
Victim Compensation Board Meeting Agenda
September 23, 2021
10:00 a.m.
400 R Street
Sacramento, CA 95812

BOARD MEETING MATERIALS

- | | | |
|----------------|--|------------------|
| Item 1. | Approval of Minutes
Minutes of the July 15, 2021, Board Meeting
DRAFT Minutes attached | Action Item |
| Item 2. | Public Comment on Items Not on the Agenda
The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.)
No materials for this item | |
| Item 3. | Executive Officer Statement
Copy of Power Point Presentation attached | Information Item |
| Item 4. | Legislative Update
Legislative Report attached | Information Item |
| Item 5. | Proposed 2022 Board Meeting Dates
Copy of Proposed Dates attached | Action Item |
| Item 6. | George Souliotes (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |

ITEM 1

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California Victim Compensation Board Open Meeting Minutes July 15, 2021, Board Meeting

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Yolanda Richardson, Secretary of the Government Operations Agency, via Zoom, on Thursday, July 15, 2021, at 10:00 a.m. Also present via Zoom was Member Diana Becton, District Attorney, and newly appointed Member Shawn Silva, Deputy State Controller and Interim Chief Counsel, acting for and in the absence of, Betty T. Yee, Controller.

Executive Officer Lynda Gledhill, and Chief Counsel Kim Gauthier, attended in person at 400 R Street, Sacramento, California. Legal Secretary and acting Board Liaison, Andrea Burrell, was also present and recorded the meeting.

Before starting the formal meeting, Chairperson Ravel updated the public on the recent change to the Board's membership. Chairperson Ravel stated that Mr. Chivaro had recently retired, and that Shawn Silva would be joining the board in his stead.

Shawn Silva introduced himself to the public. Mr. Silva has been an attorney at the State Controller's Office for 21 years and also served as a Deputy District Attorney at the beginning of his career. He indicated his familiarity with criminal cases and criminal law.

Item 1. Approval of the Minutes of the May 21, 2021, Board Meeting

The Board approved the minutes of the May 21, 2021, Board meeting. Member Silva did not vote because he was not present at the May 21, 2021, Board Meeting.

Item 2. Public Comment

The Board opened the meeting for public comment and Ms. Burrell reminded everyone that, consistent with the Bagley-Keene Open Meeting Act, items not on the agenda may not be discussed at this time but may be put on a future agenda. (Gov. Code, § 11125.7.)

Eric Gallegos appeared via Zoom. Mr. Gallegos explained that he wanted to participate more in the meeting and was using an interpreter. Mr. Gallegos said that he was still waiting on an appeal for application number A20-7909427. He said that he was working with his local District Attorney's Office on his case and wanted CalVCB to know that he still believes that the people that committed this crime do not deserve to just walk away free and that he believes there should be consequences for their actions. Mr. Gallegos continued by stating that he believed that the Board's decision to deny his application

was incorrect, and urged the Board to take his appeal into consideration. Mr. Gallegos thanked the Board for considering his request.

Chair Ravel thanked Mr. Gallegos for speaking before the Board.

There were no other public comments.

Item 3. Executive Officer Statement

Chief Executive Officer Ms. Gledhill updated the Board on several items:

Ms. Gledhill started by thanking former Board member. Rick Chivaro for his leadership and long-term support of CalVCB. She then welcomed Shawn Silva to the Board.

Ms. Gledhill discussed the Governor's budget for the 2021-22 fiscal year and noted that included in the spending plan is a \$33 million General Fund backfill for CalVCB. Ms. Gledhill expressed her gratitude for the General Fund support, which will ensure CalVCB can carry out its mission and continue to compensate all eligible victims of crime. Moving forward, CalVCB will continue to work with the Governor's Office and the Legislature to improve the financial outlook and help grow the program, services and outreach.

Ms. Gledhill then updated the Board about specific funding also included in the budget, which is \$7.5 million in funding for CalVCB to compensate the victims of state-sponsored sterilization. This practice was allowed by eugenics (yoo'jeniks) laws that existed in California between 1909 and 1979 and was carried out on women in state prisons after that. This budget provision sets aside money to pay survivors an estimated \$25,000 each. Ms. Gledhill explained that CalVCB is working on plans right now to stand up this program, which includes outreach, a specific victim application and procedures for processing payments. CalVCB's goal is to reach as many of the remaining survivors of this practice – which number about 700 – as possible and have them apply for and receive compensation.

Ms. Gledhill also gave an update to the Board on the Trauma Recovery Center (TRC) grants. She explained that since the Board voted to approve the grants in May, staff have been working diligently to execute the contracts. One of the TRCs, Fathers and Families of San Joaquin, notified CalVCB of its intent to close effective September 3, 2021. CalVCB will fund their operations through that date. Fathers and Families will use only a small portion of the \$967,000 it was awarded for 2021-2023 and, consequently, after it closes and its final claims are processed, CalVCB expects there will be a significant amount to redistribute to the other 11 TRCs that also won grant awards for this funding cycle.

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Ms. Gledhill also updated the Board on the department's operations. Ms. Gledhill described CalVCB's roll out of its long-term telework, which will start on September 1st. It is anticipated that employees will be in the Sacramento office at least one day a week with their teams, and teleworking the remainder of the week. Many of CalVCB's employees have been successful working from home, and a recent survey showed employees want to continue doing so. CalVCB believes this hybrid approach strikes the right balance – it capitalizes on all the advantages of teleworking, while maintaining regular in-person contact in the office to foster a strong organizational culture.

Ms. Gledhill finished her update by sharing two important changes to CalVCB's executive leadership team. First, Jeannine Fenton, CalVCB's Deputy Executive Officer for Administration, is retiring. Ms. Fenton, who joined the Board in 2019, has been a tremendous source of support for Ms. Gledhill. In her time at CalVCB, Ms. Fenton has worked extremely hard to improve CalVCB. She launched our employee recognition program with a full guide on how to recognize, evaluate and reward the achievements of our staff. She also established clear processes for hiring, administrative processes and worked tirelessly during the past year to help CalVCB deal with the ever-changing Covid rules and restrictions.

Prior to joining CalVCB, Ms. Fenton served as Chief Deputy Director at the California Department of Aging, where she also held the Administration Division Deputy Director position since 2015 and she held multiple positions at the California Employment Development Department from 1988 to 2015, including office chief, manager, project manager, executive consultant, and senior accounting officer.

The second change Ms. Gledhill shared is the promotion of Natalie Mack to Chief Deputy Executive Officer, effective July 1st. Ms. Mack has served as the Deputy Executive Officer over the Victim Compensation Program since May 2020. In this role, she did exceptional work. She has led multiple efforts to improve the CalVCB program, including decreasing processing times, implementing workload tracking and aligning policy with statutes. She has worked closely with staff, managers and her colleagues to strengthen program operations.

Before coming to CalVCB, Ms. Mack developed her leadership skills through a long and impressive state career, including eight years at the Employment Development Department, where she held several positions. Since beginning her state career in 2001, Ms. Mack has worked for the State Controller's Office, the Department of Corrections and Rehabilitation, the Department of Health Care Services, the Department of Social Services and the Department of Justice.

Item 4. Legislative Update

The Legislative update was provided by Deputy Executive Officer of the Policy, Outreach and Grants Division, Andrew Lamar.

Mr. LaMar stated that the bill concerning forced sterilization was turned into a trailer bill, which is almost identical to AB 1077, the legislative proposal on the same topic. Mr. LaMar estimates that there are about 700 victims that will be eligible for compensation as a result of this bill, but noted based on the experience of two other states that have offered this type of compensation, only about a quarter of that number will apply. The Governor's budget included 7.5 million dollars to CalVCB for implementation and compensation costs, including two million dollars for outreach, up to one million dollars for plaques and memorial markers, and the remaining 4.5 million to compensate victims.

Mr. LaMar reported that this week the legislature is wrapping up all of its policy meetings for this year's session. On Friday, the legislature goes on summer recess, returns to session on Monday, August 16, 2021, and is due to adjourn for the year on September 10, 2021.

The Board also received an update on AB 1593 by Assemblyman Gonzalez, which contains a 5.7million dollar appropriation to pay for five erroneous conviction claims approved by CalVCB. This bill has been passed by both houses of the legislature and has been sent to the Governor for his signature.

Lastly, Mr. Lamar reported that CalVCB continues to have discussions with the sponsors of SB 299, which would compensate victims of police violence. That bill has passed the Senate and the Assembly Public Safety Committees and will next be heard by the Assembly Appropriations Committee in August.

Item 5. Contract Report

This presentation was given by Executive Officer Lynda Gledhill.

Ms. Gledhill explained that this contract report is purely informational, and intended to keep the Board Members updated on CalVCB's spending and purchases. Ms. Gledhill described a purchase for laptops, which will support CalVCB's future telework plans and ensure that all employees have CalVCB equipment, no matter their primary work location.

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Item 6. PC 4900 Claim No. 18-ECO-17, William Richards

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by William Richards.

On June 13, 2018, Robert Richards submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application is based upon Mr. Richards' 1997 murder conviction, for which he was found factually innocent by the San Bernardino County Superior Court after serving 19 years in prison. According to the Proposed Decision, Mr. Richards is entitled to an automatic recommendation for compensation in the amount of \$1,165,920, representing \$140 for each day of the 8,328 days that he was wrongfully imprisoned.

Ms. Gauthier noted that Mr. Richards is represented by Caitlin Weisberg of McClane, Bednarski & Litt and Wendy Koen of the Law Offices of Wendy Koen and the Attorney General is represented by Deputy Attorney General Timothy O'Hair.

Counsel for Mr. Richards appeared before the Board via Zoom. They thanked the Board for its consideration of this claim and Staff Attorney Harbarger for her hard work on this case. They asked that the Board adopt the proposed decision.

Mr. Ravel thanked counsel for appearing before the Board.

Mr. Richards also appeared before the Board via Zoom. He thanked the Board for its consideration and indicated he was happy to move on with his life.

Mr. Ravel thanked Mr. Richards for appearing before the Board.

Mr. Timothy O'Hair from the Attorney General's appeared via Zoom and also urged the Board to adopt the proposed decision.

Mr. Ravel thanked Mr. O'Hair for appearing before the Board.

The Board adopted the Proposed Decision.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:19 a.m., to deliberate on proposed decision numbers 1-80 of the Victim Compensation Program.

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Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126(c)(3) at 10:35 a.m.

The Board adopted the hearing officers' recommendations for proposed decision numbers 1-80 of the Victim Compensation Program.

Adjournment

The Board meeting adjourned at 10:37 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, September 23, 2021.

ITEM 2

Public Comment

The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.)

ITEM 3

CHANGES TO THE FEDERAL VICTIMS OF CRIME ACT (VOCA)



VICTIMS OF CRIME ACT (VOCA)

- Created by Congress in 1984 to provide federal support to state and local programs that assist victims of crime
- Funded by offenders convicted of federal crimes through fines, forfeited bonds, penalties, and assessments—not by taxpayers

Primary recipients of VOCA funds:

- Crime victim compensation programs
- Victim assistance programs



VOCA FUNDING FOR CalVCB

Federal FY	VOCA Reimbursement Award
2017-18	\$18.7 M
2018-19	\$16.6 M
2019-20	\$15.8 M





CHANGES TO VOCA

On July 22, 2021, H.R. 1652, the VOCA Fix to Sustain the Crime Victims Fund Act of 2021, was signed into law.

- Reimbursement rate increased from 60% to 75%
- Exceptions to cooperation with law enforcement align with CalVCB language



IMPACT ON CalVCB

- Estimated \$8M - \$10M increase in federal reimbursement annually

QUESTIONS?



ITEM 4

**California Victim Compensation Board
Legislative Update
September 23, 2021**

SB 299 (Leyva) – Victim Compensation: Use of Force by a Law Enforcement Officer

This bill would add to the definition of a crime compensable by CalVCB an incident occurring on or after January 1, 2022, in which an individual sustains serious bodily injury, pursuant to Penal Code section 243, or death as a result of use of force by a law enforcement officer, as defined, regardless of whether the officer is arrested for, charged with, or convicted of committing a crime. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force due to the victim's involvement in the crime or failure to cooperate with law enforcement. It would require denial of a use of force claim for involvement when the victim is convicted of a violent crime, pursuant to Penal Code section 667.5, or a crime that caused the serious bodily injury or death of another person at the time and location of the incident, or if there is clear and convincing evidence that a victim who was killed by law enforcement committed such a crime. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force based solely upon the contents of a police report, or because a police report was not made, and it would require CalVCB to consider other forms of evidence, as specified, to establish that a qualifying crime occurred. Further, the bill would prohibit CalVCB from denying a claim, based on any crime that caused the death of the victim, due to the deceased victim's involvement of the crime or the victim's or a derivative victim's failure to cooperate with law enforcement. Finally, it would specify that CalVCB's determination on a claim is not to be considered in an action against a law enforcement officer.

Status: Placed on the inactive file and will not move forward this year

SB 446 (Glazer) – Factual Innocence

This bill would create a new procedure that reassigns the burden of proof for granting compensation to an erroneously convicted person under Penal Code section 4900 when the underlying conviction was vacated. For this particular class of claimants, a recommendation for compensation by CalVCB is mandated without a hearing, unless the Attorney General timely objects within 45 days and provides clear and convincing evidence of the claimant's guilt. The Attorney General is strictly limited to a single 45-day extension of time to object, and the trial record is per se inadequate to satisfy the Attorney General's burden of proof. If the Attorney General declines to object within the allotted period of time, then CalVCB shall issue its recommendation within 60 days thereafter. For all other claimants, the standard procedure for section 4900 claims still applies, whereby the claimant bears the burden to prove actual innocence by a preponderance of evidence.

Status: On the Governor's Desk

SB 631 (Portantino) – Erroneous Conviction Claims Bill

This bill would appropriate \$1,165,920 from the General Fund to pay the erroneous conviction claim approved by CalVCB for William Richards.

Status: On the Governor's Desk

AB 1593 (Gonzalez, Lorena) – Erroneous Conviction Claims Bill

This bill appropriates \$5,675,880 from the General Fund to pay five erroneous conviction claims approved by CalVCB for Derrick Harris, Jeremy Puckett, Arturo Jimenez, Robert Fenenbock, and Andrew Wilson. The bill also appropriates \$1,146 to the Department of General Services for the payment of claims accepted by the Government Claims Program.

Status: Signed by the Governor (Chapter 127, Statutes of 2021)

AB 137 (Ting) – State Government

This Budget Trailer Bill on State Government establishes the Forced or Involuntary Sterilization Compensation Program to be administered by CalVCB. The Program provides compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979 and to survivors of coerced sterilizations of people in prisons after 1979.

Status: Signed by the Governor (Chapter 77, Statutes of 2021)

SB 170 (Skinner) – Budget Act of 2021

Among other appropriations, this Budget Bill would appropriate \$300,000 to CalVCB for a contract with the Alliances for a Better Community for study and additional outreach to eligible claimants for the Forced or Involuntary Sterilization Compensation Program.

Status: Enrolled and will go to the Governor's Desk

AB 1007 (Carrillo) – Forced or Involuntary Sterilization Compensation Program

This bill would establish the Forced or Involuntary Sterilization Compensation Program, upon an appropriation of not less than \$7,500,000 by the Legislature for that purpose, to be administered by CalVCB. The Program would provide compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979 and to survivors of coerced sterilizations of people in prisons after 1979.

Status: Failed the fiscal committee deadline

AB 177 (Committee on Budget) – Public Safety

Among other provisions, this Budget Trailer Bill on Public Safety would eliminate a range of fees that agencies and courts are authorized to impose to fund elements of the criminal legal system, including administrative fees that fund the cost of collecting restitution. It would also eliminate all outstanding debt incurred as a result of the imposition of those fees.

