

JUNK JOURNALISM:

**CORRECTING THE ERRORS, FALSE CLAIMS, AND
DISTORTIONS IN EDWARD HUMES' *MEAN JUSTICE***



AN ANALYSIS BY THE KERN COUNTY DISTRICT ATTORNEY'S OFFICE

JULY, 1999



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To the Citizens of Kern County:

Effective law enforcement depends on the support of the community. That support in turn depends on public confidence in the integrity, judgement, competence, and ethics of police and prosecutors.

Recently, a book entitled "Mean Justice," by Edward Humes, portrayed Kern County as a den of "rednecks, gun nuts, cowboy cops," and asserted that deputy sheriffs, police officers, and deputy district attorneys acted unethically in investigating and prosecuting the case of *People v. Patrick Dunn*, and other cases. An analysis of "Mean Justice" is contained herein. As you will see, the book is rife with factual errors and distortions.

I hope you will take the time to read this report by Deputy District Attorney Deborah Spagnoli. If we are to continue to make Kern County a safer place, it is essential to retain the confidence of our citizens. I believe that after you have considered the true facts you will agree that "Mean Justice" is an agenda driven diatribe, and that its accusations against hard working police officers and prosecutors are without merit.

Very truly yours,

Edward R. Jagels
District Attorney

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EXECUTIVE SUMMARY

Mean Justice is an ideologically slanted, poorly researched book about Kern County's criminal justice system. The book is written in a manner that attempts to manipulate, not inform, the reader. In author Ed Humes' effort to discredit the war on crime, the book plays to people's prejudices and aggressively attacks and maliciously impugns the community of Bakersfield, California. Humes sneers at the Crime Victim's movement and disparages hard working, honest, law enforcement professionals. ***The book is not an objective work of non-fiction -- it is junk journalism at its worst.***

Humes' thesis consists of an attack on the war on crime. He claims that the Kern County District Attorney's Office and Kern County law enforcement are so aggressive and overzealous that innocent people pay the price and are routinely convicted of crimes. Convicted murderer Patrick Dunn serves as Humes' poster child for the "innocently convicted."

The Kern County District Attorney's Office believes that the record with regard to *Mean Justice* must be set straight. While some mistakes may be inevitable, Humes' are so extensive and one-sided that his book is fundamentally compromised. Humes ignores or flagrantly distorts the actual facts of many of the cases he writes about. *Mean Justice* is a piece of advocacy so biased and unfair that it collapses from the weight of its own melodramatic excesses and lack of respect for the truth.

An analysis of the book revealed over 100 factual errors and gross distortions. The quantity and quality of these errors and distortions is nothing less than staggering. The book is riddled with basic research mistakes which could have been corrected by a cursory review of public documents. Some of the errors Humes makes are so basic and easily verifiable that they raise profound questions about his assertions on more complex issues. ***Time after time, Humes either twists or ignores the facts when they undermine his thesis, and when necessary to support his thesis, creates phony issues by misrepresenting testimony and other public records.***

It should be noted that Humes supposedly "researched" his book over a two-year period while the District Attorney's Office has only spent the past two months checking Humes' claims. This analysis is a partial one - this Office cannot deploy the same resources Mr. Humes did. We have not researched all of the cases cited by Humes because of these resource limitations. Undoubtedly, given what has been uncovered thus far, there are many other errors and distortions in *Mean Justice*. Indeed, additional factual errors were being discovered right up to the week of publication of this analysis.

It appears that the vast majority of Humes' "research" primarily consists of repeating defense lawyer, defense investigator and defendant allegations with regard to Kern County, without verifying or attempting to document their obviously biased claims. (These defense lawyers, investigators and criminals are cited as primary sources for the book.) Additionally, Humes parrots assertions from years old newspaper articles without checking the accuracy of the underlying facts.

By his own admission, Humes apparently chose to attack Kern County because the County has some of the most effective law enforcement in the state. He uses this County in a diatribe against aggressive law enforcement, vigorous prosecution and tough sentencing of criminals. Kern County has the highest number of successful "3-Strikes" prosecutions, per capita, in California. The Kern County District Attorney's Office tries more felony cases than other large counties and sends more criminals to prison, per capita, than any other large county. Kern County's affirmance rate for cases on appeal is higher than the state's average. The District Attorney's Office is proud that its hard work and dedication help keep the community safe.

Law enforcement is winning the war on crime. The homicide rate statewide has dropped significantly in the past 5 years. In that time, there have been 5,694 fewer murders, 6,923 fewer rapes, 172,045 fewer robberies, 111,223 fewer aggravated assaults, 454,654 fewer burglaries and 339,082 fewer car thefts.¹ *In the past 17 years the crime rate in Kern County has dropped 50%.²*

Mr. Humes' bias against law enforcement and crime victims is obvious. He writes with disdain about every major public safety policy initiative in the past 17 years, including the Crime Victim's Bill of Rights, the campaign to oust liberal Supreme Court Justice Rose Bird, the Crime Victim's Justice Reform Act, and the Three Strikes and You're Out law.

This bias infects Humes' book from the start. Humes' arguments are built on evidence distorted by oversights, inaccuracies, and misinterpretations of his own research. *The book, which purportedly began as a "full and fair account of the [Patrick Dunn] case," quickly degenerated into a witch hunt — surprisingly similar to the sort of thing he imagines the Kern County District Attorney's Office and law enforcement are doing. Humes' thesis, when stripped of his contorted version of the facts, is supported by nothing more than his own evangelical fervor. In the end, Humes the writer creates an outrage where Humes the researcher could not document one.*

Humes appears to have two agendas with *Mean Justice*. He is motivated both by his clear liberal ideology and his understandable desire to make the book a financial success. He is working hand in hand with Dunn's defense team, doing everything in his power to get Dunn's conviction reversed; he would profit enormously as the author of a book that freed an "innocent" man. It should be noted that Humes submitted a manuscript to the development departments at major Hollywood studios, at least a year prior to the publication of the book.

This analysis details 112 of Humes' factual errors, distortions and misrepresentations. It is organized into five different sections. The first one is entitled "The People v. Patrick Dunn." Since the case of the People v. Patrick Dunn is the heart of *Mean Justice*, the analysis of this Section contains a synopsis of the facts of the case. Then, as is the case with all the other Sections, a "Summary," outlining Humes' errors, false claims and distortions in the particular Section is included. Following the "Summary," each Section includes "The Details," which contains an in-depth analysis of the errors and distortions within that Section. To substantiate his thesis, Humes maligns everyone involved in the Dunn case. He questions the intelligence of the jury, the competence and integrity of the judge, the character and ethics of the prosecutor and the proficiency and scruples of the lead detective.

Section II is entitled "Kern County and its Communities." This section is comprised of a summary of and then a *detailed rendition of Humes' petty and mean-spirited attacks against Bakersfield.* Humes label large groups of people as "Okies, red-necks, gun-nuts, cowboy cops," etc., so he can collectively dehumanize them. He dredges up 100 year-old historical incidents to further prejudice the reader against Kern County by creating a Gothic setting in which his tale of abuse will sound credible. Humes ridicules Bakersfield, calling it the "Anti-Mayberry," -- a town where gun-wielding red-necks amuse themselves by blowing up clinics to the delight of their fellow citizens. *Humes has said he "doesn't feel that Mean Justice tars the community."*³ *A quick read of this section clearly demonstrates otherwise.*

Section III, entitled "Appendix A: "Wrongful Prosecutions in Kern County," *dismantles the sham of a "table" Humes includes in the back of his book. Humes claims that "hundreds of innocent people have been wrongfully prosecuted in Kern County."* *A close review of the "table" reveals that Humes really references about 25 individuals in only 12 cases out of over 100,000 prosecuted over a 17 year period, with only 1 case being reversed for prosecutorial misconduct.* Most of these reversals were due to decisions of the trial court, rather than actions of the District Attorney's Office. Further, these mostly routine reversals occur in every jurisdiction in America. The criminal justice system is geared to protect the process *by allowing clearly guilty defendants* to go free if legal technicalities or errors occurred during their criminal proceedings. Consequently, a reversal does not mean that the defendant did not commit the crime.

Section IV, entitled "District Attorney Ed Jagels," *focuses on Humes' numerous distortions regarding the District Attorney and the author's complete contempt for the Crime Victim's movement and law enforcement.* This Section reveals Humes's biases and flagrant disregard for even basic factual accuracy in pushing his opinions. Humes engages in a pattern of misrepresentation when the facts - no matter how minor - don't fit his purposes. For example, Humes creates a false impression that Jagels was elected District Attorney in a massively funded campaign fueled by corporations outside of Kern County. The simple truth is that Jagels was out spent by his opponent, and no massive corporate funding existed.

Finally, Section V covers “Other Cases, Errors, False Claims and Distortions.” In this Section, Humes falsely claims the District Attorney’s Office used a “snitch” to testify in the re-trial of Carl Hogan, when in fact, no such “snitch” testified. He invents charges the DA’s Office supposedly filed against Offord Rollins, he misstates California criminal law, and he inexplicably contradicts his own research and numbers cited in Appendix A. For example, in the Appendix on page 451, Humes claims 83 people were formally charged as members of molestation rings, but on page 335 he claims that number is 53.

Because Humes’ book, at first glance, appears to be well-documented with a series of endnotes, the average reader, along with most reviewers of the book, would be inclined to swallow whole Humes’ claims, without taking the time to verify the cited “evidence.” Unfortunately, these readers have been completely misled.

With this analysis, the District Attorney’s Office documents our findings by providing sources for the facts, including page number references to the actual trial testimony. In addition, since Humes distorts and mis-characterizes liberally with regard to testimony and police reports in the Patrick Dunn case, we provide the reader with some of the actual trial testimony and police reports. These documents are located in the Appendices. See for yourself how Humes mis-characterizes or distorts official public records.

As mentioned earlier, convicted murderer Patrick Dunn serves as Humes’ poster child for the “innocently convicted.” In 1993, Dunn was convicted of killing his wife for her money. According to Humes, Dunn is simply one of the many innocent victims of Kern County’s overzealous law enforcement “machine.” *The evidence of Pat Dunn’s guilt, however, was overwhelming. It showed that Pat Dunn was the only person with motive to kill his wife, the only person with the opportunity to kill his wife, and the only person who acted as if she were dead before her body was found.*

Pat Dunn married Sandy Paola Dunn in 1986. She had inherited \$3.3 million dollars from her late husband; Pat Dunn had no assets of his own. In 1989, after he had been drinking, and obviously angry at his wife, Dunn was arrested for hitting Sandy with a closed fist, twice, on the side of her face. A deputy sheriff took note of the blood on Sandy’s ear and in her hair.

In 1992, both Dunns were involved in developing two of Sandy’s real estate properties. On June 3rd, the Bakersfield City Council rejected a project that the Dunns had already sunk \$100,000 into. The Dunns were angry and upset by the rejection. Pat Dunn said he would be “out in the cold” and “finished financially” if the project was not approved. The project became a sore spot between the Dunns. After the rejection, the Dunns fought with each other publicly on numerous occasions, once hanging up on a City Councilman because the argument between the two of them became so heated. Moreover, at a meeting on June 19th, the Dunns fought with each other; Pat Dunn told his wife to “shut up,” and made a movement towards her. She immediately retracted and stopped talking. At about that same time, Sandy Dunn told a friend she wanted a divorce. She wanted Dunn out of her home and her life.

The Dunns had “tremendous fights” during the last few months of their marriage.

On June 30th, between 5:30 and 6:00 p.m., the Dunns’ neighbor heard them arguing. He saw Sandy leave the house and drive away in a fast and erratic manner. At some point, Sandy Dunn returned home to a still angry husband. Dunn, however, says there was no argument between him and his wife that night. He says that he and his wife barbecued, and then she went to bed and he followed an hour or so later.

Mrs. Dunn “disappeared” at some point between the evening hours of June 30th and the early morning hours of July 1st, 1992. Pat Dunn was the only one with the opportunity to kill his wife during those last hours of her life. They were alone. Dunn stood to inherit all of Sandy Dunn’s fortune, as he was the sole beneficiary of her will.

The Dunns’ housekeeper, Cindi Montes, called the Dunn house at 5:00 a.m. on July 1st, to say she was on the way to clean the house. Pat Dunn answered the phone. (Montes said this was unusual.) Dunn was out of breath and told Montes not to come that morning. She heard water running in the background. She called back later that day to reschedule. Pat Dunn did not tell her on either occasion that his wife was “missing.”

A few hours later, Pat Dunn’s first call about his wife’s “disappearance,” which had occurred just hours earlier, was not to the police, but to his real estate lawyer. Dunn wanted to know if there was some sort of mechanism, like a power of attorney, he could get over his wife’s money to pay some bills, since she was “missing.” The lawyer told him a power of attorney was not an option since it required his wife’s signature.

Six hours after calling his lawyer, and a full 18 hours after he says he first discovered his wife “missing,” Pat Dunn called the Sheriff’s Department. He laughed, joked, and even flirted with the operator.

His story was that his wife went out walking, “yesterday afternoon/evening” with a big black dog and did not return home. He told the operator it wasn’t uncommon for his wife to go walking at 2:30 a.m. with one of the dogs, but she normally did not walk at 10:00 at night, and this was the first time she had been gone for so long. He implied that his wife might have Alzheimer’s disease and might be wandering around in an Alzheimer’s induced haze. *Dunn’s actions however, did not comport with those of a husband who was worried about his wife wandering around with Alzheimer’s. They were, instead, consistent with someone who murdered his wife and who tried to get away with it by concocting this Alzheimer’s cover story.*

Seven of Sandy’s business associates and friends testified that she showed no signs of Alzheimer’s disease or memory loss. Further, Dunn’s mother told deputies that Sandy Dunn did not have Alzheimer’s disease as Dunn had claimed.

On July 3rd, Dunn told his good friend Kate Rosenlieb that he “*feared the worst*” and there was nothing else to do “*until the body turned up.*” He did not appear upset. On July 4th, he tried to get Rosenlieb to drive with him to a mountainous area near where Sandy’s body eventually turned up. He again said he “feared the worst” and “she’s dead.” On July 5th, Dunn drove his good friend Rex Martin to a hamburger stand in the mountains — a location near where Sandy’s body was found.

Dunn told at least seven different people approximately eleven different stories about Sandy’s “disappearance.”

Dunn refused to provide deputies with a photo of his wife to use on a missing persons flier. When he saw that a missing persons flier was prepared without a photo from him, he was upset and complained that the police had publicized the matter without his approval. Dunn claimed to have printed up flyers himself, but Dunn’s mother said that it was Dunn’s brother Mike who actually had done so.

Dunn refused to take a lie-detector test. When asked by his mother why he refused to take a lie detector test if he was innocent, Dunn replied that he did not have to take a lie detector test and no one could make him do anything that he did not want to do. Before Sandy’s body was discovered, and she was still presumed “missing,” Dunn told his mom to “keep your dang mouth shut [about Sandy’s disappearance], it will pass.”

On July 15th, the housekeeper, Cindi Montes, heard Dunn make an appointment with his lawyer. Montes then saw Dunn leave the house for that appointment, taking with him his wife’s will and his checkbook. At this point, it wasn’t even known (except to Dunn) that Sandy Dunn was dead. Publicly, she was still simply “missing.”

That same day, at about 3:50 p.m., Dunn called Detective John Soliz to tell him he had just received a phone call reporting a possible sighting of his wife in an area about 20 minutes from his home. He told Detective Soliz that he planned to drive to that area ***the next day to check it out! This is hardly the reaction of a loving husband concerned about his “missing” wife’s well-being.***

Sandy Dunn had certain habits. She always wore her glasses, frequently wore her jewelry and she always slept in the nude. When her body was discovered, buried in the mountains, about an hour and a half away, it was without clothing, glasses or jewelry. Eleven blue fibers were found on or near her body. The body wasn’t identified as Sandy Dunn’s until July 23rd, 1992.

Dunn killed her while she slept in the nude, without her glasses, and without her jewelry. He then wrapped her in a bed sheet and some sort of blue blanket. If Sandy was killed by random gang members while walking, as Dunn suggested, why would they kill her, strip her, hang onto her glasses and clothing and drive an hour and a half away to dump the body? Common

sense dictates that they would want to get rid of the body, clothing and all, as soon as possible, or simply leave it where they killed her. ***Unlike Dunn, the mythical gang members would have no reason to move the body from the murder scene. Moreover, the jacket Dunn claimed his wife was wearing when she “disappeared,” her glasses, her jewelry and her keys were not actually missing, but were all eventually located in the Dunn home.***

Jerry Coble, a five time convicted felon, saw Pat Dunn drag a body wrapped in a white sheet and blue blanket out of his house at approximately 1:00-1:30 a.m. on July 1st. He agreed to provide truthful testimony about what he saw in exchange for a no-time deal on his own pending theft case.

Dunn’s son, Danny, told police that his father had been violent to him and once tied Mrs. Dunn up.

On October 14th, Dunn told his mother that he was going to Oregon, that he now had the “big bucks” and Oregon would be better for him. After Dunn was arrested for Sandy’s murder, he tried to drain his wife’s accounts by writing two large checks to his daughter Jennifer, totaling \$688,000. Dunn also hid his wife’s jewelry and sold it after her assets were frozen. Dunn’s brother tried to bribe three prosecution witnesses and he whisked his mother away to an undisclosed location prior to the trial — Lilian Dunn was, for obvious reasons, on the prosecution’s witness list.

The 12 person jury had no trouble unanimously and swiftly convicting Patrick Dunn of killing his wife for her money.

Edward Humes certainly has a right to voice his opinion regarding the Patrick Dunn case and law enforcement strategy and tactics, but he doesn’t have a right to package those opinions as a work of non-fiction. In the end, Humes does not seem to be able to distinguish between aggressive law enforcement and abusive law enforcement.

Mean Justice is neither an accurate nor a fair portrayal of law enforcement, the communities that comprise Kern County, or the Patrick Dunn case. Unfortunately, newspapers, editorials and book reviews simply reiterate assertions in *Humes’* book without independently verifying the accuracy of his information. Regrettably, what these reviewers do not know is that Humes distorts facts and mis-characterizes personalities for the purpose of having those cases and persons fit both his ideological agenda and his story line.

A few of Humes’ basic errors with regard to the Patrick Dunn case include the following:

- Humes claims there were 32 prosecution witnesses in the Patrick Dunn case. In fact, 34 testified. (See Section I)

- Humes claims that two checks that Pat Dunn wrote in an attempt to drain his wife's estate of its assets were entered into evidence against him. In fact, the checks, totaling \$688,000 (Humes attempts to minimize the amount as "several hundred thousand dollars") were never entered into evidence against Dunn at trial. (See Section I)
- Humes claims Judge Klein heard the Preliminary Hearing in the Patrick Dunn case. In fact, Judge Felice presided over the Preliminary Hearing. (See Section I)
- Humes claims that witness Arthur Teesdale, who testified that Sandy Dunn didn't show any symptoms of Alzheimer's disease, hadn't seen Sandy in 6 years. In fact, Teesdale testified that he had seen Sandy Dunn just a few weeks before her murder. (See Section I)
- Humes claims that evidence of Dunn's innocence is found in the fact that fly eggs were laid on Sandy Dunn's body, proclaiming that "everyone knows," including the prosecution, that flies don't lay eggs at night. In fact, many studies done before the Dunn case show that flies do indeed lay eggs at night. (See Section I)

A few of Humes' gross misrepresentations and distortions of testimony and other public records in the Patrick Dunn case include the following:

- In 1989, Sandy Dunn called the police to report that Pat Dunn had hit her. Humes claims that only Pat Dunn's account of the incident survives, and that a friend, Kate Rosenlieb could provide an alibi for Dunn. ***In fact, Sandy Dunn's account of the incident survives in a crime report which details how Dunn hit his wife with his closed fist, twice, on the side of her face.*** The report also verifies that, in fact, Kate Rosenlieb arrived after Dunn abused his wife, rendering Humes' alibi claim meritless. (See Section I and Appendix A)
- Pat Dunn concocted a cover story after his wife "disappeared." He says she may have had Alzheimer's disease and wandered off in an Alzheimer's induced haze. Seven prosecution witnesses testified to the contrary. ***Humes minimizes this testimony by falsely asserting that none of the witnesses who testified knew Sandy Dunn well or had seen her recently.*** (See Section I)
- Humes fabricates an "issue" by misstating Dunn lawyer Teri Bjorn's critical testimony that Dunn was seeking to gain control of his wife's finances only hours after she supposedly "disappeared" and hours before reporting her missing. ***Realizing how damning this testimony was, Humes creates an issue over the date of the phone call when no issue as to the date ever existed.*** Humes claims that Bjorn was not sure of the date Dunn called her, asking about a power of attorney over Sandy's money. It

was either July 1st or July 2nd, Humes says, thereby enabling him to argue that perhaps Dunn didn't try to get a power of attorney over his wife's finances before reporting her missing. *Humes' argument carries no weight. Teri Bjorn's testimony was unequivocal as to the date of the call. She said that Dunn called her on the morning of July 1st. Even the defense didn't contest the date of the call, conceding that it was, in fact, made on July 1st.* (See Section I & Appendix B)

- Perhaps Humes' most glaring misstatements of fact and gross distortions concern Jerry Coble, a convicted felon, who testified that he saw Pat Dunn put a body into a truck outside Dunn's home during the early morning hours of July 1st. Humes claims Coble was the key to the prosecution's case, that the prosecution "hid" a police report and a pending forgery case about Coble from the defense, and that had the jury known about their existence they would not have believed Coble and Dunn would not have been convicted. *None of these claims are true.* While Coble is absolutely essential to Humes' thesis in *Mean Justice* (and *his entire premise collapses without these manufactured issues*), Coble was not essential to the prosecution's case. *Without Coble, Humes has no story.* (See Section I)

First, 34 prosecution witnesses testified at trial. 33 of those witnesses provided persuasive evidence of Dunn's motive to kill his wife, his exclusive opportunity to kill her, the fighting and anger between the Dunns, Sandy Dunn's desire to get a divorce, and Dunn's repeated lies and bizarre actions with regard to her "disappearance" and death — all without any help from Jerry Coble. Moreover, many jurors told Humes heroine, Dunn defense investigator Laura Lawhon, that the verdict was clear without considering Coble's testimony at all. (See Section I)

Second, the prosecution did not hide a police report from the defense. *The "hidden" report Humes refers to was in the court file, a public record available to both the prosecution and the defense. In fact, it is where Humes himself found the report in question.* Because the information was readily accessible to both sides, and to anyone else who wanted it, it was impossible for anyone to "hide" this information from the defense. (See Section I)

Further, Humes invests this report with significance it doesn't have. The report simply repeats what was made known to the defense and jury: that Jerry Coble wanted a deal to avoid going to prison. Humes, 6 years later, now weaves a theory that it is the date that Coble first requested a deal that is important, not the fact that he requested a deal. (See Section I)

- Moreover, in Humes' attempt to create a "smoking gun," *he completely distorts what Coble actually said.* Humes implies that Coble volunteered to "set-up" innocent people to avoid going to prison, and in fact, according to Humes, that is exactly what he did to poor Pat Dunn.

