.

13 **Conclusion of Trials One and Two**

14 At the first trial, the jury deliberated for three days. During the first day of deliberation, the jury
15 requested that portions of Sandoval's testimony, as well as testimony from the prosecution's fire
16 experts, be read to them. Specifically, the jury wanted to rehear portions of Sandoval's identification of
17 the motor home and driver, and they requested rereading of the county fire investigator's testimony
18 about inspections of the stove and related connections.

19 On the second day, the jury requested rereading of portions of the testimony of defense expert
20 Myronuk regarding fire patterns on and around the door to the garage, the county fire investigator's
21 testimony regarding the same, additional Sandoval testimony, and Officer Pimental's testimony
22 describing Sandoval's report of the motor home.

23 On the third day, the jury asked to rehear a state lab expert's MPD testimony and testimony
24 regarding the results of the use of a hydrocarbon detector when searching Souliotes' house,
25 belongings, and shoes. They also requested testimony about assault charges against Sandoval having
26 been dropped and testimony of neighbors regarding movement of the motor home on the night of the
27 fire. The jury could not arrive at a unanimous decision. According to trial counsel, it was hung, 11 to
28 one in favor of guilt.

1 Souliotes' second trial began April 3, 2000. The prosecution presented the same witnesses and
2 evidence as it had at the first trial.

3 In his opening statement, defense counsel refuted the contentions of the prosecution and
4 argued that the evidence would show that the fire was not arson, but accidental, and that Souliotes was
5 factually innocent. In support, he promised to present a fire expert, a forensic pathologist, and at least
6 four lay witnesses. However, once the prosecution rested, defense counsel did as well, calling no
7 witnesses. The jurors deliberated for a matter of hours and found Souliotes guilty on all counts.

8 **Basis for Habeas Petition**

9 A. Lentini's Newly Discovered Evidence

10 In September 2005, Souliotes' sister contacted John Lentini, the criminalist, chemist, and arson
11 investigator relied upon by Dr. Myronuk in trial one, to see if there was any new technique or
12 information regarding the testing of MPD samples from the Souliotes' case. Lentini had originally
13 tested the carpet, carpet foam, and shoes samples at trial, and, like the state's criminalist, Yoshida,
14 concluded that both Souliotes' shoes and the carpet samples exhibited the presence of an ignitable
15 liquid belonging to the class of compounds known as MPDs, and further, that the MPDs in these
16 samples could not be distinguished. Thus, at the time of Souliotes' second trial, the MPDs found on
17 Souliotes' shoes could not be excluded from the same source of MPDs found in the samples from the
18 fire scene.

19 However, upon further research in 2005, Lentini devised a method, previously unknown to him
20 and not described in scientific literature, to distinguish chemical differences between the MPDs found
21 on the samples from the fire scene and Souliotes' shoes. Using that method, he found there was no
22 chemical match between the residue on Souliotes' shoes and the MPDs found on the carpet and carpet
23 foam. Specifically, Lentini opined that the residue found on Souliotes' shoes was naturally occurring,
24 meaning it was from a chemical used in their manufacture.

25 Based on the information from Lentini, Souliotes petitioned the district court for habeas relief
26 based on his belief that there was new evidence which annulled a key evidentiary link leading to
27 Souliotes' conviction. Contrary to the information provided to the jury, Souliotes' shoes did not link
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1 Souliotes to the scene of the fire. The Attorney General (AG), despite challenging Souliotes' diligence
2 in raising this argument, did not dispute that the chemicals were distinguishable.

3 Prior to the habeas corpus evidentiary hearing, the parties submitted the following stipulations in
4 their Joint Pretrial Statement:

- 5 1. In the early morning hours of January 15, 1997, a fire destroyed the house located at 1319
6 Ronald Ave., Modesto, CA. The house was owned by Souliotes. Three of the tenants then
7 living in the house—Michelle Jones, Amanda Jones, and Daniel Jones, Jr.—perished in the fire.
8 The fourth tenant, Daniel Jones Sr., was not at home.
- 9 2. The fire was investigated by Captain Reuscher and Captain Evers of the Modesto Fire
10 Department. Both investigators determined the fire to be the result of arson.
- 11 3. Captain Reuscher and Captain Evers both relied on several factors they believed provided
12 evidence of arson using a flammable liquid. The following factors relied on by Captains
13 Reuscher and Evers are now known not to be indicators of arson using flammable liquid. These
14 factors are:
 - 15 a. Deep burning and floor damage to the floor inside the residence and burn patterns on
16 the floor inside the residence and on the concrete floor of the garage.
 - 17 b. The temperature of the fire, evidenced by the deep charring and witness accounts of an
18 “extremely hot” fire.
 - 19 c. Lack of sufficient fuel for the fire to have occurred without the use of flammable liquid.
 - 20 d. The floor damage and burn patterns located inside the house and garage.
- 21 4. The floor damage and burn patterns located inside the house and garage that the original
22 investigators attributed to arson using a flammable liquid appear to be the result of flashover
23 burning and fall down from the roof collapsing, and are not indicators of arson using a
24 flammable liquid.
- 25 5. Fires involving liquid accelerants do not burn at higher temperatures than fires involving the use
26 of a flammable liquid.
- 27 6. There was sufficient fuel in the house for the fire to have occurred without the use of a
28 flammable liquid.

- 1 7. The parties' experts all agree that they cannot determine the cause and origin of the fire based
2 on the available evidence and record as it exists today, including whether the fire was accidental
3 or the result of arson.
- 4 8. Captain Reuscher used a "hydrocarbon detector" at the fire scene to search for the possible
5 presence of ignitable liquids. Captain Bruce Elliott of the Modesto Police Department also used
6 the detector to search Souliotes and his clothing for the possible presence of ignitable liquids.
7 The detector gave several positive alerts at the fire scene and on Souliotes' clothes and body.
- 8 9. Hydrocarbon detectors commonly deliver false positives and are intended to be used only for
9 presumptive testing to determine what items to collect and submit for laboratory testing.
- 10 10. A positive reaction from a hydrocarbon detector is never reliable evidence of the presence of a
11 liquid accelerant without confirmatory lab results.
- 12 11. Of the samples collected from the fire scene for laboratory testing, two tested positive for the
13 presence of medium MPD: sample number 66, a piece of burnt wood from a floorboard in the
14 living room, and sample number 71, a piece of carpet foam from the living room.
- 15 12. A pair of black shoes belonging to Souliotes, samples 16 and 17, tested positive for the
16 presence of a MPD.
- 17 13. The MPD on Souliotes' shoes is chemically distinguishable from the MPD found on the carpet
18 samples taken from the fire scene, and the MPDs did not originate from a common source.
- 19 14. Detectable MPDs are commonly found on many household products and consumer goods,
20 including the solvents in glues and adhesives in floor coverings and footwear, residues of dry
21 cleaning solvents, insecticides and cleaning agents.
- 22 15. Souliotes did not become aware of the new MPD testing methods until September 21, 2005,
23 when John Lentini sent a letter setting forth his new findings based on his use of the new MPD
24 testing methods.
- 25 16. Monica Sandoval testified at trial that she witnessed Souliotes' Winnebago driving up and down
26 Ronald Avenue 10 to 15 times during the approximately two hours prior to the fire. She also
27 testified that she witnessed the Winnebago being parked across the street from 1319 Ronald
28 Avenue, and then she saw a man exit the Winnebago and cross the street while carrying a bag or
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1 a pillowcase. She testified that the man went behind the residence at 1319 Ronald Avenue and
2 returned a few minutes later empty handed and that soon after she observed flames coming
3 from the residence. Sandoval also testified that she observed Souliotes' face through the front
4 windshield of his Winnebago when he slowed down to look at the house from the corner of
5 Ronald Avenue and Tully Road before driving away.

6 B. Federal Habeas Evidentiary Hearing

7 1. Motions in Limine

8 On January 24, 2012, the federal habeas evidentiary hearing commenced. After hearing
9 argument from both parties, the federal magistrate judge, Judge Seng, concluded that the transcript
10 from the interview of Judith Miller, a previous tenant of Souliotes' whose home suffered smoke damage
11 while renting from Souliotes, would be excluded because it was inadmissible to show that Souliotes'
12 had a motive to set fire to 1319 Ronald Avenue.

13 2. Expert Witness Testimony

14 Steven Carman was the first witness called by Souliotes.⁷ In his opinion, the Modesto Fire
15 Department's determination that the fire at 1319 Ronald Avenue was caused by arson was based on
16 indicators now known not to be indicators of arson. After reviewing the report, Carman noted that
17 Reuscher and Evers based their opinion on a laundry list of outdated factors that had been widely
18 discounted as indicators of arson. In 1992, a document known as the National Fire Protection
19 Administration or Association's NFPA 921 was released. This document marked the transition from the
20 outdated mode of fire investigation and has been updated every three or four years since then.

21 Carman opined that possible accidental causes were not thoroughly investigated. One of the
22 difficulties with the 1319 Ronald Avenue fire is that the record was insufficient to be able to eliminate
23 certain possibilities. Although Reuscher and Evers testified that they had eliminated all accidental
24 causes, a closer examination showed that their review was not adequate. Furthermore, it appeared
25 based on the trial testimony of Reuscher that he had concluded the fire was caused by arson before
26 starting the investigation.

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⁷ Because Carman also testified at the Penal Code section 4900 hearing, only highlights from his
testimony at this hearing are included.

1 According to Carman, there were five potential accidental causes of the fire: the water heater,
2 the washer and dryer, electrical failure, the stove, and the refrigerator.

3 Carman opined that although the water heater was a possible source of an accidental fire, it
4 was not adequately investigated. In fact, little to no information regarding the water heater was placed
5 in the initial reports. Carman explained that there are several ways a water heater can fail. A gas
6 burning water heater has a flue stack that comes out of the top of it. It appeared from a photograph
7 taken at the fire scene that the flue stack had fallen off the water heater. If an incident prior to the fire
8 had caused an obstruction in the stack, the hot exhaust gases that would normally rise through the
9 stack and out the vent at the roof would become plugged or inhibited. If that happened, a gas water
10 heater could fail if the gases start to back up, causing the flames from the burner to spread outside of
11 the burner chamber. Flames could come from the bottom of the unit as well.

12 At 1319 Ronald Avenue, the area above the water heater is close to the highest part of the
13 ceiling. If the water heater had failed, the gases from the heater would have collected at the highest
14 part of the ceiling. These gases could have become hot enough to ignite the underside of the roof
15 structure.

16 There were various mechanisms by which the fire could have traveled into the house from the
17 water heater.

18 In Carman's opinion, it appeared from the report that the washer and dryer were inadequately
19 investigated. For example, Carman found no reference to the make or model of the washer and dryer.
20 It is unknown whether the washing machine or dryer had clothes in them.