Status: Amended to incorporate language from SB 586; Enrolled and will go to the Governor's Desk.

SB 586 (Bradford) – Criminal Fees

This bill would eliminate a range of fees that agencies and courts are authorized to impose to fund elements of the criminal legal system, including administrative fees that fund the cost of collecting restitution. It would also eliminate all outstanding debt incurred as a result of the imposition of those fees.

Status: Gutted and amended to an unrelated topic that does not impact CalVCB

AB 361 (Rivas) – Open Meetings: State and Local Agencies: Teleconferences

This bill, until January 31, 2022, would authorize a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

Status: Enrolled and will go to the Governor's Desk

AB 128 (Ting) – Budget Act of 2021

The Budget Act transfers \$33 million from the General Fund to the Restitution Fund. Provisional language specifies that upon order of the Director of Finance, the amount available for transfer in this item may be increased by an amount sufficient to backfill the Restitution Fund if a determination is made that revenues are insufficient to support CalVCB.

Status: Signed by the Governor (Chapter 21, Statutes of 2021)

SB 129 (Skinner) – Budget Act of 2021

This bill, known as Budget Bill Jr., amends the Budget Act of 2021, AB 128 (Ting), to appropriate \$7.5 million to CalVCB to fund the Forced or Involuntary Sterilization Compensation Program through September 30, 2024. Up to \$2 million shall be used for agency implementation and outreach costs, up to \$1 million shall be used for establishment of plaques and markers, and the remaining amount shall be used for reparation payments to eligible survivors.

Status: Signed by the Governor (Chapter 69, Statutes of 2021)

AB 1171 (Garcia, Christina) – Rape of a Spouse

This bill would expand the crime of rape pursuant to Penal Code section 261 to include spousal rape, and it would repeal the current spousal rape statute, Penal Code section 262. The bill would make conforming changes to Government Code section 13956 regarding CalVCB eligibility, which references the statute that is to be repealed. It also would make technical changes to meet Legislative Counsel's current drafting style.

Status: Enrolled and will go to the Governor's Desk

AB 1291 (Frazier) – State Bodies: Open Meetings

This bill requires a state body subject to the Bagley-Keene Open Meeting Act, when it limits time for public comment, to provide at least twice the allotted time to a member of the public who utilizes translating technology to address the state body.

Status: Signed by the Governor (Chapter 63, Statutes of 2021)

ITEM 5

**California Victim Compensation Board
Proposed Board Meeting Dates for Calendar Year 2022**

September 23, 2021

Action Requested

Staff proposes the Board approve Board meeting dates for calendar year 2022.

Background

Government Code section 13915 provides:

The board shall hold regular meetings in Sacramento and may hold other meetings at the times and places within the state as a majority of the board directs. At any meeting the board may transact any business and perform all duties imposed upon it.

Currently, the Board meetings are scheduled on the third Thursday of every other month.

If necessary in order to comply with statutorily mandated deadlines (e.g., erroneously convicted felon matters pursuant to Penal Code sections 4900), the Board may schedule and conduct additional hearings throughout the year with ten days' notice in compliance with the Bagley Keene Open Meeting Act.

The proposed meeting dates for calendar year 2022 are:

- Thursday, January 20, 2022
- Thursday, March 17, 2022
- Thursday, May 19, 2022
- Thursday, July 21, 2022

- Thursday, September 15, 2022
- Thursday, November 17, 2022

ITEM 6

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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of:

10 **George Souliotes**

11 Claim number 16-ECO-01

**Amended Proposed Decision Post-Writ
(Penal Code § 4900)**

12 **INTRODUCTION**

13 On April 8, 2015, George Souliotes submitted an application for compensation as an
14 erroneously convicted person to the California Victim Compensation Board (CalVCB). The application
15 was based upon Souliotes's convictions for arson and three, special-circumstance, first-degree
16 murders, all of which were vacated during a federal habeas proceeding on March 7, 2013, after
17 Souliotes served 6,013 days imprisonment. An administrative hearing was conducted on May 4 and 5,
18 2016, by CalVCB Hearing Officer Jasmine Turner-Bond. Counsel Marilyn Bednarski and David
19 McLane of the law firm Kaye, McLane, Bednarski, and Litt, appeared on behalf of Souliotes, who also
20 appeared and testified. Supervising Deputy Attorneys General (SDAG) Kathy McKenna and Michael
21 Canzoneri appeared on behalf of the Attorney General (AG).

22 On December 12, 2016, the hearing officer issued a Proposed Decision recommending
23 compensation be approved in the amount of \$841,820. On May 18, 2017, the Board voted 2-0 to reject
24 the Proposed Decision. The Board determined that Souliotes had failed to satisfy his burden of proving
25 by a preponderance of the evidence that he was actually innocent. The Board then issued a six-page
26 decision detailing its findings during the May 2017 Board meeting, which unanimously rejected the
27 Hearing Officer's proposed decision.
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1 Souliotes challenged the Board's decision by pursuing a petition for writ of mandate in the Los
2 Angeles County Superior Court. The trial court agreed, in part, and commanded CalVCB to vacate its
3 decision for failing to cite to specific evidence in the administrative record and reconsider its action
4 without a new hearing. The trial court rejected Souliotes's argument that, as a matter of law, the federal
5 court's procedural ruling under *Schlup v. Delo* (1995) 513 U.S. 298, to excuse an untimely habeas
6 application was binding upon CalVCB or otherwise amounted to a persuasive finding of actual
7 innocence. While this legal issue was appealed and remains pending before the California Supreme
8 Court, this administrative proceeding resumed before CalVCB at the request of both parties. Upon
9 remand, the matter was reassigned to CalVCB Senior Attorney Michelle D. Phillips. In the interim, the
10 AG reviewed the evidence and agreed that Souliotes had proved, by a preponderance of evidence, that
11 he was innocent of the crimes for which he was imprisoned. After having considered the entire
12 administrative record, along with the binding federal court findings, the Hearing Officer recommends the
13 Board approve compensation in the amount of \$841,820.

14 **FACTUAL SUMMARY AND PROCEDURAL HISTORY**

15 As of January 1997, Daniel Jones (Jones), his wife Michelle Jones (Michelle) and their two
16 children, Daniel Jones, Jr. (Daniel) and Amanda Jones (Amanda), were the occupants of the home
17 located at 1319 Ronald Avenue in Modesto, California. The home was owned by Souliotes, and he
18 was in the process of evicting the family due to non-payment of rent.

19 Between the hours of 1:00 a.m. to 2:30 a.m. on January 15, 1997, Monica Sandoval (Sandoval)
20 testified she was standing on the balcony of her apartment located at 1839 Tully Avenue, waiting for
21 her boyfriend, Joaquin, to return home. It was dark, misty and cold. Sandoval's apartment was located
22 near the intersection of Tully Avenue and Ronald Avenue and on the opposite side of the street of 1319
23 Ronald Avenue. As she stood on the balcony, Sandoval noticed a recreational vehicle (RV) repeatedly
24 drive by, an estimated 10 to 20 times. At one point, Sandoval watched the RV park across from 1319
25 Ronald Avenue. The driver stepped out, walked behind the home while carrying a white pillowcase
26 type bag, and returned a few minutes later without the item. The driver reentered the motor home and
27 drove toward the intersection of Ronald Avenue and Tully Avenue. From this vantage point, Sandoval
28 saw the lower half of the driver's face, from his eyeglasses down, through the windshield. Three to five
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1 minutes later, Sandoval heard a loud boom and 1319 Ronald Avenue exploded in flames. Inside were
2 Michelle, Daniel and Amanda.¹ Michelle's husband Daniel Jones (Jones) was at work. Michelle,
3 Daniel and Amanda succumbed to their injuries later in the day.

4 Moments after the fire started, before first responders arrived, Steve Hamilton (Hamilton) was
5 driving by Ronald Avenue when he spotted flames coming out of the front of the garage, in place of
6 where the large overhead door had been. Hamilton stopped to help. Before entering the property,
7 Hamilton noticed a dark-colored sedan parked directly in front of the house. Hamilton described the
8 driver as a 25-35-year-old male with long, light-colored hair. The car was parked, and the engine
9 appeared to be off. As Hamilton moved closer to the vehicle, the driver started the engine and drove
10 away. Hamilton later testified he was able to get a partial license plate number. Hamilton saw no other
11 vehicles at that time.²

12 While one neighbor banged on the front door to alert the occupants, Hamilton walked past the
13 side of the garage, which still had an intact roof, and continued to the back of the home. Hamilton
14 looked inside through the opening of a sliding glass door, which no longer had any glass. From this
15 vantage point, Hamilton observed the entire living room engulfed in flames. Hamilton walked towards a
16 nearby bedroom window, broke it open, and shouted inside, but it was dark, and no one responded.
17 Hamilton attempted to retrace his steps back to the street, but, at one point, the fire was too strong, and
18 he had to hop a fence. While passing along the side of the garage the second time, Hamilton observed
19 flames where the regular-sized side door had been. The fire department arrived minutes later.³

20 At or around 3:30 a.m., Sandoval was interviewed by Captain Reuscher and Officer Pimental.
21 Reuscher's handwritten notes of the interview reveal Sandoval stated she saw a "Beige RV Dodge Van
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23 ¹ Because the victims share the same last name, they are referred to by their first names in this
24 Proposed Decision.

25 ² Reporter's Transcript (RT) pp. 1604-1606.

26 ³ Administrative Record (AR) AR 4302-4363 (Hamilton testimony). The AR was lodged in electronic
27 format on or about September 4, 2018, with computer-generated, consecutive pagination numbers
28 appearing on the bottom right corner of each page. The pagination initially matches, but then diverges
29 from, the manual Bates stamp numbers that appear on the lower right corner of most pages of the
administrative record. This Proposed Decision refers to the computer-generated pagination, not the
manual Bates stamp.

1 type,” and Reuscher wrote “Dodge Caravan” in the margin of his notes.⁴ Sandoval told Pimental she
2 saw a “white or off-white RV” driving up and down Ronald Avenue. In her initial statement, Sandoval
3 described the driver as male, in his 30s, with glasses, standing six feet tall and wearing a light blue,
4 checkered Pendleton-type shirt.

5 Around 5:15 a.m., just over two hours after the fire erupted, Officer Burnside arrived at
6 Souliotes’s home. Officer Burnside knocked on the door while also ringing the doorbell. Within five
7 minutes, Souliotes answered, wearing a bathrobe and slippers. His hair was disheveled, but he did not
8 seem groggy. After confirming that Souliotes owned the home on Ronald Avenue, Officer Burnside
9 informed Souliotes that there had been a fire. Officer Burnside asked for information about the people
10 living in the rental home, and Souliotes offered his paperwork file. Souliotes acknowledged that he was
11 trying to evict the occupants. At Officer Burnside’s request, Souliotes drove to the rental home in his
12 own pickup truck, with Officer Burnside following behind.⁵

13 By the time they arrived around 5:30 a.m., the flames had been extinguished, but there was still
14 smoke emanating from smoldering fires. Numerous firemen and police detectives were also present,
15 and the home was surrounded by crime scene tape. Souliotes inquired about the whereabouts of the
16 people living in the home, but Officer Burnside declined to provide any information and explained that
17 Souliotes needed to speak with the detectives first.⁶

18 Souliotes eventually left the scene of the fire and returned home. A few hours later around 9:10
19 a.m., Souliotes called his insurance agent and reported the fire. Under Souliotes’s policy, the rental
20 home was insured for a maximum of \$97,000. The insurance company retained the right to pay only
21 the cost of replacement or actual cash value, which was estimated to be \$55,000.⁷ Meanwhile,
22 Souliotes still owed \$75,591 for the rental home, which he had recently listed for sale in December
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26 ⁴ AR 1262, Hearing Exs. J-X.

27 ⁵ AR 4738-4740, 4749-4762 (Officer Burnside testimony).

28 ⁶ AR 4740-4746, 4749-4762 (Officer Burnside testimony).

29 ⁷ AR 1889 (Spertzel report); 5175-5176 (Marks testimony); 7847 (Spertzel testimony), 10723-10727 (Miner testimony); 13860 (F&Rs); 14082 (Streed report / testimony).

1 1996 for \$89,950.⁸ A former renter had contacted Souliotes about purchasing the home, although he
2 only had \$4,000 of the \$10,000 down payment.⁹

3 At approximately 10:30 a.m., Detectives Ridenour and Lee spoke to Souliotes at his home.
4 When asked about the Winnebago parked next to his house, Souliotes acknowledged it was his. With
5 Souliotes's permission, both detectives placed their hand on the motor home's engine, and it felt cold.
6 By then, almost eight hours had passed since the fire started shortly before 2:51 a.m. Also, the winter
7 weather was cold, approximately 40 degrees, with a light drizzle of rain.¹⁰ At the detectives' request,
8 Souliotes backed out the Winnebago and parked it on the street. They returned inside to continue
9 talking. During their conversation, Souliotes acknowledged he was having difficulties trying to evict the
10 Jones family. He further acknowledged regularly driving by his rental home to see if the Joneses had
11 moved out. He admitted doing so the night before at around 5:00 p.m. He knew they had not left
12 because a light was on in the bathroom.¹¹

13 That afternoon around 4:00 p.m., arson investigator Captain Elliott arrived at Souliotes's home
14 with a search warrant. He used a hand-held combustible gas detector, which tested positive for
15 Souliotes's hands and ankles, as well as a pair of Souliotes's shoes. When Captain Elliott informed
16 Souliotes that the test indicated his hand had been exposed to a flammable vapor or liquid, Souliotes
17 responded, "I can't understand why that would happen. I've washed my hands at least ten times this
18 morning."¹² Captain Elliott tested Souliotes's hand soap, but it was negative. Souliotes added that he
19 had been painting the last couple of days, and he showed Captain Elliott his painting supplies, some of
20 which had been cleaned with water. All tested negative, with the exception of a minor positive result on
21 a can of latex paint.¹³

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23 ⁸ AR 5159-5171 (accountant Marks testimony); 5261-5273 (Love testimony).

24 ⁹ AR 10628-10634 (Linam).

25 ¹⁰ Defense testing of a similar motor home, on an evening when temperatures were approximately 45
26 degrees, but with no rain, revealed that the engine was still warm to the touch after seven hours and 45
27 minutes. (AR 11823-11824.)

28 ¹¹ AR 10756-10760, 10904-10924 (Detective Ridenour); 11514, 1152-1153 (Detective Lee); 12346
(closing).

29 ¹² AR 11108, 11123.

¹³ AR 11110-11114, 11125-11128, 11131, 11151-11153.

1 Law enforcement re-interviewed Sandoval later the same morning. At that time, she told the
2 investigators that she was unable to identify the driver given her brief glimpse of him. Detectives drove
3 Sandoval to Souliotes's home to determine whether she could identify the RV as the one she saw. The
4 RV was parked in the driveway and only the back was visible. Sandoval could not identify Souliotes's
5 vehicle as the suspicious vehicle she observed earlier that morning. Officers then drove Sandoval
6 directly to an RV sales lot to see if she could identify a similar vehicle. Sandoval viewed 10 to 50 RVs.
7 She did not see a vehicle that resembled the one she saw on the night of the fire. Law enforcement
8 took Sandoval back to Souliotes's home. The RV was now parked on the street in front of Souliotes's
9 house. At that point, she made a positive identification of Souliotes's Winnebago. Sandoval became
10 emotional after making the identification and law enforcement took her home.

11 Later that day, officers provided Sandoval with a photographic lineup of six individuals, including
12 Souliotes. Sandoval did not select Souliotes, or anyone else as the driver of the vehicle from the photo
13 array.