The problem with Humes' version is that it simply is not true. Humes specifically claims Coble promised “to testify against and to help set up virtually anyone the sheriff’s department wanted. Strangers, relatives, he didn’t care. Just so long as he didn’t have to go back to prison.” “ ‘I’ll do whatever it takes’ he had promised.’ ” “ ... ‘I want to make a deal.’ ” Humes cites the report as his source for these statements. (See Section I and Appendix D)

Upon a review of the report, nowhere did Coble “promise to testify against and to help “set up” virtually anyone the sheriff’s department wanted.” Nowhere in the report did Coble say “Strangers, relatives, he didn’t care. Just so long as he didn’t have to go back to prison.” These statements are purely the invention of the author! (See Section I and Appendix D)

- Third, Humes claims another report, by Detective Taylor of the Bakersfield Police Department, was “hidden.” The truth is that the prosecution could not have hidden this report because it didn’t know about it. The prosecution found out about this report four years after the trial. To say that the prosecution “kept this secret” is patently false. (See Section I)
- Finally, Humes asserts that the jury had an unfairly positive image of Coble because they didn’t hear about Taylor’s report which involved a forgery by Coble and his attempt to cut a deal with law enforcement. The absurdity of this theory is clear when one considers the damning history the jury did hear about Coble. They heard that Jerry Coble had five prior felony convictions. They heard that Coble had previously violated parole. They also heard that four of Coble’s convictions were thefts, that he had a 13-year drug habit, that he was looking for heroin when he saw Dunn hiding the body, that he used illegal drugs after receiving a probationary sentence barring such use, and that Coble had sought and received a non-prison “deal” in exchange for information in the Dunn case. In spite of the fact that all of this was told to the jury at trial, Humes somehow concludes that the jury formed an unfairly positive image of Jerry Coble. (See Section I)

A few of Humes’ errors, false claims and distortions with regard to other cases within his book include the following:

- Humes claims that in the re-trial of Carl Hogan a “snitch” testified against Hogan, when no such “snitch” testified. (See Section V)
- Humes claims convicted murderer Michael Denny was released from custody for being “wrongfully prosecuted,” when in fact Mr. Denny remains comfortably behind bars. (See Section III)

- Humes is wrong when he says a track star's murder conviction was overturned because of jury misconduct, prosecutorial misconduct and judicial misconduct. (See Section III)
- Humes is wrong when he says a double murderer was given a new trial because the prosecutor excluded Hispanic jurors. (See Section III)
- Humes is wrong when he says a rape conviction and sixty five year prison sentence was overturned because prosecution DNA evidence overstated the likelihood of guilt. (See Section III)
- Humes claims Offord Rollins received a life sentence in his first trial, when in fact Rollins was sentenced under the Youthful Offender statute which allowed him to get out of prison at the age of 25. (See Section V)
- Humes claims that Rollins was initially charged with rape, when in fact Rollins was never charged with that crime. (See Section V)

The statistics Humes cites in Appendix A, a "Table of Wrongful Prosecutions in Kern County" are distorted and misleading. *Humes manipulates the numbers because use of the actual numbers would disprove the very heart of his inflammatory message.*

- Humes inflates the number of people he says were "wrongfully charged." He says the number is 102, but he includes 28 people he absolutely knows the District Attorney's Office never charged at all! Thus, only after a close look at the footnotes would a reader discover the actual number of "wrongfully charged" begins at 74, not 102. (See Section III)
- Humes deceptively implies that if a case is reversed, the defendant must be innocent. Most everyone knows, however, that in the practice of criminal law cases are often reversed because of legal technicalities. Defendants sometimes go free as a result. The system is designed to protect persons who are guilty of committing crimes even at the expense of valid convictions. *A reversal does not mean that the defendant did not commit the crime.* That is why defendants are never found "innocent" in our criminal justice system. (See Section III)
- Humes claims that "hundreds of people have been wrongfully convicted" in Kern County, when in fact, a review of the "table" Humes offers in support of his contention (Appendix A) disproves his thesis. *Humes actually cites only 25 people in 12 cases as "wrongfully convicted," not the "hundreds" he rants about.* (See Section III)

- In this “Table of Wrongful Prosecutions” Humes claims only 9 convictions were valid, when in fact 29 convictions were valid. (See Section III)
- Humes deceptively misstates the number of individuals who had their cases reversed on appeal. Only 25 people in just 12 cases had their cases reversed on appeal, not the 47 that Humes implies. (See Section III)
- Humes misstates the reasons for the case reversals. Indeed, most of the 25 reversals were due to decisions of the trial court, rather than actions of the District Attorney’s Office. (See Section III)
- Only one case cited in this entire “Table of Wrongful Prosecutions” was overturned due to prosecutorial misconduct. *The Kern County District Attorney’s office handled at least 103,818 cases during this time period and Kern County has more of its cases upheld on appeal than the rest of the state!* (See Section III)

The list of these errors and distortions goes on and on. (See the details within each Section for further information.)

A few of Humes’ misstatements with regard to California criminal law include the following:

- Humes claims that “three strikes puts non-violent offenders in prison for life, whether or not a judge wants it.” In fact, in order to be a “three striker,” a criminal must have committed at least two prior serious or violent felonies, and judges do indeed have the discretion to “strike” or dismiss one or both of the strikes, thus reducing the sentence. (See Section V)
- Humes wrongly states that every criminal defendant has a right to a preliminary hearing. Defendants who are indicted by a grand jury do not also have the right to a preliminary hearing. (See Section V)
- Humes is wrong when he says that sentencing/parole laws would not enable long time criminal Jerry Coble to get out of custody prior to serving, in full, his six year sentence. In fact, non-violent, non-strike defendants automatically receive half time credits for “good behavior.” (See Section I)

These are but a few examples of the errors, false claims and distortions found in *Mean Justice*. We encourage you to read the following detailed analysis for more information.

ENDNOTES

1. *"3 Strikes Benefits Trumpeted,"* Andy Furillo, Sacramento Bee, 2/27/99.
2. This number is based on the FBI crime index from 1982-1998 for Kern County and includes all reported violent crimes, property crimes, larceny-theft and arson as reported by the California Department of Justice. Population figures come from the State of California, Department of Finance, Demographic Research Unit.
3. Humes, KNZR Radio, Bakersfield, CA, 4/3/99.

SECTION I

THE PEOPLE V. PATRICK DUNN

(53 ERRORS, DISTORTIONS OR FALSE CLAIMS)

The case of the People v. Patrick Dunn is the heart of *Mean Justice*. Humes devotes 245 pages,¹ or 60% of the text,² to his misleading re-invention of both the facts of the case and the trial. Before a summary of this section can be considered, it is important to have a basic understanding of the true facts. To that end, this section begins with an eleven page synopsis of the key evidence, as heard by the jury. This synopsis is followed by a summary of Humes' misstatements of fact — misstatements that are essential to Humes' thesis of police and prosecutorial misconduct. A detailed analysis of each of Humes' false and misleading characterizations follows the summary.

The Murder: Key Facts³

On October 28, 1992, after a four month investigation by the Kern County Sheriff's Department, Patrick Dunn was arrested for the murder of his 56 year old wife of 6 years, Alexandra "Sandy" Dunn. Dunn's arrest led to a three week jury trial in which 44 witnesses testified. This testimony laid out Patrick Dunn's motive and opportunity to kill his wife. The evidence revealed an angry relationship between the Dunns, the impending collapse of their marriage, Dunn's attempts to gain control of his wife's money, and Dunn's bizarre behavior and contradictory and deceptive statements with regard to his wife's disappearance. On March 24, 1993, Dunn was convicted by a jury of killing his wife for financial gain. The facts are complex, but, as summarized, form a clear picture of an angry man desperately clinging to a lifestyle he never earned.

The Dunns, Their Financial Background, 1992 Financial Crisis and Collapse of their Marriage

In 1983, Mrs. Dunn inherited an estate worth approximately \$3.3 million from her late husband, Pat Paola. Pat Dunn (hereinafter referred to as the defendant) married Mrs. Dunn in late 1986 and admittedly had no assets of his own. The couple resided in Mrs. Dunn's home and her assets, consisting mostly of real estate, remained in her name. The defendant consumed alcohol frequently, often times drinking all day, every day. Dunn consistently denied he had a drinking problem.

In 1992, both Dunns were involved in developing two of Mrs. Dunn's properties (Morning Star and Columbus Theatre). The Bakersfield City Council rejected the Columbus Theatre project on June 3rd. The Dunns, who had expended about \$100,000 on it (and stood to lose that whole amount), were angry and upset by the rejection. The defendant said he would be

“out in the cold” and “finished financially” if the project was not approved. This project clearly became a sore spot between the Dunns.

Numerous witnesses testified that in late June, 1992, the Dunns fought with each other in front of others. For example, when the Dunns were at a meeting on June 19th, they argued publicly and disagreed with each other; the defendant told his wife to “shut up” and made a movement towards her. She immediately retracted and stopped talking. During the same time period, the Dunns were both on the phone with City Councilman Ken Peterson talking about the Columbus Theatre project. Once again, the Dunns got so caught up in arguing with each other that they hung up on Peterson. At about the same time, a friend, Marie Gates, saw Mrs. Dunn walking down the street in tears. *Mrs. Dunn told Gates that she made a terrible mistake in her marriage and that she wanted a divorce.* She said that she wanted Dunn out of her home and her life and that she would pay for the divorce. This, of course, would have left Pat Dunn “out in the cold” financially.

The Night of the Murder

On June 30, 1992, between 5:30 and 6:00 p.m., a neighbor testified that he heard the Dunns arguing. He then saw Mrs. Dunn leave the house and drive away in a fast and erratic manner. This neighbor was the last person, other than the defendant, to see Mrs. Dunn alive.

The defendant says there was no argument between him and his wife that night. He says that he and his wife barbequed and then she went to bed; he followed an hour or so later.

Mrs. Dunn “disappeared” at some point between the evening hours of June 30, 1992, and the early morning hours of July 1, 1992. Patrick Dunn was the only one with the opportunity to kill his wife during those last hours of her life -- they were alone.

The Next Morning, July 1st: Dunn’s Statements and Actions

On the morning of July 1st, 1992, just hours after Sandy Dunn “disappeared,” the defendant’s first contact with anyone regarding his wife’s “disappearance” was not with the police. His initial actions concerned her money and how he could gain control of it. *The defendant called, not the police, but his real estate lawyer* and told her that his wife was missing. He described the circumstances surrounding her disappearance and said he had spent the night looking for her. He expressed concern about his wife’s disappearance *in light of the bills on the pending real estate transactions*, including the Morning Star Project. Dunn said that his wife would be very upset if the project was shut down because the bills went unpaid. *He asked if there was some mechanism, like a power of attorney*, by which the bills could be paid. The lawyer told him a power of attorney was not an option because it required his wife’s signature.

At approximately 4:00 p.m., *six hours after calling his real estate attorney, and a full 18 hours after he says he first discovered his wife missing*, the defendant finally called the Sheriff's Department. He told the female operator taking the report that his wife went walking "yesterday afternoon/evening" with a big black dog and did not come home. He started looking for her at 9:30 or 10:00 p.m. He returned home about midnight, checked the house and left to search again. He returned home about 2:00 a.m. He indicated that his wife must have come home between 9:30 and 2:00 a.m. because when he returned, he noticed that the big black dog was in the yard and he also saw the keys which his wife had taken earlier. He got up at 4:30 a.m. to search for her again. He told the operator that it wasn't uncommon for his wife to go walking at 2:30 a.m. with one of the dogs, but that this was the first time she had been gone for so long.

He told the operator that he was worried about his wife because his wife's mother died of Alzheimer's disease. He didn't know if his wife had any signs of Alzheimer's disease but said that his wife forgets things and that she had previously fed the dogs as much as three times in one evening. He described his wife as being "really healthy." However, occasionally, something "set her off." He said that she was "set off" during a meeting yesterday afternoon when a person selling health insurance and living trusts mentioned Alzheimer's disease.

He told the operator that the first time his wife left, she had on her regular walking clothes, consisting of blue jeans, tennis shoes, T-shirt, and a little blue sweater jacket.

This phone call tells a great deal of emotional truth about Patrick Dunn and this case. Dunn sounded happy and cheerful. His *tone in the tape was laughing, joking, and flirtatious*. He said the "O" initial for his middle name stood for "outstanding." He appeared unconcerned about his "missing" wife.

The Dunns' housekeeper, Cindi Montes, was scheduled to clean the house on *July 1, 1992*. *She called at 5:00 a.m.* to say she was on the way. *The defendant* answered the phone (she said this was unusual) and *told her not to come* because he had an appointment that day. He sounded out of breath and there was water running in the background that sounded like a shower. When she called that evening to reschedule, the defendant was "in a real good mood" and didn't tell her that his wife was missing. The housekeeper testified that there was tension between the Dunns the last few weeks before Mrs. Dunn disappeared, and that Dunn was more abrupt and stern in his manner towards Mrs. Dunn.

Ms. Montes testified that in the middle of July, she found the little blue sweater jacket hanging in the hall closet -- the same jacket that Dunn said Mrs. Dunn was wearing when she left the house on June 30th. Dunn said Mrs. Dunn normally wore that jacket on her early morning walks.

July 3rd - 5th: Dunn's Contacts with Friends and Law Enforcement

Kate Rosenlieb had known Pat Dunn for 25 years and was good friends with both Dunn and his wife. She testified that the Dunns argued frequently. After the planning commission turned down their Columbus project, they had "tremendous fights;" Sandy Dunn was distressed and shocked. Rosenlieb spoke to the defendant on July 3rd and 4th -- *he did not appear upset* on either day. On July 3rd, Dunn told Rosenlieb that *he feared "the worst"* and there was nothing else to do *"until the body turned up."* It was as if he knew she was dead.

On July 4th, The defendant *tried to get Ms. Rosenlieb to drive with him up to a mountainous area near where Mrs. Dunn's body eventually turned up*, but she declined. The defendant denied having had a fight with his wife the night she disappeared. This, of course, was a lie, as their neighbor heard the Dunns fighting.

Ms. Rosenlieb asked Dunn three times to go to the Sheriff's department about his missing wife. (She did not know at the time that he had already called the Sheriff's department). Instead of telling her that he had already called, Dunn told Rosenlieb that he did not want to go to the Sheriff's department because it was "too late," he *"feared the worst"* and *"she's dead."* Rosenlieb asked "How do you know she's dead?" Dunn paused a great while and then said, "If she was not dead, she would be home." It was at that time that Dunn asked Rosenlieb to drive up to the mountains. After asking Dunn a third time to go to the Sheriff's department, Dunn told Rosenlieb, *"I don't want anyone to know."* He said the only ones who knew at that point were his son Pat Jr. and his daughter, Jennifer. This, too, was a lie. He had told his real estate attorney and he had told the Sheriff's Department.

When recounting to Ms. Rosenlieb what happened the night his wife disappeared, Dunn said that when he returned to the house about midnight, his wife might have been hiding from him.

When the defendant first talked to Deputy Sheriff Vernon Kline on July 4th, he told him that he and his wife had a meeting with their accountant on June 30th, and that he believed that his wife was suffering from Alzheimer's disease. After the accountant left, he and his wife barbecued, then she went to bed at about 5:30 or 6:00 p.m., and he followed sometime afterwards. When he awoke at 9:30 -10:00 p.m., he could not find his wife and the black dog was missing. He went looking for her, returned about midnight and found the black dog in the yard and his wife's keys in the kitchen. He went back to bed at 4:00 a.m. and got up and went looking for her at about 6:00 a.m. He told the deputy that his wife had never disappeared before. The next day, the defendant changed his story and told the deputy that his wife had disappeared for 12 hours on July 4th, either in 1989, 1990, or 1991, when her car had broken down. (*He did not tell Kline what he later told friend/business associate Roger McIntosh -- that Sandy Dunn had previously wandered off three months earlier and was found in the Mesa Marin area.*)

On July 5th, 1992, the defendant went to Rex Martin's office and asked Martin to go for a ride with him. Rex Martin was a close friend and business partner. The defendant drove Martin to a hamburger stand in the mountains — *a location near where Mrs. Dunn's body was found* five days later.

Additional Stories Told to Friends and Law Enforcement

The defendant described the circumstances of his wife's disappearance numerous times, both to law enforcement and to his friends and acquaintances. The circumstances changed and the stories differed substantially as to when Mrs. Dunn had gone walking the night she disappeared and when Dunn had gone looking for her.

Dunn's story to law enforcement was different in time and substance from what he told friends and acquaintances.

For example, Dunn told Roger McIntosh that his wife had gotten up to walk the dogs at 2:30 or 3:00 a.m. the morning of her disappearance (this was not the same as the 9:30 -10:00 time he told others, nor did it match the "yesterday afternoon/evening" he told the Sheriff's operator). Dunn also told McIntosh something he told no one else (including the Sheriff's operator and all the law enforcement officers he spoke to); his wife had previously wandered off for a couple of days in March of 1992, just three months earlier, and that she was found in the Mesa Marin area.

Judith Penney testified that the defendant told her that he went to bed about 6:00 or 6:30 p.m., awakened at 1:00 a.m., could not find his wife, noticed the dog was missing, and, at 4:30 a.m., he went out looking for her.

When talking to Detective John Soliz a few days later, the defendant said he left the house at 9:30 p.m. to look for his wife, returned at 10:30, went out again, and returned at 2:30 a.m. He slept from 2:30 - 4:30 and then again went out looking for his wife. He denied fighting with his wife that day.

Suspicious/Bizarre Behavior

Dunn refused to provide deputies with a photo of his wife to use on a missing persons flier. When he saw that a missing persons flier was prepared without a photo from him, he was upset and complained that the police had publicized the matter without his approval. He said his wife would be embarrassed that her disappearance became newsworthy.

The defendant refused to take a lie-detector test. When asked by his mother why he refused to take a lie detector test if he was innocent, Dunn replied that he did not have to take a lie detector test and no one could make him do anything that he did not want to do.⁴

On July 15th, the housekeeper, Cindi Montes, heard Dunn make an appointment with his lawyer. Montes then saw Dunn leave the house for that appointment with his wife's will and his checkbook. At this point, it wasn't even known (except to Dunn) that Sandy Dunn was dead. Publicly, she was still simply "missing."

That same day, at about 3:50 p.m., the defendant called Detective John Soliz to tell him he had just received a phone call reporting a possible sighting of his wife in an area about 20 minutes from his home. He told Detective Soliz that he planned to drive to that area *the next day* to investigate the report. *This is hardly the behavior of a husband who is concerned about his "missing" wife wandering around in an Alzheimer's induced haze.*

Discovery of Mrs. Dunn's Body

Mrs. Dunn had certain habits. She always slept in the nude, while she was out of bed she always wore her eyeglasses, and she frequently wore her jewelry. Mrs. Dunn's partially decomposed body was found in a shallow grave in Kelso Valley on July 10, 1992. The body, which was without clothing, jewelry or glasses *was not identified as Mrs. Dunn's* by dental records and fingerprints *until July 23, 1992*. She died of a stab wound to the abdomen. Blue fibers consistent with an outdoor blanket or carpet, similar to that which Jerry Coble described seeing a body wrapped in, were found on or near her body.

Dunn's Additional Contradictory Statements

After Mrs. Dunn's body was identified, detectives talked to the defendant again on July 23rd. He told them at that time that his wife went to bed between 3:30 and 4:00 p.m., that he left the house at 10:00 p.m. and returned two hours later. He said he and his wife never had fights and never raised their voices. *When asked why he wanted to take Kate Rosenlieb to the mountains he said it was because he needed someone to talk to and because he and his wife used to go to the mountains to see wild flowers.* The question made him nervous and he made himself a drink.