21 Regarding the washer, if any of the electrical controls failed and the washer caught on fire, the
22 fire would extend far from the washer, unless it had a plastic clothes basket on it, or cardboard boxes,
23 which could ignite.

24 The dryer is inherently a heating unit, it is unclear whether the dryer at 1319 Ronald Avenue
25 was a gas dryer or an electric dryer. In either case, there could be an electrical failure. If there are
26 combustible materials nearby, they could be ignited from a smaller fire in the dryer.

27 The fire could have been caused by an electrical fire. Carman noted that in 1997 it was
28 common for investigators to look at a fuse panel and eliminate it if it was not an obvious cause of the
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1 fire. From his review of the initial fire investigation report, it appeared the investigators eliminated
2 electrical causes by simply looking at a device to see whether it was readily apparent that the fire
3 started there.

4 Carman stated that according to the trial transcript, the defense fire expert recorded various
5 fuse panels in the house. One fuse box was located in the living room, which had four fuses in it. In
6 one of the photographs, it was clear that the top of two fuses had failed by either taking too much heat
7 or too much electrical charge. These fuses, however, did not appear to have ever been unscrewed
8 from their sockets during the earlier investigations, and there was no mention of the fuses in reports.

9 On cross-examination, Carman opined that, at this point, the record was insufficient for anyone
10 to determine the cause and origin of the fire.

11 Carman opined that if the fire had started in the living room he would have anticipated more
12 damage to the western part of the house, which was not nearly as extensive as the damage on the
13 eastern side of the house.

14 Carman believed that the fire progression occurred as follows: the fire started near the
15 separation wall in the garage, either in the water heater, or another appliance; it spread into the living
16 room on the underside of the roof through holes in the wall. However, if there was a failure in the door
17 or the door was open leading to the garage, hot gases could have passed into the living room from the
18 kitchen area. There was a fire in both the living room ceiling and in the room below.

19 The AG asked whether Carman was aware that firefighters went on top of the roof, above the
20 living room, to open the ventilation holes above the living room. Carman found this surprising because
21 it was not standard procedure, and because this would have been extremely dangerous considering the
22 room was in flashover.

23 The AG questioned Carman regarding John DeHaan's theory that there may have been multiple
24 points of origin. Carman opined that although this was a possibility, he did not agree that it is the only
25 possibility.

26 The AG questioned Carman about whether he believed possible motives should be considered
27 when investigating a fire scene. Carman opined that it is common practice to consider motives when
28 determining whether a fire was caused by arson. However, this creates an expectation bias that can
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1 interfere with an investigation. Coming to an investigation with a blank slate allows an investigator to
2 evaluate all evidence equally.

3 The AG queried whether the conclusion reached 15 years earlier was wrong just because the
4 cause or origin could not be determined. Carman stated he believes the conclusion was wrong if what
5 he read in Reuscher and Evers report was the only evidence pointing to arson.

6 John Lentini, fire investigator and chemist, testified that he was contacted by Souliotes' sister in
7 2005 and asked to retest the MPDs found on Souliotes' shoes and on the carpet in the living room.
8 Lentini found that the two were chemically distinguishable based on their molecular weight: the
9 molecular weight of the MPD on the shoes was higher than the material from the fire scene. According
10 to Lentini, this was problematic. When an MPD is exposed to fire, the molecular weight rises because
11 the lighter components of the mixture tend to evaporate more quickly than the heavier components.
12 Therefore, if the MPD from the fire scene had been heavier than the MPD on the shoes, he would have
13 been unable to eliminate the shoes as coming from the same place as the fire scene. However, since
14 the material on the shoes was heavier, it is impossible for the two MPDs to be the same material.

15 On cross-examination, the AG questioned Lentini regarding whether distinguishing substances
16 based on their molecular weight could have occurred prior to 2005. Lentini opined that although the
17 difference in molecular weight was known, until 2005, no one in the fire science community had
18 appreciated the significance of this data.

19 Dr. Jennifer Dysart, a psychology professor specializing in eyewitness identification, opined that
20 Sandoval's identification was problematic because there were significant impediments at the time of the
21 fire and her observations that significantly impaired her ability to accurately and correctly recall people
22 and information.⁸

23 On the second day of the evidentiary hearing, Carly Balletto, a witness hired to reenact the
24 scene Sandoval saw on the night of the fire, testified that Sandoval's balcony was virtually the same in
25 every way, aside from the color. Balletto did not wear glasses and has never needed to wear glasses.
26 The video was taken at nighttime, at around 7:30 p.m.

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28 ⁸ Dr. Dysart's opinion is substantially the same as her opinion at the Penal Code section 4900 hearing
29 and it is more fully summarized in the section below.

1 From this position, Balletto watched as a Winnebago drove the same path as the motor home
2 on the night of the question. She was extremely focused on the windshield. From this location, she
3 could not see the face of the driver, nor could she make out any of the driver's features from any of the
4 angles Sandoval claimed to have seen the driver's face.

5 On cross-examination, the AG questioned Balletto about the lighting on the night of the
6 reenactment. Balletto was on the balcony for a total of five hours while it was dark. Balletto did not
7 know whether she was viewing the Winnebago under the same lighting conditions as Sandoval did on
8 the night of the fire.

9 Dr. Thomas Streed, a behavioral scientist who has conducted in-service training for law
10 enforcement officers at the local, state, and federal levels, opined that field show ups are inherently
11 suggestive. In his opinion, law enforcement erred by taking Sandoval to identify the motor home a
12 second time, after she explicitly stated that Souliotes' Winnebago was not the same motor home she
13 saw on the night of the fire. According to Streed, the back of the motor home was the most identifying
14 portion of the motor home and she described this part of the motor home with great specificity.
15 Sandoval stated that she had seen a ladder on the back of the motor home. Souliotes' Winnebago
16 does not have a ladder. Sandoval stated there had been a white curtain in the rear window. Souliotes'
17 Winnebago does not have a curtain. Sandoval testified the motor home had a white license plate,
18 Souliotes' Winnebago has a blue license plate. Sandoval testified the motor home she saw did not
19 have a spare tire on the back. Souliotes' Winnebago had a spare tire.

20 Although Sandoval testified the driver of the motor home was wearing a blue-checkered
21 Pendleton, this shirt was not recovered after a search warrant specifically requested the seizure of this
22 item if found.

23 David Shilling, a private fire investigator who investigated 1319 Ronald Avenue on behalf of
24 Souliotes' insurance carrier, described his investigation of the fire scene. Shilling arrived to the 1319
25 Ronald Avenue and entered the house through the garage. He examined distinct patterns on the floor
26 and checked electrical outlets. Shilling concluded that the pour patterns in the garage were indications
27 of the presence of flammable liquid. As he entered each room, he visually inspected electrical outlets
28 and other sources and did not see any accidental causes of fire.

1 Shilling testified that he examined the refrigerator, washer, dryer, water heater, and forced air
2 heater from the garage, as they lay in a large pile of debris the fire department removed from the
3 house. While Shilling specifically remembered examining the water heater, he could not recall if he
4 examined the washer and dryer. Other than the photograph of the debris in the pile (in which
5 appliances, if identifiable at all, were either partially or completely obscured by other rubble) and a
6 photograph of a wall heater in the house, there were no pictures of appliances in his report.

7 John DeHaan, a criminalist with over 40 years of experience in fire investigations, agreed that,
8 given the severe damage to the structure and limited investigation documentation, the cause and origin
9 of the fire could not now be determined. Believing it would have been difficult for the fire to spread
10 across the firewall separating the garage and the living room, DeHaan hypothesized that the fire may
11 have started at multiple points. Based on the original inspectors' investigation, DeHaan did not think
12 that the stove was a possible accidental cause of the fire. He also thought that the insurance company
13 investigator's evaluation of the water heater and electrical outlets satisfactorily eliminated them as
14 sources of ignition.⁹

15 **PENAL CODE 4900 HEARING**

16 A. Claimant's Position

17 1. Testimony of George Souliotes

18 Souliotes testified to the following in summary:

19 He did not set fire to 1319 Ronald Avenue. He went to trial with knowledge that he could be
20 sentenced to death if he was found guilty. After the second trial, Souliotes refused the plea deal offered
21 by the Office of the District Attorney because he is innocent. Souliotes served time in a Level 4 prison
22 for 16 and a half years and was ineligible for parole.

23 Souliotes was 26 years old when he came to the United States. He spoke very little English.
24 Soon after, he married and had three children. The house at 1319 Ronald Avenue was his first
25 property and he lived there for three years. Souliotes worked for Montgomery Ward until he was
26 injured in 1994. He was declared 63-percent disabled and underwent a series of surgeries due to his
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29 ⁹ John DeHaan's opinion will be discussed in further detail below.

1 injuries. According to his worker's compensation attorney, Souliotes was expected to receive a
2 settlement of between \$150,000.00 and \$200,000.00. Due to his injuries, in January 1997, Souliotes
3 was not working and was receiving workers' compensation and temporary social security. He had a
4 knee injury in 1988, a hip injury in 1993, and a work related automobile accident in 1994. In 1997, he
5 had surgery to treat his shoulder injury from the automobile accident; the surgeries could not be
6 completed at one time. Souliotes did ballroom dancing as a hobby. When asked by the AG whether
7 his injuries prevented him from dancing, Souliotes claimed that there are variations of ballroom dancing
8 and he did a milder form after he was injured.

9 In January 1995, Souliotes had a tenant named Miller in his Tully Road residence.¹⁰ When
10 asked whether he had performed work on her house, he testified he had not. When asked whether
11 there was a fire, he stated there was no fire but instead smoke damage. The fire department did not
12 put "one drop of water" on the house to extinguish a fire. The fire department determined an electrical
13 plug malfunctioned. Souliotes filed a claim with his insurance company for the repairs. Souliotes
14 completed the repairs on the home himself and was given the insurance money after the repairs had
15 been made. Souliotes had not served Miller a three-day pay or quit notice prior to the smoke damage.
16 He served the notice after the smoke damage because the house was uninhabitable and he needed to
17 complete the repairs.

18 By 1996, Souliotes owned three properties: 1319 Ronald Avenue and Pearl Street were rental
19 properties and he lived in the Tully residence. Souliotes remodeled, refinanced, and began to rent
20 1319 Ronald Avenue. For the Pearl property, Souliotes received \$600.00 per month in rental income.
21 Both the Tully Street and Pearl Avenue properties were zoned as commercial property. 1319 Ronald
22 Avenue was zoned as residential property and was not as valuable as the other two properties.
23 Souliotes received between \$20,000.00 and \$25,000.00 from the refinance of 1319 Ronald Avenue. At
24 the time of the fire, Souliotes had \$17,000.00 in cash in a checking account.