14 The same day, the Modesto Police Department arrested Souliotes and charged him with one
15 count of arson and three counts of murder.

16 **A. Preliminary Hearing**

17 Six months later, at Souliotes's preliminary hearing, Sandoval's testimony differed from her
18 initial statements. Sandoval testified the RV she saw driving back and forth on Ronald Avenue had a
19 ladder and a window with a white drape. Defense counsel showed Sandoval a photograph of
20 Souliotes's Winnebago. From the size of the window in the photograph, she determined it was the
21 same motor home from the night of the fire. The suspicious motor home had a ladder, but Souliotes's
22 Winnebago as depicted in the photograph did not have a ladder. Sandoval further testified that the
23 motor home on the evening in question had a white license plate. The license plate of Souliotes's
24 Winnebago as depicted in the photograph was blue. Souliotes's motor home had the word
25 "Winnebago" written across the front of the hood, under the windshield. Sandoval did not see the logo
26 on the night of the fire. She testified she did not notice anything about the front of the RV other than the
27 way it slanted downward.

1 The Deputy District Attorney (DA) questioned Sandoval about the driver's physical appearance.
2 She described the driver as a man in his 50s. When confronted by her initial statement to police which
3 described the driver as a man in his 30s-40s, Sandoval testified that she did not remember stating that
4 to officers. She only admitted that it was a possibility. Sandoval also testified that she had difficulty
5 discerning ages of people.¹⁴ Initially, under direct examination, Sandoval did not identify Souliotes as
6 the driver. The DA asked for a short break. After the break, the DA asked Sandoval to describe the
7 driver. For the first time, Sandoval provided new, identifying characteristics. The driver had a narrow,
8 pointy chin, glasses and was a man in his 50s. Sandoval then identified Souliotes, for the first time, as
9 the driver of the RV. Sandoval testified that she got a good look at the driver. On cross-examination,
10 she was asked about her initial statement to law enforcement where she stated that she did not get a
11 good look at the driver and could not identify him. Sandoval could not explain her ability to identify the
12 driver six months later, as opposed to immediately after having viewed the driver hours after the fire.
13 She could also not explain how she was unable to identify Souliotes as the driver in the photo array.

14 **A. State Trial Proceedings**

15 Souliotes was subsequently charged in Stanislaus County Superior Court, with one count of
16 arson plus three separate counts of first-degree murder for the deaths of Michelle, Amanda, and Daniel,
17 with special circumstances for committing felony-murder during an arson or burglary.¹⁵

18 **1. First Trial**

19 *a. Prosecution's Case*

20 Souliotes's trial began in February 1999. The prosecution's case rested primarily on three
21 sources: (1) fire cause and origin analysis proved the fire was arson; (2) scientific evidence that
22 Souliotes's shoes were present at the scene of the fire because they tested positive for the same
23 medium petroleum distillates (MPDs) found at the scene,¹⁶ and (3) eyewitness Sandoval's testimony
24

25 ¹⁴ AR 1248, RT 5962-63

26 ¹⁵ Pen. Code, §§ 187 (murder); 190.2, subd. (a)(17) (special circumstance felony-murder); 451, subd.
27 (b) (arson of an inhabited structure).

28 ¹⁶ MPDs are ignitable liquids found in common household items such as charcoal lighter fluid, some
29 camp fuels, some solvents, insecticides, furniture polish, shoe polish, some hand cleaners, some paint
thinners, and the glue from shoes made overseas.

1 that she saw Souliotes driving his RV at the scene of the fire immediately before the fire started.
2 Additionally, the prosecution theorized Souliotes was in financial distress and angry with the Jones
3 family for failing to pay two months' rent and failing to vacate the property by January 1, 1997.¹⁷

4 i. *Arson Investigation*

5 Two arson investigators from the Modesto County Fire Department, Thomas Reuscher
6 (Reuscher), and Captain Evers (Evers), testified with certainty that the fire was caused by arson. They
7 relied on several factors to support their conclusion: the fire was unusually hot; there were "pour
8 patterns" on the floor where flammable liquids had "obviously" been poured and ignited; there was deep
9 charring on the walls; there was insufficient combustible material (fuel load) to sustain such an intense
10 fire unless an ignitable liquid, such as an accelerant, were used; a hand-held hydrocarbon detector
11 indicated the presence of ignitable liquids at the scene, and the eyewitness testified that a suspicious
12 person visited the house shortly before the fire started. Based upon this evidence, Reuscher testified
13 he had, "no doubt...that this was an arson fire" involving an ignitable liquid, and "[t]he ignition devise
14 [*sic*] was a human hand."¹⁸

15 ii. *MPD Evidence*

16 According to Sara Yoshida (Yoshida), a senior criminalist for the California Department of
17 Justice, MPDs were present on two of the items taken from the scene of the crime (one from burned
18 wood and another from burned foam and carpeting), and on Souliotes's shoes, which were taken from
19 his Pearl Street home in Modesto. Yoshida testified that the presence of an MPD does not necessarily
20 indicate its use to start a fire; however, finding an MPD product is rare because MPD vapors dissipate
21 rapidly. According to Yoshida, in 95 percent of her cases, when she detected an accelerant, it was
22 gasoline. Yoshida tested several liquid samples from Souliotes's home including a can of Thompson's
23 water sealant, a container of Sunny Select charcoal lighter fluid, and a sample from what appeared to
24 be a gasoline container. Yoshida excluded these items as being the source of the MPDs found on
25 items at the crime scene and on Souliotes's shoes.¹⁹

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27 ¹⁷ AR 1212.

28 ¹⁸ AR 1212 (RT 6722,6957).

29 ¹⁹ RT 3114-3142.

1 iii. *Eyewitness Testimony of Monica Sandoval*

2 Sandoval testified that she was preoccupied while waiting for her boyfriend to come home and
3 was not paying much attention to the RV for much of the time it was driving around. Sandoval
4 described her mood as; “angry,” “agitated,” “mad,” “pretty mad,” and “seething.” (RT 5857, 5892).²⁰
5 Sandoval testified that her only opportunity to see the RV driver was when the vehicle traveled south on
6 Tully into the intersection with Ronald and the driver slowed down and leaned to look down Ronald (RT
7 1497-98, 5658). Sandoval saw the driver’s face from where she stood, over 100 feet away. During trial
8 she indicated that she only saw the bottom portion of the driver’s face. Specifically, the shape of the
9 driver’s chin, his nose and the bottom frames of his glasses. Sandoval only observed the driver’s face
10 in profile, and only for the length of time it took for the driver to look down the street, turn and drive
11 away (RT 5936-37). The driver never stopped the RV. ²¹

12 Sandoval testified that, during her interview with law enforcement at the scene, she described
13 the driver as a man with a narrow face, wearing square glasses, a pointy nose with a thin build. She
14 further described the man as being in his 50s and standing 5 feet 9 inches tall to six feet tall. She
15 asserted that she identified Souliotes as the driver because his features matched those of the person,
16 she saw driving the Winnebago.²² On cross-examination, Souliotes’s counsel asked Sandoval about
17 her preliminary hearing testimony, where she admitted she was unable to identify the driver who exited
18 the RV as male or female. Sandoval could not explain how she was now able to discern that the driver
19 was male.²³

20 Sandoval also admitted that she saw pictures in the newspaper of Souliotes after the fire.

21 Under cross examination, Sandoval testified she observed the RV driving through the
22 neighborhood, 10-15 times over the course of two and a half hours, prior to watching the driver stop
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26 ²⁰ AR 1245.

27 ²¹ AR 1246.

28 ²² RT 66-67.

29 ²³ RT 104-106.

1 and exit the RV. She could not identify the driver's features before this point. Sandoval identified the
2 color of the clothing the driver was wearing.²⁴

3 Sandoval recalled viewing Souliotes's RV in front of his house. She recognized the "W" on the
4 side and the slanted front windshield. Sandoval testified that Souliotes's RV shared the same
5 characteristics of the vehicle she saw the night of the fire. Although the rear of the RV did not resemble
6 the rear of the suspect vehicle, once it pulled out of the driveway, she recognized its unique slanted
7 hood.²⁵

8 Sandoval further testified that when she viewed the photographic lineup, which included
9 Souliotes's photo, she was unable to make an identification.²⁶

10 iv. *Motive*

11 1. *Testimony of Daniel Jones, Sr.*

12 Jones testified he notified Souliotes on November 5, 1996, of his intent to vacate the property
13 on December 1, 1996. Jones testified Souliotes did not show any sign of dissatisfaction with the news,
14 and in fact seemed to understand Jones's economic reason for moving. Souliotes and Jones
15 disagreed, however, on whether Jones had prepaid his last month's rent. Souliotes presented Jones
16 with a three-day "pay rent or quit" notice on the same day Jones told Souliotes he was moving. Jones
17 planned to move his family into a mobile home he had purchased. On December 20, 1996, the court
18 ordered Jones to vacate the property on January 1, 1997, and awarded a total of \$1,552.50 in favor of
19 Souliotes for rent, damages, and attorney fees.²⁷

20 However, around the first of the year, heavy flooding occurred at the mobile home park and left
21 the Jones's new mobile home under water. The Jones family was unable to relocate until mid-January
22 1997. Accordingly, the Joneses remained at 1319 Ronald Avenue past January 1, 1997.²⁸

25 ²⁴ RT 104-105.

26 ²⁵ RT 139-140.

27 ²⁶ RT 127.

28 ²⁷ AR 3.

29 ²⁸ RT 1385-1386.

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3. Testimony of Michael Marks

Michael Marks (Marks), an auditor with the United States Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF), examined Souliotes's financial status at the time of the fire. As of January 15, 1997, Souliotes had assets worth about \$394,000, and liabilities of about \$209,000. Marks put Souliotes's monthly income at \$2,609.00 and his monthly expenses at roughly \$2,100. He noted Souliotes had \$16,579 in liquid savings in the bank. According to Marks, Souliotes had a history of paying his bills on time and leaving no balances on his credit cards. Souliotes's monthly mortgages on his properties totaled \$1,504, not including taxes and insurance. Marks did not believe 1319 Ronald Avenue was over-insured.³⁰

Hope Warner, the manager of the mobile park where the Jones family intended to relocate, testified she observed an angry exchange between the driver of a motor home and Michelle at the mobile home park a day or two before the fire. She identified the driver of the motor home as Souliotes.³¹ The prosecution presented no evidence as to how Souliotes knew to visit the mobile home park at the same time as Michelle and no evidence as to why Souliotes would choose to confront Michelle at the mobile home park as opposed to her residence.

³¹ RT 160-164.

1 *b. Defense Case*

2 Trial counsel presented an expert in the field of engineering to rebut the testimony of the
3 prosecution's fire experts, a financial expert to explain that Souliotes was not in financial distress, and a
4 psychologist to explain factors negatively affecting the reliability of Sandoval's identifications.

5 *1. Testimony of Dr. Donald Myronuk*

6 Fire investigation expert, Dr. Donald Myronuk (Myronuk), opined the fire was likely caused by a
7 natural gas leak from the kitchen stove. He attributed the leak to a brass flex hose that connected the
8 stove to a gas line, which is known to be susceptible to corrosion by common kitchen chemicals.
9 Myronuk believed gas from a leak could have been ignited by a nearby pilot light.³²

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.³³

13 Myronuk further testified that falling tar, not a liquid accelerant caused the patterns on the floor
14 in the kitchen, living room, and garage.³⁴ He theorized that the MPDs on Souliotes's shoes were likely
15 from shoe polish, laminate materials, or adhesives, while the MPDs in the living room were likely from
16 melted polyurethane on the entertainment center or from audio video components.³⁵ Finally, Myronuk
17 described an experiment he conducted to show whether Souliotes's motor home had been driven on
18 the night of the fire. If the RV had been driven, its engine would have been noticeably warm to the
19 touch when the police inspected it in the morning. The engine of the motor home was cold, according
20 to law enforcement.³⁶

21 *2. Testimony of Dr. Elizabeth Loftus*

22 Dr. Elizabeth Loftus (Loftus), an eyewitness reliability expert, testified that "all ingredients were
23 present for a hypothetical witness like Sandoval to be influenced by the post-event information
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25 ³² RT 3479-3481.

26 ³³ RT 3481.

27 ³⁴ RT 3485.

28 ³⁵ RT 3540.

29 ³⁶ RT 3563-3566.

1 presented to her." ³⁷The fact that Sandoval saw Souliotes in a police lineup and at the preliminary
2 hearing, prior to her in-court identification of him at trial, could have influenced the reliability of her
3 identification.³⁸

4 *3. Testimony of Shazad Contractor*

5 Shazad Contractor (Contractor), financial expert and Certified Public Account (CPA), testified
6 that Souliotes was not in financial distress at the time of the fire. Contractor based his opinion on a
7 review of Souliotes's financial history for the five years preceding, including December 1996, which
8 showed Souliotes was current on his debts, paid his bills automatically from his bank each month, and
9 had significant cash reserves in the bank at the time of the fire.³⁹

10 *4. Testimony of Russell Downing*

11 Souliotes called the owner of the mobile home park, Russell Downing (Downing), to testify
12 regarding Warner, the manager of the mobile home park's credibility. Downing testified that he was
13 approached by an investigator from the Federal Emergency Management Agency (FEMA) regarding a
14 possibly falsified receipt by Warner on a flood damage claim.⁴⁰

15 *5. Testimony of Apolis Crain*

16 Apolis Crain testified that he was at the mobile home park during the time Warner described the
17 exchange that allegedly took place and did not witness an argument. (RT 3277). He further testified
18 that Warner called him before the trial and threatened to report his allegedly unlicensed business
19 activities if he did not "get [his] story straight."⁴¹

20 On March 24, 1999, Souliotes's first jury trial ended with a hung jury.

21 2. Second Trial

22 Souliotes's second trial commenced on April 3, 2000. Souliotes's counsel presented no
23 witnesses, after promising in his opening statement to present a fire expert, a forensic pathologist and
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25 ³⁷ RT 3611-3612.

26 ³⁸ RT 3616-3618.

27 ³⁹ RT 3354-3358.

28 ⁴⁰ RT 3181-85.

29 ⁴¹ RT 3277-78.

1 at least four lay witnesses.⁴² The jury returned a guilty verdict on all counts and true findings on all
2 allegations on May 8, 2000, thereby rendering Souliotes eligible for the death penalty. At the
3 conclusion of the penalty phase on May 25, 2000, the jury rejected the death penalty and voted in favor
4 of a life sentence without possibility of parole. Accordingly, on October 20, 2000, the trial court
5 imposed a sentence of three consecutive terms of life without possibility of parole for each of
6 Souliotes's first-degree, felony-murder convictions.

7 Souliotes appealed his convictions to the California Court of Appeal, Fifth Appellate District.
8 The appellate court affirmed the judgment in its entirety on August 5, 2002.⁴³ Souliotes petitioned for
9 review in the California Supreme Court, which was denied on January 6, 2004.⁴⁴

10 **B. State Habeas Proceedings**

11 Souliotes, represented by counsel, filed a state habeas petition in the Stanislaus County
12 Superior Court on December 10, 2003, alleging ineffective assistance of counsel. The superior court
13 denied the petition on January 6, 2004, ostensibly because "habeas corpus can't be used to second
14 guess the trial attorneys['] strategy" and a grant of habeas relief would require "accept[ing], as factually
15 correct, all of Claimant's allegations and disregard[ing] all of the facts proved at trial."⁴⁵ Souliotes
16 renewed his claim of ineffective counsel in a habeas petition in the California Court of Appeal. After
17 requesting and receiving a response from Souliotes's trial counsel Timothy Rein and John Traback, and
18 the Attorney General, the appellate court summarily denied the petition on August 26, 2004.⁴⁶
19 Souliotes next petitioned the California Supreme Court for habeas relief, which was summarily denied
20 on April 19, 2005.⁴⁷

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25 ⁴² AR 1325.