During this same conversation, after deputies told Dunn that his wife's body had been found, they asked him again why he wanted to take Kate Rosenlieb to the mountains. *This time, Dunn denied asking Rosenlieb to go for a drive in the mountains.* Detectives asked the defendant numerous times if he had killed his wife and they directly accused him of killing her; Dunn didn't answer the question nor did he deny killing his wife.

In all, Dunn told at least seven different people approximately eleven different stories (he talked to some of these people more than once) prior to the preliminary hearing.

Alzheimer's Concoction

An accountant did come to see the Dunns at about 11:30 a.m. on June 30th. He talked to them about estate planning, setting up a revocable trust and health insurance. He showed them a short film on revocable trusts which mentioned Alzheimer's disease as one of the reasons for conservatorship. Mrs. Dunn did not appear upset in front of the accountant. Mrs. Dunn mentioned that the defendant was the sole beneficiary of her will. When his wife was out of the room, the defendant told the accountant he was worried that his wife might have Alzheimer's since she sometimes fed the dogs two or three times a night. The accountant left about 4:00 p.m.

Seven of Mrs. Dunn's business associates and friends testified *she showed no signs of Alzheimer's disease or memory loss* before she disappeared. The defendant did not testify at trial. If he had, he would have had to explain his numerous unbelievable and inconsistent statements. Therefore, the only witness the defense offered on this so-called Alzheimer's defense was Jim Marino. Marino testified that approximately six weeks prior to Sandy Dunn's disappearance, he had lunch at the Dunns' house. Marino said Sandy Dunn asked him four times, over the course of this lunch, how his kids were doing.

Eyewitness Testimony

On August 19, 1992, Jerry Coble, an admitted felon and heroin addict, contacted Deputy Soliz and said he had information about the murder. Coble was facing a six year prison term for grand theft and conspiracy convictions and said he wanted a deal on his case. He agreed to provide truthful testimony about Mrs. Dunn's murder in exchange for placement on probation.

Coble testified that a couple of days before July 4, 1992, he was at Young's market at 1:00 a.m. to buy heroin from a Mexican named "Ray." The dealer, however, had to throw the heroin away because he was being followed by the police. Coble began walking in the nearby neighborhood looking for the Marlboro box which supposedly contained the drugs. He heard a noise and hid behind some trash cans. *He saw the defendant drag an object wrapped in a white sheet and blue blanket out of the house.* A woman's hand was sticking out of the bundle. Dunn put the body in the back of a white truck with a camper-type shell. The defendant owned a vehicle meeting that description, and all his cars were white or light-colored. When the defendant returned to the house, Coble ran to his car and left the area.

"Casing the House" Story

The defense tried to persuade the jury that Coble was making up the whole story just to get out of going to prison in his own case. Gary Coble, Jerry's brother, a seven time convicted felon on methadone maintenance, testified that Jerry told him that he did not see what he told the police he saw. Gary Coble testified that while he was not sure of the exact date, he did

know that this conversation occurred right after the preliminary hearing in the case. On cross-examination, the prosecutor tried to pin Coble down on when this so-called conversation took place. He asked Coble when the preliminary hearing was. Coble did not know. The prosecutor asked for a time frame, such as the approximate month. Coble didn't know and clearly didn't want to be pinned down to the wrong time frame. After numerous questions by the prosecutor, Coble finally testified that the conversation occurred in the summer. In fact, however, the preliminary hearing was in December. In addition, Gary Coble testified that he was angry with the Kern County District Attorney's Office because they had just attached his paycheck in order to get him to pay child support.

A number of jurors, after convicting the defendant, told both the prosecution and the defense that they discounted both the Coble brothers' testimony and convicted based on the other evidence in the case.

The defense's theory was that Jerry Coble cased the defendant's home after reading about the murder in the paper, in order to get detailed information to make up a story to give to the Sheriff. However, the defendant himself destroyed that theory when he testified in his own defense at the preliminary hearing. The defendant claimed that he was positive that he saw Jerry Coble drive by his house on July 24, 1992 — thereby proving his contention that Coble staked out the house after the murder.

Dunn's Perjury

While the defendant did not testify at trial, he did testify at the preliminary hearing. Dunn testified that his friend and business partner Rex Martin was there when Coble drove by the house on July 24, 1992, that the defendant pointed out the car to Rex Martin, and Rex Martin followed the car, saw the driver and got the license plate. The problem with this theory however, was that it provably could not have happened that way.

There is no way that Coble could have read about Mrs. Dunn's disappearance and the identification of her body in the *Bakersfield Californian* either on or prior to July 24, 1992. Before that date, no media coverage identified Sandy Dunn as a homicide victim or gave her address. It was not until July 25, 1992, the *day after* the defendant testified he had seen Coble drive by his house, that the *Californian* reported that Sandy Dunn was a homicide victim and gave her address. Moreover, the media did not identify Dunn as a suspect until August 3, 1992, and the *media did not identify the house as the suspected location of her death*.

Enter Rex Martin

With that defense theory busted, the defense had to come up with another way to convince the jury that Jerry Coble was lying about seeing the defendant put a body into his vehicle. The defendant had lied -- he couldn't testify and change his story now. So, they came up with Rex Martin.

Rex Martin was not a disinterested third party witness. He had a strong bias in favor of Patrick Dunn. He was Dunn's business partner in the Morning Star project (he had a 35% interest) and stood to lose if the project could not go forward. Martin valued that property at \$1.1 million. Mrs. Dunn was acting as construction lender on the development. Just before she disappeared, they had begun to grade the land. They anticipated that \$250,000 - \$300,000 in bills would come due in July. Mrs. Dunn's disappearance caused the project to come to a stop because no funds could be released to pay the bills.

Rex Martin testified at trial that he was at the defendant's house a few *days after July 24, 1992*, when the defendant told him a suspicious car had passed by the house several times that day and once turned into the driveway. When the defendant saw the car drive by again, Martin followed it and got the license number and a description of the driver. He identified the driver as Jerry Coble and described the vehicle as a blue-green Pontiac Sunbird. Of course, Martin's testimony on the date he and the defendant saw this completely contradicted the defendant's testimony at the preliminary hearing.

Bottom Line

If acquitted of the murder charges, Pat Dunn stood to inherit all of Mrs. Dunn's fortune, as he was the sole beneficiary of her will.

The Defense Case/Theories:

The defense theorized that Mrs. Dunn wandered off in an Alzheimer's induced haze and must have been killed by some random gang members. *But the actions of Pat Dunn during the days following Sandy's "disappearance" did not comport with those of a man who was worried about his wife wandering around the streets with Alzheimer's disease. His behavior was instead consistent with someone who murdered his wife and who tried to get away with it by concocting the Alzheimer's cover story.*

If, as the defense theorized, Mrs. Dunn was killed by random gang members, why would they kill her, strip her, and drive her all the way up to Kelso Valley (a 90 minute trip one-way) to bury her? *Common sense and practice dictates that they would either leave her or get rid of the body quickly, clothing and all. They certainly wouldn't keep clothing and glasses that might potentially tie them to her dead body!*

Dunn killed his wife while she slept in the nude, without her glasses, and without her jewelry. He then wrapped her in a bed sheet. *If she had gone out walking as Dunn claims, why were her glasses, jewelry, keys and walking clothes all found in the house?*

The defense tried mightily to discredit Jerry Coble. If Coble simply wanted a deal to get out of prison, cased the defendant's house, and made up this whole story, why did he wait three weeks to go to the Sheriff after casing the home and obtaining the "key" information? If Coble made up this story, how did he first know that Sandy Dunn was murdered? How then did he know that Pat Dunn was a suspect? (No articles appeared in the paper about this until July 25th and August 3rd respectively.)

And, if he did in fact case the house after July 24th but prior to August 3rd, how is it that he got specific details right? How could Coble possibly have known that Sandy Dunn's body would turn up with 11 blue fibers on or near it unless he was right when he said he saw a body wrapped in a blue blanket? How could he possibly have known that Dunn left his house to dump Sandy in Kelso Valley (an hour and a half trip, one way) at approximately 1:30 a.m.? This time fits perfectly with the next contact Dunn had with anyone — the housekeeper called at 5:00 a.m. and said Dunn sounded out of breath and she heard a shower running in the background — perfectly consistent with Dunn leaving his house about 1:30, driving to Kelso Valley, spending some time burying Sandy, and then driving back, arriving home around 5:00 a.m.? How could Coble have been right on the timetable of the actual murder if he was not there?

His testimony fits all of the facts of the case perfectly — *facts he had no way of knowing unless he was telling the truth and was actually there*. While Coble's testimony was clearly corroborated on key details, many of the jurors nevertheless disregarded his testimony and convicted Pat Dunn without him.

Some Additional Facts the Jury did not Hear:

- 1) The defendant was arrested for spousal abuse in 1989 when Mrs. Dunn called the police and accused the defendant of assaulting her in their home. She later asked that the charges be dropped.
- 2) Danny Dunn, the defendant's son, told the police that his father had been violent to him and once tied Mrs. Dunn up.
- 3) After the defendant's arrest for murder, he wrote two large checks totaling \$688,000 to his daughter to try and drain his wife's accounts before her assets were frozen.

4) Dunn hid his wife's jewelry and had it sold after her assets were frozen. (The prosecution did not know this at the time of the trial.)

5) Statements that Pat Dunn's brother Mike tried to bribe three prosecution witnesses from testifying against his brother — including offering Jerry Lee Coble \$10,000 to leave the country.

6) Dunn's brother also whisked his mother away to an undisclosed location prior to trial -- Lilian Dunn was on the prosecution's witness list. Lilian Dunn had told police that before Sandy's body was discovered, Pat Dunn was at her house when she and Marie Gates were talking about Sandy's disappearance. Pat snapped at them for talking about Sandy. ***He said "just keep your dang mouths shut, it will pass."*** Lilian Dunn also told police that Sandy Dunn did not have Alzheimer's disease as Pat Dunn had claimed. She said that while Pat Dunn claimed to have printed flyers about his missing wife (separate and apart from the Sheriff's Department flyers), it was actually Mike Dunn, Pat's brother who had the flyers printed. ***Lilian Dunn spoke to Pat Dunn on October 14, 1992 by phone. Pat Dunn told her at that time that he was going to Oregon, that he now had the "big bucks" and Oregon would be better for him.***

Conclusion

The Patrick Dunn case was tried to a jury of twelve citizens. The defense team was retained by the Dunn family and paid well for their services. The jury heard the evidence and the law. They were able to evaluate the credibility of all 44 witnesses -- they heard the voice and words of Patrick Dunn calling to report his wife missing. They heard arguments from both the prosecution and defense; they concluded that Patrick Dunn was guilty of killing his wife for financial gain.

The defendant has tried on numerous occasions to get his conviction overturned, and/or a new trial ordered. His motions after trial, on appeal and by writ of habeas corpus have all been denied by the relevant courts (Kern County Superior Court, 5th District Court of Appeal, and the California Supreme Court).

In the end, the best defense money could buy was unable to escape the evidence showing that Patrick Dunn was the ***only*** person with motive to kill his wife, the ***only*** person with the opportunity to kill his wife, and the ***only*** person who acted as if she were dead before her body was found.

Summary

In March of 1993, a 12 person jury unanimously found that Patrick Dunn killed his wife for her money. Edward Humes believes the jury was wrong. In *Mean Justice*, Humes concludes that Patrick Dunn is innocent and his self-imposed mission is to convince his readers as well. Humes' opinion, however, may be colored by his own personal relationship with a key member of the Dunn defense team, a private investigator named Laura Lawhon, whom he casts as the heroine of his book, and from whom he apparently got the idea to spend two years writing this book.

In a letter to Deputy District Attorney John Somers, dated June 15, 1997, Humes said that he was interested "solely in writing a full and fair account of this case (and others) for my book." *Somewhere along the way, however, Humes lost any objectivity he may have had and became a blind advocate for Patrick Dunn. Humes recklessly disregards the actual facts of the case -- the evidence the jury used to convict Patrick Dunn. In its place, Humes substitutes his own fictitious version of the facts, changing not only the reality and essence of the case but manipulating the form and substance of the evidence presented at trial as well.* Humes then re-argues his false and misleading version of the evidence, advocating that Dunn is an innocent victim of an overzealous criminal justice system.

To substantiate his thesis, Humes questions the intelligence of the jury. He mocks the jury foreperson for wearing a cross and for being religious, for writing on a piece of paper "floor person," and for liking country music and thinking the defense attorneys did not. (pp. 250-251, 296, 300-301) *Humes also questions the competence and integrity of the judge:* "the out-of-town lawyers did not get along with [the judge]" (p. 280); they thought [the judge] had made a "grievous error..." and this judge, according to Humes, perpetuated this "grievous error" by constantly "misquoting testimony in the case" that continued to be cited wrongly in appeals briefs and by appeals courts — the error "taking on a life of its own." (p.348) Finally, as will be explored in further detail, *Humes questions the character and ethics of Dunn's prosecutor.*

Humes' version of this case is pure fiction. Not only does Humes distort and mislead the reader as to the actual testimony and chain of events; he makes numerous errors and mistakes in the reporting of basic facts. Humes is either so incompetent in his research that he cannot even get the basic facts right, or he purposely reports that which he knows is not true. There is simply no other logical explanation for what he does.

Many of Humes' errors could have been avoided if he had simply done his homework. A few basic mistakes an amateur would not have made include: 1) The judge who heard the preliminary hearing in the case was Judge Felice, not Judge Klein, a fact that is printed in capital letters on the cover page of the transcript. Humes replies that this error was simply a "typo" and that the passage should have read "pretrial" rather than "preliminary hearing."⁵ That explanation is impossible. Klein did not preside over any "Dunn pretrial hearing." Moreover, Humes relates an embarrassing story about this wrong judge for the sole purpose of prejudicing the reader against the judge by undermining his credibility. 2) The number of prosecution witnesses — there were 34 witnesses, not 32. Again, a simple count of witnesses in the court file or a quick read of the transcript on appeal would tell him this. 3) Humes claims that evidence of Dunn's innocence is found in the fact that fly eggs were laid on Sandy Dunn's body, proclaiming that "everyone knows" flies don't lay eggs at night. Many studies done before the Dunn case show that flies do indeed lay eggs at night. 4) The amount of money Dunn tried to drain from his wife's estate: Humes minimizes the amount saying it was "several hundred thousand dollars." It was, in fact, close to three quarters of a million dollars, a whopping \$688,000, to be exact. 5) Humes then claims that these checks that Dunn had written, trying to drain his wife's estate of funds, "had been entered into evidence" against Dunn. This is simply not true. The checks were never used against Dunn at trial, as the trial exhibit list clearly shows. 6) Humes claims a witness, Arthur Teesdale, who testified that Sandy Dunn didn't show any symptoms of Alzheimer's disease, hadn't seen her in 6 years. In fact, Teesdale had seen Sandy Dunn just a few weeks before her murder.

Of all of Humes' misstatements of fact, one stands out. Humes, blatantly ignoring the overwhelming evidence to the contrary, asserts that one single witness named Jerry Coble was the key witness to the prosecution's case. This particular misconstruction is especially interesting for two reasons. First, in spite of Humes' best efforts to overlook the other evidence in the case, it is clear that Jerry Coble was *not* the key figure in the prosecution's case. Second, in an elegant reversal of Humes' own argument, it turns out that the same Jerry Coble who is but one piece of the prosecution's overall case becomes the very foundation of Humes' book. In short, the ***People's case against Patrick Dunn remains intact without Jerry Coble, but Humes' case against Kern County law enforcement fails completely unless he impugns Jerry Coble.***

A simple analysis shows that Humes' "Jerry Coble Theory" cannot stand up to even a cursory inspection. For Humes' theory to survive, he must prove three assumptions: (1) without Coble's testimony, the People's case would fail; (2) Jerry Coble was lying; (3) but for dirty District Attorney tricks, Coble's lies would have been exposed to the jury. In the end, a review of the facts shows that none of these three assumptions is true.

- (1) ***34 prosecution witnesses testified at trial. 33 of those witnesses provided persuasive evidence of Dunn's motive to kill his wife, his exclusive opportunity to kill her, and his repeated lies about her disappearance and death — all without any help from Jerry Coble.*** Under the circumstances, it is absurd for Humes to assert that Coble was the key witness for the People. In fact, many jurors told Humes' heroine, Dunn defense investigator Laura Lawhon, the verdict was clear without considering Jerry Coble's testimony at all.
- (2) While it is true that Jerry Coble's testimony was contradicted by the testimony of one other witness (Coble's own brother, Gary Coble), it does not follow that Jerry Coble was lying. Gary Coble's testimony was wrong on a key material point, while Jerry Coble's testimony supporting the prosecution's case was corroborated by several pieces of forensic evidence that Coble could not have planned or known about. Moreover, the jury heard it all and decided what was proven or not proven.
- (3) There were no dirty tricks or hidden evidence by the prosecution. Humes claims that the prosecution kept some of Jerry Coble's past criminal record secret. This claim is ludicrous for two reasons. ***First, the "hidden" record Humes refers to is included in the court file, a public record available to both the prosecution and the defense. In fact, it is where Humes himself found the report in question.*** Because the information was readily available to both sides, it was ***impossible*** for anyone to hide this information from the defense. Second, Humes asserts that the jury had an unfairly positive image of Coble because they did not hear about a pending forgery case. The absurdity of this theory is clear when one considers the damning history the jury did hear about Coble. The jury heard that Jerry Coble had five prior felony convictions. They heard that Coble had previously violated parole. They also heard that four of Coble's convictions were thefts, that he had a 13-year drug habit, that he was looking for heroin when he saw Dunn hiding the body, that he used illegal drugs after receiving a probationary sentence barring such use, and that Coble had sought and received a non-prison "deal" in exchange for information in the Dunn case. In spite of the fact that all of this was told to the jury at trial, Humes somehow concludes that the jury formed an unfairly positive image of Jerry Coble.

Humes imperiously accuses the jury of misunderstanding the testimony of these witnesses. However, ***it was the jurors who actually saw and heard the witnesses testify in person -- not Edward Humes. It was the jurors who could see and evaluate the body language and the emotion with which each witness spoke -- not Edward Humes. The jurors were clearly in a better position to judge the truthfulness and the importance of the evidence.*** Humes, however, arrogantly wants his readers to believe what he does: that he is the better judge of the evidence in this case, even though all he did was read a cold transcript of the trial 4 years

after the fact. The judgement of 12 people who see and hear everything is by definition superior to that of one person reading a transcript.

For Humes' thesis to be true, he consistently ignores or rationalizes away the many damning inconsistencies in Patrick Dunn's many stories, Dunn's prior arrest for abusing his wife, his theft of her jewelry, and his attempt to drain her estate of funds.

Humes passes off as a "mistake" Dunn's perjured testimony at the preliminary hearing in which Dunn claimed that Jerry Coble was supposedly checking out Dunn's house for information for Coble's "story." Dunn's story was proven a lie because Coble could not have known at the time that Sandy Dunn was dead. Of course, after Dunn was caught in this lie, he wasn't called to testify at trial. Instead, the defense called a new witness, Dunn friend and business partner Rex Martin, who testified to a similar story but on a different date. The defense still got it wrong. Martin still put Coble there at a time before anyone had announced that Pat Dunn was a suspect. Humes explains: "[Dunn] misstated the date Rex followed Coble." (p. 193) This "unfortunate and inaccurate testimony, in which he misstated the date that Coble cased his home..." (p. 229-230) He "made a simple mistake, ...the days had blurred together, ...he hadn't meant to sound so sure in his testimony..." (p. 293) Here, Humes wishes away two blatant lies because to admit them is to admit Pat Dunn's guilt.

Humes ignores or rationalizes away the fact that numerous witnesses including a city councilman, the Dunns' next door neighbor, and a close friend of Pat Dunn's who had known him since she was in the sixth grade (Kate Rosenlieb) testified that the Dunns fought constantly, in contrast to Dunn's repeated assertions that they never fought. Humes also claims that Kate Rosenlieb provided an alibi for Dunn on the night he was arrested for abusing Sandy, but this is false. Rosenlieb arrived that night after the Dunns' fight was over.

Humes completely fabricates a pivotal issue by misstating Terri Bjorn's critical testimony. Her testimony clearly showed that Dunn was already seeking a power of attorney to control Sandy's financial affairs only hours after she supposedly "disappeared" and ***hours before*** reporting her missing. Humes barely touches on Dunn's odd behavior after his wife's disappearance, such as telling Kate Rosenlieb less than three days later than "there's nothing to do but wait until the body turns up." Humes doesn't even mention Dunn's behavior on July 15th, eight days before Sandy's body was identified. He called Detective Soliz at 3:50 p.m. to tell him that someone spotted Sandy wandering in an area 20 minutes away — he told Soliz he would go and check it out ***the next day!*** ***This, of course, is hardly the reaction of a husband deeply concerned about his wife wandering around town in an Alzheimer's induced haze.***

Humes attempts to explain away Dunn's apparent lack of concern over his wife's disappearance, saying "Pat was distraught and simply forgot to mention [that his wife had disappeared before]..." (p. 399, footnote 21) With regard to Dunn's failure to tell people about Sandy's disappearance and his 18 hour delay in reporting her missing, Humes explains that Dunn was simply "trying to avoid embarrassing his wife." (p. 275) In short, Humes expects his readers to simply take on faith that a loving husband would "forget" that his wife had disappeared before and would wait almost a full day to contact authorities because he was fearful of embarrassing her.