25 According to Souliotes, 1319 Ronald Avenue was approved as Section 8 Housing. Under
26 Section 8, the property must be inspected by the county. Once the property passes inspection, it may
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28 ¹⁰ This evidence was excluded at trial and at the federal habeas hearing. (1 RT 338-342; Federal
29 Habeas Evidentiary Hearing, p. 23.)

1 be rented to approved tenants under the guidelines, with their rent guaranteed by the county. The
2 county inspected 1319 Ronald Avenue every January. In January 1996, 1319 Ronald Avenue was
3 inspected to ensure that it was adequate and safe for residents. Section 8 found no defects in the
4 house except for the stove. All additions made on the home were also inspected by the building and
5 safety enforcement.

6 Souliotes began renting the property to the Jones family in April 1996. Jones testified in court
7 that after moving into 1319 Ronald Avenue, he repaired the stove himself. On November 4, 1996,
8 Jones told Souliotes he and his family would be vacating the premises. Souliotes requested that he
9 pay rent for November. Jones told Souliotes to take the rent from the deposit, to which Souliotes
10 replied that the deposit was not rent. Souliotes did not receive rent from the Jones family for November
11 or December of 1996. Souliotes filed an unlawful detainer against the Jones family for their failure to
12 pay rent. At the eviction hearing, Souliotes claimed to have voluntarily allowed the Jones family to
13 remain in the residence until after the New Year. The AG noted that the transcript from that proceeding
14 showed the judge ordered the family be allowed to stay until after the New Year. The eviction was
15 scheduled for early January, but due to a scrivener's error, the eviction was rescheduled for the
16 following week. When asked by the AG if he was upset that the eviction was delayed, Souliotes said
17 he was disappointed, but not upset.

18 On December 4, 1996, Souliotes listed 1319 Ronald Avenue for sale at \$90,000.00. There was
19 a prospective buyer, Earl Linam, who Souliotes told that if he could come up with a \$10,000.00 down
20 payment, Souliotes would co-sign on the loan. There was no written agreement between Linam and
21 Souliotes, however. Souliotes would hold the first mortgage, and then Linam would make the monthly
22 mortgage. Linam confirmed the existence of this oral agreement at trial.

23 On the night of the fire, Souliotes filled the tank of his Winnebago, changed the oil, and left it on
24 the street so that the oil would drip on the street rather than the concrete pad in his driveway. He was
25 going camping with his girlfriend the following morning. Souliotes paid \$8,000.00 for the Winnebago. It
26 was normally kept inside, behind the fence. On January 14, 1997, Souliotes' neighbors told law
27 enforcement the Winnebago was parked on the street the night of the fire at 11:30 p.m.
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1 In the early morning of January 15, 1997, law enforcement told Souliotes about the fire.
2 Souliotes was identified as the owner of the home and showed the officers the unlawful detainer action.
3 He also told law enforcement about his camping trip. Law enforcement touched the engine of the
4 Winnebago; it was cold. Souliotes contacted his insurance company that day. The entire time he
5 owned the home, he never changed the terms of the insurance, even though the home's value had
6 increased. Law enforcement found a piece of paper in Souliotes' home. The paper was handwritten by
7 Souliotes' girlfriend and was a list of questions regarding surrendering 1319 Ronald Avenue to the bank
8 or transferring it to his children.

9 Souliotes took a polygraph examination in 2002. According to the polygraph test, Souliotes
10 truthfully answered "no" when asked whether he started the fire at 1319 Ronald Avenue. He truthfully
11 answered "no" when asked whether he caused the fire to be started at 1319 Ronald Avenue.

12 Souliotes was released from prison in 2013, at age 73. He decided he could not afford a third
13 trial. He was offered four deals, and he chose the only plea that would allow him to be released without
14 admitting any direct participation: failure to maintain a smoke alarm. However, according to Souliotes,
15 it was untrue that he negligently maintained smoke alarms. Section 8 would not have allowed him to
16 rent the property without functioning smoke alarms.

17 Souliotes did not testify at either trial.

18 2. Testimony of Scott Spertzel, CPA

19 Scott Spertzel (Spertzel), a certified fraud examiner who holds a certificate in financial forensics,
20 testified to the following in summary:

21 He has 20 years of experience as a consultant and specializes in forensic accounting where the
22 intended use of his work is litigation. Spertzel testified on behalf of Souliotes in his habeas hearing
23 before a federal magistrate judge. The AG stipulated to his qualifications as an expert.

24 Spertzel was asked to assess Souliotes' financial position around the time of the fire. Based on
25 his analysis, Souliotes was in a strong financial position at the time of the fire, with a net worth of
26 \$210,000.00.¹¹

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29 ¹¹ According to Spertzel, net worth is defined as the difference between assets and the amounts owed.

1 On the night of the fire, Souliotes had \$17,000.00 in cash reserves. Souliotes' total projected
2 monthly expenses were \$2,234.00. Souliotes paid off his credit card bills every month. According to
3 Spertzel, if Souliotes received no income from workers' compensation, rental income, or social security,
4 his cash reserves would have covered all of his expenses for eight months. If Souliotes continued to
5 receive workers' compensation and social security, and had no rental or interest income from anywhere
6 else, he would have been able to cover all of his recurring monthly debt, only occasionally touching his
7 cash reserves. The remaining \$17,000.00 in cash reserves could be used over a significant amount of
8 time to cover any other expenses Souliotes may have had. Souliotes also had \$33,000.00 in an
9 Individual Retirement Account that was accessible, although he may have incurred a penalty to
10 withdraw it. It appeared Souliotes was conservative in his investments, not under any financial distress,
11 and living within his means.

12 Spertzel agreed with the federal magistrate judge at the habeas evidentiary hearing who
13 concluded Souliotes would not have benefitted from destroying the property, he would have benefitted
14 from selling it. The insurance company would have had two options: (1) pay for the building to be
15 repaired; or (2) make a cash payment to Souliotes reduced to reflect depreciation of the building. The
16 home at 1319 Ronald Avenue was 30 years old. The insurance company offered \$50,000.00 which
17 was \$20,000.00 less than the amount owed on the mortgage. The insured person would elect which
18 option of two to select.

19 The federal magistrate judge also found that there was no financial rationale for destroying the
20 house and that Souliotes was in a "relatively comfortable" financial position. Spertzel assessed the
21 financial benefit of committing arson; he concluded that it did not appear Souliotes would significantly
22 financially benefit from the fire. The financial harm that came as a result of the fire was between
23 \$500,000.000 and \$800,000.00. The properties at Pearl Street and Ronald Avenue were producing
24 consistent rental income, and Tully Road was Souliotes' primary residence. Souliotes planned to rent
25 the Tully Road house and move in with his girlfriend in Pleasanton. Souliotes continued to pay the
26 mortgage on Ronald Avenue even after it burned down, which showed his financial strength after the
27 fire.

1 In December 1996, Souliotes made a personal loan of \$30,000.00 in cash to a couple who
2 wanted to purchase a home (called the Petaluma loan). The net interest earned on the home was
3 payable \$287.50/monthly to Souliotes. Spertzel opined Souliotes' ability to make a \$30,000.00 loan
4 indicated the strength of his financial position at the time. This personal loan was considered a safe
5 investment and Souliotes was the first trust deed on the house—if there was a problem he would be the
6 first to recoup on the loan.

7 In 1997, 1319 Ronald Avenue was listed for sale at \$90,000.00. A former tenant (Earl Linam)
8 was interested in purchasing the property. Linam was interested in making a down payment to
9 Souliotes, and then he would make the payments to Souliotes, and Souliotes would pay the bank
10 (Souliotes would become the lender on behalf of Linam and first trust deed on the property). Under the
11 terms, Linam would become the owner of the property and would be responsible for taxes and
12 insurance. There was no written contract between Souliotes and Linam.

13 Souliotes would not have had difficulty selling 1319 Ronald Avenue; he successfully refinanced
14 Ronald Avenue for \$69,000.00 and received \$24,690.00. In 1991 and 1992, Ronald Avenue was
15 appraised at \$107,000. The Pearl Street and Tully Road properties were purchased for \$147,000.00
16 and were appraised in 1993 at \$185,000.00.

17 Spertzel was aware there was a pending workers' compensation lawsuit for which a large award
18 was expected. Spertzel did not consider the potential award when determining Souliotes' financial
19 fitness. Should Souliotes have received that lump sum amount, the monthly workers' compensation
20 payments would have ended.

21 On cross-examination, the AG questioned Spertzel as to why rent for Pearl Street property was
22 included in the potential income list. Spertzel responded that because the Pearl Street property had
23 been rented for \$600.00 before, this is the potential amount Souliotes could have rented it for in the
24 future. Spertzel considered Souliotes' potential income from a historical perspective, not based on one
25 moment in time.

26 In response to the AG's question about when the first interest payment on the Petaluma loan
27 was due (\$287.50), Spertzel said the payment was not due until February 1, 1997, 17 days after the
28 fire.

1 Regarding Michael Marks report at the habeas corpus evidentiary hearing, Spertzel noted that
2 Marks is not a CPA. Spertzel criticized the method Marks used because according to him, it was overly
3 narrow in scope and very focused on the January 15, 1997 time frame which could lead to inaccurate
4 results. The AG noted that Spertzel and Marks had approximately the same figure for Souliotes' net
5 worth. For the rental income, rent was included for 1319 Ronald Avenue, however, in November,
6 December, and January, no rent was paid. It was Spertzel's understanding that Jones owed money
7 only for December and January. In response to whether Spertzel had knowledge of who was paying
8 the mortgage at 1319 Ronald Avenue while Souliotes was incarcerated, Spertzel said the only logical
9 person would be Souliotes.

10 Regarding the workers' compensation payments Souliotes was receiving at the time of the fire,
11 the AG asked whether the total amount of compensation would be reduced once Souliotes' claim was
12 settled. Spertzel responded that he was not sure, therefore, he could not offer an opinion on this
13 question.

14 3. Testimony of Dr. Jennifer Dysart

15 a) Direct testimony

16 Dysart, a psychology professor at John Jay College of Criminal Justice for the City University of
17 New York, specializes in eyewitness identification. Dysart has been certified as an eyewitness expert
18 approximately 12 times. Dysart was retained by Souliotes to evaluate the accuracy and reliability of
19 Maria Sandoval's eyewitness identification of Souliotes and his Winnebago.

20 In Dysart's opinion, several factors caused high concern about the unreliability of Sandoval's
21 testimony, including:

- 22 • The distance from which Sandoval claimed to have viewed the suspect;
- 23 • The short length of time she was exposed to the suspect's face;
- 24 • The fact that the opportunity to view the suspect occurred at night;
- 25 • The number of trees obstructing her view to the street; and
- 26 • The fact that Sandoval rejected the initial identification of Souliotes, stating she did not
27 recognize anyone she saw in the photo array. Still, Sandoval was permitted to make an
28 in court identification of Souliotes, which was her first positive identification of him.