26 ⁴³ AR 12703-12725.

27 ⁴⁴ AR 12831.

28 ⁴⁵ AR 12816-12890.

29 ⁴⁶ AR 12608-12614, 12618-12620, 12892-13100.

⁴⁷ AR 13301-13480.

1 **C. Federal Habeas Proceedings**

2 Souliotes, still represented by counsel, filed a federal habeas petition in the United States
3 District Court for the Eastern District of California on May 20, 2006. The petition, as subsequently
4 amended, raised seven claims: (1) actual innocence; (2) ineffective counsel for failing to call an arson
5 expert at trial; (3) ineffective counsel for failing to present defense witnesses; (4) ineffective counsel for
6 failing to adequately cross-examine the prosecution's arson expert; (5) juror misconduct; (6) due
7 process violation by admission of fundamentally unreliable expert testimony and evidence; and (7)
8 cumulative error.⁴⁸

9 The district court initially dismissed the petition on March 20, 2008, as untimely as it was filed
10 five days beyond the one-year statute of limitations imposed by 28 U.S.C. § 2244(d)(1) of the
11 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).⁴⁹ The Ninth Circuit reversed and
12 directed the district court to consider whether the equitable tolling exception for actual innocence under
13 *Schlup v. Delo*, supra 513 U.S. 298 applied.⁵⁰ An evidentiary hearing, to determine whether Souliotes's
14 petition was eligible for equitable tolling under *Schlup*, was scheduled for January 24, 2012.

15 On January 4, 2012, prior to the habeas evidentiary hearing, the parties submitted a Joint
16 Hearing Pretrial Statement pursuant to the Court's Evidentiary Hearing Scheduling Order of October
17 27, 2011, wherein they stipulated to the following undisputed facts:

- 18 1. In the early morning hours of January 15, 1997, a fire destroyed the house located at 1319
19 Ronald Ave., Modesto, CA. The house was owned by Souliotes. Three of the tenants living in
20 the house, Michelle, Amanda and Daniel Jones, Jr. perished in the fire. The fourth tenant,
21 Daniel Jones, Sr., was not home.
- 22 2. The fire was investigated by Captain Reuscher and Captain Evers of the Modesto Fire
23 Department. Both investigators determined the fire to be the result of arson.
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27 ⁴⁸ AR 13482-13726, 13946-13947.

28 ⁴⁹ AR 13727-13742.

29 ⁵⁰ AR 13765-13775.

3. Captain Reuscher and Captain Evers both relied on several factors that they believed provided evidence of arson using flammable liquid. The following factors relied on by Reuscher and Evers are now known not to be indicators of arson using flammable liquid:
 - a. Deep burning and floor damage to the floor inside the residence and burn patterns on the floor inside the residence and on the concrete floor of the garage.
 - b. The temperature of the fire, evidenced by deep charring and witness accounts of an “extremely hot” fire.
 - c. Lack of sufficient fuel for the fire to have occurred without the use of flammable liquid.
4. The floor damage and burn patterns located inside the house and garage that the original investigators attributed to arson using a flammable liquid appear to be the result of flashover burning and fall down from the roof collapsing and are not indicators of arson using a flammable liquid.
5. Fires involving liquid accelerants do not burn at higher temperatures than fires involving the use of a flammable liquid.
6. There was sufficient fuel in the house for the fire to have occurred without the use of flammable liquid.
7. The parties’ experts all agree that they cannot determine the cause and origin of the fire based on the available evidence and record as it exists today, including whether the fire was accidental or the result of arson.
8. Reuscher used a “hydrocarbon detector” at the fire scene to search for the possible presence of ignitable liquids. Captain Bruce Elliot of the Modesto Police Department also used the detector to search Souliotes and his clothing for the possible presence of ignitable liquids. The detector gave several positive alerts at the fire scene and on Souliotes’s clothes and body.
9. Hydrocarbon detectors commonly deliver false positives and are intended to be used only for presumptive testing to determine what items to collect and submit for laboratory testing.
10. A positive reaction from a hydrocarbon detector is never reliable evidence of the presence of a liquid accelerant without confirmatory lab results.

- 1 11. Of the samples collected from the fire scene for laboratory testing, two tested positive for the
2 presence of medium petroleum distillate (MPD): Sample number 66, a piece of burnt wood from
3 a floorboard in the living room and sample number 71, a piece of carpet from the living room.
- 4 12. A pair of black shoes belonging to Souliotes, sample numbers 16 and 17, tested positive for the
5 presence of MPD.
- 6 13. The MPD on Souliotes's shoes is chemically distinguishable from the MPD found on the carpet
7 samples taken from the fire scene, and the MPDs did not originate from a common source.
- 8 14. Detectible MPDs are commonly found on many household products and consumer goods,
9 including the solvents in glues and adhesives used in floor coverings and footwear, residues of
10 dry-cleaning solvents, insecticides and cleaning agents.
- 11 15. Souliotes did not become aware of the new MPD testing methods until September 21, 2005,
12 when John Lentini sent a letter setting forth his new findings based on his use of the new MPD
13 testing methods.
- 14 16. Monica Sandoval testified at trial that she witnessed Souliotes's Winnebago driving up and
15 down Ronald Avenue 10 to 15 times during the approximately two hours prior to the fire. She
16 also testified that she witnessed the Winnebago being parked across the street from 1319
17 Ronald Avenue, and then saw a man exit the Winnebago and cross the street while carrying a
18 white bag or pillowcase. The man went behind the residence and returned a few minutes later
19 empty handed, and she soon observed flames coming from the residence. She testified that
20 she saw Souliotes's face through the front windshield of his Winnebago when he slowed down
21 to take a look at the house from the corner of Ronald Avenue and Tully Road before driving
22 away.⁵¹

23 The parties made the following stipulations regarding Fire Science, MPDs and Hydrocarbon
24 Detectors:

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29 ⁵¹ AR 259-60.

1. The parties' experts all agree that they cannot determine the cause and origin of the fire, including whether the fire was accidental or the result of arson, based on the evidence and record existing today.
2. Burn patterns, deep burning and damage to the floor inside the residence and burn patterns on the concrete floor of the garage are now known not to be indicators of arson.
3. The floor damage and burn patterns inside the house and garage (which the original investigators attributed to arson using a flammable liquid) appear to be the result of flashover burning and fall-down from roof collapse; they are not indicators of arson using a flammable liquid.
4. The temperature of the fire, evidenced by deep charring and witness accounts of an "extremely hot" fire is, "known not to be [an] indicator of arson using flammable liquid."
5. Fires involving accelerants do not burn at higher temperatures than fires not involving the use of a flammable liquids.
6. There was sufficient fuel in the house for the fire to have occurred without the use of a flammable liquid.
7. The hydrocarbon detector is not a reliable indicator of the use of an accelerant. "[H]ydrocarbon detectors commonly deliver false positives," and "a positive reaction from a hydrocarbon detector is never reliable evidence of the presence of a liquid accelerant without confirmatory lab results."⁵²

The federal habeas evidentiary hearing commenced on January 24, 2012.

Petitioner's Expert Witnesses

Steve Carman (Carman) opined that the Modesto Fire Department's conclusion that the fire at 1319 Ronald Avenue was arson was based upon factors now known not to be indicators of arson. Specifically, Carman opined Reuscher and Evers based their opinion on a laundry list of outdated factors that had been widely discounted as indicators of arson.⁵³ Carman further opined that their testimony regarding fire behavior was "inaccurate and not representative of or based on proven

⁵² AR 872-873 (stipulations regarding Fire Science, MPDs and Hydrocarbon Detectors).

⁵³ AR 492.

1 scientific principles.”⁵⁴ He also opined that Reuscher and Evers’s misinterpretation of the fire’s
2 behavior led them to mistakenly believe that the normal fire behavior they observed was “indicative of a
3 classic use of ignitable liquid, an arson.”⁵⁵

4 Carman opined that possible accidental causes were not thoroughly investigated. According to
5 Carman, one of the difficulties with the 1319 Ronald Avenue fire is that the record was insufficient to be
6 able to eliminate certain possibilities. Although Reuscher and Evers testified that they had eliminated
7 all accidental causes, a closer examination showed that their review was not adequate.⁵⁶ Furthermore,
8 it appeared to Carman, based on the trial testimony of Reuscher, that Reuscher had established the fire
9 was arson before starting the investigation.⁵⁷

10 According to Carman, there were five potential accidental causes of the fire: the water heater,
11 the washer and dryer, electrical failure, the stove, and the refrigerator.⁵⁸ In Carman’s opinion, none of
12 the potential accidental causes of the fire were adequately investigated by Reuscher and Evers.⁵⁹

13 Carman testified there was little to no information regarding the water heater as a possible
14 source of the fire in the initial reports. Carman viewed a photograph of the water heater taken at the
15 scene which showed the flue stack had fallen off the water heater. According to Carman, if the flue
16 stack was obstructed, it could fail when the gases backed up and would cause flames from the burner
17 to spread outside of the burn chamber. At 1319 Ronald Avenue, the area above the water heater was
18 close to the highest part of the ceiling. If the water heater had failed, the gases from the heater would
19 have collected at the highest part of the ceiling. These gases could have become hot enough to ignite
20 the underside of the roof.⁶⁰

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24 ⁵⁴ *Ibid.*

25 ⁵⁵ AR 497.

26 ⁵⁶ Habeas Transcript (HT) 77-78.

27 ⁵⁷ HT 54.

28 ⁵⁸ HT 70-76.

29 ⁵⁹ HT 51-55.

⁶⁰ HT 60.

1 In Carman's opinion, it appeared from the report that the washer and dryer were inadequately
2 investigated. For example, Carman found no reference to the make or model of the washer and dryer.
3 It was also unknown whether the washing machine or dryer had clothes in them.⁶¹

4 Regarding the washer, if any of the electrical controls failed and the washer caught on fire, the
5 fire would not spread much beyond the washer, unless it had flammable material on top such as a
6 plastic clothes basket or cardboard boxes.⁶²

7 It is unclear whether the dryer at 1319 Ronald Avenue was a gas dryer or an electric dryer. In
8 either case, there could have been an electrical failure. If there are combustible materials nearby, they
9 could be ignited from a smaller fire in the dryer. The fire could have been caused by an electrical fire.
10 Carman noted that in 1997 it was common for investigators to look at a fuse panel and eliminate it if it
11 was not an obvious cause of the fire. From his review of the initial fire investigation report, it appeared
12 the investigators eliminated electrical causes by simply looking at a device to see whether it was readily
13 apparent that the fire started there.⁶³

14 Carman stated that, according to the trial transcript, the defense fire expert recorded various
15 fuse panels in the house. One fuse box was located in the living room, which had four fuses in it. In
16 one of the photographs, it was clear that the top of two fuses had failed by either taking too much heat
17 or too much electrical charge. These fuses, however, did not appear to have ever been unscrewed
18 from their sockets during the earlier investigations, and there was no mention of the fuses in reports.⁶⁴

19 On cross-examination, Carman opined that, at this point, the record was insufficient for anyone
20 to determine the cause and origin of the fire.⁶⁵

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25 ⁶¹ HT 72-73.

26 ⁶² HT 72.

27 ⁶³ HT 76-79.

28 ⁶⁴ HT 78-79.

29 ⁶⁵ HT 69.

1 Carman opined that if the fire had started in the living room, he would have anticipated more
2 damage to the western part of the house, which was not nearly as extensive as the damage on the
3 eastern side of the house.⁶⁶

4 Carman believed that the fire progression occurred as follows: the fire started near the
5 separation wall in the garage, either in the water heater, or another appliance; and it spread into the
6 living room on the underside of the roof through holes in the wall. However, if there was a failure in the
7 door or the door was open leading to the garage, hot gases could have passed into the living room from
8 the kitchen area. There was a fire in both the living room ceiling and in the room below.⁶⁷

9 The Deputy Attorney General (AG) asked whether Carman was aware that firefighters went on
10 top of the roof, above the living room, to open the ventilation holes above the living room. Carman
11 found this surprising because it was not standard procedure and would have been extremely
12 dangerous considering the room was in flashover.

13 The AG questioned Carman regarding Dr. John DeHaan's (DeHaan) theory that there may have
14 been multiple points of origin. Carman opined that, although this was a possibility, he did not agree that
15 it was the only possibility.⁶⁸

16 The AG questioned Carman about whether he believed motives should be considered when
17 investigating a fire scene. Carman opined that it is common practice to consider motives when
18 determining whether a fire was caused by arson. However, this creates an expectation bias that can
19 interfere with an investigation. Coming to an investigation with a blank slate allows an investigator to
20 evaluate all evidence equally.⁶⁹

21 The AG queried whether the conclusion reached 15 years earlier was wrong just because the
22 cause or origin could not be determined. Carman stated he believes the conclusion was wrong if what
23 he read in Reuscher and Evers's report was the only evidence pointing to arson.⁷⁰

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25 ⁶⁶ HT 88.

26 ⁶⁷ HT 89-90.

27 ⁶⁸ HT 94.

28 ⁶⁹ HT 96-98.

29 ⁷⁰ HT 99-100.

1 John Lentini, fire investigator and chemist, testified that he was contacted by Souliotes's sister
2 in 2005 and asked to retest the MPDs found on Souliotes's shoes and on the carpet in the living room.
3 Lentini found that the two were chemically distinguishable based on their molecular weight: the
4 molecular weight of the MPD on the shoes was higher than the material from the fire scene. According
5 to Lentini, this was problematic. When an MPD is exposed to fire, the molecular weight rises because
6 the lighter components of the mixture tend to evaporate more quickly than the heavier components.
7 Therefore, if the MPD from the fire scene had been heavier than the MPD on the shoes, he would have
8 been unable to eliminate the shoes as coming from the same place as the fire scene. However, since
9 the material on the shoes was heavier, it is impossible for the two MPDs to be the same material.⁷¹

10 On cross-examination, the AG questioned Lentini regarding whether distinguishing substances
11 based on their molecular weight could have occurred prior to 2005. Lentini opined that although the
12 difference in molecular weight was known, until 2005, no one in the fire science community had
13 appreciated the significance of this data.⁷²

14 Dr. Jennifer Dysart, a psychology professor specializing in eyewitness identification, opined that
15 Sandoval's identification was problematic because there were significant impediments at the time of the
16 fire. These impediments to her observations significantly impaired her ability to recall people and
17 information accurately and correctly.⁷³

18 On the second day of the evidentiary hearing, Carly Balletto (Balletto), a witness who created a
19 video designed to reenact the scene Sandoval saw on the night of the fire, testified that Sandoval's
20 balcony was virtually the same in every way, aside from the color. The video was taken at nighttime, at
21 around 7:30 p.m.

22 From her position on the balcony, Balletto watched as a Winnebago drove the same path as the
23 motor home on the night in question. She was extremely focused on the windshield. From this
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26 ⁷¹ HT 102-110.

27 ⁷² HT 117.

28 ⁷³ Dysart's opinion is substantially the same as her opinion in the Penal Code section 4900 hearing and
29 is more fully summarized in the section below.