Pat Dunn and Ed Humes contend that Sandy Dunn wandered off in an Alzheimer's induced haze and must have been killed by would-be robbers. The contention that Sandy Dunn had Alzheimer's disease comes from the defendant and the defendant alone. No medical evidence of this was established, and Dunn himself destroyed the only evidence that could have conclusively proven Sandy Dunn either had or didn't have Alzheimer's disease. He chose to have his Catholic wife's body cremated. Thus, an autopsy of the brain could not be undertaken to determine whether or not she had Alzheimer's.

Furthermore, Dunn and Humes' assertion that Sandy Dunn had Alzheimer's was contradicted at the trial when seven separate prosecution witnesses testified that Sandy Dunn showed no signs of memory loss. Humes of course, minimizes this testimony by falsely asserting that none of the witnesses who testified to this knew Sandy Dunn well or had seen her recently.

Humes glosses over the existence of evidence that Pat Dunn's brother Mike tried to bribe three prosecution witnesses from testifying against his brother — including offering Jerry Lee Coble \$10,000 to leave the country, though this is something else the jury did not know. Dunn's brother also whisked his mother away to an undisclosed location prior to trial -- Lilian Dunn was on the prosecution's witness list. (p. 238-239, p. 427) Before Sandy's body was discovered, Pat Dunn was at his mother's house when his mother and Marie Gates were talking about Sandy's disappearance. Pat snapped at them for talking about Sandy. He said "just keep your dang mouths shut, it will pass." On September 15, 1992, Lilian Dunn spoke to detectives about the case. She told them that Sandy Dunn did not have Alzheimer's disease as Pat Dunn had claimed. Pat Dunn claimed to have printed up and passed out missing persons flyers about his wife. His mother, however, told police that it was Mike Dunn, Pat's brother, who had flyers printed about Sandy Dunn's disappearance. Lilian Dunn spoke to her son on October 14, 1992 by phone. Pat Dunn told her at that time that he was going to Oregon, that he now had the "big bucks" and Oregon would be better for him. The jury of course heard none of this since Mike Dunn got her out of town before the trial.

Humes even justifies Dunn's illegal sale of his wife's jewelry -- jewelry he had hidden from the authorities before his arrest, by advancing Dunn's contention that once he was proven

innocent, the entire estate would be his. (p. 236) *Beside the illegality, this suggests a less than sentimental view of his wife's most personal property. Apparently, the mourning was over.*

In one of Humes' more transparent attempts to excuse Dunn's greed, Humes likens Dunn's request for a power of attorney over his wife's money to asking an accountant if he could take a questionable deduction, not ordering the accountant to actually take it!! (p. 282) Humes' excuse of course, misses the point — *from the moment of her "disappearance" Dunn was concerned about his wife's money, not his wife.*

Dunn did not testify at his trial. According to his own attorney, he "was absolutely awful," "the worst," "there is no way I can put that man on the stand." (p. 229) He was "defensive and contradictory, arrogant one moment and at a loss for words the next." (p. 231) Dunn continued to insist that he and his wife never fought, even though the defense team knew that was a lie; if Dunn took the stand and testified that he and his wife never quarreled or fought, he would be destroyed by his own lies.

More important, if Dunn took the stand and testified he never fought with his wife, the prosecution would be able to tell the jury about the time he was arrested for spousal abuse in 1989 — something the defense obviously wanted to hide from the jury.

Dunn never did testify; still the jury had no trouble finding him guilty even though they never heard about the abuse.

To this day, Dunn continues to insist that he and his wife did not ever fight. Humes' book concludes with Dunn's own words "I know people lied on me and said Mom and I always fought, but it's just not true..." (p. 391) In addition, Dunn also insisted neither he nor his wife had drinking problems — something else the defense team knew to be demonstrably false. (p. 230)

Inexplicably, Humes claims that his heroine, Laura Lawhon, believed that these two boldfaced lies provide "further evidence that Dunn really loved his wife" — to her, they were "well-intentioned, rose-tinted memories." (p. 231)

In the end, both Humes and Dunn accuse the Sheriff's Department of going after Pat Dunn without any evidence pointing in his direction. This bold assertion stands in stark contrast to the evidence gathered in the case, each and every piece of which points the finger of guilt solely at Pat Dunn. This is not the Sheriff's Department's fault — it's Pat Dunn's fault. It is Pat Dunn's fault because Pat Dunn killed his wife.

The Details: Humes' Errors, False Claims and Distortions:

FALSE CLAIM:

“As it turned out,...the defense team was missing even more crucial information before the trial of Pat Dunn began - information about witnesses, about evidence, about the police and the prosecution, all of it far more important than anything Kate Rosenlieb had to say.” “...Information that could only have helped Pat’s defense and hurt the prosecution was kept secret.” (p. 245)

FACT:

Nonsense. The prosecution did not keep anything secret from the defense. Humes complains that the defense did not have one police report written by Sheriff’s Detective Banducci regarding Jerry Coble. If the defense didn’t have this report they have only themselves to blame because it was contained in the court file. It is clear the defense did have access to this public record because they copied other documents from the very same file.⁶ ***If the defense didn’t have this report it was because they simply overlooked it. Moreover, contrary to what Humes claims, there is nothing new in this report.*** Humes’ “big issue” is a red herring. Humes creates a convoluted defense theory after the fact that invests this report with great significance. The report, however, simply repeats that which was already known to the defense and to the jury: that Jerry Coble wanted a deal to avoid going to prison. Now, 6 years later, Humes weaves a theory that it is the date that Coble first requested a deal that is important, not the fact that he did request a deal. The prosecution cannot possibly be charged with the duty of presently predicting what the defense will claim years later was “crucial” to the understanding of the case!

The other report Humes says was “hidden” was a report by Detective Taylor of the Bakersfield Police Department, also with regard to Jerry Coble. The truth is that the prosecution could not have hidden this report because it didn’t know about it. The prosecution only found out about this report 4 years after the trial.⁷ To say that the prosecution “kept this secret” is patently false.

FALSE CLAIM:

“First there was the story of how Jerry Lee Coble came to make the deal that made him the star witness against Pat Dunn. It was a story the defense never heard. Neither Laura nor any other member of the defense team knew about an earlier meeting bringing Coble together with Kern County law enforcement, the one in a Sheriff’s interrogation room a year before Sandy’s murder, when Coble first begged to be allowed to make a deal.” (p. 302)

FACT:

If the defense did not see this report (and the evidence clearly suggests otherwise) it was due to their own oversight. Humes however, misleads the reader by blaming the prosecution instead. Superior Court case #47620 was the theft case that Coble received a deal on in exchange for his truthful testimony in the Dunn case. *The report Humes refers to was in that court file, and is still in that court file today.* The Superior Court case number was given to the defense repeatedly by Deputy District Attorney John Somers, both before and after it was requested by the defense. Dunn’s investigators, including Ms. Lawhon, had access to that file, and even copied parts of it. The defense also had a copy of Coble’s probation report which clearly reiterated the contents of the “hidden” report. The two probation officers involved in writing the probation report for Coble’s theft case were both on the defense’s witness list in the Dunn case.⁸ Presumably, this information did not come to the attention of the defense by osmosis. The defense must have read the probation report to know who to subpoena at trial.

FALSE CLAIM:

“At that time,[when being interviewed on 4/4/91 by Sheriff’s Deputy Eric Banducci about the theft case] Coble promised to testify against and to help set up virtually anyone the sheriff’s department wanted. Strangers, relatives, he didn’t care. Just so long as he didn’t have to go back to prison.” ‘I’ll do whatever it takes,’ he had promised. ‘...I want to make a deal.’ ” (p. 302)

FACT:

This is a complete distortion of what Coble actually said! Humes cites Banducci's report as his source for the statements that Coble makes. *But Humes attributes comments to Coble that are not contained anywhere in Banducci's report.* Additionally, Humes takes the comments Coble did say completely out of context to embellish his story.

This kind of creative writing is fine for fiction, but it is completely out of place in a book that purports to be non-fiction. Nowhere in this report did Coble "promise to testify against and to help "set up" virtually anyone the sheriff's department wanted." Nowhere in the report did Coble say "Strangers, relatives, he didn't care. Just so long as he didn't have to go back to prison." These statements are purely the invention of the author!

What Coble actually said was that he could get information for the police on a major dope dealer. *He never promised to help "set up" anyone, including innocent persons, as Humes implies.* Coble, an admitted heroin addict, made an initial spontaneous statement before being interviewed by any law enforcement officer. He said "I didn't fucking do it. This is bullshit. I don't want to go back. I'll do whatever it takes." Coble then cooperated and talked to the deputies about the case. Some time later in the conversation (14 paragraphs of information later), Coble said he wanted a deal. He said he could "do" a dope dealer who does not deal in anything less than "quarters" (a significant quantity of narcotics). Banducci responded he wasn't a dope cop. Coble continued cooperating and talking to the deputies, asking additional times if he could get a deal, without any further elaboration as to what kind of deal he was talking about.⁹ (See Appendix D, specifically pages 3, 5 and 6, for the complete copy of Banducci's crime report.)

FALSE CLAIM:

Unbeknownst to either the prosecution or the Sheriff's Department, in January of 1993, another police agency, the Bakersfield Police Department, was investigating Coble in an alleged forgery that occurred in December of 1992. The investigation commenced in January and lasted until late April,

1993. Humes contends, however, that even though the prosecution and the Sheriff's Department were not aware of this investigation, "the duty to provide such information extends beyond individuals to whole law enforcement and prosecutorial agencies." (p. 309)

FACT:

Humes cannot possibly be saying that prosecutors must be omniscient! First, there is no law to support the assertion that the prosecution has a duty to inquire of every law enforcement agency in the county, state or nation whether or not they are conducting an investigation on each and every prosecution witness testifying in every trial held. There is no legal authority to support this contention because it is ludicrous on its face. Yet, this is the only way to comply with the "duty" that Humes claims exists. Humes admits that both the prosecution and the Sheriff's Department were unaware of this forgery investigation; in fact, it was Humes himself who brought the forgery case to the attention of the prosecutor, John Somers, four years after the trial. Thus, the correct legal test to be applied is whether the information on the forgery investigation was "reasonably accessible" to the prosecution.¹⁰ The facts clearly show the answer to this question is NO.

The forgery case stemmed from an attempt to pass a forged check on December 23, 1992. The initial crime report, taken by a patrol officer, did not identify Jerry Coble or anyone else as a suspect. Coble's name was not mentioned anywhere in the report. Bakersfield Police Detective Taylor contacted the victim (owner of the forged check) on January 11, 1993 (still before the Dunn trial) and determined that his identification had been stolen almost a year before. At some point - when is not clear - he investigated Jerry Coble as a possible suspect because a money order was made out to his son, Aaron Coble. It was not until April 5 and 6, 1993, (*after* Dunn was convicted) that he reviewed Coble's criminal history file and asked for latent prints on the check to be investigated. His written report containing this information was not typed until May 11, 1993; it was submitted to the District Attorney's Office (though never to Mr.

Somers) on May 18th, and the complaint was filed on May 24, 1993. At no time did anyone bring this to Mr. Somers' attention until Humes did so in 1997.

In order for the prosecution to have discovered this information, it would have had to contact Detective Taylor specifically and inquire of him if an investigation on Jerry Coble was pending. Of course, Detective Taylor is only one of many law enforcement officers in Kern County, the state, the nation... And Jerry Coble was only one of 34 prosecution witnesses. In order to find this information, the prosecutor would have had to blindly contact all officers with a countless number of agencies to find out if any investigation was pending on 34 witnesses, since no reports or other materials existed as a clue to its existence. This information was clearly not "readily available" to the prosecution.

FALSE CLAIM:

"In the Dunn case, Jerry Coble had presented himself on the witness stand as a man who just happened to stumble on a murder in progress, a good citizen who wanted to do the right thing." (p. 303)

FALSE CLAIM:

"Such testimony, had the defense known it was available, could have been devastating to Coble's credibility as a witness, as well as the prosecution's entire case..." (p. 303)

FACT:

Humes misleads the reader into thinking that Coble was somehow flying under false colors as a witness, pretending to be a public-spirited citizen, and that the jury had no idea what kind of person he really was. Humes then asserts that had the jury known this new information, Coble's stellar credibility would have been shot. Humes is dead wrong. First, Coble testified that he would rather not be in court testifying against someone else. Coble also told the jury that he had five prior felony convictions, that he had previously violated parole, that four of his convictions were theft-related, that he had a 13 year drug habit, that he was searching for heroin and that he used illegal drugs after receiving a probationary sentence which barred such use. Most important, Jerry Coble himself told the jury that he had sought and received a non-prison "deal" as a quid pro quo

for his information from the day he came forward. In addition, the jury heard Coble's brother testify that Coble said he made up the story to get a deal. No one on that jury could have thought Coble was a "good guy." Humes' assertion that one additional forgery investigation would have made a difference is ridiculous.

FALSE CLAIM:

"...despite laws requiring full disclosure, key information about Coble was never given to Pat Dunn's lawyers." (p. 279)

FACT:

Humes demonstrates his ignorance of California criminal law. The District Attorney gave the defense everything it was legally obligated to. Penal Code Section 1054.1 details the required disclosures. In short, the prosecution is required to give the defense 1) names and addresses of persons the prosecutor intends to call as witnesses at trial; 2) statements made by the defendant; 3) all relevant real evidence seized or obtained as a part of the investigation; 4) felony convictions of material witnesses whose credibility is likely to be critical to the outcome of the trial; 5) any exculpatory evidence; 6) relevant written or recorded statements of witnesses whom the prosecutor intends to call at trial.

FALSE CLAIM:

(1) "There was a great deal of additional information available on [Jerry Coble's] credibility, much of it known to the District Attorney's office. Had it been presented to the jury it could have severely eroded whatever remained of Coble's viability as a witness, and it could have dealt a serious blow to the credibility of the Sheriff and District Attorney as well....But the information was not used in the trial, and for one reason: the defense never saw it." (p. 279)

FALSE CLAIM:

(2) "Banducci's report was never given to Pat Dunn or his lawyers, as the law requires." (p. 303)

- FALSE CLAIM: (3) “And Banducci,...never appeared on the lengthy list of witnesses and officers relevant to the Dunn case...because they never heard of him. Prosecutors are legally obliged to reveal all information in a case that might be helpful to a defendant.” (p. 303)
- FALSE CLAIM: (4) “...it’s clear that Pat Dunn was denied important, powerful information about his case and the main witness against him.” (p. 309)
- FALSE CLAIM: (5) “Laura never did find out about the missing report from Detective Banducci or the new check forgery charges against Jerry Coble...” “Only the DA and its witnesses could provide that information and they did not do so.” (p. 346)
- FALSE CLAIM: (6) “When Somers told the judge that there was nothing new with which to challenge Jerry Coble’s credibility...his own office had information showing each of these points to be untrue.” (p. 350)
- FALSE CLAIM: (7) “Had the defense known of the new case against Coble, and had they known of Detective Eric Banducci and his report chronicling Coble’s desperate attempt to strike a deal to avoid prison — Pat would have had powerful information with which to seek a new trial, to attack Coble’s credibility and to show possible prosecutorial misconduct. Banducci’s testimony, had the defense known of its availability, could have gone far beyond simply challenging Jerry Coble’s story: It could have undermined the credibility of the entire case against Pat Dunn.” (p. 351)
- FALSE CLAIM: (8) “No one had noticed that the DA failed to disclose to Pat’s lawyers, as the law required, a wealth of evidence that could have helped prove his innocence.” “...Most dramatically, the defense never knew there were new charges against Jerry Lee Coble or that the police and the DA neglected to pursue this new case against the star witness despite overwhelming evidence of his guilt.” (p. 386)

FALSE CLAIM:

- (9) “Nor did anyone seem to notice that Pat Dunn’s defense team never received a critical police report about Coble that detailed how the man who claimed to have accidentally witnessed Pat Dunn commit murder had previously begged to be allowed to make a deal, any kind of deal, vowing he’d do whatever it took to stay out of prison. Without that report the defense had no way of knowing about Detective Eric Banducci, who arrested Coble but who was left out of the loop when Deputy DA John Somers and Sheriff’s Detective John Soliz cut their deal with the career criminal...The defense had no way of knowing...Locked within the files of the District Attorney’s office was a police report that could have destroyed Jerry Coble as a witness and seriously eroded the credibility of the entire case against Pat Dunn except for the fact that Dunn and his lawyers never saw that report.” (p. 386)

FACT:

Repeating the same melodramatic mantra over and over again will not make it so. Apparently, when Mr. Humes is at a loss for new material, he slings the same mud over and over, hoping some of it will stick and somehow be accepted as the truth. As stated above, the defense had access to, and in all likelihood (based on the evidence), did in fact have Banducci’s report. It was not “locked within the files of the District Attorney’s office,” rather, it was available to the defense, just as it was available to Humes, in a public court file. The prosecution gave this case information to the defense. *After that, Ms. Lawhon and the defense investigative team must take responsibility for their own investigative failures.*

The prosecution had no knowledge of a pending forgery case, and as such, could not have turned it over to the defense. Moreover, the jury knew all about Jerry Coble’s criminal history. It is ridiculous to claim that had the jury only known about this forgery investigation, it somehow would have perceived Coble differently.

FALSE CLAIM:

“The Kern County District Attorney’s Office had filed new charges against Jerry Coble and in addition, had information in hand that its star witness in the Dunn case had violated his plea agreement and the conditions of his probation.” (p. 350)

FALSE CLAIM:

“Despite the new [forgery] charge... there is no record of him being arrested, or of a warrant for his arrest being sought by the DA, though this too, should have been routine. Yet the Kern County court records for May 25 state that, at 9:35 a.m., Jerry Coble was in custody, presumably in the Kern County jail, which is run by the sheriff’s department. Six hours later...when Coble was supposed to be arraigned on the new charges, no hearing took place; court records indicate ‘defendant not transported to court.’ The case record...ends at that point, without explanation. There was no further attempt to bring Coble to court on the new case, no attempt to revoke his probation, no effort to prosecute or punish him in any way. To this day, the Kern County District Attorney has failed to pursue the forgery case...the DA has never notified Pat Dunn of its existence.” (p. 350-351)

FACT:

Humes falsely implies that the District Attorney ignored this pending case against Coble as a reward of sorts for him testifying against Pat Dunn. This is totally untrue. A warrant was indeed requested by the District Attorney.

When the case was filed with the court on May 25, 1993, the filing documents indicated that both the police department and the District Attorney knew that Jerry Coble was “at large” and a warrant would need to be issued for his arrest. This information, which is in essence a request for a warrant, was provided to the court by the prosecution, as it is in every “at-large” case. The court would normally then issue a warrant for the suspect’s arrest. Due to an apparent clerical error, the court clerk did not issue a warrant for Coble. At the scheduled arraignment on May 25, the court was, for an undetermined reason, under the impression that Coble was in custody and simply not brought to court, rather than “at-large.” Apparently, for that reason, no additional arrest warrant was issued. The DA had no knowledge of this error by the court. As a result, (and as the complete docket shows), the case remained open until July 23, 1997, when it was dismissed because Coble’s constitutional right to a speedy trial had obviously been violated — not as a “secret benefit” to Jerry Coble.

FALSE CLAIM:

“To this day, the Kern County District Attorney has failed to pursue the forgery case against Jerry Lee Coble, though the case was listed as ‘open and active’ in the court files as late as 1998. (p. 351)

FACT:

Humes once again did not do his homework and he is just plain wrong about his assertion that the case was listed as “open and active” as late as 1998. The case remained open until July 23, 1997, when it was dismissed because Coble’s constitutional right to a speedy trial had obviously been violated.

FALSE CLAIM:

Background: Pat Dunn’s lawyer, Terri Bjorn, told Judge Baca in an *in camera* hearing that Pat Dunn called her on the morning of July 1, 1992, told her that Sandy was missing, and asked if he could get or use a power of attorney over his wife’s money to pay the bills. Bjorn then repeated the essence of this testimony to the jury in open court. ***Humes makes a number of false claims about this pivotal and damning testimony.*** (See Appendix B for the entire transcript of Bjorn’s testimony)

Humes first claims, incorrectly, that the date of this phone call is at issue — he says the call could have been made on July 2nd, and if that were the case, he argues, Dunn wouldn’t look so guilty for calling his attorney to get his wife’s money before he actually reported her missing. (p. 281-282)

FACT:

Humes is 100% wrong. In fact, there was no issue over when the call was made. ***Terri Bjorn was unequivocal in her testimony both before the judge and the jury.*** In front of the judge she said “***sometime during the morning of July 1, Mr. Dunn called me by telephone and the essence of the conversation he told me that Sandy was missing, he told me the circumstances surrounding her being missing.***” (RT 623) Then, in front of the jury when Bjorn was asked if she recalled what day it was specifically in early July that Dunn had called her, she responded, “***I believe it was July 1st, mid to late morning, definitely before noon.***” (RT 634-635)

Moreover, the defense apparently conceded that Dunn called Bjorn on July 1st, 1992, as they did not contest the issue at trial.