1 Dysart discussed research conducted by Professor Geoffrey Loftus¹² and his colleagues which
2 examined the effects of distance on a person's ability to view the details of a person's face.¹³¹⁴ The
3 distance between Sandoval's balcony and 1319 Ronald Avenue was 381 feet, 21 feet longer than a
4 football field. The distance between Sandoval's balcony and Ronald Avenue where the suspect was
5 driving is 120 feet. From that distance, it would be nearly impossible to see a face. According to
6 Sandoval's testimony, she was unable to determine whether the person she saw driving the Winnebago
7 was male or female.

8 Dysart offered her opinion as to Sandoval's testimony at the preliminary hearing, and two trials.
9 At the beginning of the preliminary hearing, Sandoval testified she could not tell whether the person had
10 facial hair or glasses, nor could she determine his or her hair length or color. The court took a brief
11 recess, when Sandoval resumed her testimony she gave a full, detailed description of the suspect.
12 This was the first time she was able to describe the face of the suspect. This in court testimony
13 contradicted Sandoval's statements the day after the fire. In fact, twelve hours after the fire, Sandoval
14 was shown a photo array, where she responded she could not identify anyone. According to experts in
15 eyewitness identification, the first identification is the most important. In this case, during the first
16 identification attempt, Sandoval rejected the photographs in the lineup. Dysart opined there is very little
17 difference between a photo array and live bodies.

18 Regarding the motor home identification, Sandoval initially identified six physical characteristics
19 about the motor home she saw on the night in question:

- 20 • It had a ladder;
- 21 • It had a window with a white curtain in the back;
- 22 • There was no written branding on the front of the RV;
- 23 • The license plate was white; and

24
25
26 ¹² Professor Loftus testified on behalf of Souliotes at his first trial. (Proposed Decision, p.21.)

27 ¹³ Although all exhibits presented by both parties were considered and given their proper weight, Dr.
28 Dysart's Exhibit M visually shows the effects of distance on a person's ability to view the details of a
29 person's face.

¹⁴ Souliotes Exhibit M, p. 0602.

- There was/was not a tire on the back of the motor home.¹⁵

In fact, there was no ladder on the back of Souliotes' motor home and there was no curtain. However, written across the front in large letters was the word "Winnebago." Sandoval explicitly stated that the motor home she saw that night did not have this type of branding. The license plate on Souliotes' Winnebago was navy blue and not white as Sandoval had described. In addition, Souliotes' motor home had a prominent HV unit on the top. Sandoval made no mention of the HV unit. Nor did Sandoval mention the eight running lights along the top of the RV, or the tire on the back.

Dysart further testified that initially Sandoval rejected the Winnebago entirely. During the first motor home identification, the Winnebago was parked in the driveway with the front end facing the fence, therefore, Sandoval was unable to see the front or the sides. Dysart questioned if the front of the vehicle was the most memorable part of the motor home she saw on the night of the fire, why had law enforcement failed to show her the front of the motor home during the first identification. Sandoval decided at the initial show up that the Winnebago was not the same motor home because it had no ladder and the motor home she saw driving on Ronald Avenue had a ladder. After explicitly stating it was not the same motor home, law enforcement took her back to Souliotes' home and asked her to identify the same motor home. Dysart opined this was an extremely suggestive show up and research shows that confidence in a show-up or photo array identification should only be considered during the initial identification.¹⁶

Dysart speculated that Sandoval's sudden memory improvement could have been because prior to the fire, Sandoval was charged with stabbing her boyfriend. Shortly before the preliminary hearing where Sandoval made a full and detailed description of the perpetrator, her charges for the stabbing were dropped.

b) Cross-examination

On cross-examination, the AG elicited the following testimony:

¹⁵ Dysart was unclear whether Sandoval testified that there was or was not a tire on the back of the RV she saw on the day in question. According to the Reporter's Transcript, Sandoval initially stated she did not recall a spare tire.

¹⁶ The initial interview with Sandoval was tape recorded. The recording was lost before trial.

1 It is unusual for a witness to remember every detail of an event or person. However, even at a
2 distance of 100 yards away, a person's height can be estimated. The driver side of the motor home
3 seen by Sandoval on the night in question at its closest point was 15 yards¹⁷ away from Sandoval's
4 balcony. At this point, the driver's face would have been visible to Sandoval.

5 Regarding the photo array, Sandoval stated she would not be able to identify anyone. However,
6 a person cannot have an accurate recognition experience if there is no memory at all. Dysart found it
7 credible that Sandoval could not identify anyone because she did not get a good look at the driver's
8 face. For instance, if Sandoval's eyes were closed, she would not be able to identify anyone. Dysart
9 testified that Sandoval's inability to identify anyone in the photo array could be because she never saw
10 anyone: she never saw the face, and therefore, could not have an accurate recognition experience in
11 the absence of no memory at all. Dysart would not have expected Sandoval to have any memory of
12 the face, specifically because Sandoval said she did not think she would be able to identify anyone.
13 The AG then stated Sandoval may not have seen the perpetrators face at all. Memory is selective.
14 Dysart agreed that Sandoval may have remembered certain aspects of the events and not others.

15 c) Re-direct

16 On re-direct, Souliotes' counsel highlighted what he believed was the AG's concession that
17 Sandoval may not have seen the driver of the motor home's face at all, stating, "She didn't see his face,
18 so she was being truthful when she said she could not identify her [*sic*]." The evidence was that when
19 she pointed Souliotes out in court, she stated he had a similar build and similar height. Souliotes was
20 not asked to stand up in court to show his height and build.

21 4. Testimony of Robert P. Bieber

22 Robert Bieber (Bieber) is certified by the National Association of Fire and Explosion
23 Investigators as a fire and explosion investigator. His specializations include fire cause and origin
24 determination, fire/death scene examination, and arson for profit insurance fraud investigation. Bieber
25 was a firefighter in Contra Costa County, as well as a deputy coroner. Currently, Bieber is the director
26 of the Arson Research Project, a criminal justice research project hosted by the Constitutional Law
27 Center of Monterey College of Law. The purpose of the Arson Research Project is to examine the

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29 ¹⁷ 45 feet.

1 reliability of evidence used in arson prosecutions and to identify arson convictions that have relied on
2 unreliable evidence. The Arson Research Project conducts live-burn research to examine and
3 compare the fire patterns remaining after fires started in the presence of and in the absence of an
4 ignitable liquid.

5 Bieber's opinion was based on the following: (1) the fire investigation report and trial testimony
6 of fire investigators Tom Reuscher and Robert Evers and the accompanying documents in this case;
7 (2) numerous photographs and video recordings of the fire scene; (3) his interview of Robert Evers; (4)
8 the past and current curriculum of the National Fire Academy and the California State Fire Marshall's
9 office; (5) his own research as the director of the Arson Research Project; and (6) his own opinions and
10 conclusions after reviewing NFPA 921, and post-flashover research.

11 Bieber testified to the following in summary:

12 The broadest conclusion is that the methodologies and processes used by Reuscher and Evers
13 at the time of the Souliotes fire investigation that led them to a determination that an ignitable liquid was
14 used in the garage, kitchen, and living room, was based entirely on unreliable, outdated, and since
15 disproven methodologies. Fire investigators now recognize that the pour patterns and damage found in
16 homes like 1319 Ronald Avenue are created in any large fire of this type and there is no scientific basis
17 from which to draw a conclusion that an ignitable liquid was used. The presence of ignitable liquids or
18 liquid accelerant in an area cannot be determined in the absence of confirmatory laboratory results.

19 Reuscher and Evers believed there were several burn/fire indicators that strongly pointed to
20 arson. There were both pour patterns and burn patterns. Their impression was that the fire burned
21 particularly hot. Both the live fire research Bieber conducted, and other research conducted in the field,
22 have consistently shown that fires can start accidentally on common combustibles found in a home
23 without an ignitable liquid being used. Unfortunately, at the time the 1319 Ronald Avenue fire was
24 investigated, fire investigators strongly believed that a fire thought to have burned particularly hot
25 suggested the presence of an ignitable liquid. Similarly, if a burn pattern appeared on the floor it was
26 erroneously characterized as a pour pattern.

27 Bieber then explained the occurrences of "flashover" and full room involvement. Flashover
28 occurs when the temperature in a room fire rises so high that combustible items begin to burn, even at
29

1 floor level, and in areas of the room away from the fire's origin. This is the point where low burning and
2 burning objects throughout the room can create conflicting burn indicators and fire patterns that can
3 easily distort or mask the fire's true area of origin. Burn patterns found in various parts of the
4 compartment can be easily misinterpreted as "pour patterns" or other fire patterns that were previously
5 associated with the presence of an ignitable liquid. Once the fire reaches flashover or full-room
6 involvement, these items (furniture and other combustible items) create their own fire patterns that can
7 be easily confused with or attributed to the presence of an ignitable liquid. When the fire reaches full
8 room involvement, it is burning hot and burns hottest wherever ventilation allows it to burn. At this
9 point, the investigation becomes far more subjective because, in the majority of cases, where burn and
10 heat patterns occur has nothing to do with where the fire started.

11 a) Live fire research conducted by the Arson Research Project

12 The Arson Research Project built four burn structures, which are 14x14 rooms, outfitted with
13 sheetrock, windows, doors, furniture, and floor surfaces, similar to 1319 Ronald Avenue. An ignitable
14 liquid was used to start the fire in only one room. All four floor substrates were present in the rooms.
15 The rooms were allowed to burn from flashover into full room involvement. None of the rooms burned
16 as long as the 1319 Ronald Avenue fire.¹⁸¹⁹

17 1) Pour Patterns and Low Burning

18 Bieber found pour patterns in the one room in which an ignitable liquid was used, as well as the
19 three other rooms where no ignitable liquid was used. Bieber removed all 12 floors. He took the floor
20 samples to an annual fire investigation convention, where 45 certified fire investigators examined the
21 samples and made a determination as to whether an ignitable liquid was used on any of the floors.
22 Only one-third of the investigators stated they could not tell whether an ignitable liquid was used. Of
23 the remaining investigators who believed they could determine whether an ignitable liquid was used,
24 49.2 percent correctly identified the presence or absence of an ignitable liquid, and 50.1 percent
25 incorrectly identified the presence or absence of an ignitable liquid. In summary, the accuracy of the
26

27 ¹⁸ Although all exhibits presented by both parties were considered and given their proper weight, Mr.
28 Bieber's Exhibit J includes a chart and photographs of each burn cell used which is a useful visual aid
for laypersons who are not familiar with arson science.