1 location, she could not see the face of the driver, nor could she make out any of the driver's features
2 from any of the angles Sandoval claimed to have seen the driver's face.⁷⁴

3 On cross-examination, the AG questioned Balletto about the lighting on the night of the
4 reenactment. Balletto was on the balcony for a total of five hours while it was dark. Balletto did not
5 know whether she was viewing the Winnebago under the same lighting conditions as Sandoval did on
6 the night of the fire.⁷⁵

7 Dr. Thomas Streed, a behavioral scientist who has conducted in-service training for law
8 enforcement officers at the local, state, and federal levels, opined that field show ups are inherently
9 suggestive. In his opinion, law enforcement erred by taking Sandoval to identify the motor home a
10 second time, after she explicitly stated that Souliotes's Winnebago was not the same motor home she
11 saw on the night of the fire. According to Streed, the back of the motor home was the most identifying
12 portion of the motor home, and she described this part of the motor home with great specificity.
13 Sandoval stated that she had seen a ladder on the back of the motor home. Souliotes's Winnebago
14 does not have a ladder. Sandoval stated there had been a white curtain in the rear window.
15 Souliotes's Winnebago does not have a curtain. Sandoval testified the motor home had a white license
16 plate; Souliotes's Winnebago has a blue license plate. Sandoval testified the motor home she saw did
17 not have a spare tire on the back. Souliotes's Winnebago had a spare tire.⁷⁶

18 Although Sandoval testified the driver of the motor home was wearing a blue-checkered
19 Pendleton, this shirt was not recovered during the search of Souliotes's property.⁷⁷

20 David Shilling, a private fire investigator who investigated 1319 Ronald Avenue on behalf of
21 Souliotes's insurance carrier, described his investigation of the fire scene. Shilling arrived at 1319
22 Ronald Avenue and entered the house through the garage. He examined distinct patterns on the floor
23 and checked electrical outlets. Shilling concluded that the pour patterns in the garage were indications
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26 ⁷⁴ HT 249-250.

27 ⁷⁵ HT 258.

28 ⁷⁶ HT 269-279.

29 ⁷⁷ HT 285-286.

1 of the presence of flammable liquid. As he entered each room, he visually inspected electrical outlets
2 and other sources and did not see any accidental causes of fire.⁷⁸

3 Shilling testified that he examined the refrigerator, washer, dryer, water heater, and forced air
4 heater from the garage, as they lay in a large pile of debris the fire department had removed from the
5 house. While Shilling specifically remembered examining the water heater, he could not recall if he
6 examined the washer and dryer. Other than the photograph of the debris in the pile (in which
7 appliances, if identifiable at all, were either partially or completely obscured by other rubble) and a
8 photograph of a wall heater in the house, there were no pictures of appliances in his report.⁷⁹

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

16 After the evidentiary hearing regarding the *Schlup* gateway ruling, the judge noted that the
17 parties agreed that the cause and origin of the fire could not be determined from the evidence
18 presented. The original expert conclusions that flammable liquids were used as an accelerant and that
19 the fire was caused by arson "no longer have probative value."⁸⁰ Further the judge found that there
20 was no link between Souliotes's shoes and the fire as there was no MPD evidence placing him at the
21 scene of the fire.⁸¹ The judge further posited that the parties' stipulations regarding the fallibility of the
22 fire science used at Souliotes trial "drastically and fundamentally changes the evaluation of the
23 Petitioner's guilt."⁸²

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25 ⁷⁸ HT 383.

26 ⁷⁹ HT 386-387.

27 ⁸⁰ AR 1282.

28 ⁸¹ AR 1284.

29 ⁸² AR 1285.

1 Regarding Sandoval's identifications, the Court discussed her identification of Souliotes and her
2 identification of the RV separately, before drawing conclusions about her credibility.

3 Sandoval's Identification of Souliotes

4 In making its determination for *Schlup* purposes, regarding Sandoval's eyewitness identification,
5 the Court noted that her initial description of the driver's age and facial features did not match
6 Souliotes, and her identification changed over time. The Court found Sandoval's belated identification
7 of great significance. Specifically, Sandoval initially described a much younger person, told
8 investigators that she had not seen the driver long enough to identify him, and was unable to identify
9 him in the photo array the morning after the fire. The Court noted that Sandoval only identified
10 Souliotes six months later after she had seen at least one newspaper article identifying Souliotes as the
11 suspected arsonist and after she saw him sitting in court wearing a red jail jumpsuit and sitting next to
12 counsel. The Court further noted that Sandoval identified Souliotes after a break in court proceedings
13 where she might have talked with the prosecutor, who then unexpectedly reopened questioning and
14 asked her to make a newfound identification. The court was disturbed that neither Sandoval nor
15 anyone else offered any explanation to support her newly discovered ability to identify Souliotes.
16 Additionally, the Court opined that it could not state with "absolute certainty" that Sandoval did not see
17 the driver's face or that on seeing Souliotes's face in court, she did not suddenly remember what she
18 saw six months earlier. However, the court found "there are so many factors mitigating against such
19 conclusions, such bizarre circumstances surrounding the alleged sighting of the driver, and so many
20 uncertainties, contradictions and inconsistencies in her testimony and in the various reports of it, the
21 Court concludes that no reasonable juror would credit this identification."

22 Dysart, who the Court found to be a very well-qualified and objective expert on such matters,
23 concluded, after considering the totality of the circumstances, that Sandoval's identification of Petitioner
24 was "wholly unreliable."⁸³ The Court agreed with Dysart's assessment. The Court further held that
25 Sandoval's testimony, on its face "repeatedly lends itself to incredibility. It may not be unreliable, but it
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29 ⁸³ (HT 157-58).

1 has many earmarks of unreliability..."⁸⁴ The Court found credible Balletto's testimony that she was
2 unable to observe the face of the driver during the reenactment.⁸⁵

3 Identification of the RV

4 First, the Court noted the confusion over whether Sandoval initially described a Dodge Caravan
5 minivan or an RV. Both Sandoval and Reuscher testified that Sandoval probably identified the vehicle
6 as a Dodge Caravan during the initial interview. Reuscher's contemporaneous notes also corroborate
7 this description. However, this evidence is incompatible with Sandoval's claim that she knew the
8 vehicle was a Winnebago all along because it had a blue "W."

9 Second, Sandoval described several features of the RV that were not consistent with the
10 features on Souliotes's vehicle. Specifically, she identified the vehicle as having a ladder, a rear
11 window with a white curtain, a white license plate and nothing on the roof of the RV. Souliotes's vehicle
12 did not have a ladder, a rear window curtain or a white license plate. Additionally, his vehicle had an air
13 conditioner on the roof. Moreover, Sandoval initially described the RV as beige. Souliotes's RV was
14 white. Finally, although Sandoval claimed she identified the RV based on the rear window, she was
15 unable to identify the RV from the rear on the date of the fire and from a photograph during the trial.

16 Finally, the Court noted the suggestiveness created when officers took Sandoval to view
17 Souliotes's vehicle at his house when he was obviously considered a potential suspect. Sandoval was
18 brought back a second time, where she witnessed police vehicles and activity suggesting Souliotes's
19 RV was being investigated. The Court found credible Streed's opinion that such police behavior is
20 discouraged.

21 The Court found that, although problematic, Sandoval's credibility regarding the RV is "much
22 greater" than the credibility of her identification of Souliotes. "The former is entitled to some weight; the
23 latter, none."⁸⁶

24 Overall, the Court determined that Sandoval's credibility suffered because her testimony for
25 both identifications derived from the same circumstances and was influenced by the same factors. The
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27 ⁸⁴ AR 1293.

28 ⁸⁵ AR 1287-88.

29 ⁸⁶ AR 1290.

1 Court found, "Sandoval's testimony regarding the identification of Petitioner is so unbelievable, even
2 bizarre, that her testimony must be viewed with focused skepticism when she goes on to describe other
3 events and objects, she witnessed that night. Perhaps if Sandoval had not provided such an incredible
4 chain of events leading to her identification of Petitioner, her identification of the RV might be worthy of
5 more consideration. That is not the case here."⁸⁷ Consequently, the Court held that it could not credit
6 her testimony regarding the identification of Souliotes or his RV "in any measurable way."⁸⁸

7 On April 24, 2012, the Magistrate Judge issued Findings and a Recommendation that the Court
8 find Souliotes presented a sufficient showing of actual innocence to serve as an equitable exception to
9 the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) statute of limitations under *Schlup*
10 and was entitled to present the merits of his underlying habeas claim.⁸⁹ The district court adopted the
11 magistrate's recommendation on July 6, 2012, and referred the matter for further adjudication.⁹⁰
12 Under de novo review, the magistrate judge weighed the result of trial counsel's failure to call any
13 witnesses to rebut the prosecution's case in Souliotes's second trial, and how this conduct prejudiced
14 Souliotes. The Court did not make any determination regarding Souliotes's guilt or innocence for
15 purposes of any Eighth or Fourteenth Amendment constitutional claim. The Court concluded that there
16 was a reasonable probability that absent the ineffective assistance of counsel, the outcome of
17 Souliotes's trial would have been different. The Court recommended granting habeas relief based upon
18 its determination that counsel rendered ineffective assistance by failing to call an arson expert at trial
19 (claim 2) or other defense witnesses (claim 3), particularly after promising to do so during the Opening
20 Statement, and the overall cumulative effect of these two errors was prejudicial (claim 7). These
21 findings, based upon the merits of Souliotes's habeas petition are binding on CalVCB. The Court
22 expressly determined that the prosecution's main eyewitness (Sandoval) suffered significant credibility
23 issues and that fire investigators formed hasty conclusions based upon inaccurate and an incomplete
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26 ⁸⁷ AR 1295.

27 ⁸⁸ AR 1295.

28 ⁸⁹ AR 1329.

29 ⁹⁰ *Ibid.*

1 review of the physical evidence.⁹¹ The Court ordered Souliotes released within 30 days of the adoption
2 of the Findings and Recommendation unless the District Court was notified of the intent to retry.⁹²

3 On April 12, 2013, the district court adopted the magistrate's recommendation to grant habeas
4 relief and ordered Souliotes released unless a retrial commenced within 90 days.⁹³

5 **D. State Retrial Proceedings**

6 The Stanislaus County District Attorney elected to retry Souliotes. During in limine motions, the
7 trial court excluded Sandoval's identification of Souliotes, but nevertheless allowed Sandoval's
8 identification of Souliotes's vehicle, under Evidence Code section 352.⁹⁴ The trial court further
9 concluded that the stipulations among the parties in the federal habeas proceeding were equally
10 binding in the retrial.⁹⁵

11 On July 2, 2013, Souliotes accepted a plea pursuant to *People v. West* (1970) 3 Cal.3 595 and
12 *North Carolina v. Alford* (1970) 400 U.S. 25, 37-38, and pled no-contest to three counts of involuntary
13 manslaughter.⁹⁶ As the factual basis for the plea, the parties stipulated to the following facts:

14 "The defendant was the owner and landlord of a residential property located at 1319
15 Ronald Street [*sic*] located in Modesto. As such he had a duty to have an operable
16 smoke alarm as required under Health and Safety Code section 13113.8 in a rental
17 property. On January 15, 1997, a fire occurred in the rental property which resulted in
18 the deaths of Michelle Jones, Amanda Jones and Daniel Jones, Jr. There is a factual
19 basis to conclude that the defendant did not have an operable smoke alarm as required
20 in the house and as a result of his negligent maintenance of 1319 Ronald Street [*sic*]
21 property, the three occupants died in the fire."⁹⁷

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24 ⁹¹ AR 1401.

25 ⁹² AR 1403.

26 ⁹³ AR 145-148.

27 ⁹⁴ AR 304-325.

28 ⁹⁵ AR 1487-1496.

29 ⁹⁶ AR 1409.

⁹⁷ AR 1410.

1 In exchange, all remaining charges were dismissed, and Souliotes was released immediately for
2 time served on an aggregate, six-year sentence.⁹⁸ Accordingly, Souliotes was released from custody
3 on July 2, 2013, after having served 6,013 days imprisoned.⁹⁹

4 **E. CalVCB Proceedings**

5 On April 10, 2015, Souliotes applied to CalVCB for compensation as an erroneously convicted
6 offender under Penal Code section 4900. Souliotes requested automatic compensation under Penal
7 Code section 1485.5, arguing that the federal court's *Schlup* findings amounted to a finding of
8 innocence. CalVCB rejected this argument and requested a response letter from the AG.¹⁰⁰ The letter
9 was originally due June 9, 2015.

10 The Attorney General timely requested and received a first extension of 60 days to Monday,
11 September 7, 2015, which was a holiday.¹⁰¹ The next day on September 8, 2015, the Attorney General
12 requested a second extension to October 22, 2015, to which Souliotes objected.¹⁰² On September 10,
13 2015, CalVCB's Senior Attorney Kyle Hedum denied the AG's second request for an extension of time
14 and, thereafter, scheduled the administrative hearing for January 2016, with the parties' evidence to be
15 submitted by December 1, 2015.¹⁰³ The Attorney General timely submitted its exhibits, totaling several
16 thousand pages, on November 30, 2015, without any accompanying response letter.¹⁰⁴ Souliotes
17 objected to the AG's continued participation in the CalVCB proceedings.¹⁰⁵

18 At Souliotes's request, and over the AG's objection, the administrative hearing was postponed
19 and eventually held on May 4 and 5, 2016.¹⁰⁶ In advance of the hearing, Souliotes urged CalVCB to
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21 ⁹⁸ AR 1409.

22 ⁹⁹ This calculation includes the date of Souliotes's arrest on January 15, 1997, through and including
23 the date of his release on July 2, 2013.

24 ¹⁰⁰ AR 819-824.

25 ¹⁰¹ AR 825, 924-925.

26 ¹⁰² AR 829-830, 927-928, 935-939.

27 ¹⁰³ AR 831-832, 856.

28 ¹⁰⁴ AR 1000-1003.

29 ¹⁰⁵ AR 827-828.

¹⁰⁶ AR 819-869, 956-964.

1 accept as binding the federal court's findings concerning the showing of innocence under *Schlup*.¹⁰⁷
2 The AG objected.¹⁰⁸ At the hearing, Souliotes testified, along with four experts, in support of his
3 application for compensation.

4 Testimony of Souliotes

5 Souliotes testified that he did not set fire to 1319 Ronald Avenue.¹⁰⁹ According to Souliotes,
6 1319 Ronald Avenue was approved as Section 8 Housing.¹¹⁰ Under Section 8, the property must be
7 inspected by the county.¹¹¹ Once the property passes inspection, it may be rented to approved tenants
8 under the guidelines, with their rent guaranteed by the county.¹¹² The county inspected 1319 Ronald
9 Avenue every January.¹¹³ In January 1996, the house was inspected to ensure that it was adequate
10 and safe for residents.¹¹⁴ Section 8 found no defects in the house except for the stove.¹¹⁵ All additions
11 made on the home were also inspected by the building and safety enforcement.¹¹⁶

12 Souliotes began renting the property to the Jones family in March or April 1996.¹¹⁷ Jones
13 testified in court that after moving into 1319 Ronald Avenue, he repaired the stove himself.¹¹⁸ On
14 November 4, 1996, Jones informed Souliotes he and his family would be vacating the premises.¹¹⁹
15 Souliotes requested that Jones pay rent for November. Jones told Souliotes to take the rent from the
16 deposit, to which Souliotes replied that the deposit was not rent.¹²⁰ Souliotes did not receive rent from
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18 ¹⁰⁷ AR 874-885.

19 ¹⁰⁸ AR 886-891.

20 ¹⁰⁹ CalVCB 4900 Transcripts, p. 18.

21 ¹¹⁰ CalVCB 4900 Transcripts, p. 43.

22 ¹¹¹ CalVCB 4900 Transcripts, p. 42.

23 ¹¹² CalVCB 4900 Transcripts, p. 43.

24 ¹¹³ CalVCB 4900 Transcripts, p. 44.

25 ¹¹⁴ CalVCB 4900 Transcripts, p. 56.