FALSE CLAIM:

Humes next falsely claims that when talking to Judge Baca, Bjorn said she couldn't recall who brought up the subject of the bills, and that she could have instigated the subject. (p. 280-281)

FACT:

There is no testimony to this effect whatsoever in the transcript of Bjorn's testimony to the judge on pages 623-625 of the reporter's transcript.¹¹

FALSE CLAIM:

"It seemed clear to Bjorn that Pat did not know what a power of attorney was, she told Baca." (p. 281)

FACT:

Again, there is no testimony to this affect whatsoever in the transcript of Bjorn's testimony to the judge on pages 623-625 of the reporter's transcript.

FALSE CLAIMS(2):

Bjorn added one more detail at the end of her conversation with Judge Baca — she said "I believe he told me he had either filed or was going to file a missing persons report." (p. 281) Humes then dramatically declares that this is crucial because if Pat had already filed the report then the conversation with Bjorn must have occurred on July 2nd, the morning after he reported Sandy missing. "But if he hadn't yet reported Sandy missing, the conversation must have occurred on July 1st, well before the missing persons call. *That would make Pat look very, very bad. He would have put Sandy's money before Sandy herself.*" (p. 281)

FACTS:

First, Bjorn didn't make this statement at the end of her conversation with Judge Baca. She said it in the beginning, *after she unequivocally said Dunn called her the morning of the 1st*, told her Sandy was missing, explained some details of how he found her gone, and then she said "I believe he told me he had either filed or was going to file a missing persons report. That's really all the details that I can recall relating to him reporting Sandy being gone." And then she said they went on and talked about getting the bills paid. (RT 623-624) Of course, the jury already knew that Dunn did not report his wife missing until 4:00 p.m. that day. If he told Bjorn he "had" reported her missing, it was yet another lie.

Second, Humes finally agrees that Dunn looks bad for putting Sandy's money before Sandy herself! That, of course, is why he creates this issue over the date of the call, where no issue as to the date ever existed. Bjorn clearly testified that Dunn called her on July 1st.

FALSE CLAIMS (2):

"The defense...was not allowed to be present for the *in camera* hearing and no transcript of the secret proceeding was made available until later." (p. 282)

FACT:

A completely misleading statement designed to prejudice the reader against the judge. Humes implies that the prosecution got some unfair advantage. An *in camera* hearing is, by definition, a private hearing before the judge in his chambers. The judge, in this case, had to hear what the witness was going to say before he could rule on her testimony's admissibility. Since she was going to be disclosing private, attorney/client communications, all parties other than the judge, witness and court reporter were excluded, including the prosecution. The transcript of this proceeding was made available immediately after the judge ruled the witness' testimony would be heard by the jury. In fact, the judge immediately requested that the clerk provide counsel with a transcript. (RT 651) (See Appendix B, page 651.)

FALSE CLAIM:

With regard to this conversation between Pat Dunn and Terri Bjorn, Humes argues, "If the jury had known that their conversation might have taken place a day after Pat reported Sandy missing, Bjorn's testimony might have had little force." (p. 283)

FACT:

A total fabrication created to lessen the blow of extremely damaging testimony. As responded to above, *there is absolutely no evidence whatsoever to support this proposition.* There was never any conflict about when Bjorn spoke to Dunn. It was always the morning of July 1st — Bjorn simply couldn't remember exactly what Dunn had told her about his reporting Sandy missing. She was certain of the date of the phone call itself. The jury, of course, already knew from other evidence that Dunn did not report her missing until 4:00 p.m. on July 1st.

FALSE CLAIM:

“For reasons large and small, it appeared they [the defense] were in good shape. There was more than just Gary Coble’s willingness to testify, more even, than the witnesses who swore Jerry Coble had cased Pat Dunn’s house weeks after Sandy disappeared.” (p. 198)

FACT:

Another outright false statement. First, no one testified that they saw Jerry Coble “casing” Dunn’s house. Second, one biased witness (Rex Martin), and one biased witness only, testified that he saw Jerry Coble driving on Dunn’s street in late July. Furthermore, Martin’s testimony as to the date he saw Coble on Dunn’s street was directly contradicted by Pat Dunn himself, providing evidence that they made up the story since they couldn’t keep the day straight.

FALSE CLAIM:

“From his cell, shortly after his arrest, [Pat Dunn] wrote two massive checks totaling several hundred thousand dollars to his daughter, Jennifer, hoping that she would be able to cash them before he was removed as executor of Sandy’s estate...” (p. 236)

FACT:

Humes downplays the actual amount of the checks Dunn wrote. Dunn did write two massive checks to his daughter from his wife’s estate — they totaled almost three quarters of a million dollars: \$688,000 to be exact.

FALSE CLAIM:

[With regard to these same checks] “Instead, the checks were seized and entered into evidence against him.” (p. 236)

FACT:

This is a complete misstatement of fact. These checks were never entered into evidence against Patrick Dunn. Clearly, Humes didn’t look closely at the trial transcript or exhibit list.

FALSE CLAIM:

“...[T]he news article that the defense argued could have tipped off Jerry Coble about the Dunn case, which provided the Dunns’ address and strongly implied that Pat was a suspect and therefore an ideal candidate for a frame-up, had appeared in the *Bakersfield Californian* on Saturday, July 25.” (p. 293)

FACT:

The article that appeared on 7/25/92 did not “strongly imply” that Pat Dunn was a suspect, nor did it mention that the home was the suspected crime scene. While the article did give the address of the Dunn house, the substance of the article was simply a generic account of a police investigation in progress. It said that detectives were working several different theories -- that she was killed by an acquaintance or that she was abducted and that they had focused on one individual, but that no one, including family members, could be ruled out. Pat Dunn was not mentioned as a possible suspect.¹²

FALSE CLAIM:

“He [Coble] claimed that despite his previous record, he would have gotten quick parole anyway, [without having to cut a deal] rather than the six years in prison he faced under the law — a claim belied by court records.” (p. 277)

FACT:

Humes again demonstrates his ignorance of the criminal law. Non-violent, non-strike offenders automatically receive half-time credits in prison. A six year prison sentence means the non-violent, non-strike offender actually spends only 3 years in custody. Further, Coble had 323 days of credit from his days spent in jail, thus, Coble would have only had to serve an additional two years and a month in custody, not the full 6 years.

FALSE CLAIM:

“Through Somers’ questioning, he established that the [maggots and fly eggs found on the portions of Sandy Dunn’s body that were buried] could have gotten there only if those parts of the body were exposed to the elements for some length of time before burial. Otherwise there would be no flies or maggots.” “...They [the District Attorney’s office] knew that flies lay eggs above ground only. And they also knew something else: that flies lay eggs in daylight only. Entomologists have long known that flies, blind in the dark and unable to navigate without light, neither feed nor lay eggs at night.” (p. 390)

FACT:

Again, Humes draws his conclusions with little or no apparent effort to research his facts. Numerous studies have shown that several species of common flies found in California lay their eggs at night.¹³

FALSE CLAIM:

“Somers asked eight¹⁴ of the thirty-two prosecution witnesses about Sandy’s mental state. Each one of them denied she had memory problems and doubted that Sandy would ever just walk out in an Alzheimer’s induced haze, as Pat had suggested. In number, these witnesses appeared impressive, but it turned out that not one of the eight was a close friend of Sandy’s. Most were business associates who saw her just a handful of times during the year.” (p.272)

FACT:

Because this evidence is damaging to Humes’ thesis, he falsely characterizes the testimony. Some of the people who testified about Mrs. Dunn’s mental state and who said they saw no signs of memory problems included the Dunn’s once-a-week housekeeper for the previous 9 months — Ms. Montes was very familiar with Alzheimer’s disease as she had worked at a hospice and had cared for people with the disease. She said Mrs. Dunn did not exhibit any such symptoms and described her as very alert. (RT 209) An architect hired to develop the Columbus Theatre project attended business meetings with Mrs. Dunn 12-15 times between October 1991 and June 1992; he did not observe her to have any memory problems. (RT 116-121; 125-126) Pat Demond knew Mrs. Dunn for 5 years and had been in contact with her once every one or two weeks and saw her once every four or eight weeks; she never noticed any memory problems. (RT 131-132) Roger McIntosh had known Mrs. Dunn for 15 years; she did not appear to forget things or to have any memory problems. (RT 167)

FALSE CLAIM:

“Another [who testified about Sandy Dunn’s memory] was her former dentist who hadn’t seen her since she stopped coming to him in 1986 — six years before she died.” (p. 272)

FACT:

This is a total falsehood. Arthur Teesdale was the victim’s friend and former dentist. He testified that he last saw Mrs. Dunn in June, 1992 when he had an extended conversation with her and described her as “pretty sharp.” (RT 39, 41-42)

FALSE CLAIM:

“...Municipal Court Judge Alan Klein, who would later preside over Pat Dunn’s preliminary hearing, then become embroiled in scandal for consorting with a stripper on trial in his court.” (p. 417, footnote 59)

FACT: Judge Klein merely made a routine assignment of the Dunn case to another judge to hear the preliminary hearing and certainly did not preside over the preliminary hearing, as shown in the court docket and the preliminary hearing transcript — both public records. Judge Lee Felice, one of the most respected judges on the bench, presided over the preliminary hearing. Humes writes Klein in and Felice out, apparently because the inclusion of Klein — a judge who subsequently was forced off the bench in disgrace — discredits the process which ended in Dunn’s conviction.

FALSE CLAIM: (1) [Kate Rosenlieb’s] “emotion-laden story had become far more damaging to Pat than anything the defense had anticipated. (And even then, Pat and his defense team had only part of the story - crucial elements that might have greatly aided them at trial remained missing from the packet sent by the DA.)” (p. 240)

FALSE CLAIM: (2) “There were more [of Kate Rosenlieb’s] journal entries after that, ones that seemed to display a marked bias against Pat, though they were never given to the defense.” (p. 244)

FACT: Nothing was “missing from the packet sent by the DA.” Kate Rosenlieb was a private citizen witness. She gave the deputy district attorney some notes that she had written with regard to her conversations with Pat Dunn. The DA turned those notes over to the defense, as required by law. Evidently, Humes, after speaking with Rosenlieb 4 years later, discovered that she had written additional notes on the case -- notes that she never gave to anyone, prosecution or defense. The DA cannot be and is not, under the law, responsible for notes he does not have in his possession and knows nothing about. Moreover, the DA does not have any authority over private citizens. Whatever Kate Rosenlieb gave to the prosecution was duly turned over to the defense. What other private materials she had, the prosecution knew nothing about and couldn’t force her to disclose even if it did know about them.

FALSE CLAIM: “Had all of Kate’s notes been turned over, or if the DA and the Sheriff’s department had revealed the existence of the lobbying efforts as the law required them to do, the defense could have painted a very different picture.” (p. 312)

FACT:

Humes implies here that the defense knew nothing about Rosenlieb's belief that Dunn killed his wife. If only the defense had had Rosenlieb's notes, Humes theorizes, they would have uncovered her biases against Pat Dunn. Nothing could be further from the truth. The defense knew that Kate Rosenlieb thought Pat Dunn was guilty from the beginning. They knew that Kate Rosenlieb went to the Sheriff's Department on July 4th, telling them that Dunn killed his wife. They knew that Kate Rosenlieb called the Sheriff's Department to inquire of their progress on the case. They knew it was Kate Rosenlieb who urged the Sheriff's Department to compare an unidentified woman's body with the records of Sandy Dunn. Humes simply criticizes the defense's tactical decision not to cross-examine Ms. Rosenlieb as to her beliefs and actions. Rosenlieb came across very well on the stand, she had been the "best of friends" with Pat Dunn, and the defense did not want her to say anything more damaging than she already had.

As far as the lobbying issue, Deputy District Attorney John Somers made the decision to file the case against Patrick Dunn. Ed Jagels never spoke to John Somers about the decision. Neither did Kate Rosenlieb. If any lobbying of Jagels occurred, John Somers knew nothing about it and it had absolutely no effect on his decision to file the case.

FALSE CLAIM:

In 1989, Sandy Dunn called 911 and reported that her husband had hit her. When the Sheriff's deputies arrived, Kate Rosenlieb was in the house, having a drink with Pat Dunn. She had arrived after the incident. Humes says of the incident, "after that night, Sandy rarely talked of this incident, so only Pat Dunn's account survives." (p. 49)

FACT:

Nonsense. Sandy Dunn's account survives as her version of the incident is memorialized in Kern County Sheriff's crime report number KC89-25184. See the next entry for an accounting of Sandy Dunn's statement. (See Appendix A for the complete Sheriff's crime report of the incident.)

FALSE CLAIM:

With regard to the spousal abuse incident, Humes says Rosenlieb "could have provided an alibi of sorts for Pat, as she was sitting talking with him over beers when Sandy claimed to have been beaten." (p. 49)

FACT:

This must be wishful thinking on Humes' part. Kate Rosenlieb could not have provided an alibi for Pat Dunn. She arrived after the incident had taken place. Sandy Dunn told police that while she and Dunn were in the atrium of their home, he became upset with her. He was drinking at the time and started yelling at her. She then went into the master bedroom, and he followed her. She pulled the bed covers back and sat down on the bed because she was going to go to bed. It was then that Dunn struck her with a closed fist, twice on the right side of her face. He then left the room, as did she. She returned a few minutes later after deciding to call the police. When she attempted to use the phone, Dunn grabbed it and pulled it out of her hands. The door bell then rang and Kate Rosenlieb was at the door. Dunn went into the atrium with Rosenlieb and started talking to her. Sandy called 911. The deputies arrived approximately 6 minutes after Sandy called. Sheriff's Deputy Justice saw blood on Sandy's ear and hair.¹⁵

FALSE CLAIM:

On June 30th, "After Knudsen left, Pat cooked two thick steaks on the barbeque. Sandy fried some rice. She seemed quiet and even a bit depressed, perhaps by Knudsen's video and its discussion of Alzheimer's, Pat would later say. She went to bed early in the evening, as usual, with Pat following an hour later. By ten that night, she was gone." (p. 59)

FACT:

Humes misleads the reader here. Humes' version of events during the afternoon of June 30th sets up his own theory very nicely. Clearly, the actual facts get in the way of his thesis, so he ignores them. In this passage, Humes leaves out the key fact that the Dunns' next-door-neighbor saw the Dunns get into a fight in their driveway between 5:30 and 6:00, and he then saw Sandy Dunn drive off in an erratic and angry manner.

FALSE CLAIM:

"Even reports that Sandy had been spotted roaming around various parts of Kern County, looking disheveled and disoriented, had been largely ignored — dutifully recorded in police reports but seldom pursued in any meaningful way by detectives..." (p. 163)

FACT: The Sheriff's department posted missing persons flyers of Sandy Dunn, responded to citizen calls of possible sightings and attempted to check them out, bringing Pat Dunn along on at least one occasion to verify whether or not a transient was Sandy Dunn. (RT 369)

FALSE CLAIM: In his opening statement, prosecutor John Somers didn't focus on Jerry Coble, instead, he "focused on ostensibly minor witnesses, people who talked about Pat's demeanor, Sandy's mental state and the couple's finances." (p. 252)

FACT: This is a disingenuous distortion. Clearly, these 25 or so prosecution witnesses were not "minor." They testified to the very heart of this murder case -- Dunn's own inconsistent statements and bizarre behavior, his motive and maneuvering to gain control over his wife's money and the constant fights that had been ongoing between the Dunns.

FALSE CLAIM: "Somers knew that the simple visual presentation of all of those entries on his chart would leave an indelible impression on the jury. ...When the arguing was over and the lawyers sat down, the prosecutor knew that big chart of "lies" would still be there, helping the jury decide what to think about Pat Dunn." (p. 268)

FACT: Humes implies here that an exhibit was improperly sent to the jury room with the jurors — helping them decide to convict Dunn. In fact, the chart was used only during Somers' closing argument to the jury — it was not a trial exhibit that the jury got to take back into the jury room with them.

FALSE CLAIM: Somers failed to mention... "that the police had established that Sandy owned multiple pairs of glasses...which meant that she could have been wearing any one of a number of pairs that night..." (p. 270)

FACT: Here, Humes suggests that the jury did not know that Sandy Dunn had more than one pair of glasses. This assertion ignores the testimony from the housekeeper, Cindi Montes, who said that *Sandy Dunn had one other pair of glasses* that she kept in her bedroom. (RT 217) Furthermore, *as in so many of Humes' accusations, he fails to point out that even if the prosecution doesn't bring this testimony out at trial, the defense can!*

FALSE CLAIMS (2):

“The house cleaner also recalled when she would see Sandy in the morning after her walk, Sandy never wore her jewelry — just a wristwatch and her glasses. With this statement the only witness in the case who could attest firsthand to Sandy’s walking attire shot down a major portion of the prosecutor’s “opportunity to kill” theory. However, by coincidence, Montes made this point from the witness stand in a very low voice — so low that the defense team didn’t catch what she said.

When Montes was asked to repeat her answer, she only mentioned the glasses, neglecting to repeat the part about Sandy never walking with her jewelry on. Somers didn’t correct her.” (p. 271)

FACT:

This is a total fabrication, not the actual testimony. Montes never testified about what jewelry Sandy Dunn wore when she went on her walks. The questions about what Mrs. Dunn wore had absolutely nothing to do with what she wore on her walks. Montes only testified as to what Sandy Dunn wore around the house. Furthermore, the record makes it clear that *the defense did hear the answer to the question Humes complains about*. (Defense counsel did have trouble hearing a subsequent answer, but that answer was repeated to their apparent satisfaction.) *In the end, Montes could not say whether she ever actually saw Mrs. Dunn upon returning from an actual walk.*

The following is a transcript of the actual testimony:

Q: Okay. When you were at the Dunn residence, were you able to observe how Sandy Dunn ordinarily dressed?

A: Yes.

Q: And what kind of clothes did she wear, dressy, casual?

A: Very casual.

Q: Can you describe it in a little more detail?

A: Yeah, when the weather got a little bit warmer she normally just had on shorts, a t-shirt, tennis shoes. She didn’t wear a bunch of jewelry, just wore her watch. Always had her glasses on.

Q: Did you always observe her to wear her glasses around the house?

A: Oh yes, she had them on no matter what.

Mr. Pohlsen, [the defense attorney then said] “I’m sorry, couldn’t hear the last part.”

Witness responds: “Oh, I just said I always saw her wear her glasses.” (RT 207)

It was a full three pages of testimony after this line of questioning that the housekeeper was asked if she ever observed Sandy Dunn when she was coming back from walks in the morning. Her testimony was that there was just a couple of times when she was “coming in from outside after I had gotten there.” “They used to go to the bakery a lot of times in the morning...but normally she was in the house when I did show up.” (RT 210) On cross-examination, she was again asked whether she had seen Mrs. Dunn come back from her walks. She responded: “the only time I saw her come, like I said, there was just a couple of times ...that she was outside somewhere when I was actually in the house then she would walk in. *I don’t know if she was out on the walk. Normally her walks, she was completed with them by the time I got there.*” (RT 216) (See Appendix C for a complete transcript of Montes’ testimony.)

FALSE CLAIM:

Humes says the prosecution called 32 witnesses during the trial. (p. 272)

FACT:

Humes even has trouble getting this basic correct. There were 34 actual prosecution witnesses. (Witness list, Reporter’s transcript, Court Docket) *While this is not important as a substantive matter, it simply underscores Humes’ poor attention to detail and his inadequacies as a researcher.*

FALSE CLAIMS: (2)

With regard to the analysis of the blue fibers found on or near Sandy Dunn’s body by the DA’s criminalist, Humes says: “although there were some dark blue fibers collected, these were from a synthetic fabric with the trade name Olefin — which is used primarily for carpeting, and never in the sort of bedroom blanket Coble described.” (p. 278)

FACT:

First, Coble didn’t say the blanket was a bedroom blanket, he just said the blanket was blue. Second, the criminalist said she “wasn’t sure if they used Olefin fibers in blankets, or at least not in your typical household blankets. Possibly in an outdoor type

situation.” She then said it was more likely found in an outdoor type blanket of some sort. (RT 530)

FALSE CLAIM:

Background: The defense put a lot of stock in Ann Kidder’s testimony. Ann Kidder was the secretary for one of Sandy Dunn’s accountants. Ann Kidder testified that she received a call from Sandy Dunn on the morning of July 1st, needing to cancel her appointment and reschedule for another day. If Kidder’s testimony was accurate, then Sandy Dunn was alive on July 1st, and Jerry Coble was lying. (p. 286)

FALSE CLAIM:

“As good a witness as Ann Kidder was...” (p. 286)

FACT:

Ann Kidder was a nice lady but a lady whose memory of the chain of events was completely discredited at trial. In fact, jurors told John Somers that they felt sorry for the man who Kidder worked for. Kidder had to admit at trial that her memory, the memory she had sworn could not be wrong, was in fact wrong on at least three occasions with regard to Sandy Dunn.

1) Kidder was sure when she talked to Sheriff’s deputies that she had only talked to Sandy Dunn on three previous occasions. She admitted at trial she was wrong about that, that her memory was in error, and that she in fact had talked to Sandy Dunn about 8-12 times. (RT 794)

2) She swore that she was sure Sandy Dunn’s first appointment was on the 25th, but when she checked her records, she found she was in error again. The appointment was on the 29th. She had to admit that her memory (that she swore was accurate) was again wrong. (RT 808)

3) Finally, she remembered that Sandy Dunn’s appointment was scheduled for 1:30 on July 1st. She had to admit that her memory was again wrong and that in fact the appointment was for 2:00. (RT 815)

Ann Kidder was clearly wrong about the date she said Sandy Dunn called. Sandy Dunn was killed by the defendant early on July 1st or late on June 30th, so she couldn't have made that phone call to Ann Kidder at that date and time. Sandy Dunn may have called Ann Kidder, but if so, she called her on June 30th, not July 1st.