29 ¹⁹ Souliotes Exhibit J, and the attachment to Exhibit J, Exhibit C.

1 certified fire investigators in determining whether an ignitable liquid was used based on pour patterns is
2 equal to that of a flip of a coin. In the present case, there was no support for Reuscher and Evers
3 conclusion that an ignitable liquid was present.

4 During the initial fire investigation, both Reuscher and Evers reviewed the fire patterns and burn
5 damage on the floors in the kitchen and living room. They found clusters of fire patterns on vinyl tiles,
6 carpet, and hardwood floors which to Reuscher and Evers were strong indicators of ignitable liquids.

7 Fire investigators now recognize that these types of indicators (burn damage) are created in any
8 post flashover fire because the heat of the fire causes burn damage which can be misidentified as
9 being caused by ignitable liquid when clearly it was not. Fire investigators have a strong attachment to
10 two specific indicators of the presence of an ignitable liquid: (1) pour patterns; and (2) holes burned
11 through the floor. Many still believe the presence of either one of these things indicates an ignitable
12 liquid was used. However, the indicators relied upon by Reuscher and Evers have been contradicted
13 by science as not being indicative of the presence of an ignitable liquid. Flashover can cause burn
14 holes and what may be characterized as pour patterns.

15 Regarding "low burning" fires, which were once considered to be indicative of ignitable liquid
16 being used, experts now know that temperatures in excess of 1200 degrees Fahrenheit are common at
17 floor level during flashover, with temperatures spiking above 1500 degrees in areas of greater
18 ventilation. These high temperatures create burn damage throughout the room, from floor to ceiling,
19 including low burning and heat damage to floor surfaces resulting in irregularly shaped fire patterns and
20 deep charring to hardwood flooring.

21 During live burn experiments at the Arson Research Project, irregularly shaped fire patterns on
22 the floor and deep burn damage to baseboards and furniture at floor level were observed in every burn
23 cell, regardless of the presence of a flammable liquid.

24 2) Snap-On ACT 8800 Combustible Gas Detector

25 Fire Investigators Reuscher and Evers used a Snap-On, ACT 8800 Combustible Gas Detector
26 to support their conclusion that liquid accelerant was present at the fire scene. Reuscher and Evers
27 believed that the hydrocarbon detector would alert when they were close to an ignitable liquid like
28 gasoline. This technique has a high rate of false positives because the machine is not designed to be
29

1 taken into fire scenes to search for ignitable liquids; rather the device is typically used when joints are
2 braised on a gas line and it is necessary to determine whether there is a leak.

3 Bieber conducted his own research using the TIF 8800.²⁰ According to Bieber's report, the TIF
4 8800 owner's manual does not include fire scene examination in its list of applications; in fact, the
5 owner's manual describes the detector's purpose as a "general purpose combustible gas detector, that
6 may be used on gas lines, pipes, fuel in marine bilges, exhaust and fuel leaks, liquid gas or fire heating
7 systems, propane filling stations and to check manholes for safety."

8 Two days prior to his experiment with the TIF 8800, Bieber conducted an experiment with four
9 burn cells. Burn Cell #1 had hardwood flooring, and carpet and pad, and did not contain any flammable
10 liquid. Burn Cell #2 had plywood, carpet with padding, vinyl tile, and hardwood floor, and had been
11 ignited with an ignitable liquid. Burn Cell #3 had plywood with carpet and carpet with padding, and did
12 not contain any ignitable liquid. Burn Cell #4 had carpet padding and vinyl tile, and did not contain any
13 ignitable liquid.

14 Two days after live burn tests were conducted, Bieber returned to the scene with a brand new
15 TIF 8800. He calibrated the device in a non-contaminated atmosphere. Once it was calibrated, he
16 adjusted the sensitivity knob to its highest level. He took it to Burn Cell #4 with no ignitable liquid and
17 placed the detector near the burned debris of a couch and vinyl tile. The TIF 8800 immediately alerted.
18 He then reduced the sensitivity level to moderate. The detector alerted when it was near the vinyl
19 flooring, even though there was no ignitable liquid used in that room.

20 In Burn Cell #3, the detector began alerting as soon as he walked in, although there was no
21 ignitable liquid in this cell.

22 In Burn Cell #2, ignitable liquid was used and the detector alerted as soon as he entered the
23 burn cell. The detector alerted when he came closer to the ignitable liquid, but also alerted with equal
24 strength to plastic and burned debris and carpet, where there was no ignitable liquid.

27 ²⁰ At the time of the Souliotes fire, the detector was manufactured by TIF Inc. for the Snap-On
28 Corporation. TIF continues to manufacture the detector, which is now called the TIF 8800 Combustible
29 Gas Detector.

1 In Burn Cell #1, the detector was adjusted to high sensitivity and alerted on burned carpet and
2 padding. However, no ignitable liquid was used in this room.

3 Then the TIF 8800 was brought into any post-flashover burn cells. The audible rate of clicking
4 began to increase, even before getting close to any fire debris. The TIF 8800 alerted to nearly all
5 burned objects, including area where no liquid accelerant was present. Alerts were particularly high
6 when the probe was placed near burned debris of carpet and padding, but the TIF 800 also alerted on
7 fire debris consisting of melted plastic, sofa cushions, vinyl tile, and hardwood floors.²¹

8 b) Domain irrelevant factors

9 Domain irrelevant factors are pieces of outside information that have nothing to do with the
10 investigator's determination of origin, cause or development of the fire, which should be the goal of fire
11 investigations. Often during an arson investigation, forensic examiners may be exposed to domain
12 irrelevant information, which creates an environment where the forensic examiner is exposed to
13 information that is irrelevant in finding the cause of a fire. Exposure to this type of information is
14 impactful on the examiner and influences their downstream conclusions.

15 Souliotes' case is a glaring example of this type of interaction between domain irrelevant and
16 relevant information. When fire investigator Reuscher arrived on the scene before entering the home,
17 he noticed a for sale sign on the property. Although it was in the middle of the night, Reuscher called
18 his brother-in-law who was a real estate agent to ask whether there had been any offers on the home.
19 This approach began to build an expectation for the examiner about what they were about to see. It
20 had nothing to do with origin, cause, or development of the fire. It promoted a lack of objectivity.

21 Reuscher also knew there was an eyewitness who believed there had been a suspicious person
22 in the area. At the end of the interview and before ever going into the fire scene and performing his fire
23 examination, Reuscher had begun to build an expectation that this was an intentionally set fire,
24 someone used an ignitable liquid because of other supporting domain irrelevant information that the
25 suspect was Souliotes.

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29 ²¹ Souliotes Exhibit J, Expert Report of R. Paul Bieber, p. 0483; Souliotes Exhibit J, Expert Report of R. Paul Bieber, and attachments to Exhibit J, Exhibit B and C.

1 Reuscher is the person who requested that officers drive by Souliotes house to see if there was
2 a similar vehicle. This type of information produces an expectation in the mind of the investigator.
3 Before examining evidence, the examiner already knows his answer to the question before him. Not all
4 interviews are domain irrelevant; for instance, rescue efforts may be domain relevant.

5 c) Reuscher's changing theory

6 Reuscher's first theory was that someone entered 1319 Ronald Avenue through the garage
7 door and poured gasoline in the living room, kitchen, garage, and then ignited the fire from the garage,
8 exiting out of the side garage door. One suspicion was that because Souliotes was the landlord, he
9 would have access to the keys of that back door. Reuscher later found that his first theory was not
10 supported by evidence because the door he believed was used to gain access to the house was
11 blocked by a 2x4 on the inside of the door, therefore, even someone with keys could not open the door.
12 Reuscher's theory of entry then shifted.

13 Reuscher's second theory was that someone removed the sliding door from its tracks, entered
14 the home and poured gasoline, and then replaced the sliding glass door. After the fire, the sliding glass
15 door was found in place in the locked position. Reuscher continued to believe the fire was started in
16 the garage, and opined that someone reached their hand through the cat door and ignited the fire.
17 Bieber stated that this theory did not make sense because a sliding glass door could not be removed
18 from its tracks as easily as was described by Reuscher, and it certainly could not be done quietly.

19 d) Arson exonerations and common errors

20 In a minority of cases, arson is proven and the wrong person is convicted. In two-thirds of
21 cases, the fire was accidental but was misidentified as arson. The eventual exoneration had to show
22 the errors that occurred were not identifying the wrong person but believing a crime occurred when
23 none had. Amongst the two-thirds of cases misidentified as arson, the evidence presented a
24 combination of pour patterns, melted aluminum, and holes in the floor that the investigator believed
25 showed the presence of an ignitable liquid. This is the most common combination of unreliable and
26 misguided forensic methodologies that leads to error because full room involvement creates all of the
27 burn patterns and characteristics that are easily misidentified as the presence of an ignitable liquid.
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29

1 Bieber found that the Souliotes case was consistent with the cases where a fire was misidentified as
2 intentional based on the factors identified.

3 e) Multiple points of origin

4 The theory of multiple points of origin was not mentioned by the original investigators in either
5 their reports or testimony. It was never reviewed as a factor. Under NFPA 921, separate multiple
6 areas of origin are a reasonable conclusion when the areas of origin are truly separate and distinct and
7 not connected by other burn damage which could be the result of single fire growing and causing burn
8 damage because of flashover and full room involvement pattern could be easily identified as multiple
9 areas of origin. There was no fire scene evidence at 1319 Ronald Avenue that supported a conclusion
10 that there were multiple areas of origin.

11 f) Cross-examination

12 On cross-examination, the following testimony was elicited from Bieber in summary:

13 The live burn projects he conducts are partially funded by the San Mateo Public Defender's
14 Office, private law firms, and volunteer labor. He has testified seven times as an expert and all seven
15 were for the defense. Furthermore, while Bieber disagreed with the methodologies used by Reuscher
16 and Evers, he admitted they were common practice amongst investigators at that time.

17 Although it was improper to conclude that ignitable liquid was used, he cannot say it was not
18 used. Nor could he determine how the fire started.

19 5. Testimony of Steven Carman

20 Carman began his career as a special investigator with the United States Bureau of Alcohol,
21 Tobacco, and Firearms (ATF) and maintained the position for 20 years. He was later certified by the
22 ATF as a Fire Investigator and spent the next 15 years in that primary job description. As a fire
23 investigator, Carman served for almost 10 years as a member of ATF's elite National Response Team,
24 the team tasked with investigating some of the largest and most complex fires in the ATF's jurisdiction.

25 Carman has received over 3,500 hours of specialized training in general criminal investigation,
26 interviewing, and fire and explosion science, technology and investigation. Since retiring, Carman has
27 been the owner and principal investigator of Carman & Associates Fire Investigation. In that position,
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1 he has provided expert witness and investigative services on behalf of insurance companies, law firms,
2 product manufacturers, and the Department of Justice.