26 ¹¹⁵ *Id.*

27 ¹¹⁶ *Id.*

28 ¹¹⁷ CalVCB 4900 Transcripts, p. 37.

29 ¹¹⁸ CalVCB 4900 Transcripts, p. 62.

¹¹⁹ CalVCB 4900 Transcripts, p. 21.

¹²⁰ CalVCB 4900 Transcripts, p. 21.

1 the Jones family for November or December of 1996.¹²¹ Souliotes filed an unlawful detainer against the
2 Jones family for their failure to pay rent. The eviction was scheduled for early January, but due to a
3 scrivener's error, the eviction was rescheduled for the following week. When asked by the AG if he was
4 upset that the eviction was delayed, Souliotes said he was disappointed, but not upset.¹²²

5 On the night of the fire, Souliotes filled the tank of his Winnebago, changed the oil, and left it on
6 the street so that oil would not drip onto his driveway.¹²³ Souliotes and his girlfriend planned to go
7 camping the next day.¹²⁴ Souliotes learned about the fire early the next morning when law enforcement
8 came to his house.¹²⁵

9 After the second trial, Souliotes refused the plea deal proffered by the DA's office because he is
10 innocent. He served 16- and one-half years in a Level 4 prison and was ineligible for parole.¹²⁶

11 Souliotes took a polygraph examination in 2002. According to the polygraph test, Souliotes
12 truthfully answered "no" when asked whether he started the fire at 1319 Ronald Avenue.¹²⁷ He
13 truthfully answered "no" when asked whether he caused the fire to be started at 1319 Ronald
14 Avenue.¹²⁸

15 Souliotes was released from prison in 2013, at age 73. Souliotes testified that his counsel
16 urged him to take the *West* plea. He accepted the plea because his attorneys told him, "You're not
17 admitting participating at all in the fire. You're not admitting direct participation."¹²⁹ He was offered four
18 deals, and he chose the only plea that would allow him to be released without admitting any direct
19 participation: failure to maintain a smoke alarm.¹³⁰ However, according to Souliotes, it was untrue that
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21 ¹²¹ CalVCB 4900 Transcripts, p. 23.

22 ¹²² CalVCB 4900 Transcripts, p. 61.

23 ¹²³ CalVCB 4900 Transcripts, p. 41.

24 ¹²⁴ *Ibid.*

25 ¹²⁵ CalVCB 4900 Transcripts, p. 46.

26 ¹²⁶ CalVCB 4900 Transcripts, p. 52.

27 ¹²⁷ CalVCB 4900 Transcripts, p. 50.

28 ¹²⁸ *Ibid.*

29 ¹²⁹ CalVCB 4900 Transcripts, p. 56.

¹³⁰ CalVCB 4900 Transcripts, p. 55.

1 he negligently maintained smoke alarms.¹³¹ Souliotes testified, "The smoke alarm was there. They
2 pushed the button, and everything was working, and they signed it."¹³² Section 8 would not have
3 allowed him to rent the property without functioning smoke alarms.¹³³ Souliotes further testified that
4 Jones never told him anything about the smoke detector.¹³⁴ Jones told him about the air conditioner
5 and the thermostat, which Souliotes fixed.¹³⁵

6 Testimony of Scott Spertzel (Spertzel), CPA

7 Spertzel testified that he had 20 years of experience as a consultant and specializes in forensic
8 accounting where the intended use of his work is litigation. Spertzel previously testified on behalf of
9 Souliotes in his habeas hearing before the federal magistrate judge. The AG stipulated to his
10 qualifications as an expert.¹³⁶

11 Spertzel assessed Souliotes's financial position for the period in and around the time of the
12 fire.¹³⁷ Based on his analysis, Souliotes was in a strong financial position at the time of the fire, with a
13 net worth of \$210,000.¹³⁸ Specifically, Souliotes had \$17,000.00 in cash with total projected monthly
14 expenses of \$2,234.¹³⁹ Souliotes paid off his credit card bills every month. Based on his analysis,
15 Spertzel concluded that if Souliotes received no income from workers' compensation, rental income, or
16 social security, his cash reserves would have covered his expenses for eight months.¹⁴⁰ If Souliotes
17 continued to receive workers' compensation and social security and had no rental or interest income
18 from anywhere else, he would have been able to cover all of his recurring monthly debt, only
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21 ¹³¹ CalVCB 4900 Transcripts, p. 56.

22 ¹³² *Id.*

23 ¹³³ *Id.*

24 ¹³⁴ CalVCB 4900 Transcripts, p. 56.

25 ¹³⁵ CalVCB 4900 Transcripts, p. 57.

26 ¹³⁶ CalVCB 4900 Transcripts, p. 77.

27 ¹³⁷ CalVCB 4900 Transcripts, p. 78.

28 ¹³⁸ Spertzel defined net worth as the difference between assets and the amounts owed. CalVCB 4900
29 Transcripts, p. 78,

¹³⁹ CalVCB 4900 Transcripts, p. 79.

¹⁴⁰ CalVCB 4900 Transcripts, p. 80.

1 occasionally touching his cash reserves.¹⁴¹ The remaining \$17,000 in cash reserves could be used
2 over a significant amount of time to cover any other expenses Souliotes may have had. Souliotes also
3 had \$33,000.00 in an Individual Retirement Account that was accessible, although he may have
4 incurred a penalty to withdraw it.¹⁴² Souliotes was conservative in his investments, not under any
5 financial distress, and living within his means.¹⁴³

6 Spertzel agreed with the federal magistrate judge at the habeas evidentiary hearing who
7 concluded Souliotes would not have benefitted from destroying the property, he would have benefitted
8 from selling it.¹⁴⁴ The insurance company would have had two options: (1) pay for the building to be
9 repaired; or (2) make a cash payment to Souliotes reduced to reflect depreciation of the building.¹⁴⁵
10 The home at 1319 Ronald Avenue was 30 years old. The insurance company offered \$50,000,, which
11 was \$20,000.00 less than the amount owed on the mortgage.¹⁴⁶ The insured person would elect which
12 option of the two to select.¹⁴⁷

13 The federal magistrate judge also found that there was no financial rationale for destroying the
14 house and that Souliotes was in a "relatively comfortable" financial position.¹⁴⁸ Spertzel assessed the
15 financial benefit of committing arson; he concluded that it did not appear Souliotes would significantly
16 financially benefit from the fire.¹⁴⁹ The financial harm that came as a result of the fire was between
17 \$500,000. and \$800,000.¹⁵⁰ The properties at Pearl Street and Ronald Avenue were producing
18 consistent rental income, and Tully Road was Souliotes's primary residence.¹⁵¹ Souliotes planned to
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20 ¹⁴¹ CalVCB 4900 Transcripts, p. 85.

21 ¹⁴² CalVCB 4900 Transcripts, p. 94.

22 ¹⁴³ CalVCB 4900 Transcripts, p. 80.

23 ¹⁴⁴ CalVCB 4900 Transcripts, p. 94.

24 ¹⁴⁵ *Id.*

25 ¹⁴⁶ CalVCB 4900 Transcripts, p. 95.

26 ¹⁴⁷ *Id.*

27 ¹⁴⁸ CalVCB 4900 Transcripts, p. 96.

28 ¹⁴⁹ *Ibid.*

29 ¹⁵⁰ CalVCB 4900 Transcripts, p. 79.

¹⁵¹ CalVCB 4900 Transcripts, p. 82.

1 rent the Tully Road house, and move in with his girlfriend in Pleasanton.¹⁵² Souliotes continued to pay
2 the mortgage on Ronald Avenue even after it burned down, which showed his financial strength after
3 the fire.¹⁵³

4 In December 1996, Souliotes made a personal loan of \$30,000. in cash to a couple who wanted
5 to purchase a home (called the Petaluma loan).¹⁵⁴ The net interest earned on the home was payable
6 \$287.50 per month to Souliotes. Spertzel opined Souliotes's ability to make a \$30,000. loan indicated
7 the strength of his financial position at the time. This personal loan was considered a safe investment
8 and Souliotes was the first trust deed on the house, meaning if there was a problem, he would be the
9 first to recoup on the loan.¹⁵⁵

10 Souliotes would not have had difficulty selling 1319 Ronald Avenue; he successfully refinanced
11 Ronald Avenue for \$69,000.00 and received \$24,690, as part of a cash-out refinance. In 1991 and
12 1992, Ronald Avenue was appraised at \$107,000. The Pearl Street and Tully Road properties were
13 purchased for \$147,000 and were appraised in 1993 at \$185,000.¹⁵⁶

14 Spertzel was aware there was a pending workers' compensation lawsuit for which a large award
15 was expected.¹⁵⁷ Spertzel did not consider the potential award when determining Souliotes's financial
16 fitness.¹⁵⁸ Should Souliotes have received that lump sum amount, the monthly workers' compensation
17 payments would have ended.

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

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24 ¹⁵² *Ibid.*

25 ¹⁵³ CalVCB 4900 Transcripts, p. 97.

26 ¹⁵⁴ CalVCB 4900 Transcripts, p. 84.

27 ¹⁵⁵ CalVCB 4900 Transcripts, p. 85.

28 ¹⁵⁶ CalVCB 4900 Transcripts, p. 91.

29 ¹⁵⁷ CalVCB 4900 Transcripts, p. 83.

¹⁵⁸ CalVCB 4900 Transcripts, p. 84.

1 In response to the AG's question about when the first interest payment on the Petaluma loan
2 was due (\$287.50), Spertzel said the payment was not due until February 1, 1997, 17 days after the
3 fire.¹⁵⁹

4 Regarding Marks's report at the habeas corpus evidentiary hearing, Spertzel noted that Marks is
5 not a CPA. Spertzel criticized the method Marks used as overly narrow in scope and overly focused on
6 the January 15, 1997, time frame, which could lead to inaccurate results.¹⁶⁰ The AG noted that
7 Spertzel and Marks had approximately the same figure for Souliotes's net worth.¹⁶¹ For the rental
8 income, rent was included for 1319 Ronald Avenue, however, in November, December, and January,
9 no rent was paid.¹⁶² It was Spertzel's understanding that Jones owed money only for December and
10 January.¹⁶³ In response to whether Spertzel had knowledge of who was paying the mortgage at 1319
11 Ronald Avenue while Souliotes was incarcerated, Spertzel said the only logical person would be
12 Souliotes.¹⁶⁴

13 Regarding the workers' compensation payments Souliotes was receiving at the time of the fire,
14 the AG asked whether the total amount of compensation would be reduced once Souliotes's claim was
15 settled.¹⁶⁵ Spertzel responded that he was not sure, therefore, he could not offer an opinion on this
16 question.

17 Testimony of Dr. Jennifer Dysart

18 Dysart, a psychology professor at John Jay College of Criminal Justice for the City University of
19 New York, specializes in eyewitness identification.¹⁶⁶ Dysart has been certified as an eyewitness
20 expert approximately 12 times. Dysart was retained by Souliotes to evaluate the accuracy and reliability
21 of Sandoval's eyewitness identification of Souliotes and his Winnebago.

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23 ¹⁵⁹ *Id.*

24 ¹⁶⁰ CalVCB 4900 Transcripts, p. 99.

25 ¹⁶¹ *Id.*

26 ¹⁶² *Id.*

27 ¹⁶³ CalVCB 4900 Transcripts, pp. 99-100.

28 ¹⁶⁴ CalVCB 4900 Transcripts, p. 105.

29 ¹⁶⁵ CalVCB 4900 Transcripts, p. 101.

¹⁶⁶ CalVCB 4900 Transcripts, p. 109.

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

- 3 • The distance from which Sandoval claimed to have viewed the suspect;
- 4 • The short length of time she was exposed to the suspect's face;
- 5 • The fact that the opportunity to view the suspect occurred at night;
- 6 • The number of trees obstructing her view to the street; and
- 7 • The fact that Sandoval rejected the initial identification of Souliotes, stating she
8 did not recognize anyone she saw in the photo array. Still, Sandoval was
9 permitted to make an in-court identification of Souliotes, which was her first
10 positive identification of him.¹⁶⁷

11 Dysart discussed research conducted by Professor Geoffrey Loftus and his colleagues which
12 examined the effects of distance on a person's ability to view the details of a person's face. The
13 distance between Sandoval's balcony and 1319 Ronald Avenue was 381 feet, 21 feet longer than a
14 football field.¹⁶⁸ The distance between Sandoval's balcony and Ronald Avenue, where the suspect was
15 driving, is 120 feet.¹⁶⁹ From that distance, it would be nearly impossible to see a face. According to
16 Sandoval's testimony, she was unable to determine whether the person she saw driving the Winnebago
17 was male or female.¹⁷⁰

18 Dysart offered her opinion as to Sandoval's fluctuating testimony at the preliminary hearing, and
19 two trials. At the beginning of the preliminary hearing, Sandoval testified she could not tell whether the
20 person had facial hair or glasses, nor could she determine his or her hair length or color.¹⁷¹ The court
21 took a brief recess, when Sandoval resumed her testimony, she gave a full, detailed description of the
22 suspect.¹⁷² This was the first time she was able to describe the face of the suspect. This in court
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24 ¹⁶⁷ CalVCB 4900 Transcripts, p. 110.

25 ¹⁶⁸ CalVCB 4900 Transcripts, p. 118.

26 ¹⁶⁹ *Id.*

27 ¹⁷⁰ CalVCB 4900 Transcripts, p. 120.

28 ¹⁷¹ CalVCB 4900 Transcripts, p. 121-122.

29 ¹⁷² *Id.*

1 testimony contradicted Sandoval's statements the day after the fire. In fact, twelve hours after the fire,
2 Sandoval was shown a photo array, where she responded she could not identify anyone. According to
3 experts in eyewitness identification, the first identification is the most important. In this case, during the
4 first identification attempt, Sandoval rejected the photographs in the lineup.¹⁷³ Dysart opined there is
5 very little difference between a photo array and live bodies.¹⁷⁴ Regarding the motor home identification,
6 Sandoval initially identified the following physical characteristics about the motor home she saw on the
7 night in question:

- 8 • It had a ladder;
- 9 • It had a window with a white curtain in the back;
- 10 • There was no written branding on the front of the RV;
- 11 • The license plate was white; and
- 12 • There may have been a tire on the back of the motor home.¹⁷⁵

13 In fact, there was no ladder on the back of Souliotes's motor home and there was no curtain.
14 However, written across the front in large letters was the word "Winnebago." Sandoval explicitly stated
15 that the motor home she saw that night did not have this type of branding. The license plate on
16 Souliotes's Winnebago was navy blue and not white as Sandoval had described. In addition,
17 Souliotes's motor home had a prominent HVAC unit on the top. Sandoval made no mention of the
18 HVAC unit. Nor did Sandoval initially, mention the eight running lights along the top of the RV, or the
19 tire on the back.¹⁷⁶

20 Dysart further testified that initially Sandoval rejected the Winnebago entirely.¹⁷⁷ During the first
21 motor home identification, the Winnebago was parked in the driveway with the front end facing the
22 fence, therefore, Sandoval was unable to see the front or the sides.¹⁷⁸ Dysart questioned if the front of

24 ¹⁷³ CalVCB 4900 Transcripts, p. 123.

25 ¹⁷⁴ CalVCB 4900 Transcripts, p. 129.

26 ¹⁷⁵ CalVCB 4900 Transcripts, p. 132

27 ¹⁷⁶ CalVCB 4900 Transcripts, p. 132.

28 ¹⁷⁷ CalVCB 4900 Transcripts, p. 133.

29 ¹⁷⁸ CalVCB 4900 Transcripts, p. 143.