A July 1st phone call doesn't make sense anyway. If Sandy Dunn went out for a walk and was kidnaped and murdered by gang members, then she was dead, and she couldn't have made that call to Ann Kidder. If she wandered off in an Alzheimer's induced haze, and couldn't even remember how to get home, how could she make this call, remembering that she has an appointment with her accountant that she must cancel?

How could she give Ann Kidder *detailed directions to her home, which she supposedly couldn't even find?* (RT 803-804) That phone call is totally inconsistent with the defense theory that she was out in an Alzheimer's induced haze and couldn't remember how to get home!

ENDNOTES

1. *Mean Streets*, New York Law Journal, Harry J. Reynolds, March 5, 1999.
2. The text of the book is 391 pages. An additional 100 pages are devoted to endnotes and two separate appendixes.
3. The facts were taken from the official Reporters Transcript of the trial proceedings, hereinafter referred to as RT, the Statement of Facts as written by the 5th District Court of Appeal (with citations to the record), and the Statement of Facts as written by the Prosecution (with cites to the official record) in the pending habeas corpus proceeding.
4. The jury did not hear any testimony about this evidence; lie detector or polygraph evidence is generally not admissible in criminal trials.
5. April 3rd, 1999, KNZR Radio, Bakersfield, CA.
6. Sources: Discovery memorandum from Deputy District Attorney John Somers to Dunn defense lawyer Gary Pohlson; plea agreement of Jerry Lee Coble in case number 47620; criminal record of Jerry Lee Coble disclosed to the defense; Superior Court file number 47620 which contains the report in question and also contains the file copy request by Dunn's defense investigators, Sandberg Investigations; Probation report of Jerry Lee Coble in case number 47620; defense witness list provided in February, 1993.
7. Police report 92-49371; complaint request forms from the police department; complaint and filing forms from the District Attorney's office in case number BF66673; court docket form case number BF66673.
8. Source: see endnote 6.
9. Supplemental report of Detective Banducci, case # 91-06787. (See Appendix D)
10. In re Littlefield (1993) 5 Cal.4th 122; People v. Cover (1983) 142 Cal.App.3d 839; Pitchess v. Superior Court (1974) 11 Cal.3d 531.
11. Ms. Bjorn did testify in front of the jury that she didn't know who brought the subject of the bills up.
12. *Bakersfield Californian*, 7/25/92.
13. *Mean Streets*, New York Law Journal, Harry J. Reynolds, March 5, 1999. See also Bernard Greenberg, professor emeritus at the University of Illinois at Chicago. Greenberg, *Nocturnal Oviposition Behavior of Blow Flies*, J. Med. Entomol. 27 (5): 807-810 (1990); Greenberg, *Flies as Forensic Indicators*, J. Med. Entomol. 28 (5): 565-577 (1991).
14. Somers asked eight prosecution witnesses about Sandy's mental state. Seven of the eight testified they saw no sign of Alzheimer's disease in Sandy Dunn. The eighth witness could not speak to the issue.
15. Source: Kern County Sheriff's Deputy Justice's crime report, #KC89-25184.

SECTION II
KERN COUNTY AND ITS COMMUNITIES
(5 ERRORS, FALSE CLAIMS OR DISTORTIONS)

Summary

In author Edward Humes' attempt to discredit the Kern County District Attorney's Office and Kern County law enforcement, he vilifies the people who live here and who support both law enforcement and the District Attorney. Humes cannot understand how juries in this county convict criminals so swiftly, nor can he relate to a community that appreciates a tough law and order attitude on the part of their law enforcement agencies. Humes implies that the people of Kern County have to be ignorant, immoral or both to support and participate in a system where "convictions seemed to materialize out of thin air" and "the war on crime is out of control..." (p. 17) *Humes paints this dark picture of Kern County and its residents, because without an appropriate supporting cast of evil or misguided citizens, his underlying premise -- that Kern County routinely plucks innocent citizens off of the street and convicts them of crimes they didn't commit -- is impossible.* Reviewers of the book swallow without question Humes' prejudices. One reviewer, who after reading Humes' petty and insulting description expressed the thought that one "would not want to raise a family or dog in Kern County." *Humes, however, doesn't think his book "tars the community."*¹

Mr. Humes expresses nothing but contempt for Kern County and its residents. He ridicules Kern County, calling it the "anti-Mayberry," — a town where gun-wielding red-necks amuse themselves by blowing up clinics to the delight of their fellow citizens. The characters in his book who are from Orange County, not only race south with anticipation over the Grapevine to get away from this backward, frightening community, they "breathe a deep sigh of relief when the oppressive heat and dust and injustice disappear in their rear view mirror." (p. 353)

Humes supports his mean-spirited depiction of Kern County by relating stories of such non-current events as the hanging execution of horse thieves back in the 1870's and Ku Klux Klan activities in the early 1900's. Never mind that these anecdotes have absolutely no relevance to today's Kern County or the court cases Humes complains about. Never mind that hanging of horse thieves was common throughout the Old West back when the loss of a horse threatened a man's livelihood and sometimes his survival. Never mind that the Ku Klux Klan was prominent throughout much of the United States and California 80 years ago, with headquarters in San Francisco and Los Angeles.² Never mind that Kern County was no different than the rest of the West. Never mind that the Kern County branch of the Ku Klux Klan was broken up by a law and order District Attorney named Jess Dorsey waging a war on crime. *Humes' apparent purpose in dredging up these historical incidents is to prejudice the reader against Kern County by creating a Gothic setting in which his tale of abuse will seem credible.*

Humes' willingness to label large groups of people as "okies, red-necks, gun-nuts, etc.," just so he can collectively dehumanize them, suggests that he is willing to engage in one of the oldest propaganda tricks in the book.

Humes often hides behind the heroine of his book, Laura Lawhon, an investigator for Patrick Dunn's defense team, to denigrate and malign Kern County and its residents. Taking her word as gospel, Humes never flinches at the possibility that, as a member of the defense team, she might be biased in recounting the events that led to her client's conviction for murder. Neither does it trouble him that in her own words, the defense team saw themselves as "cocky big city lawyers slumming in a small town." (p. 16) "[Lawhon] ... "sensed something deep and troubling below the surface of ...this town from the very beginning." (p. 17) From Lawhon's biased account, as told through Humes, readers are to believe that her premonition of something "deep and troubling" was clearly a sinister thing. Perhaps, however, Lawhon's sense of foreboding came from the realization that, here, in Kern County, the truth would ultimately prevail.

The Details: Humes' Errors, False Claims, and Distortions:

FALSE CLAIM:

"I don't feel that Mean Justice tars the community. I think it focuses on the justice system and some problems that occurred and that's what I tried to stick to." (Humes, KNZR radio, Bakersfield, CA, 4/3/99)

HUMES' CLAIM:

Judge for yourself whether or not Humes' description "tars the community."

Humes describes Bakersfield as ... **"red-neck country,"** (p. 73) **"...the antithesis of the California of popular imagination."** (p. 21) **"...a land...of crude oil and tractors, of black dirt under the fingernails and molten, breeze-less summers..."** (p. 21) An **"incongruous haven for some of the dirtiest air in California."** (p. 148) **"... home to...the poorest farm workers in America..."** (p. 27) **"Okies...now run the place."** (p. 22) Bakersfield is, according to Mr. Humes **"...a town known for its hanging jurists and merciless prosecutors."**(p. 15) Kern County consists of **"Red-necks, gun nuts, cowboy cops."** **"Wild West, frontier law, hanging judges."** (p. 118-119) **"Theirs is the heartland of California...conservative law and order, the toughest jurisdiction in the toughest state in the union...where the most powerful and feared politician...is the district attorney."** (p. 22) **"Convictions... materialize out of thin air"** and the **"war on crime is out of control [here]."** (p. 17)

Humes asserts, through Laura Lawhon, his heroine, that Bakersfield is the **"anti-Mayberry" – a town where "Andy Griffith's got a big ol' shotgun that he likes to mow people down with, Barney Fife likes to frame people, Aunt Bea is a John Bircher and old Floyd down at the barber shop got a bug up his ___ one day and blew up the family planning clinic... and all the good citizens of Mayberry thought that was just swell."** (p. 121)

HUMES' CLAIM:

"The region clings to its frontier legacy, a rough-hewn place built by gold and oil fever, where gunfights and lynchings continued well into the twentieth century... Homesteads are still sold by the acre here, not the square foot. Horse ownership

is common, gun ownership more so and ...tax protests and **militia movements have flourished here.**" (p. 22)

"The pursuit of wild criminal conspiracies are a recurring theme, with widespread belief in them rarely hindered by a lack of evidence: Satanists, poisoned watermelons, killer bees, and a sinister shadow government dubbed the 'Lords of Bakersfield' all have aroused fears and demands for harsh punishment in recent years." (p. 23)

Humes reaches back to a lynching: "...in 1877, a case of **horse thievery...ended in the summary execution of five rustlers.**" (p. 23) He then fast-forwards 50 years: "In the 1920's... **Ku Klux Klan violence in California, particularly in Kern County, rivaled that of the Deep South** in this era, though the west coast version was aimed at whites as well as at black and brown citizens." (p. 24) "**Kern County was once a haven for the Ku Klux Klan...**" (p. 121) Fast forward another 50 years: "Bakersfield, circa 1970, a time and place not known for its tolerance or diversity." (p. 320)

HUMES' CLAIM:

"Kern County remains the national capital of child-molestation conspiracies, the place where a **modern day witch hunt** began." (p. 227)

"And some of the **judges were right out of the Wild West** it seemed. One...judge...kept a noose hanging in his chambers ... another...was censured for playing practical jokes on defendants...[T]here was the "bubble judge" who sealed off the air vents to his courtroom, more concerned about dust and 'spores' ... and then there was the judge who invited a stripper on trial in his court to perform a private dance in his chambers..." (p. 121) "...[W]hen **misconduct was revealed, the Kern County justice system ignored it, dismissed it, said it didn't matter, even rewarded it.**" (p. 198)

"The Sheriff's Department did seem to shoot more people than most police agencies in the state." "Kern County was **once a west coast haven for the Ku Klux Klan — just as in the 1990's it became a stronghold for armed militias.**" "The only clinic in town that performed abortions was torched that year, an arson widely celebrated and never solved."

“Kern County earned the distinction that same year of having the second highest rate of teen pregnancy in California and the highest birthrate of all among girls fourteen or younger, children having babies on an almost daily basis here.” (p. 121)

FACTS:

This inflammatory and prejudicial rhetoric about Bakersfield and its residents goes on and on with Humes offering little or no documentation to back up his ugly accusations.

If Humes had bothered to look at the actual numbers, he would have found that in the past nine years, there has been only 1 Sheriff's Department shooting out of every 38,000 Sheriff's Department contacts. This number represents 26 one thousands of 1% (.0026%) — a number hardly suggesting an “out-of-control” Sheriff's Department.⁴

Bakersfield is nothing like Humes' description. The citizens of Kern County are hard-working, friendly people who are proud of their community. It is neither the “anti-Mayberry,” nor is it the “national capital of child molestation conspiracies.” Militia movements have not “flourished” here, and the community is not full of “red-necks, gun-nuts and cowboy cops.”

What, then, are the real Kern County and Bakersfield?

Bakersfield, California was incorporated in 1898 and is the County Seat for Kern County. Bakersfield is located at the Southern end of the San Joaquin Valley, surrounded by three mountain ranges with the Kern River flowing through the valley. Kern County has a population of 639,800 (15th largest in the state). The City of Bakersfield is the 13th most populous city in the state, with 221,700 residents. In 1996, Kern County was the nation's leading oil producing county and the fourth most productive agricultural county in the nation. Grapes, citrus, cotton, almonds and market milk are the top five crops. Major employers include State Farm Insurance, four different hospitals, Chevron, Giumarra Vineyards, and three large farming companies.

Today's Bakersfield has 34 local radio stations (including a number of Spanish language stations) and 5 local TV stations (including one Spanish language station). Bakersfield is home to 6 major hospitals, 12 school districts with 56 elementary schools, 17 junior high schools and 13 high schools. The community boasts 1 community college, 1 state university, 9 vocational schools, 1 adult school, and 1 college of law.

The Sheriff's Department has 450 sworn officers including approximately 300 patrol officers. These officers cover an amazing 8,073 square miles of territory — a land area that is larger than the land area of Massachusetts, New Jersey or Hawaii!

Bakersfield enjoys a wide variety of entertainment with the new Centennial Garden, the convention center, theaters, museums and art galleries. The community boasts two lakes, 5 private and 6 public golf courses, 6 private and 13 public tennis facilities, 5 private country clubs, 2 roller skating rinks, 3 bowling facilities, 3 auto race tracks and over 50 community parks. The Kern River flows through the Bakersfield area and offers fishing and whitewater rafting. The community has its own minor league baseball team -- the Bakersfield Blaze, an ice hockey team -- the Condors, and a soccer park where local regional and state tournaments are held.⁵ Finally, every October, Bakersfield hosts one of the largest, most successful and prestigious business conference in the country where attendees are treated to speakers such as former Presidents Bush and Ford, Nobel Peace Prize winner Desmond Tutu, entertainer Bill Cosby, basketball coach John Wooden, and former astronauts Walter Schirra and Sally Ride.

FALSE CLAIM:

“The county is dominated by two parties, conservative Republicans and ultraconservative Republicans.” (p. 83)

FACT:

The majority of voters in Kern County are not Republicans. 53% of the voters are Democrats, Decline-to-States, American Independents, Libertarians, Peace and Freedom, Green, Natural Law, and Reform Party members. Republicans comprise only 47% of the electorate.⁶

FALSE CLAIMS (2):

Humes condescendingly implies that the city of Bakersfield calls itself an “All-American City” (when Humes clearly believes otherwise).

- (1) “That such a baneful national phenomenon began not in sin-addled Los Angeles, but right here in California’s heartland, became a lasting source of shame for a community that considered itself a shrine to family values -- the ‘All-America City,’ as Bakersfield billed itself.” (p. 15)
- (2) “In a nation where violent crime has become the great common ground found in small towns and large, Bakersfield was, at last, the ‘All-America City’ it has so long claimed to be.” (p. 174)

FACT:

If Humes had checked his facts, he would have discovered that Bakersfield never proclaimed itself an “All-America City.” Rather, that honor was awarded to the community in 1990 by the National Civic League.⁷

ENDNOTES

1. *Mean Streets*, New York Law Journal, Harold J. Reynolds, March 5, 1999.
2. Ed Humes, KNZR radio, Bakersfield, CA, 4/3/99.
3. *The Ku Klux Klan, An Encyclopedia*, Garland Publishing Inc. 1991.
4. Sheriff's Department officer-involved shootings: 1990: 2; 1991: 1; 1992: 4; 1993: 4; 1994: 4; 1995: 13; 1996: 5; 1997: 5; 1998: 2; for a grand total of 40. The Department averages 170,000 incidents per year. (Source: Kern County Sheriff's Department)
5. Source: Bakersfield Chamber of Commerce web page: <http://www/bakersfield.org/chamber/city/profile.html>
6. Source: Kern County Registrar of Voters.
7. Source: Bakersfield Chamber of Commerce web page: <http://www/bakersfield.org/chamber/city/profile.html>.

SECTION III
APPENDIX A: WRONGFUL PROSECUTIONS IN KERN COUNTY
(17 ERRORS, FALSE CLAIMS OR DISTORTIONS)

Summary

Edward Humes' thesis in *Mean Justice* is that the Kern County District Attorney's Office, and Kern County law enforcement, is so aggressive and overzealous that innocent people are routinely convicted of crimes. As proof, Humes offers a table entitled "Wrongful Prosecutions in Kern County." He identifies a total of 24 cases and vaguely refers to a number of others without naming them. He claims that between 1982 and 1998, 268 "suspects" were "innocent" and "wrongly convicted." (p. 449) He further asserts that, of these, many had their cases overturned on appeal due to prosecutorial misconduct. To bolster his argument, he invents an entirely new species of crime statistic, the "wrongly suspected." Apparently, according to Humes, massive injustice occurs if the police even *suspect* that someone committed a crime even if that individual is never arrested or prosecuted.

Humes has combed through 17 years of criminal investigations and prosecutions and isolated a tiny number of mostly routine reversals and dismissals of the sort which occur in every jurisdiction in America. Trial court rulings on such things as the admissibility of certain evidence necessarily involve judgement calls by the trial judge. One judge may rule one way, while another judge will rule in precisely the opposite way on the very same issue. Many legal issues are ones in which intelligent people may disagree. (How many Supreme Court decisions are actually unanimous?) Thus, the fact that a judge's decision is ultimately reversed does not mean that the judge is somehow incompetent, much less that prosecutorial misconduct was involved. Nevertheless, around this type of case Humes weaves a fantastic tale of injustice to support his message — that aggressive police work and prosecution means that the "innocent" get convicted.

Humes' rhetoric asserts that "hundreds of people were wrongfully prosecuted" in Kern County during the past 17 years. ***Ironically, Humes' own numbers disprove his thesis. Of these phantom "hundreds," Humes' numbers indicate that only 74 people were "wrongfully charged" and 56 convicted, not the "hundreds" that he rants about. Further, only 25 individuals in 12 cases had their cases reversed on appeal, most on legal technicalities, and only 1 case was reversed due to prosecutorial misconduct. The Kern County District Attorney's Office handled at least 103,818 cases during this time period and does a better job of having cases upheld on appeal than the rest of the state!***

Thus, Humes' "hundreds of people" wrongfully convicted, when actually analyzed, consists of only slightly more than two dozen individuals whose convictions were reversed during a 17 year period. What's more, most of those reversals were due to decisions of the trial court, rather than actions of the District Attorney's Office.

Humes' statistics are obviously distorted and grossly misleading. He has to manipulate the numbers because use of the actual numbers would disprove the very heart of his inflammatory message. A close look at the table reveals a number of things. First, ***Humes inflates the number of individuals "wrongfully charged" (he says the number is 102) by including 28 people he absolutely knows the District Attorney's Office never charged at all!***¹ Thus, only with a close read of the footnotes does a reader discover that the number of "wrongfully charged" starts at 74, not 102 as Humes claims. Second, ***Humes misstates the number of individuals who had their cases reversed on appeal — he says 47, rather than the actual 25.*** Third, Humes misstates the reasons for the reversals -- he says prosecutorial misconduct, hidden evidence and improper interrogations or investigations rather than the actual incorrect evidentiary trial court rulings. Finally, Humes peppers the chart with factual errors and distortions. ***Humes doesn't even get basic facts right: he claims, for example, that murderer Michael Denny was released from prison after a successful appeal. In fact, Mr. Denny remains comfortably in custody.***

While asserting "rampant" misconduct by deputy district attorneys, ***Humes cites only one case out of over 100,000 cases*** prosecuted during the relevant time period as being reversed due to prosecutorial misconduct. Out of Humes' "268 innocent suspects," ***only 74 individuals were actually charged with a crime. 56 of the 74 were convicted. 18 cases were dismissed. Out of the 56 individuals convicted, 29 either had their cases upheld on appeal, pleaded guilty or were re-convicted in a subsequent trial.*** Presumably, it is safe to assume that these 29 individuals who pleaded guilty, or were convicted and had their convictions affirmed, are not "innocent."

Of the 25 reversals Humes cites, most were overturned on procedural grounds or because of incorrect trial court rulings. Despite Humes' insinuations to the contrary, neither kind of reversal implies any improper act by the prosecution. Labeling them as "wrongful prosecutions" is disingenuous, and implying that these defendants were "innocent" ignores a bedrock principle of the criminal justice system; "better 10 ***guilty*** men go free than an innocent suffer..." The criminal justice system, as Humes well knows, is geared to protect the process by allowing clearly guilty defendants to go free, as was the case in most of the cases Humes complains of, if legal technicalities or errors occurred during the disposition of their proceedings.

In the practice of criminal law, cases are often reversed because of legal technicalities. Defendants sometimes go free as a result. The system is designed to protect persons accused of crimes even at the expense of valid convictions. A reversal does not mean that the defendant did not commit the crime. That is why defendants are *never* found “innocent” in our criminal justice system.

But even if one accepts Humes’ absurd premise that any or all of these 25 individuals (in 12 cases) were “innocent,” *it is ludicrous to assert that less than twelve one thousands of one percent (.012%) of all felony cases over a 17 year period demonstrates “rampant” misconduct!*

It is a very difficult task to correct Humes’ errors in this section. His chart is not only laden with errors, distortions of fact and manipulations of the numbers; it does not give the reader all the information necessary to find the actual cases and/or defendants to whom he is referring in order to check his claims. Humes does not cite each case by name, does not explain the rationale he uses for placement of defendants in certain categories, and does not specify, in multiple defendant cases, whom he is actually placing in a certain category. Thus, the analysis of these numbers is only as good as what Humes actually discloses.

Even Humes can’t keep his own manipulated numbers straight. In the body of the book, Humes repeats his allegations with regard to the number of cases reversed on appeal and the number of innocent defendants wrongfully convicted in Kern County. Those numbers, however, do not match the numbers Humes details in the book’s Appendix A.