3 Carman testified to the following in summary:

4 His primary task was to determine where a fire originated and identify causal factors contributing
5 to the fire. In his opinion, there was no scientific basis to support a finding that the 1319 Ronald
6 Avenue fire was intentionally started. He offered the same opinion at Souliotes' habeas corpus
7 evidentiary hearing.

8 The origin of the fire cannot be determined and the possibility that the fire was accidental was
9 not thoroughly investigated. Over the last 20 years, fire investigation and arson science has advanced
10 tremendously. It was common practice, in the past, to look at the face of an outlet and if there was no
11 sign of a major failure at that outlet the investigator could then say the possibility of an electrical fire had
12 been eliminated. Investigators conducted a visual survey of the appliances in garage, water heater,
13 dryer, and because nothing jumped out at them they did not pursue this as a potential cause of the fire.

14 After reviewing the report, Carman did not believe that sufficient effort had been placed on
15 eliminating accidental causes. In fact, Carman found no documentation that Reuscher and Evers
16 investigated any accidental causes. For instance, Mrs. Jones was a known smoker, which could have
17 led to the fire.

18 When inspecting electrical appliances as a potential cause of fire origination, more than a visual
19 inspection must be conducted, which was what had occurred during the fire investigation of 1319
20 Ronald Avenue. Typically a forensic investigator will look for certain artifacts of damage, for example,
21 arcing on the wires which leave beads and pitting. Another cause of fire could be something called a
22 "high resistance connection" where a plug is extremely loose in an outlet. Because there must be a
23 solid connection between the blade and the outlet, failure to have this connection may cause a fire. In
24 order to see whether a fire was started because of a high resistance connection, one must take the
25 plug apart to see whether oxidation occurred. Investigators are supposed to collect it. This was not
26 done.

27 Carman agreed with Stipulation 4: ***The floor damage and burn patterns located inside the***
28 ***house and garage that the original investigators attributed to arson using a flammable liquid***

1 **appear to be the result of flashover burning and fall down from the roof collapsing, and are not**
2 **indicators of arson using a flammable liquid.** Carman believed there was sufficient fuel load to
3 sustain that level of burning. In fact, had an ignitable liquid been used its contribution to the fire would
4 have been minimal. For example, a chemical analysis on a gallon of gasoline would show that a sofa
5 has a higher amount of energy. Gasoline only speeds things up. If all the fuels present burn together,
6 the contribution from a flammable liquid will be minimal. Fuel is defined as anything that can burn or
7 oxidize.

8 Carman agreed with Stipulation 5: **Fires involving liquid accelerants do not burn at higher**
9 **temperatures than fires involving the use of a flammable liquid.** Regarding the type of fuel, as
10 long as that fuel is an organic fuel, meaning carbon based which is anything other than metals, it will
11 typically burn with a temperature within five-percent of each other. Fuel to burn is more dependent
12 upon the amount of oxygen pulled into the fire, than the presence of a flammable liquid.

13 Carman also agreed with stipulations 8, 9, and 10:

14 **Captain Reuscher used a “hydrocarbon detector” at the fire scene to search for the**
15 **possible presence of ignitable liquids. Captain Bruce Elliott of the Modesto Police**
16 **Department also used the detector to search Petitioner and his clothing for the possible**
17 **presence of ignitable liquids. The detector gave several positive alerts at the fire scene**
18 **and on Petitioner’s clothes and body.**

19 **Hydrocarbon detectors commonly deliver false positives and are intended to be used**
20 **only for presumptive testing to determine what items to collect and submit for laboratory**
21 **testing.**

22 **A positive reaction from a hydrocarbon detector is never reliable evidence of the**
23 **presence of a liquid accelerant without confirmatory lab results.**

24 Carman recalled the hydrocarbon detector alerted to both items in the house and Souliotes and his
25 clothing at the scene of the fire. Parties agreed that a hydrocarbon detector commonly delivers false
26 positives and are intended to only be used for presumptive testing to determine what/which items to
27 collect and submit for confirmatory lab testing. The hydrocarbon detector alerted to Souliotes’ shoes,
28 but there was no confirmation that there were matches of anything found in the house to his shoes.

29 Carman further agreed with stipulations 11-15:

30 **Of the samples collected from the fire scene for laboratory testing, two tested positive for**
31 **the presence of a medium petroleum distillate (MPD): Sample number 66, a piece of burnt**
32 **wood from a floorboard in the living room, and sample number 71, a piece of carpet from**
33 **the living room.**

1 ***A pair of black shoes belonging to the Petitioner samples number 16 and 17, tested***
2 ***positive for an MPD.***

3 ***The MPD on Petitioner's shoes is chemically distinguishable from the MPD found on the***
4 ***carpet samples taken from the fire scene, and the MPDs did not originate from a common***
5 ***source.***

6 ***Detectable MPDs are commonly found on many household products and consumer***
7 ***goods, including the solvents in glues and adhesives used in floor covering and***
8 ***footwear, residues of dry cleaning solvents, insecticides and cleaning agents.***

9 ***Souliotes did not become aware of the new MPD testing methods until September 21,***
10 ***2005, when John Lentini sent a letter setting forth his new findings based on his use of***
11 ***the new MPD testing methods.***

12 Carman opined that the MPDs found on Souliotes' shoes and the MPDs found on items in 1319 Ronald
13 Avenue did not come from the same source. MPDs are found in glues and adhesives used in floor
14 coverings and footwear, residue of dry cleaning solvents, insecticides, and cleaning agents. The larger
15 classification of these chemicals is petroleum distillates, which are classified as either light or medium.
16 Both forms are very common and a lot of consumer goods are composed of them.

17 Reuscher and Evers testified that the fire was extremely hot, beyond the condition of a normal
18 fire, which suggested that liquid accelerants were used to ignite the fire. Carman disagreed with the
19 contention that the fire was incredibly or abnormally hot: fires are hot. Only fires that utilize metal
20 (such as fireworks or a welding torch), can be classified as "unusually hot." A fully involved room can
21 reach the highest level of burning of organic fuels, and 1319 Ronald Avenue had transitioned from
22 flashover to full-room involvement. The fire was huge and Carman did not doubt that it felt hotter
23 because there was a tremendous amount of heat being released. The temperature of the fire,
24 however, was the same as the temperature of one candle. When people say a fire is really hot they are
25 describing how their senses are reacting to how much energy is being given off and how much reached
26 them.

27 Reuscher and Evers found that because there was a lack of fuel in the garage, in the house,
28 ignitable liquids must have been used to start the fire. Carman disagreed. He understood that the
29 Jones family was in the process of moving and had a large amount of personal items in the garage,
including wooden tables.

1 Reuscher and Evers determined that the charring of the wood in the house supported a finding
2 that the fire was unusually hot and therefore an accelerant was used. Carman disagreed. Charring on
3 wood occurs due to the length of time a fire burns. Charring is an indication of the amount of energy
4 exerted on wood. Wood can char without the use of an ignitable liquid or accelerant. Charring alone
5 does not support a finding that an ignitable liquid was used. The charring could be explained by full
6 room involvement which causes normal burning without the use of a liquid accelerant, in fact, a house
7 can go into full involvement regardless of whether the fire started by a match dropping in a trash can,
8 pouring gasoline across the floor, or an electrical failure in a wall.

9 Carman believed eyewitness accounts support a finding that full room involvement occurred at
10 1319 Ronald Avenue. Steven Hamilton said he saw flames emitting from the garage. The garage door
11 was either collapsed or partially down. When an entire room is on fire, there is a steady flame
12 extension out of the vents, doors and windows, indicating there was not enough air in the garage to
13 burn all the fuel/gas, so the flames escaped through the vents.

14 Souliotes' counsel questioned Carman regarding the AG's witness, John DeHaan's, conclusion
15 about the origin of the fire. Both Carman and DeHaan agree that it could not be determined that the fire
16 was or was not started by arson. However, DeHaan could not eliminate the possibility of multiple points
17 of origin. DeHaan saw certain indicators that led him to believe it was possible to have multiple origins.
18 Carman disagreed, believing there is a good explanation for the fires in both garage and the living room
19 which does not lead to a conclusion that this was a multiple-originated fire.

20 Looking at an aerial photograph of 1319 Ronald Avenue, Carman pointed out that the garage is
21 under the bigger hole and the living room is under the smaller hole. It was his opinion that the fire
22 started in the garage. As the heat rose, it burned through the roof, then over the top of the wall of the
23 living room. Hamilton's eyewitness testimony confirmed this possibility. Hamilton saw a little flame
24 coming out of the window. When he looked into the family room, it was as if the air started to burn.
25 According to Carman, what Hamilton was seeing is the overabundance of fuel gases beginning to
26 ignite. Hamilton was not sure if he could get by the family room because the garage was in full
27 involvement when he approached, but the living room was not yet in full involvement, which indicates
28 the fire started in the garage, and moved to the living room.

1 On cross-examination, the AG elicited the following testimony:

2 While Carman's overall opinion regarding the fire is that the origin of the fire is undetermined, he
3 opined that none of Reuscher or Evers hypotheses were supported by evidence. It is difficult to
4 determine, after flashover, whether a fire is arson because in a post flashover room the path of the fire
5 is masked by smoke, charring, and burn patterns.

6 On re-direct, Carman testified to the following in summary:

7 He believes the fire progressed from the garage to the living room. There was more damage on
8 the west side of the house than on the east side. It was not necessary for two fires to cause the
9 damage; one fire alone could cause this level of damage. Any fire in the garage naturally could have
10 led to the other fire in the living room, causing the evidence presented at trial. Had there been a
11 second fire in the living room, experts would anticipate, based on the general fuel load, there would be
12 more damage on the west side of the house than there was. If the fire had been a second fire, it would
13 have spread out and the damage would have been more uniform throughout the living room, bedroom,
14 bathroom, and attic than it was. It is more likely than not the fire started in the garage then spread to the
15 living room.

16 **B. Attorney General's Case**

17 The AG proffered one expert in support of its case against Souliotes. In both its pre-hearing
18 and post-hearing briefing, the AG referenced a previous instance where a fire occurred at one of
19 Souliotes' rental properties.

20 **1. Fire and Eviction of Pearl Street Tenant June Miller**

21 As of January 1995, claimant owned the residence at 1319 Ronald Avenue, which he had
22 purchased in November 1988, along with another nearby property in Modesto that included two
23 residences ("Pearl/Tully property"). The address of one of the houses on the Pearl/Tully property was
24 1302 Pearl Street.