1 the vehicle was the most memorable part of the motor home she saw on the night of the fire, why had
2 law enforcement failed to show her the front of the motor home during the first identification. Sandoval
3 decided at the initial show up that the Winnebago was not the same motor home because it had no
4 ladder, and the motor home she saw driving on Ronald Avenue had a ladder. After explicitly stating it
5 was not the same motor home, law enforcement took her back to Souliotes's home and again asked
6 her to identify the same motor home. Dysart opined this was an extremely suggestive show up and
7 research shows that confidence in a show-up or photo array identification should only be considered
8 during the initial identification.¹⁷⁹

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

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

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

18 Regarding the photo array, Sandoval stated she would not be able to identify anyone. However,
19 a person cannot have an accurate recognition experience if there is no memory at all. Dysart found it
20 credible that Sandoval could not identify anyone because she did not get a good look at the driver's
21 face.¹⁸⁰ For instance, if Sandoval's eyes were closed, she would not be able to identify anyone. Dysart
22 testified that Sandoval's inability to identify anyone in the photo array could be because she never saw
23 anyone: she never saw the face, and therefore, could not have an accurate recognition experience in
24 the absence of no memory at all. Dysart would not have expected Sandoval to have any memory of
25 the face, specifically because Sandoval said she did not think she would be able to identify anyone.

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29 ¹⁸⁰ CalVCB 4900 Transcripts, p. 147.

1 The AG then stated Sandoval may not have seen the perpetrator's face at all. Memory is selective.
2 Dysart agreed that Sandoval may have remembered certain aspects of the events and not others.

3 Testimony of Robert P. Bieber

4 Robert Bieber (Bieber) is certified by the National Association of Fire and Explosion
5 Investigators as a fire and explosion investigator. His specializations include fire cause and origin
6 determination, fire/death scene examination, arson for profit and insurance fraud investigations. Bieber
7 was a firefighter in Contra Costa County, as well as a deputy coroner. At the time of his CalVCB
8 testimony, Bieber was the director of the Arson Research Project, a criminal justice research project
9 hosted by the Constitutional Law Center of Monterey College of Law. The purpose of the Arson
10 Research Project is to examine the reliability of evidence used in arson prosecutions and to identify
11 arson convictions that have relied on unreliable evidence. The Arson Research Project conducts live-
12 burn research to examine and compare the fire patterns remaining after fires started in the presence of
13 and in the absence of an ignitable liquid.¹⁸¹

14 According to Bieber, the broadest conclusion is that the methodologies and processes used by
15 Reuscher and Evers at the time of the Souliotes fire investigation that led them to a determination that
16 an ignitable liquid was used in the garage, kitchen, and living room, was based entirely on unreliable,
17 outdated, and since disproven methodologies. Fire investigators now recognize that the pour patterns
18 and damage found in homes like 1319 Ronald Avenue are created in any large fire of this type, and
19 there is no scientific basis from which to draw a conclusion that an ignitable liquid was used. The
20 presence of ignitable liquids or liquid accelerant in an area cannot be determined in the absence of
21 confirmatory laboratory results.¹⁸²

22 Reuscher and Evers believed there were several burn/fire indicators that strongly pointed to
23 arson. There were both pour patterns and burn patterns. Their impression was that the fire burned
24 particularly hot. Both the live fire research Bieber conducted, and other research conducted in the field,
25 have consistently shown that fires can start accidentally on common combustibles found in a home
26 without an ignitable liquid being used. Unfortunately, at the time the 1319 Ronald Avenue fire was
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28 ¹⁸¹ CalVCB 4900 Transcripts, Day 2, p. 5.

29 ¹⁸² CalVCB 4900 Transcripts, Day 2, p. 9.

1 investigated, fire investigators strongly believed that a fire thought to have burned particularly hot
2 suggested the presence of an ignitable liquid. Similarly, if a burn pattern appeared on the floor, it was
3 erroneously characterized as a pour pattern.¹⁸³

4 Bieber then explained the occurrences of "flashover" and full room involvement. Flashover
5 occurs when the temperature in a room fire rises so high that combustible items begin to burn, even at
6 floor level, and in areas of the room away from the fire's origin. This is the point where low burning and
7 burning objects throughout the room can create conflicting burn indicators and fire patterns that can
8 easily distort or mask the fire's true area of origin. Burn patterns found in various parts of the
9 compartment can be easily misinterpreted as "pour patterns" or other fire patterns that were previously
10 associated with the presence of an ignitable liquid. Once the fire reaches flashover or full-room
11 involvement, these items (furniture and other combustible items) create their own fire patterns that can
12 be easily confused with or attributed to the presence of an ignitable liquid. When the fire reaches full
13 room involvement, it is burning hot and burns hottest wherever ventilation allows it to burn. At this
14 point, the investigation becomes far more subjective because, in the majority of cases, burn and heat
15 patterns have nothing to do with where the fire started.¹⁸⁴

16 During the initial fire investigation, both Reuscher and Evers reviewed the fire patterns and burn
17 damage on the floors in the kitchen and living room. They found clusters of fire patterns on vinyl tiles,
18 carpet, and hardwood floors, which to Reuscher and Evers were strong indicators of ignitable liquids.
19 Fire investigators now recognize that these types of indicators (burn damage) are created in any post
20 flashover fire because the heat of the fire causes burn damage, which can be misidentified as being
21 caused by ignitable liquid when clearly it was not. Fire investigators have a strong attachment to two
22 specific indicators of the presence of an ignitable liquid: (1) pour patterns; and (2) holes burned
23 through the floor. Many still believe the presence of either one of these things indicates an ignitable
24 liquid was used. However, the indicators relied upon by Reuscher and Evers have been contradicted
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28 ¹⁸³ CalVCB 4900 Transcripts, Day 2, p. 10-11.

29 ¹⁸⁴ CalVCB 4900 Transcripts, Day 2, p. 12-20.

1 by science as not being indicative of the presence of an ignitable liquid. Flashover can cause burn
2 holes and what may be characterized as pour patterns.¹⁸⁵

3 Regarding "low burning" fires, which were once considered to be indicative of ignitable liquid
4 being used, experts now know that temperatures in excess of 1,200 degrees Fahrenheit are common at
5 floor level during flashover, with temperatures spiking above 1,500 degrees in areas of greater
6 ventilation. These high temperatures create burn damage throughout the room, from floor to ceiling,
7 including low burning and heat damage to floor surfaces resulting in irregularly shaped fire patterns and
8 deep charring to hardwood flooring.¹⁸⁶

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

12 Fire Investigators Reuscher and Evers used a Snap-On, ACT 8800 Combustible Gas Detector
13 to support their conclusion that liquid accelerant was present at the fire scene. Reuscher and Evers
14 believed that the hydrocarbon detector would alert when they were close to an ignitable liquid like
15 gasoline. This technique has a high rate of false positives because the machine is not designed to be
16 taken into fire scenes to search for ignitable liquids; rather the device is typically used when joints are
17 braised on a gas line, and it is necessary to determine whether there is a leak.¹⁸⁷

18 Testimony of Steven Carman

19 Carmen testified that in his opinion, there was no scientific basis to support a finding that the
20 1319 Ronald Avenue fire was intentionally started. He offered the same opinion at Souliotes's habeas
21 corpus evidentiary hearing.¹⁸⁸

22 The origin of the fire cannot be determined and the possibility that the fire was accidental was
23 not thoroughly investigated. Over the last 20 years, fire investigation and arson science have advanced
24 tremendously. It was common practice, in the past, to look at the face of an outlet and if there was no
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26 ¹⁸⁵ CalVCB 4900 Transcripts, Day 2, p. 18-19.

27 ¹⁸⁶ CalVCB 4900 Transcripts, Day 2, p. 13-14.

28 ¹⁸⁷ CalVCB 4900 Transcripts, Day 2, p. 20-21.

29 ¹⁸⁸ CalVCB 4900 Transcripts, Day 2, p. 43.

1 sign of a major failure at that outlet the investigator could then say the possibility of an electrical fire had
2 been eliminated. Investigators conducted a visual survey of the water heater and dryer in the garage.
3 The investigators did not observe anything on either appliance that they believed would have been a
4 potential cause of the fire and thus, did not conduct any additional investigation. After reviewing the
5 report, Carman did not believe the investigators expended sufficient effort to eliminating accidental
6 causes. In fact, Carman found no documentation that Reuscher and Evers investigated any accidental
7 causes.¹⁸⁹

8 When inspecting electrical appliances as a potential cause of fire origination, more than a visual
9 inspection must be conducted, which was what had occurred during the fire investigation of 1319
10 Ronald Avenue. Typically, a forensic investigator will look for certain artifacts of damage, for example,
11 arcing on the wires, which leave beads and pitting. Another cause of fire could be something called a
12 "high resistance connection" where a plug is extremely loose in an outlet. Because there must be a
13 solid connection between the blade and the outlet, failure to have this connection may cause a fire. In
14 order to see whether a fire was started because of a high resistance connection, one must take the
15 plug apart to see whether oxidation occurred. Investigators are supposed to collect it. This was not
16 done.¹⁹⁰

17 While Carman's overall opinion regarding the fire is that the origin of the fire is undetermined, he
18 opined that none of Reuscher or Evers's hypotheses were supported by evidence. It is difficult to
19 determine, after flashover, whether a fire is arson because in a post flashover room, the path of the fire
20 is masked by smoke, charring, and burn patterns.¹⁹¹

21 The AG presented expert witness DeHaan, in opposition, whose testimony was consistent with
22 his prior testimony in the evidentiary hearing.

23 Testimony of Dr. John DeHaan

24 DeHaan opined that the source of the fire is undetermined because, based on the available
25 documentation, he could identify no accidental mechanisms by which a fire was started in any of the
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27 ¹⁸⁹ CalVCB 4900 Transcripts, Day 2, p. 48-51.

28 ¹⁹⁰ CalVCB 4900 Transcripts, Day 2, p. 50-51.

29 ¹⁹¹ CalVCB 4900 Transcripts, Day 2, p. 47.

1 possible areas of the structure. Based on the possible dynamics of fire spread in the structure, he
2 could not find an accidental means by which a fire that originated in the garage, could cause the
3 damage it did in the living room, and be visible to Hamilton. When Hamilton reached the back of the
4 house, the living room was in full involvement.¹⁹²

5 Souliotes's counsel then presented evidence that DeHaan had been expelled from the Academy
6 of Forensic Sciences because of the expert opinions he offered in *State v. Gutweiler*, where the
7 defendant was charged with capital murder for the death of her three children from a fire.¹⁹³ DeHaan
8 was retained by the District Attorney in the case. According to DeHaan, the District Attorney gave him
9 secret grand jury testimony, which enabled him to have a complete understanding of the fuel load
10 (furnishings) of the house, so he could render an opinion to the grand jury as to the cause and origin of
11 the fire and answer their questions in that regard. As a result of the grand jury testimony, DeHaan
12 opined in *Gutweiler* that the fire was intentional and had multiple points of origin to a scientific certainty.
13 The Louisiana Supreme Court took three years to decide that the information that DeHaan relied on
14 was confidential grand jury testimony that was erroneously given to DeHaan. Although expulsion was
15 recommended, DeHaan resigned instead of having to explain his rationale before a Board appeal
16 hearing where he was only given 15 minutes to present his case.¹⁹⁴

17 Following the administrative hearing, Souliotes and the Attorney General each timely filed a
18 post-hearing brief.¹⁹⁵ In its post-hearing brief, the AG argued that if the Board determined Souliotes
19 was entitled to compensation, the amount should be reduced by six years, the time allotted for
20 Souliotes's *West/Alford* plea to three counts of involuntary manslaughter. According to the AG,
21 Souliotes would be entitled to compensation for 3,823 days which equals \$535,808

22 Souliotes subsequently submitted a reply brief, in which Souliotes's counsel conceded that
23 under the statute that existed at the time, Souliotes was not entitled to compensation for the period of
24 pre-conviction incarceration from January 15, 1997 to October 20, 2000, making the amount of the
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26 ¹⁹² CalVCB 4900 Transcripts, Day 2, p. 96-97, 101-102.

27 ¹⁹³ *State v. Gutweiler* (2008) 979 So. 2d. 469.

28 ¹⁹⁴ CalVCB 4900 Transcripts, Day 2, p. 129-136.

29 ¹⁹⁵ AR 899, 904, 1014-1066 (Souliotes), 1077-1113 (AG).

1 claim total \$649,600 for serving 4,640 days imprisonment from October 20, 2000 (i.e., date of
2 conviction) to and including July 3, 2013 (i.e., date of release).¹⁹⁶ ¹⁹⁷ Souliotes's counsel further
3 argued a person serving a six-year sentence for involuntary manslaughter was eligible for day-for day
4 custody credits pursuant to California Penal Code section 2933, thereby reducing the actual length of
5 incarceration from six years (i.e., 2,190 days) to just three (i.e., 1,095 days), which was less than the
6 number of days that Souliotes served pretrial (i.e. 1,374 days), such that it would not impact
7 compensation.¹⁹⁸

8 On April 14, 2017, the hearing officer issued a 63-page proposed decision recommending that
9 Souliotes receive compensation in the amount of \$841,820 for the entire duration of his
10 incarceration.¹⁹⁹ The proposed decision initially concluded that the federal court's findings under
11 *Schlup* did not amount to a finding of factual innocence for purposes of Penal Code section 1485.55.
12 Nevertheless, the proposed decision found that a preponderance of evidence demonstrated that the fire
13 was not caused by arson and, even assuming otherwise, a preponderance of evidence failed to show
14 that Souliotes was the culprit. In reaching this latter conclusion, the proposed decision found the
15 federal court's determination of the eyewitness' credibility under *Schlup* was binding and, therefore,
16 afforded the eyewitness testimony no weight. The proposed decision did find that Souliotes was a
17 persuasive witness at the CalVCB hearing. Finally, the proposed decision declined to reduce
18 Souliotes's compensation by the six-year sentence for involuntary manslaughter because the Hearing
19 Officer found there was not a preponderance of evidence that Souliotes failed to maintain an operable
20 smoke alarm in his rental house.

21 Counsel for both parties appeared before the Board on May 18, 2017. After listening to their
22 presentations, CalVCB Acting Chairperson and Board Member Michael Ramos observed that all parties
23

24
25 ¹⁹⁷ Hearing Officer Turner-Bond rejected Souliotes's response brief. Since this matter was returned to
26 CalVCB, the current Hearing Officer chose to accept and consider it. At the time, Penal Code § 4904
27 authorized compensation for each "day of incarceration served subsequent to the claimant's conviction
[.] Penal Code § 4904 was amended January 1, 2016, to include compensation for pre-and post-

28 ¹⁹⁸ AR 1173-1174.

29 ¹⁹⁹ AR 16190-16252.

1 agreed that the origin of the fire was unknown and, therefore “we cannot rule arson out.” Ramos further
2 noted “all the circumstantial evidence” implicating Souliotes, which included “the eyewitness testimony”
3 from Sandoval identifying both Souliotes and his motor home. Ramos acknowledged the magistrate’s
4 determination that Sandoval’s identification of Souliotes was unreliable but expressed “some concerns”
5 that the determination was rendered without the magistrate ever viewing the witness first-hand,
6 particularly since that witness had convincingly testified in both of Souliotes’s trials. Finally, Ramos
7 recognized the “horrendous fact” that “two babies and a mother ... lost their lives....” Ramos therefore
8 moved to reject the proposed decision and deny compensation, which was seconded by CalVCB Board
9 Member Richard Chivaro. Consequently, the Board voted 2-0 to deny Souliotes’s application for
10 compensation.²⁰⁰ The Board’s oral determination was memorialized in a written decision on July 21,
11 2017.