For example, on *page 335*, *Humes says 53 people* were formally prosecuted as members of molestation rings. This number, however, does not match what he says *in the Appendix*. There, *he says 83 people* were charged as members of molestation rings.² On the same page, Humes says 85 people were suspected but never charged with crimes in the molestation ring cases, but in the Appendix Humes puts the numbers at 90-165. Finally, on *page 374*, *Humes says* the “number of *people freed* from erroneous or wrongful prosecutions in recent years in Bakersfield reached at least *91*.” In the *Appendix*, *however, Humes claims* that out of 56 convictions, only 9 were upheld, thereby implying that *47 were released* due to their wrongful prosecution.

The table is a sham which collapses under the weight of even a cursory analysis.

The Details: Humes' Errors, False Claims, and Distortions:

HUMES' FALSE CLAIM: "It was startling to find out that hundreds of people in Bakersfield have had their lives devastated by wrongful prosecutions." (Humes, Los Angeles Times, 3/29/99)

HUMES' FALSE CLAIM: Between 192 and 268 individuals were "suspects" in a total of 24 plus³ cases that were "wrongfully prosecuted" between 1982 and 1998. (p. 453, *Mean Justice*)⁴

FACT: (1) Many of the "suspects" (p. 453) were never prosecuted. (See fact 4 below.)

FACT: (2) The Kern County District Attorney's Office prosecuted more than 100,000 felony cases during the time period that Humes criticizes (1982-1998).⁵

FACT: (3) Kern County does a *better* job of having cases upheld on appeal than the rest of the state. On average, more cases from Kern County are upheld on appeal than are upheld statewide.⁶

FACT: (4) Humes lists 268 individuals as "wrongful suspects", but even *he only claims that 102 were actually charged with any type of crime.* (p. 453) In other words, even Humes' own statistics would seem to demonstrate that the D.A.'s Office actively and effectively screens cases submitted by local law enforcement.

FACT: (5) *Of the 102 "innocent" individuals Humes claims were prosecuted, a total of 28 were never charged at all! Humes includes these 28 additional people when he knows full well that they were never criminally prosecuted.* As Humes has demonstrated over and over in this book, he once again manipulates the facts to get the results he wants. Never mind the fact that his manipulations result in absolutely false conclusions. Humes inflates these numbers by including 18 people who were never charged with anything,⁷ and further pumps up his figures by adding 10 people whose children were temporarily removed in civil proceedings but who were never criminally prosecuted.⁸ Thus, in reality, *out of the 268 "suspects" listed in Humes' "wrongful prosecutions," only 74 were actually charged with a crime.*

FALSE CLAIM: Of the 74 “wrongfully prosecuted” individuals actually charged with a crime, Humes notes that 56 were convicted, and broadly implies the remaining 18 were acquitted. (p. 453)

FACT: None of the defendants were acquitted of the charges at trial.

FALSE CLAIM: Of those 56 who were convicted, Humes notes that only 9 were upheld on appeal, thereby implying that the other 47 had their cases reversed. (p. 453)

FACT: *Humes wants the reader to believe that only 9 convictions in this entire chart were valid, when in fact at least 29 were. In addition to the 9 individuals that Humes says had their cases upheld on appeal, ⁹ 13 more **pleaded guilty**.¹⁰ 7 other defendants were re-convicted or pleaded guilty after their cases were reversed.¹¹ Thus, in fact, 29 out of 56 convictions were found valid, and one other case¹² is pending retrial with far stronger DNA evidence than at the original trial.*

FALSE CLAIM: Humes states that the reason the cases he cites were reversed was because the defendants were innocent and wrongfully prosecuted by the Kern County District Attorney’s Office.

FACT: *This claim could not be further from the truth. In the practice of criminal law, cases are reversed on appeal for a variety of reasons. Here, most of the cases were reversed for technical reasons or erroneous evidentiary rulings by the court, not because of any misconduct by the District Attorney. Defendants who have their cases reversed on appeal do not suddenly become “innocent.” In fact, they do not even become “not guilty.” Simply put, legal errors occurred in the disposition of their cases which resulted in orders for a new trial.*

- ▶ Four defendants had their cases reversed because the trial court admitted statements that the appellate court ruled should have been excluded.¹³ Out of these four, three were re-convicted.¹⁴
- ▶ Two others were reversed because the trial court admitted inadmissible evidence.¹⁵ One was re-convicted.¹⁶

- ▶ One was reversed because the defense attorney was not licensed.¹⁷ This defendant was re-convicted.
- ▶ One was reversed because the court erroneously refused the defense a hearing on a jury challenge.¹⁸ This defendant was re-convicted.
- ▶ One was reversed because the FBI failed to follow accepted scientific procedures in calculating the probability of a DNA match.¹⁹ This case is pending re-trial with far stronger DNA evidence.
- ▶ Two others were reversed because the trial court improperly excluded defense psychological testimony.²⁰
- ▶ One was reversed for jury misconduct.²¹
- ▶ One was reversed due to technical errors in charging.²²
- ▶ Six individuals had their cases reversed because the trial court's denial of a motion to suppress evidence (Penal Code Section 1538.5) was overturned on appeal.²³ Since the appellate court suppressed crucial evidence against the defendants, holding that the police did not have a legal right to seize it, they could not be re-tried. This hardly means they were "innocent."
- ▶ Only two cases, with a total of five defendants, were overturned due to allegedly improper interviewing techniques.²⁴
- ▶ Only one case out of the entire table of "wrongful prosecutions" was reversed due to prosecutorial misconduct.²⁵ A jury in a related civil suit later reviewed the facts in the case and found that the defendants were *not* wrongfully convicted.²⁶

Since 29 convictions out of 56 were found valid, 27 cases should have been reversed. The above list detailed the reasons for just 25 reversals because Humes only names 25 defendants. Mr. Humes does not cite by name two other defendants that he claims were convicted "in other ring-era molestation cases." Thus, who these defendants are or whether they are involved in one or two cases cannot be known. As a result, it cannot be confirmed that these two individuals had their cases reversed and, if so, for what reason. Consequently, these two unnamed people will not be considered in this analysis and the number of reversals explained above remains at 25.

FALSE CLAIM: Only nine defendants remain in prison, implying the rest were released due to their “wrongful prosecution.” (p. 453)

FACT: Ten defendants remain in prison,²⁷ one died in prison, and eighteen others have served their sentences.

FALSE CLAIM: Humes implies that numerous cases were dismissed by the District Attorney’s Office because the cases were either overturned on appeal or because of prosecutorial misconduct. (p. 453)

FACT: Out of the seventy four defendants charged, eighteen individuals had their cases dismissed. Four were dismissed years later after the defendants fled the state to avoid prosecution.²⁸ One was released after being mistaken (due to his appearance, name and lies to the police) for the actual perpetrator; the case is still open.²⁹ Two other cases are still under investigation.³⁰ One was unilaterally dismissed in the early stages of the process (before preliminary hearing) when *the District Attorney’s Office* developed proof the defendant was innocent.³¹ (Note that this is not a ‘wrongful prosecution.’ It was filed based on the available evidence and was dismissed based on new evidence when that became available.) Four defendants were dismissed as part of a plea or disposition.³² Five defendants were dismissed as the evidence against them was weaker than against their co-defendants who had already been convicted in separate trials.³³ And one case was dismissed because the defendant was sentenced to prison on another case.³⁴

Thus, out of over 100,000 felony cases over a 17 year period of time, Humes cites only 25 individuals (in 12 cases) to claim that the District Attorney’s Office wrongly prosecutes “hundreds” of innocent people. This claim, if true, would amount to less than twelve one thousands of one percent (.012%) of all felony cases over a 17 year period. As the facts above show, these cases were not “wrongly prosecuted.” In only one case has any of these defendants been found to be factually innocent, and that finding was made by the District Attorney’s Office!

Some additional false and misleading claims in the table include the following:

FALSE CLAIM: In the Nokes case, prosecutors... “refused to allow medical exams of victims...” (p. 449)

FACT: The prosecution didn’t refuse anything. Under the law, victims of sexual assault have a right to refuse to undergo medical exams demanded by either side as protection against harassment. These victims chose not to submit to a defense medical exam, and the appellate court upheld the victim’s right not to undergo such an exam.

FALSE CLAIM: In the so-called “satanic case,” “...crucial information was kept hidden by prosecutors...” (p. 449)

FACT: All relevant information was in fact turned over to defense attorneys in those cases in which there were pending charges.³⁵ Accusations involving “satanic” allegations were investigated by the Sheriff’s Department, but no charges were filed by the District Attorney’s Office.

FALSE CLAIM: “Track star’s murder conviction overturned because of jury misconduct, prosecutorial misconduct, and judicial errors.” (p. 451.)

FACT: The Rollins case was overturned on the basis of jury misconduct only. It was not overturned on the basis of prosecutorial or judicial misconduct.

FALSE CLAIM: “Double murderer was given a new trial because the prosecutor excluded Hispanic jurors in the Floyd Gore case.” (p. 451)

FACT: The case was reversed because the trial court improperly held that a motion by the defense with regard to the jury panel was not timely made.

FALSE CLAIM: “Rape conviction and sixty five year sentence overturned because prosecution DNA evidence overstated the likelihood of guilt.” (p. 451)

FACT: Case reversed because the FBI failed to follow accepted scientific procedures in calculating the probability of a DNA match. Based on DNA technology at that time, only 1 in 65,000 persons had DNA characteristics identical to the defendant's and the rape suspect's semen. Now, at retrial, advanced technology has reduced that figure to 1 in 13 billion.

FALSE CLAIM: In the Rosales Meza case, "Detective John Soliz (who investigated Pat Dunn) arrested the wrong man, neglected to check fingerprint evidence." (p. 452)

FACT: Jose Meza was arrested after being mistaken (based on his appearance, name and lies to the police) for Rosales Meza. The prints used to check his ID and clear him were requested by Detective Soliz immediately. The DMV delayed in sending the prints. When the prints were received, they were compared with Jose Meza's, and he was released.

FALSE CLAIM: In the Calvin Howard case, "Four year prison term overturned because prosecutors introduced evidence obtained through illegal search." (p. 452)

FACT: Humes implies that the District Attorney's Office somehow "snuck in" illegally obtained evidence against the defendant. In fact, the judge, in an extremely complicated area of the law, held a hearing on the very evidence Humes complains of and ruled that the District Attorney could in fact use it against the defendant. The case was subsequently overturned because the appellate court disagreed with the trial court's ruling in denying the defendant's motion to suppress, not because "prosecutors introduced evidence obtained through illegal search."

FALSE CLAIM: In the Christopher Ridge case, "conviction overturned because prosecution relied upon evidence from illegal search." (p. 452)

FACT: Humes again implies that the District Attorney's Office somehow "snuck in" illegally obtained evidence against the defendant. In fact, the judge again, in an extremely complicated area of the law, held a hearing on the very evidence Humes complains of and ruled that the District Attorney could in fact use it against the defendant. The case was subsequently overturned because the appellate court disagreed with the trial

court's ruling in denying the defendant's motion to suppress, not because the "prosecution relied upon evidence from illegal search."

FALSE CLAIM:

In the main case in the book, People v. Patrick Dunn, "evidence that would discredit key witness never given to defense; other crucial information never disclosed." (p. 453)

FACT:

See Section 1 of this report. Evidence Humes claims was withheld was in fact provided.

FALSE CLAIM:

Again, referring to the main case in the book, People v. Patrick Dunn, "initial appeal lost, new habeas plea (sic) pending." (p. 453)

FACT:

This is one of the most revealing errors in the book. The new habeas pleading that Humes references was not in fact pending on the date of the publication of Humes book, February 19, 1999.³⁶ The pleading was first faxed to news media outlets on March 2nd before it was actually filed with the court on March, 3, 1999. This error exposes Humes' advocacy for murderer Patrick Dunn and consequently *his inherent bias and conflict of interest in writing this supposed piece of "non-fiction."* He is working hand in hand with Dunn's defense team and doing everything in his power to get Dunn's conviction reversed; he would profit enormously as the author of a book that freed an "innocent" man. *Unfortunately, Humes' blatant lack of respect for the truth calls into question the credibility of the entire book.*

ENDNOTES

1. In footnote 3 on page 453, Humes explains he includes 18 people who were “referred by Sheriff’s department to district attorney for prosecution, but *never formally indicted*” in his “charged” with a crime category. In footnote 6 on page 453, Humes explains he includes 10 parents who were “accused of molestation in civil proceedings that led to the removal of their children, but *not criminal prosecution*” in his “charged” with a crime category.
2. This total number of defendants charged in ring molestation cases is footnoted in the Appendix. The footnote details the fact that Humes has included 10 individuals in his total of 83 who were not in fact charged with a crime. Thus, giving Humes the benefit of the doubt, and allowing for the fact that he includes 10 people not charged with a crime, the number he cites, 83, becomes 73. Then, giving Humes another huge benefit by adding the additional 18 people Humes includes as “charged” when they really weren’t (see page 449 and footnote on page 453), the 83 number becomes 55. This still does not match the 53 number Humes claims on page 335.
3. Humes specifically identifies 24 cases by name and then includes 32 other individuals (not identified by name) whom he claims were suspected in “other ring-era molestation cases.” Humes does not make clear how many cases are involved with these 32 unnamed suspects.
4. The number of suspects, 192-268, comes from Humes himself in a vague passage on page 453. Humes does not explain the discrepancy in the number of suspects he lists. Since he does not list each case by name there is no way to verify or explain these numbers. For simplicity’s sake, we will use the number 268 as the number of suspects charged throughout this analysis.
5. 100,000 is a conservative estimate. Between 1990-1998, an average of 7,091 felony complaints were filed per year (63,818 total for the 9 year time period.) Using a conservative average of 5,000 felony complaints filed per year for the time period of 1982-1989, the actual number of felony cases handled by the Kern County District Attorney’s office between 1982-1998 is more accurately reflected at over 100,000.
6. Between 1991-1997, Kern County’s affirmance rate (cases upheld on appeal) averaged 90.53% while the statewide average was 87.96%. In 1996-1997, Kern’s affirmance rate was a full five percentage points higher than the state’s average. (Source: Fifth District Court of Appeal).
7. Footnote #3, page 449, “referred by sheriff’s department to district attorney for prosecution but never formally indicted.”
8. Footnote #6, page 451, “includes ten parents who were accused of molestation in civil proceedings that led to removal of their children, but not criminal prosecution.”
9. Dunn; Hubbard; Stoll (2); Cox (5). One of the Cox defendants that had his case upheld was Jeffrey Modahl. In May of 1999, Modahl’s case was reversed.
10. Wong (3 defendants); Forsythe (7 defendants); Nokes (3 defendants).
11. Cox (2); Gore; Barrientos; Hogan; Denny; Jaspal.
12. Venegas.

13. Hubbard (actual defendant's name was Duncan); Hogan; Denny; Jaspal.
14. Hogan; Denny; Jaspal.
15. Barrientos; Tomlin.
16. Barrientos.
17. Cox.
18. Gore.
19. Venegas.
20. Stoll.
21. Offord Rollins. After this defendant was found guilty but his case reversed due to juror misconduct, the case was re-tried. The re-trial resulted in a hung jury. The case was not re-tried a third time only because the defendant was originally sentenced as a "youthful offender" meaning he could not be incarcerated past the age of 25. Since he would have been almost 25 by the time a third trial concluded, it was considered pointless to go forward.
22. Nokes (actual defendant's name was Stowe).
23. Ridge; Howard; Stallion Springs (4 defendants).
24. Hubbard; Kniffen.
25. Pitts (7 defendants).
26. One of the kids who recanted his testimony admitted to a law enforcement officer that he did so just to please the family and that in fact he had been molested.
27. Humes claims that Michael Denny is out of custody (p. 452) when in fact he is still in prison.
28. Two defendants from the Pitts case and two defendants from the Kniffen/McCuan case.
29. Jose Meza.
30. Marie Haven & George Curtis.
31. One defendant in the Kniffen/McCuan case.
32. Nokes (2); Wong(2). It is common practice in the criminal justice system to agree with the more culpable defendants that if they plead guilty, dismissals will occur as to peripherally involved co-defendants.

33. Kniffen/McCuan (3); Nokes (2).
34. Forsythe.
35. Office of the Attorney General Report on the Kern County Child Abuse Investigation, September, 1986.
36. *Mean Justice* was actually on bookstore shelves weeks before the official publication date of February 19, 1999.

SECTION IV
DISTRICT ATTORNEY ED JAGELS
(14 ERRORS, FALSE CLAIMS OR DISTORTIONS)

Summary

Edward Humes asserts that his book's examination of Kern County's justice system is motivated by its "cutting edge" status in the war on crime. Humes, however, is not candid about his agenda. It is evident that his true purpose is to use Kern County as a prop in a diatribe against contemporary law enforcement and vigorous prosecution of criminals. He writes with disdain about every major public safety policy initiative in the past 17 years, including the Crime Victims Bill of Rights, the campaign to oust liberal Supreme Court Justice Rose Bird, the Crime Victims Justice Reform Act, and the Three Strikes and You're Out law, each of which was approved overwhelmingly by California voters.

Mr. Humes clearly doesn't like these judgements by the voters. That is, of course, his right. But in assessing his conclusions it is important to remember his ideological predisposition.

Because District Attorney Ed Jagels, along with Kern County law enforcement, has been so successful in taking criminals off of the streets and because Jagels has been active in supporting a number of the public safety initiatives that Humes scorns, Humes actually devotes an entire chapter to petty and mean-spirited attacks on the Kern County DA.

Humes' bias is evident in his willingness to use pejoratives to describe Jagels, such as "ultraconservative," "vicious," "cold," "smirk," "voice thick with indignation," "righteous," "tirade," etc. In so doing, Humes overtly sacrifices any sense of professional detachment. His words are merely characterizations designed to slant the reader's perception of the record. Such a slanted "investigation" by Humes undermines the integrity of his entire book.

Among other things, Humes criticizes Jagels' role as a leader in the Crime Victim's movement. Humes tries to portray Jagels' commitment to crime victims as simply a politically expedient tool used to gain power. In fact, Ed Jagels has the support of every major Crime Victim's group in the state, and for a good reason: he has dedicated his entire career to the people who have historically been left voiceless in the criminal justice process -- crime victims.

Humes' absolute lack of concern for crime victims is underscored when he recounts an incident in which Jagels attempted to block a news photographer from taking pictures of the weeping family of a murdered victim. Humes attacks this effort to prevent the exploitation of their private grief as "sheer arrogance." *Unbelievably, his scorn is not for the photographer*

who wanted to publicly exploit the grief of crime victims for profit, but for the prosecutor who tried to protect them from being victimized again.

To appreciate Mr. Humes' agenda, it is necessary to understand certain facts relating to California's criminal justice history. In 1975, Governor Jerry Brown began appointing justices. Many of them, particularly at the appellate level, were judicial activists and extremely pro-criminal defendant in their outlook. Under Chief Justice Rose Bird's leadership, California's already liberal criminal law was transformed by judicial fiat. Defendants' rights were expanded exponentially at the expense of public safety. In law enforcement circles, California became a laughingstock as its Supreme and appeals courts fashioned rule after rule that excluded evidence, struck down tough penal statutes, and handcuffed the police.

It is noteworthy that Humes makes no mention of Rose Bird's incredible record. His only reference to Bird is a complimentary description of her as a "civil libertarian" (p. 74). This "civil libertarian" voted to reverse the death penalty in all cases (61) reviewed by the Supreme Court since 1978. The death penalty was reinstated in 1977 but no death sentence had been carried out in California since 1967. The first execution occurred after Bird was defeated at the polls by a 2-1 margin. In 1992, Robert Alton Harris became the first death row inmate put to death in 25 years.

Not only did Bird obstruct the implementation of the death penalty, she enhanced the rights of criminals at the expense of their victims and undermined attempts to strengthen the state's criminal sentencing laws with regard to recidivist criminals. In addition, Bird, on three separate occasions, voted to overturn Proposition 8, the Victim's Bill of Rights, and she consistently usurped legislative prerogative and authority by legislating from the bench by, for example, invalidating the "Use a Gun, Go to Prison law."¹

In 1982, in reaction to the Supreme Court's pro-criminal bent and legislative inaction, the voters overwhelmingly passed Proposition 8, the "Victim's Bill of Rights." Ed Jagels was Kern County Co-Chairman for Prop. 8. Amazingly, Humes voices his contempt for Proposition 8 by saying: "...[T]he initiative...was designed to allow prosecutors to use any relevant evidence, even if it was illegally obtained through unlawful searches or coercive interrogations." (p. 395) Humes' description of the initiative is absolutely false. Now, as then, evidence from unlawful searches is not allowed. Similarly, evidence of coerced interrogations is suppressed. Proposition 8 simply requires the admission of trial evidence which passes U.S. Constitutional muster. In other words, it resolved inconsistencies between state and federal law and prevented the California Supreme Court from suppressing evidence that would be admissible under the U.S. Constitution.

It is amazing that Humes would criticize the Crime Victim's Bill of Rights in the context of this book, as the net effect of the law is to assist juries in finding the truth. This law increases the chance that guilty defendants will be convicted and it decreases the chance that innocent defendants will be convicted. If Humes truly believes in the substance of his own book, he should be an ardent supporter of Proposition 8.

In 1986, Chief Justice Bird and two other Supreme Court justices who repeatedly blocked implementation of the death penalty and crime victims initiatives were overwhelmingly defeated at the polls.² Ed Jagels was Steering Committee Chairman for Crime Victims for Court Reform, one of the two campaign organizations working for their defeat.