25 During the investigation following the January 1997 fire at 1319 Ronald Avenue, the Modesto
26 Police discovered that there had been a fire at Souliotes' property at 1302 Pearl Street in January 1995.

1 At that time, Souliotes was renting the house to June Miller and her son.²² Detective Roger Lee
2 interviewed Miller on October 29, 1997. Miller reported that she rented the house on Pearl Street
3 beginning, possibly, in 1994.²³ While Miller lived in the Pearl Street home, Souliotes lived in the Tully
4 Street house, which was on the same parcel.

5 Miller told the detective that during her tenancy, Souliotes told her that he did not want her
6 grandson, who was visiting from out of town, to stay in her home, and he objected to other visitors who
7 came to her home. Souliotes told Miller that if visitors did not leave, he would evict her. She
8 experienced a lot of conflict with Souliotes, who also complained about her allowing a visitor to park a
9 car on the street in front of the house. Miller also reported that Souliotes came into her house without
10 her permission when she was not home.

11 The fire at 1302 Pearl Street occurred around midnight on January 31, 1995. Miller attempted
12 to call for help, but her phone had stopped working. When she stepped outside to go to Souliotes'
13 place to use his phone, she discovered he was already standing outside next to his house. Souliotes
14 tried to blame the fire on Miller. He said he suspected the fire was caused by a lamp with faulty wiring.
15 But the lamp Souliotes referred to did not have a plug and was never plugged in; and the fact he knew
16 of the lamp confirmed her suspicions that he had been in her home when she was not there. Miller told
17 Detective Lee that on occasion, she had seen Souliotes tinker around with wiring leading into the
18 residence. The repairman from the phone company told her the fire had damaged the phone's wiring.

19 A week before the fire, Souliotes had served Miller with a notice to quit the premises. Then the
20 morning after the fire, he presented Miller with another notice to quit the premises. The fire happened
21 the day the rent was due for the next month. Souliotes then commenced unlawful detainer proceedings
22 and eventually obtained a judgment against Miller on April 27, 1995.

23 Souliotes immediately filed a claim with his insurance agent the day of the fire. He wrote a note
24 asking who would be responsible to pay for a motel if the renters had to move out. He also asked to be
25

26 ²² The AG attempted to contact Miller during preparation for the federal habeas evidentiary hearing and
27 discovered Miller was deceased.

28 ²³ The documents included in the unlawful detainer proceedings include a lease stating her tenancy
29 began on July 1, 1993.

1 allowed do the repairs to the home himself, and provided a copy of a contractor's license issued in
2 1982.

3 2. Testimony of Dr. John DeHaan

4 DeHaan holds a Bachelor's of Science in Physics and a PhD in Forensic Science with a fire
5 specialty. He has been a criminalist for 46 years, with 29 years in law enforcement. He is a member of
6 Texas Forensic Science Commission. He testifies for the defense and prosecution. He testified at
7 Souliotes federal evidentiary hearing. He found no identifiable accidental causes of the fire.

8 DeHaan testified to the following in summary:

9 The source of the fire is undetermined because based on the available documentation he could
10 identify no accidental mechanisms by which a fire was started in any of the possible area of the
11 structure.

12 Based on the possible dynamics of fire spread in that structure, he could not find an accidental
13 means by which a fire that originated in the garage, could cause the damage it did in the living room,
14 and be visible to Hamilton. When Hamilton reached the back of the house, the living room was in full
15 involvement.

16 DeHaan reviewed Exhibit 61, an aerial photograph of 1319 Ronald Avenue.²⁴²⁵ Penetration
17 through the roof is a useful indicator of an area of origin. The house was comprised of a wood frame,
18 with a stucco exterior and a wood framed roof. The garage area, as far as could be determined, had an
19 open wood frame, with wood joists. Based on the composition of the structure of the garage, a fire
20 starting in the garage would rapidly extend up into the unprotected underside of the roof and cause a
21 fairly rapid collapse of the roof.

22 The living room was finished with gypsum walls and ceilings. Starting a large sustained fire in
23 the living room could eventually cause the ceiling to collapse, however, a fire starting in the living room
24 would take longer to collapse the roof in the living room because a gypsum wallboard ceiling takes 15
25 or 20 minutes of a sustained fire underneath it before it will collapse. In this case, the presence of the
26 gypsum board changed the time frame for the fire in that compartment to develop, which must be a part

27 _____
28 ²⁴ Although all exhibits presented by both parties were considered and given their proper weight, the
Attorney General's Exhibit 61 provides an aerial view of 1319 Ronald Avenue after the fire occurred.

29 ²⁵ Attorney General, Exhibit 61.

1 of the consideration in the determination of where the fire originated and whether there are multiple
2 origins.

3 The fire wall was placed in the garage to stop the fire from going into the house. The wall
4 appeared to be intact and limited the ways in which the fire could have spread between the
5 compartments. If the door to the garage was open, the fire could have spread through the kitchen.

6 DeHaan addressed Steven Carman's theory that the fire started in the garage and advanced in
7 the space above the garage. In most homes, the only fire wall is in the attic between the garage and
8 the living space. If the fire wall is compromised by cutting a hole for ventilation, the fire could pass into
9 the attic, which is composed of open wood. Hot gases or flames extending through this opening would
10 cause the fire to spread throughout the attic space and burning all the structural elements of the roof
11 and the joists for the rooms below. When this happens, the exposed underside of the plywood
12 sheathing for the roof fails very quickly. The joists burn to the point they are no longer supporting the
13 ceiling. Based on this theory, however, the ceiling would have fallen into the room below. That
14 generally produces minimal fire because now everything is venting up and there is no hot gas layer to
15 force fire growth in the living room. The landmark characteristic of attic fires is that there is virtually no
16 damage to the furnishings of contents of the room because of the non-combustible gypsum ceiling that
17 has flattened everything in the room and cut off fire development, but that was not visible in this case.
18 The fire damage recorded in the investigation photography showed enormous combustion of the
19 furnishings and the contents of the living room, which means the roof did not fall, reducing the likelihood
20 of an attic fire.

21 DeHaan opined the theory offered by Carman was incompatible with Hamilton's eyewitness
22 observations at the scene of the fire. Hamilton looked through the sliding glass door and saw
23 furnishings and fabric on the couch. For Hamilton to have seen the plume of flames, the ceiling would
24 have had to remain in contact and not collapsed, which is what happens in most cases when the fire is
25 in the ceiling. Furthermore, DeHaan questioned: if the fire had occurred in the attic, why would it have
26 stopped at the living room and not traveled further into the spaces above the bedrooms?

27 The medium petroleum distillates that were found were tested and found negative. MPDs are
28 not widely used in consumer products. The only household products containing MPDs are insecticides.

1 On cross-examination, Souliotes' counsel elicited the following testimony. Hamilton could see
2 items low in the living room, which means the ceiling had not failed through the attic fire.

3 Regarding MPDs, DeHaan stated the forensic analyst never said the MPDs found on site and
4 on Souliotes' shoes came from the same origin. DeHaan could not identify an accidental cause that
5 would cause a fire in both locations.

6 Souliotes' counsel then presented evidence that DeHaan had been expelled from the Academy
7 of Forensic Sciences because of the expert opinions he offered in *State v. Gutweiler*,²⁶ where the
8 defendant was charged with capital murder for the death of her three children from a fire. DeHaan was
9 retained by the District Attorney in the case. According to DeHaan, the District Attorney gave him
10 secret grand jury testimony, which enabled him to have a complete understanding of the fuel load
11 (furnishings) of the house, so he could render an opinion to the grand jury as to the cause and origin of
12 the fire and answer their questions in that regard. As a result of the grand jury testimony, DeHaan
13 opined in *Gutweiler* that the fire was intentional and had multiple points of origin to a scientific certainty.

14 DeHaan was not given access to critical data on which his original determination was based.
15 The data was about fuel loads and the distribution of fuels within the structure. The Louisiana Supreme
16 Court took three years to decide that the information that DeHaan relied on was confidential grand jury
17 testimony that was erroneously given to DeHaan. Without this information, DeHaan was unable to
18 conclude the fire was caused by arson. Although expulsion was recommended, he resigned instead of
19 having to explain his rationale before a Board appeal hearing where he was only given 15 minutes to
20 present his case.

21 DETERMINATION OF ISSUES

22 A. There has been no prior finding of factual innocence in this case.

23 Souliotes contends that the findings by the district court amount to a finding of factual
24 innocence, which is binding on the Board. The Hearing Officer finds this argument unavailing. Under
25 *Schlup* "prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of
26 new evidence, 'it is more likely than not that no reasonable juror would have found petitioner guilty
27 beyond a reasonable doubt.'" (*Schlup v. Delo* (1995) 513 U.S. 298, 327.) It is Souliotes' contention
28

29 ²⁶ *State v. Gutweiler* (2008) 979 So.2d 469.

1 that because he satisfied the requirements under *Schlup* this finding should be binding on the Board
2 under Penal Code section 1485.55, subdivision (b)²⁷ and 4903, subdivision (b).²⁸

3 A recent case, *Larsen v. Soto* (9th Cir. 2013) 742 F.3d 1083, provides guidance for the current
4 proceedings. In *Larsen*, the Ninth Circuit found that Larsen's counsel failed to produce several
5 potentially exculpatory witnesses who may have given credible testimony that someone other than
6 Larsen committed for which he was convicted and sentenced. (*Id.* at p. 1096.) The Ninth Circuit
7 concluded that Larsen's claim of innocence was at the core of the miscarriage of justice doctrine: it
8 generate[d] "sufficient doubt about the validity of his conviction to satisfy *Schlup* and permit
9 consideration of his constitutional claims. Then concluded that it is more likely than not that no
10 reasonable juror hearing all the evidence Larsen presented in federal court would vote to convict him
11 under the beyond-a-reasonable-doubt standard." (*Id.* at p. 1096.)

12 The Ninth Circuit affirmed that Larsen's evidence was more than sufficient to pass through the
13 *Schlup* gateway because it "cast[ed] doubt on the conviction by undercutting the reliability of the proof
14 of guilt, even if it does not affirmatively prove innocence." (*Larsen v. Soto, supra*, 742 F.3d. at p. 1099,
15 citing *Sistrunk v. Armenakis* (9th Cir. 2002) 292 F.3d 669, 673.) Larsen then filed a motion for finding of
16 innocence, requesting that the district court find by a preponderance of the evidence that Larsen was
17 actually innocent of the crime of possessing a dagger.