12 **F. Writ Proceedings**

13 On August 18, 2017, Souliotes filed a petition for writ of mandate in the Los Angeles County
14 Superior Court. The petition was granted in part, and denied in part, on October 16, 2018. According
15 to the order, which was subsequently amended on October 26, 2018, the superior court found that
16 CalVCB had erred by failing to consider the impact of any binding federal court findings that were
17 rendered in support of the decision to grant habeas relief as required by Penal Code sections 4903 and
18 1485.5. The superior court further found that CalVCB had erred by failing to support its decision with
19 factual findings to bridge the analytic gap between the raw evidence and ultimate decision as required
20 by *Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. By
21 comparison, the superior court agreed with CalVCB’s determination that the federal court’s ruling on the
22 statute of limitations equitable exception under *Schlup v. Delo* (1995) 513 U.S. 298 was not binding and
23 did not amount to a binding determination of innocence for purposes of Penal Code section 1485.55.
24 The superior court further agreed that the Attorney General was permitted to participate in CalVCB’s
25 administrative proceedings. The superior court declined to resolve Souliotes’s remaining claim that the
26 Board’s determination to deny compensation was not supported by the evidence.

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29 ²⁰⁰ AR 16407-16435, 16436-16438.

1 Accordingly, the superior court's amended order issued "a writ of mandate directing [the] Board
2 to set aside its decision, and issue a new decision without further evidentiary hearing, which includes
3 findings that satisfy *Topanga*." In the judgment entered on November 21, 2018, the superior court
4 specifically commanded CalVCB to set aside the oral and written decisions from May 18, 2017, and
5 July 21, 2017, respectively, and to reconsider its action in accordance with the amended order, leaving
6 it to CalVCB's discretion whether to permit additional evidence and or argument.

7 On January 9, 2019, Souliotes appealed to Division Four of the Second District of the California
8 Court of Appeal (Appellate Court). On February 19, 2021, the appellate court affirmed the judgment of
9 the superior court and found that the *Schlup* determination did not amount to a finding of factual
10 innocence. The appellate court affirmed that the Board is bound by factual findings and credibility
11 determinations made by the court that establish the basis for the grant of a petition for writ of habeas
12 corpus. Significantly, the appellate court concluded that a *Schlup* gateway ruling is not a ruling the
13 district court makes "in considering a petition for habeas corpus," and thus, the Board is not bound by
14 the factual findings and credibility determinations in *Schlup*. On April 1, 2021, Souliotes filed a petition
15 for review in the California Supreme Court on the legal issue of whether a *Schlup* ruling amounts to a
16 finding of factual innocence or otherwise binds CalVCB.

17 On May 11, 2021, Division Five of the Second District Court of Appeal reached a contrary
18 decision in *Larsen v. California Victim Compensation Board (Larsen)* (2021) 64 Cal.App.5th 112. The
19 *Larsen* court concluded that a *Schlup* innocence finding, coupled with a permanent release from
20 custody pursuant to a writ of habeas corpus, is tantamount to a finding of factual innocence that
21 compels CalVCB to recommend compensation under Penal Code section 1485.55.

22 On June 9, 2021, the California Supreme Court granted Souliotes's petition for review. Shortly
23 thereafter on August 25, 2021, the California Supreme Court granted CalVCB's petition for review in
24 *Larsen*.

25 The Hearing Officer requested additional briefing from the parties' regarding their stipulation that
26 the writ issued by the Los Angeles Superior Court was not stayed by the pending litigation before the
27 California Supreme Court. On June 16, 2021, the parties submitted a joint statement wherein they
28 assert that, because Souliotes petitioned for review the portion of the writ petition that was denied and
29

1 because no party appealed the portion of the writ that was granted, the pendency of the appeal has no
2 impact on the execution of the superior court’s writ. The parties further agreed that, even if the Board
3 lacks jurisdiction, neither party will contest the Board’s action to grant Souliotes’s claim.²⁰¹

4 **DETERMINATION OF ISSUES**

5 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
6 for a felony offense, to apply for compensation from CalVCB.²⁰² The application must be submitted at
7 least 60 days following reversal of a conviction or grant of habeas relief, and no more than 10 years
8 after release from custody or dismissal of charges.²⁰³

9 Once an application has been properly filed, CalVCB typically requests a written response from
10 the Attorney General pursuant to Penal Code section 4902, and then an informal evidentiary hearing
11 ensues in accordance with Penal Code section 4903.²⁰⁴ Under Penal Code section 1485.5, CalVCB is
12 bound by any “express factual findings” rendered by a court when granting habeas relief, vacating a
13 conviction, or issuing a certificate of factual innocence.²⁰⁵ Nonetheless, the claimant bears the burden
14 to prove, by a preponderance of the evidence, that (1) the crime with which he was charged was either
15 not committed at all, or, if committed, was not committed by him, and (2) he sustained injury through his
16 erroneous conviction and imprisonment.²⁰⁶

17 If the claimant satisfies his burden of persuasion for both elements, then pursuant to Penal
18 Code section 4904, CalVCB shall recommend to the Legislature an award of compensation. Under
19 Penal Code section 4904, compensation is calculated at the rate of \$140 per day for pre-and post-
20 conviction confinement.²⁰⁷

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24 ²⁰¹ Parties Joint Statement dated June 18, 2021.

25 ²⁰² Pen. Code, § 4900.

26 ²⁰³ Pen. Code, § 4901.

27 ²⁰⁴ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

28 ²⁰⁵ Pen. Code, § 1485.5, subd. (c).

29 ²⁰⁶ Pen. Code, §§ 4903, subd. (a), 4904.

²⁰⁷ Pen. Code, § 4904, added by Stats.2015, c. 422 (S.B.635), § 1, eff. Jan. 1, 2016.

1 An exception to CalVCB's standard procedure occurs when a claimant has obtained a
2 finding of factual innocence for each and every conviction underlying his incarceration. As set
3 forth in Penal Code section 1485.55:

4 In a contested proceeding, if the court has granted a writ of habeas corpus or
5 when, pursuant to Section 1473.6, the court vacates a judgment, and if the court
6 has found that the person is factually innocent, that finding shall be binding on
7 the California Victim Compensation Board for a claim presented to the board,
8 and upon application by the person, the board shall, without a hearing,
9 recommend to the Legislature that an appropriation be made and the claim paid
10 pursuant to Section 4904.²⁰⁸

11 Subdivision (c) similarly provides that if "the court makes a finding that the petitioner has proven
12 their factual innocence by a preponderance of the evidence..., the board shall, without a hearing,
13 recommend" payment "pursuant to Section 4904."²⁰⁹ In effect, these provisions of section 1485.55
14 compel CalVCB to assume both requisite elements of innocence and injury for a successful claim under
15 Penal Code section 4900 and to recommend compensation accordingly.

16 This construction is confirmed by Penal Code section 4902, which provides in relevant part:

17 "If the provisions of Sections 851.865 or 1485.55 apply in any claim, the
18 California Victim Compensation Board shall, within 30 days of the presentation of
19 the claim, calculate the compensation for the claimant pursuant to Section 4904
20 and recommend to the Legislature payment of that sum."²¹⁰

21 Consequently, not only must CalVCB automatically recommend payment without a hearing or
22 response from the Attorney General whenever a claimant has obtained the requisite findings of factual
23 innocence, but CalVCB must do so within 30 days thereafter. Moreover, a finding of factual innocence
24 issued pursuant to section 1485.55 is not appealable by the prosecution.²¹¹

25 ²⁰⁸ Pen. Code, § 1485.55, subd. (a).

26 ²⁰⁹ Pen. Code, § 1485.55, subd. (c).

27 ²¹⁰ Pen. Code, § 4902, subd. (a).

28 ²¹¹ *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89 (concluding that "a defendant may appeal
29 denial of a factual innocence motion" despite the People's inability to do so); *In re Anthony* (2015) 236
Cal.App.4th 204, 215 (holding that "section 1485.55 order is not appealable by the People"); see also
Pen. Code, § 1485.5 (omitting any right of appeal of factual innocence determination rendered post-
conviction), cf. Pen. Code, § 851.8, subd. (o) (expressly authorizing right of appeal by either party of
factual innocence determination rendered pre-conviction).

1 **A. Automatic Compensation Statute**

2 If an applicant has obtained a finding of factual innocence for every conviction underlying his
3 incarceration, Penal Code section 1485.55 compels CalVCB to assume both requisite elements of
4 innocence and injury for a successful claim under Penal Code section 4900 and to recommend
5 compensation. Penal Code section 4902 further requires CalVCB to recommend payment without a
6 hearing or a response from the Attorney General and within 30 days after the application is filed.

7 Here, Souliotes lacks an express finding of factual innocence by a preponderance of the
8 evidence so as to trigger an automatic recommendation for compensation. Souliotes nevertheless
9 contends that the *Schlup* findings by the district court amount to a finding of factual innocence within
10 the meaning of Penal Code section 1485.55. Because this issue is currently pending before the
11 California Supreme Court, this Hearing Officer declines to resolve this issue. Instead, this Hearing
12 Officer will decide the issue solely based upon the weight of evidence presented during the
13 administrative hearing in support of Souliotes's claim of innocence.

14 **B. Souliotes is innocent of the crimes of arson and murder.**

15 Souliotes has proved by a preponderance that he is innocent of the crimes of arson and murder.
16 Souliotes's convictions were based upon three theories: a) the fire at 1319 Ronald Avenue was due to
17 arson; b) the eyewitness testimony of Sandoval; and c) MPD evidence on Souliotes's shoes tied him to
18 the crime scene.

19 A person is guilty of arson when he or she "willfully and maliciously sets fire to or burns or
20 causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land or
21 property."²¹² Here, the parties stipulated, and the federal court found, that the cause of the fire is
22 undetermined. The federal court also found Sandoval's testimony unreliable, and that fire investigators'
23 conclusions were hasty and inaccurate. The arson conviction is unsupported by the scientific evidence
24 and thus, there is insufficient evidence the fire was intentionally set. If there is no intent, the fire cannot
25 be characterized as arson. Based upon the evidence, Souliotes has shown, by a preponderance, that
26 the crimes of arson and murder were not committed.

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28 _____
29 ²¹² Penal Code § 451.

1 And even assuming the fire was caused by arson, a preponderance of evidence shows the
2 culprit was not Souliotes. First, Hearing Officer Turner-Bond, who observed Souliotes during the 4900
3 hearing, found Souliotes credible and persuasive. Souliotes also passed a polygraph test.

4 Additionally, the Hearing Officer determines that Sandoval's testimony is unpersuasive and
5 lacks credibility. Specifically, Sandoval gave conflicting descriptions of the driver of the RV. Sandoval
6 was unable to identify Souliotes as the driver of the RV hours after the she allegedly witnessed him
7 drive up and down the street. Sandoval did not identify him until the preliminary hearing, six months
8 later, after she had seen a newspaper describing him as the suspect and after observing him in the
9 courtroom dressed in jail clothing. She could not explain how she was able to suddenly identify the
10 driver. Moreover, Sandoval described the clothing the driver was wearing. However, the distinctive
11 shirt was not found at Souliotes's residence.

12 Similarly, Sandoval's description of the suspect RV is striking for the many ways it is not
13 descriptive of Souliotes's vehicle. She described a beige, Dodge Caravan minivan, not an RV. She
14 saw a vehicle that did not have an air conditioning unit on the top, had a curtain in the rear window and
15 did not have a ladder. This simply is not Souliotes's RV. Sandoval also could not identify the vehicle
16 from the rear, despite the fact that she testified that is how she identified it. Moreover, the magistrate
17 judge also found her testimony unreliable when granting habeas relief. Accordingly, her testimony and
18 identifications are given little weight.

19 Moreover, it is now known that the MPDs found on Souliotes's shoes are not the same as the
20 MPDs found at 1319 Ronald Avenue. Multiple witnesses testified that MPDs are commonly found in
21 household products, including glues used in the manufacture of shoes. Therefore, the existence of a
22 MPD alone does not support a finding that an ignitable liquid was used to start the fire at 1319 Ronald
23 Avenue. Further, since the MPDs on Souliotes's shoes are distinguishable from those found at the
24 residence, there is no evidence physically connecting Souliotes to the fire scene.

25 Also, when deciding the merits of Souliotes's habeas petition, the Court found Reuscher, and
26 Evers inadequately investigated the fire. They failed to investigate any accidental causes of the fire
27 and relied on now debunked fire science. Moreover, Reuscher relied on the hydrocarbon results,
28 without obtaining laboratory confirmation.

1 Further, eyewitness Hamilton testified that he saw another vehicle at the scene of the fire.
2 However, the evidence shows that law enforcement immediately focused on Souliotes and failed to
3 investigate the report of another vehicle in the vicinity on the night of the fire.

4 Finally, the AG is now persuaded of Souliotes's evidence of innocence. The AG urged the
5 Board to grant Souliotes's claim in full.²¹³ While the AG's concession that Souliotes has proven his
6 innocence, is not binding, it is given significant consideration.

7 Based upon the preceding, Souliotes has shown by a preponderance that he is innocent of the
8 crimes of arson and murder for which he was incarcerated for 6,013 days.

9 **B. Effect of Souliotes's plea agreement**

10 Souliotes's plea of nolo contendere for three counts of involuntary manslaughter was entered
11 pursuant to *West/Alford*. As stated above, Souliotes agreed to the plea in order to be immediately
12 released from prison. The factual basis was Souliotes's admission was that there were no working
13 smoke detectors in the Ronald Avenue home, which led to the death of Michelle, Daniel, and Amanda
14 Jones. This is the type of plea, wherein a defendant "does not admit the facts underlying the charged
15 offense but pleaded guilty to take advantage of a favorable recommendation from the prosecution
16 because he recognized he might be convicted if the case were retried." (*People v. Sample* (2011) 200
17 Cal.App.4th 1253, 1263–1264.) When weighing the evidence of innocence, Souliotes's no-contest plea
18 is an inculpatory factor.

19 However, there is other affirmative evidence that Souliotes did not commit the crime of
20 involuntary manslaughter for failure to maintain a working smoke detector. The most compelling
21 evidence comes from Jones's sworn testimony that there was a working smoke detector in the home
22 prior to the fire.²¹⁴ Jones lived in the residence and had first-hand knowledge of a working smoke
23 detector in the residence prior to the fire. Additionally, Souliotes testified that Jones never told him that
24 the smoke detector was not working, unlike other instances where Jones told Souliotes about issues
25 with the thermostat and the oven, which Souliotes remedied.²¹⁵ Further, 1319 Ronald Avenue was
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27 ²¹³ Respondent's Brief (April 23, 2020), p. 71; Parties Stipulations (March 1, 2021).

28 ²¹⁴ AR 746; HT 1382.

29 ²¹⁵ RT 1430.

1 certified Section 8 housing. To remain eligible for a Section 8 designation, annual health and safety
2 inspections are required. 1319 Ronald Avenue passed its annual inspection in January 1996. This
3 suggests that the property had working smoke detectors, otherwise the property would not have passed
4 inspections. Based on Jones's testimony, there is no evidence Souliotes negligently maintained a
5 working smoke detector. Souliotes's testimony, Jones's testimony and the Section 8 certification show
6 that it is more likely than not, there was a working smoke detector in the home prior to the fire. If there
7 was a working smoke detector, Souliotes could not have been negligent in its maintenance. Based on
8 the preceding evidence, Souliotes has shown, by a preponderance of evidence, that he did not commit
9 the crime of involuntary manslaughter.

10 CONCLUSION

11 Souliotes has demonstrated by a preponderance of evidence that he is innocent of the crimes
12 with which he was charged and convicted. The Hearing Officer recommends the Board approve
13 Souliotes's application and award him \$841,820 for 6,013 days of wrongful imprisonment.
14

15 Date: September 16, 2021

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