18 The district court declined to make such a finding. While it was true that Larsen had made a
19 sufficient showing of innocence to satisfy the actual innocence gateway set forth in *Schlup* that the
20 district court granted habeas corpus relief because of ineffective assistance from trial counsel, he was
21 found innocent "that is, the [c]ourt found [p]etitioner had demonstrated it was 'more likely than not that
22 no reasonable juror would have convicted him in light of the new evidence' he presented. Importantly,
23

24 ²⁷ If the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or
25 restrained on any ground other than new evidence that points unerringly to innocence or actual
26 innocence, the petitioner may move for a finding of innocence by a preponderance of the evidence that
27 the crime with which he or she was charged was either not committed at all or, if committed, was not
28 committed by him or her.

29 ²⁸ In a hearing before the Board, the factual findings and credibility determinations establishing the
court's basis for granting a writ of habeas corpus, a motion for new trial pursuant to Section 1473.6, or
an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on
the Attorney General, the factfinder, and the board.

1 in so holding, the court did not affirmatively conclude that Petitioner was actually innocent of
2 possessing a dagger.”

3 Similarly, in this case, the federal magistrate specifically declined to find Souliotes actually
4 innocent of arson, however, the petition was granted relief on claims two, three, and seven, and
5 Souliotes was granted provisional release on this basis. Souliotes did not prove his innocence in the
6 prior proceedings, therefore, he has not obtained a finding of factual innocence relieving him of his
7 burden. Because there were no findings under claims one, four and five, the facts associated with
8 these findings are not binding on the Board under Penal Code section 1485.55.

9 Consequently, it is determined California Code of Regulations section 641 et. seq. require
10 CalVCB to independently review the merits of Souliotes claim.

11 B. Souliotes has proven by a preponderance of the evidence that the crime with which he was
12 charged was either not committed at all, or if committed, was not committed by him.

13 Penal Code section 4903 establishes the requirements for a successful claim by individuals
14 alleging to have been imprisoned as a result of an erroneous conviction. In order to be successful on
15 such a claim, Souliotes must prove the following by a preponderance of the evidence:

16 (1) That the crime with which he was charged was either not committed at all, or, if
17 committed, was not committed by him; and

18 (2) That he sustained injury through his erroneous conviction and imprisonment.²⁹

19 Preponderance of the evidence” means evidence that has more convincing force than that opposed
20 to it.³⁰

21 In reaching its determination of the merits of the claim, the Board may consider Souliotes’
22 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
23 conviction on appeal, acquittal of Souliotes on retrial, or the failure of the prosecuting authority to retry
24 him for the crime. However, those factors will not be deemed sufficient evidence to warrant the
25 Board’s recommendation that Souliotes be indemnified in the absence of substantial independent

26 _____
27 ²⁹ Pen. Code, § 4903; *Diola v. Board of Control* (1982) 135 Cal. App. 3d 580, 588, fn. 7; *Tennison v.*
Victim Compensation and Government Claims Board (2006) 152 Cal. App. 4th 1164.

28 ³⁰ *People v. Miller* (1916) 171 Cal. 649, 652.
29

1 corroborating evidence he is innocent of the crime charged.³¹ The Board may also consider as
2 substantive evidence testimony of witnesses Souliotes had an opportunity to cross-examine and
3 evidence to which Souliotes had an opportunity to object, admitted in prior proceedings relating to
4 Souliotes and the crime with which he was charged. Finally, the Board may also consider any
5 information that it deems relevant to the issue before it.³²

6 1. Souliotes has shown that there is a preponderance of the evidence that the fire was not
7 caused by arson.

8 Souliotes was presented with the daunting task of, for the lack of a better word, disproving
9 arson by a preponderance of the evidence. This undertaking was especially difficult considering the
10 state of fire science at the time the fire was investigated. In view of the advances in fire science
11 which have debunked a significant number of the theories presented at trial which formed the basis of
12 Souliotes' conviction, there is insufficient evidence that the fire at 1319 Ronald Avenue was caused
13 by arson.

14 Reuscher and Evers found that the fire at 1319 Ronald Avenue burned unusually hot, which in
15 that era, suggested the presence of an ignitable liquid, and therefore arson. Science now reveals
16 that most fires burn within 5 percent of each other, meaning, all fires are roughly the same
17 temperature unless a metal is used, such as in fireworks and welding torches. Insufficient evidence
18 was found showing that this fire was unusually hot. The fire was large, which could explain the
19 unusually hot sensation experience by Hamilton and firefighters.

20 Reuscher and Evers used a Snap-On ACT 8800 Combustible Gas Detector to support their
21 conclusion that liquid accelerant was present at the fire scene. The owner's manual for the device
22 describes the detector as a "general purpose combustible gas detector, that may be used on gas
23 lines, pipes, fuel in marine bilges, exhaust and fuel leaks, liquid gas or fire heating systems, propane
24 filling stations and to check manholes for safety." The purpose of the device is not to confirm the
25 presence of an ignitable liquid. In fact, both parties agree that hydrocarbon detectors deliver false
26

27 ³¹ Cal. Code Regs., tit. 2, § 641.

28 ³² Cal. Code Regs., tit. 2, § 641.

1 positives, as stipulated and shown by Paul Bieber's experiments at the Arson Research Project.
2 Indeed, during Bieber's experiments, the hydrocarbon detector alerted moderately, high, or very high,
3 regardless of whether an ignitable liquid was used. At the time of the initial fire investigation,
4 however, the hydrocarbon detector's alerts to Souliotes clothes and motor home formed part of the
5 basis for his arrest warrant.

6 Reuscher and Evers mistakenly concluded that the burn patterns and holes in the flooring, as
7 well as the charring on the walls, point to the use of an ignitable liquid. In fact, both parties have
8 stipulated that deep burning, burn patterns, and charring are not indicators of arson using an ignitable
9 liquid. Absent corroborating evidence, burn patterns alone are not evidence of the use of an ignitable
10 liquid. Bieber's experiments show that post-flashover burning causes deep charring both in the
11 presence and in the absence of a flammable liquid.

12 DeHaan presented an alternate theory of the cause of the fire, opining that it was possible that
13 the fire was multi-originated. This theory was not offered at trial; instead all parties believed the fire
14 originated in the garage, whether caused by arson or not.

15 Under Penal Code section 451, a person is guilty of arson when he or she willfully and
16 maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the
17 burning of, any structure, forest land, or property. Because the theories leading to Souliotes'
18 conviction at trial are not supported by scientific evidence, there is insufficient evidence at this
19 juncture, to find that he committed arson by a preponderance of the evidence.

20 2. There is not a preponderance of the evidence that if there was a crime committed, that
21 Souliotes committed it.

22 Should the Board find that the fire was caused by arson, there is not a preponderance of the
23 evidence that arson Souliotes caused the arson. Three pieces of evidence linked Souliotes to the
24 crime: (a) the eyewitness testimony of Sandoval; (b) evidence of MPDs on the sole of Souliotes'
25 shoes; and (c) a motive to burn down 1319 Ronald Avenue. All three pieces of evidence are
26 unpersuasive.

- 27 a) Sandoval's eyewitness testimony lacks credibility and is given no weight under Penal
28 Code section 4903, subdivision (b).

29 Under Penal Code section 4903, subdivision (b), in a hearing before the Board, the factual
findings and credibility determinations establishing the court's basis for granting a writ of habeas

1 corpus shall be binding on the Attorney General, the factfinder, and the Board. Sandoval's testimony
2 has been found to lack credibility by the district court in this case, therefore, her testimony is given no
3 weight here.

4 b) The MPDs found on Souliotes' shoes were not the same compound found at the scene of
5 the crime.

6 At trial, the District Attorney stated "the shoes tell the tale," (1 RT 9350.) It is now known that
7 the MPDs found on Souliotes' shoes are not the same as the MPDs found at 1319 Ronald Avenue.
8 Moreover, multiple witnesses testified that MPDs are commonly found in household products, including
9 glues used in the manufacture of shoes. Therefore, the existence of an MPD alone does not support a
10 finding that an ignitable liquid was used to start the fire at 1319 Ronald Avenue. Moreover, the
11 presence of MPDs on Souliotes' shoes, in and of itself, does not support a finding that Souliotes
12 committed the act of willfully and maliciously setting fire to 1319 Ronald Avenue.

13 c) Expert testimony shows Souliotes was not in financial duress at the time of the fire,
14 therefore, there is no evidence of a motive to set commit arson.

15 There is insufficient evidence that Souliotes had a motive to set fire to 1319 Ronald Avenue.
16 The federal magistrate judge at the habeas evidentiary hearing opined that Souliotes was in a
17 relatively comfortable position at the time of the fire, and would have benefitted more from the selling
18 of the property than from the insurance proceeds from a fire. Expert testimony offered by Spertzel
19 and Marks suggests that Souliotes had a surplus of \$17,000.00 in cash at the time of the fire.
20 Furthermore, evidence suggests that Souliotes was in a worse financial position after the fire than if
21 the eviction had been completed on January 16, 1997, as scheduled.

22 d) A prior fire that occurred at one of Souliotes' rental properties is not evidence of arson in
23 this case.

24 No evidence has been presented to show that the fire at Pearl Street was arson. Also, no
25 evidence was presented that Souliotes' was arrested or charged with arson connected to the fire that
26 occurred at Pearl Street.

27 **3. Souliotes' plea to involuntary manslaughter does not affect his compensation under Penal**
28 **Code section 4900**

29 The Hearing Officer finds there is not a preponderance of the evidence that Souliotes
committed involuntary manslaughter due to failure to maintain the smoke detectors. Both parties

1 acknowledge that the factual basis for the *West* plea³³ has no relationship to the arson and resulting
2 murders. Other than Souliotes' plea of no contest, there is no evidence that he failed to maintain
3 smoke detectors in the residence. In fact, 1319 Ronald Avenue was a certified Section 8 house.
4 Section 8 would not have allowed him to rent the property without working smoke detectors.
5 Furthermore, Jones testified at the civil hearing that there was a working smoke detector in the home,
6 however, he wanted to add more. Souliotes agreed to allow Jones to add more smoke detectors to
7 the home.

8 4. Souliotes sustained injury as a result of his erroneous conviction and imprisonment

9 Souliotes suffered loss. Although Souliotes was permanently disabled, he would have had the
10 opportunity to manage his rental properties and invest his money, which would have led to financial
11 gain.

12 Souliotes' claim is approved and he is entitled to \$841,820.00 in compensation.

13
14 Dated: December 12, 2016

15 _____
16 Jasmine Turner-Bond
17 Hearing Officer
18 California Victim Compensation Board
19
20
21
22
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25
26

27 _____
28 ³³ An *Alford/West* plea is a plea under which a defendant may choose to plead guilty, not because of an
29 admission to the crime, but because the prosecutor has sufficient evidence to place a charge and to
obtain conviction in court. (See generally *North Carolina v. Alford* (1970) 400 U.S. 25; [91 S. Ct. 160; 27
L. Ed. 2d 162]; *People v. West* (1970) 3 Cal. 3d 595.)