In 1990, the electorate passed -- with a margin of victory of over 14 percentage points -- Proposition 115, the "Crime Victim's Justice Reform Act."³ This legislation restored and expanded the death penalty, created the crime of torture, streamlined the state's Byzantine criminal procedures, and restored the grand jury's indictment authority. The criminal defense bar, virtually all Democratic politicians, and most of the media bitterly opposed it. Ed Jagels was a principal author and state chairman for Prop. 115.

In 1994, 72% of the electorate passed Proposition 184, "Three Strikes and You're Out."⁴ While Jagels supported "3 Strikes," he was not involved in the campaign. Since its passage, however, he has actively supported and defended it by writing a widely distributed monograph on its impact and by speaking on it. Humes' inaccurate and misleading description of "3 Strikes"⁵ reveals his bias against it. (See Section V)

Throughout this section, Humes repeatedly misquotes Ed Jagels and assigns quotes to Jagels in error. Additionally, Humes distorts stories about the District Attorney. Humes repeats assertions made by others, including defense lawyers, investigators, and Jagels' opponents without verifying their accuracy. In many cases, a quick check of the readily available public records could have corrected his errors.

Humes is right about one thing: Kern County does have effective law enforcement. Kern County has the highest number of successful "3-Strikes" prosecutions per capita in California. The Kern County District Attorney's Office tries more felony cases per capita than other major counties and sends more criminals to prison per capita. Kern County's convictions are upheld on appeal at a higher percentage than the statewide average. The District Attorney's Office is proud that its hard work and dedication helps keep communities in Kern County safe places to live and raise families.

Jagels has been the District Attorney for 17 years. The residents of the community have voted for him on five separate occasions. During that time, the county's crime rate has dropped 50%.⁶

The Details: Humes' Errors, False Claims and Distortions:

FALSE CLAIM:

In 1979, Dana Butler, a teenage girl, was murdered. Sheriff's deputies zeroed in on Glenn Fitts, a former city police commissioner, as the perpetrator -- the DA's office reviewed the case and decided it could not prove that Fitts murdered the girl. The DA's office instead filed other, provable charges against Fitts. Humes asserts that Ed Jagels, in his campaign for DA in 1982 promised that "[n]ever again would a criminal like Glenn Fitts be allowed to roam free." (p. 64)

FACT:

This is a complete fabrication. Jagels never made such representations. In fact, on the one or two occasions when he was asked about the case, he always emphasized that the evidence against Fitts was very equivocal and defended the Office's decision not to file the murder charges.

FALSE CLAIM:

Humes claims Jagels was delighted by District Attorney Al Leddy's retirement. "For Jagels, it didn't get any better than this: First, the old DA had been pushed out of the way after mishandling Dana Butler and Glen Fitts..." (p. 66)

FACT:

Again, a fabrication. First, far from being pleased with Mr. Leddy's decision to retire, Jagels had repeatedly urged him to run for reelection. Second, the Butler/Fitts homicide occurred over three years before Leddy decided not to run again. Some months after the murder, the local paper did a series of articles which exonerated the DA's Office and pinned blame on the Coroner. The case had absolutely nothing to do with Leddy's decision to retire. Moreover, Leddy supported Jagels when Jagels ran for District Attorney.

FALSE CLAIM:

"Here is a guy [Jagels]... who thought illegally obtained evidence ought to be permissible in trials..." (p. 76)

FACT:

Absolutely not true. Ed Jagels has never fought to admit illegally obtained evidence. The political battle was over the legal boundaries of police investigation. At the time, California law was dramatically out of step with Federal law and most other states. Ed Jagels simply fought to bring California law

back in line with federal law. The result of this is that California criminal juries are now more likely to reach the truth at trial.

FALSE CLAIM:

“...Jagels’ public tirade over the California Supreme Court’s exclusion of a coerced confession in a murder case left his critics sputtering...” (p. 64, 395)

FACT:

Another remarkable distortion. The confession in question was beyond doubt admissible under U. S. Constitutional standards as defined by the U. S. Supreme Court. However, it didn’t meet the unusual standards then imposed by Rose Bird’s California Supreme Court. This shouldn’t have mattered, since Prop. 8, the “Victim’s Bill of Rights,” prohibited the California Supreme Court from excluding evidence otherwise admissible under the U.S. Constitution. Nonetheless, in an effort to undercut the new law, the California Supreme Court ruled that the Victim’s Bill of Rights didn’t apply to any crime that occurred before its passage. In so saying, the court tenaciously held on to its former rules of evidence for as long as it could. The ruling was contrary to existing case law, which held that procedural changes, such as changes to the rules of evidence, applied to all future trials, and that the date of the crime was irrelevant. *It was for that ruling, not the “exclusion of a coerced confession,” that Jagels criticized the Bird Court.* The suggestion that the confession was “coerced” comes, of course, from the defendant’s lawyer. Typically, Mr. Humes assumes that whatever the defense says is true, even where, as here, a court finds precisely the opposite to be true.

FALSE CLAIM:

Jagels “ended up in Bakersfield on a whim, pulling off the highway while driving from Los Angeles to a job interview in San Francisco. On impulse, he interviewed at the Kern County DA’s Office on a Friday...He started work on the following Monday.” (p. 69)

FACT:

Including this unimportant fiction demonstrates just how willing Humes is to repeat something he has no first-hand knowledge of. It reveals Humes’ willingness to put dramatic statements in his book without verifying their factual accuracy. This symbolizes Humes’ lack of regard for the factual truth in order to make the story a little better. Obviously,

Jagels didn't pull off the highway on a whim. It is 25 miles from I-5 to Bakersfield. He had a scheduled interview with the DA's Office. He didn't start work "the following Monday."

FALSE CLAIM:

"Jagels' campaign donor list was like no one else's in Kern County. It read like a who's who of corporate California." Mr. Humes creates an impression of massive funding by out-of-town interests and family contacts which overwhelmed Jagels' opponent. The example he offers in support of this proposition is that the president and vice-president of Occidental Petroleum "kick[ed] in." (p. 73)

FACT:

Mr. Humes apparently adheres to the prescription that if you are going to perpetrate a wild tale, make it a whopper. The truth is the exact opposite of Humes' scenario.

There was a funding disparity, but it was the other way around. Jagels' opponent out-spent him by 50%. There were indeed big contributions from "power brokers," but they weren't to Jagels' campaign. Over one third of Jagels' opponent's war chest during the campaign came from contributions and a huge loan from the president of a corporate farming operation and the managing partner of the county's largest law firm. Finally, the president and vice president of Occidental Petroleum did indeed contribute to Jagels' campaign - a total of \$300 - but they weren't "corporate luminaries from Los Angeles," as Humes claims, but rather long term residents of Bakersfield, where Occidental was then headquartered.

These facts are readily available in the relevant campaign disclosure statements, but Humes ignores them because the true numbers and facts do not fit the picture Humes wants to paint.

FALSE CLAIM:

Jagels interfered with a newspaper photographer's "constitutional right" to take a picture of a murder victim's family. The photographer "had every right to take pictures in a public area of a public building... [Jagels] knew he didn't need the law on his side on this one..." (p. 71-72)

FACT:

Jagels did indeed have a confrontation with the photographer. However, virtually nothing else in Humes' rendition is accurate.

During a particularly brutal rape strangulation death penalty case Jagels was trying, the victim's husband and children asked him to ask the media not to film or photograph them outside the courtroom. They were extremely distraught because of the nature of the testimony, and they also believed (mistakenly) that the defendant had had an accomplice who might wish to retaliate against them. Jagels asked the reporters, photographers, and film crews to respect the family's privacy and they all readily agreed, except for one photographer who ignored him.

Some time later, perhaps the next day, Jagels encountered the family *running* down a stairwell as he was returning to court at the end of a recess. Pursuing them was that same photographer, his lens in their faces. One weeping family member asked if Jagels would please make the photographer stop.

The photographer turned and went back up to the second floor. Jagels followed him, and told him exactly what he thought of him. *Contrary to Humes' innuendo, Jagels never suggested that he didn't have a legal right to intrude on the family's grief, only that he was a jerk for doing so.* Presumably expressing that opinion was Jagels' First Amendment right.

FALSE CLAIM:

"The DA has previously tried to prosecute the same photographer for shooting the scene of a child's drowning..." Humes also broadly implies that on that occasion Jagels had the photographer arrested and that Jagels' courthouse confrontation with him was part of an ongoing vendetta. (p. 72)

FACT:

Another remarkable distortion. The photographer wasn't prosecuted for "shooting the scene of a child's drowning." Rather, despite repeated requests from search and rescue deputy sheriffs, the photographer refused to wait and stay out of the way of search and rescue personnel and emergency equipment as they were trying to make their way down a fenced off canal area to try and save the drowning child. Finally, a deputy sheriff lost patience and arrested him for interfering with a peace officer. Jagels wasn't there and had nothing to do with

the arrest. The Sheriff's department filed the case directly with the court. Finally, never having seen the photographer until the murder trial, Jagels had no idea the photographer was the same person who was involved in the canal drowning matter years before.

FALSE CLAIM:

"A college student during the Vietnam War, [Jagels] is said to have provoked several fistfights with war protesters and to have been shot at once for his trouble..." (p. 69)

FACT:

This is yet another conclusionary leap that displays Humes' shameless bias.

At the time, Stanford was convulsed with violent and highly destructive riots and vandalism by left-wing radical groups. Jagels belonged to a small student group which published a conservative newspaper. The paper's photographer was targeted by the protesters because he took photos of them throwing rocks, destroying property, and beating people up. Because the photographer had been assaulted and had had his film taken by force on previous occasions, several people accompanied him for protection. The group was usually out-numbered about 30 to 1. Jagels weighed under 140 pounds at the time. Indeed, Jagels was shot at, however, contrary to Humes' assertions, he was most eager to avoid "provoking fistfights." But perhaps his mere presence, being politically incorrect, was sufficient provocation by Humes' standards.

FALSE CLAIM:

Prior to Jagels' election as District Attorney "...the young guy had tried a mere eight cases'..." (p. 65)

FACT:

Mr. Humes merely repeats Jagels' opponent's accusations *without verifying the accuracy of the information*. Actually, Jagels had tried dozens of significant cases, from burglary to rape to murder in his seven years as a deputy district attorney.

FALSE CLAIM:

Jagels "championed a Crime Victims Bill of Rights that has since become law in California (though portions of it were later found to be unconstitutional)" (p. 74)

FACT: Humes implies that there was something wrong with Jagels' support of this Crime Victim's Initiative because portions of it were found unconstitutional. However, only one small portion of the sweeping initiative was overturned on a technicality by Rose Bird's Supreme Court. The Bird court ruled that the initiative should have specifically informed the voters that the judge's discretion in sentencing certain repeat offenders would be removed by the initiative's imposition of mandatory enhanced sentencing for these repeat offenders, and since it did not, that portion of the initiative was struck down.

FALSE CLAIM: Jagels "proclaimed the requirement that police should have to take thirty seconds to advise a suspect of his constitutional rights...an outrage..." (p. 76)

FACT: Humes pulls this out of thin air. Jagels never made such a statement.

FALSE CLAIM: During Jagels' first campaign for DA, a supporter of Jagels confronted Jagels' opponent, Judge Ferguson, about his decision to return a four year old girl named Mary Ann Azevedo to abusive parents after county welfare workers asked him to put the child into protective custody. The girl's stepfather had beaten her so badly that she had a broken collarbone, a burned hand, and a skull fracture. Her mother waited all day to bring the girl to the hospital and refused to report it to police. The judge, however, decided to send the girl home. The step-father was released from jail after a few months, moved to Mississippi with the girl and her mother, and beat the girl to death.

Humes says it was "political dirty work" for a [Jagels] supporter to get a "confidential" juvenile file, and it was actually the DA's Office's fault that Mary Ann Azevedo was returned to an abusive household. (p. 65-66)

FACT: The rules of confidentiality surrounding juvenile files are solely to protect the juvenile's privacy. In this case, the juvenile was dead. Privacy restrictions do not last past the life of the individual.

The District Attorney's Office, under DA Al Leddy, and the Welfare Department opposed the return of the child. The DA's Office did not attend one of a number of hearings, but the Welfare Department was present and opposed the release of the child.

It was the judge's decision to return the child to an abusive environment. Again, Humes simply repeats Jagels' opponent's claims without verifying the accuracy of the information.

It is a sad comment on Humes' lack of objectivity and bias against victims that he seems far more concerned with the supposed breach of confidentiality rules than the return of a child to a mother who made no secret of her intention to resume living with the man who had previously beaten the child, and who ultimately murdered her.

FALSE CLAIM:

Jagels "had a virtually airtight case against...Tony Perez"... He "was accused of infecting an entire trial with racist appeals..." (p. 69-70)

FACT:

Mr. Humes' extensive trial experience no doubt gives him the necessary background to determine that a case is "airtight." Actually, the case was somewhat difficult.

First, the eyewitness identification was somewhat subject to impeachment. Second, the defendant had returned to the scene of the crime to watch the police driving up and down looking for a suspect. That behavior is rather hard to explain, unless one understands that the defendant had changed his shirt and was merely one more anonymous figure in a large crowd of identically clothed Hispanic gang members who were standing around. (Hence, the "racist" accusation.)

Humes implies, that the "racist appeal" accusation came from the Court of Appeal. It did not. This is simply another example of the author parroting inflammatory rhetoric from a criminal defense lawyer. Many defense lawyers habitually make such accusations any time race can be made an issue in a case.

ENDNOTES

1. *The People v. Rose Bird*, Joseph Gughemetti, 1985.
2. 66.16% of the voters voted against retaining Bird as Chief Justice of the Supreme Court. Source: Secretary of State's Statement of Vote, November, 1986.
3. 57.03% voted yes, 42.97% voted no. Source: Secretary of State's Statement of Vote, June, 1990.
4. Source: Secretary of State, Statement of Vote, November, 1994.
5. See Section 5: Other Cases, Errors, False Claims and Distortions.
6. This number is based on the FBI crime index from 1982-1998 for Kern County and includes all reported violent crimes, property crimes, larceny-theft and arson as reported by the California Department of Justice. Population figures come from the State of California, Department of Finance, Demographic Research Unit.

SECTION V
OTHER CASES, ERRORS,
FALSE CLAIMS & DISTORTIONS
(23 ERRORS, FALSE CLAIMS OR DISTORTIONS)

Summary

Mr. Humes spent two years researching this 500 page book. Obviously, the District Attorney's Office cannot respond to a 500 page book with a 500 page response. To do so would take close to a year's worth of research. In this relatively short response, we have attempted to show that, in a great many portions of this book, Humes has presented false and misleading information as fact.

In this section, Humes misstates California criminal law, falsely claims the District Attorney's office used a "snitch" to testify in the re-trial of Carl Hogan, when no such "snitch" testified, fabricates charges the District Attorney's office filed against Offord Rollins, shamelessly mischaracterizes arguments made by the prosecution during Rollins' fitness hearing, and *inexplicably contradicts his own research and numbers found in Appendix A (a listing of "wrongful prosecutions in Kern County") with the numbers he cites in the body of the book.*

The Details: Humes' Errors, False Claims and Distortions:

FALSE CLAIM:

Humes says that the ultimate weapon in allowing prosecutors to decide a criminal's sentence is California's Three Strikes and You're Out law. "...[T]he law...puts three time offenders -- even non-violent ones-- in prison for life, whether a judge wants it that way or not." (p. 75)

FACT:

This is a classic example of how Humes, who claims to be an objective journalist, instead engages in factually erroneous sensationalistic propaganda for the purpose of prejudicing the reader. Once again, Humes is wrong on the law. First, prosecutors never determine a defendant's sentence. The sentence of a criminal defendant is always determined by a judge, except in death penalty cases, where the decision rests with the jury. Second, *each and every criminal who gets sentenced under the three-strikes law has, at a minimum, committed at least two prior serious or violent felonies* — they are not criminals who have simply committed prior offenses for drug possession or petty thefts. Third, a judge has the discretion to dismiss any one or all of the strikes if he or she believes that such an action would be in the interests of justice. The dismissal of one or all of the strikes significantly reduces the sentence. Finally, three strikers are not imprisoned for the rest of their lives, without the possibility of parole. Their sentence is 25 years to life, and they are eligible for parole after serving a significant portion of their sentence.

FALSE CLAIMS (3):

On page 171, Humes talks about the Carl Hogan case, a defendant who was prosecuted for the hammer slaying of a young woman and her seven year-old son. The defendant was convicted at trial, but the case was reversed on appeal after the appellate court ruled that the defendant's statement to police should not have been admitted at trial. Hogan was re-convicted at a subsequent trial.

"For his retrial, Penninger [a Kern county defense investigator] helped build a defense that accounted for Hogan's every movement on the day of the murders, showing... that he could not possibly have had the time to kill anyone. Hogan could

have been in the house only a few seconds before his friend walked in and found him standing over the bodies....” “But that was not enough: The second time around, the district attorney replaced the lost confession with a jailhouse snitch who claimed Hogan had confessed to him while behind bars. This witness’s credentials were even less savory than Jerry Lee Coble’s, but his statement still was enough to convict Hogan anew and send him to prison for life.” (p. 171)

FACTS:

1) No “snitch” or informant ever testified in the Hogan case.

2) The victim’s husband came home and found the defendant standing behind the front door with a hammer in his hand, not over the bodies, as Humes asserts.

3) The defense evidence that Hogan could have been in the house only a few seconds before the husband of the murdered woman came home and found Hogan standing behind the front door with a hammer in his hand was not persuasive given that Hogan had blood spatters on his pants and shoes, which proved conclusively that he was in the room when the fatal blows were struck. ¹

FALSE CLAIMS (3):

Humes tells his own distorted version of another murder case in Kern County -- the People v. Offord Rollins. The defendant was a high school student convicted of murdering his 17 year-old ex-girlfriend. Rollins’ conviction was later overturned by the appeals court because of juror misconduct. The case was re-tried and a hung jury resulted.

1) “... Offord Rollins, a good student, high school president..” (p. 173)

2) “...within hours he had a seventeen year-old high school track star and class president behind bars...” (p. 178)

3) “...he was...a class president who had overcome dyslexia to earn passable-to-good grades...” (p. 184)

FACT:

Rollins was not the Wasco High School President.²

FALSE CLAIM:

“Laura, though, kept remembering some of the other Kern County cases she had heard about, how confident Offord Rollins’ lawyers and family were that he too, would be acquitted — only to see him receive a life sentence instead.” (p. 296)

FACT:

This is another example of Humes getting the facts 100% wrong. While Rollins was in fact convicted of murder, because he was a juvenile when he committed the crime the trial judge exercise his discretion and sentenced Rollins under the Youthful Offender law. As a result, Rollins did not get a “life sentence” as Humes claims; he would have been released from custody upon reaching the age of 25.

FALSE CLAIMS (3):

“To buttress the case for moving him into adult court, the assistant DA on the case...argued that Rollins’ crime was particularly sophisticated and heinous because he raped and sodomized Maria before murdering her. Rape was the motive for murder, it was argued, probably because Offord got angry when Maria refused his request to have anal sex. The judge happily moved the teenager into adult court. Problem was, the DA’s office at that time had in hand an autopsy report showing Maria had not been raped. Furthermore, the autopsy revealed she had regularly engaged in anal sex for months, if not years, but that she had not done so for at least twenty-four hours prior to her murder. The DA’s office revealed this information and dismissed the rape and sodomy charges only after winning Offord’s transfer to adult court...” (p. 185)

FACTS:

Humes both fabricates details and distorts the facts with this passage. Humes tries to play word games here when the public documents clearly indicate that:

1) ***Rollins was never charged with rape!*** On August 29, 1991, the District Attorney’s Office initially filed a petition in juvenile court charging Rollins with murder and sodomy.³ Since rape was never charged, it couldn’t have subsequently been dismissed as Humes claims.

2) Humes claims that the DA won Rollins’ transfer to adult court arguing that Rollins had raped, sodomized and killed the victim when the DA had in hand the autopsy report that

indicated the victim had not been raped or sodomized. Humes' rendition is false. First, as mentioned above, Rollins was never charged with rape. Second, *the information that the DA had was the initial autopsy report which did indeed indicate trauma to the victim's anus, indicative of sodomy.* The initial autopsy dated August 15, 1991 read "The anus appears to have been of the usual configuration but now presents a circular orifice 1.25 cm (½ inch in diameter)." "Detailed examination in collaboration with the Kern Medical Center Rape Evidence Technician confirms the presence of ecchymosis (bruising) within the 9:00 to 3:00 segment [of the anus]. Adjacent rectal tissue appears ecchymotic as well. En bloc dissection on the inner rectal tissue is done and detailed microscopic study will follow." In addition, a postmortem suspected sexual assault report dated August 7, 1991 concluded with the following impression: "genital trauma consistent with sexual activity, namely sodomy." ⁴

3) *Rollins initially requested to be tried as an adult!!* The DA did not have to "win" Rollins' transfer to adult court when Rollins was initially charged. The District Attorney and Rollins' lawyer stipulated that Rollins was unfit for juvenile court and should be tried as an adult instead. (Source: Juvenile Court minutes, 8/30/91) Rollins subsequently obtained a new lawyer who did not want to waive the fitness hearing. The new lawyer won a remand of the case back to juvenile court for a fitness hearing. This fitness hearing was held on October 18, 1991 and was conducted, not by the trial prosecutor, but by the prosecutor who handles matters in juvenile court. *During this fitness hearing, the prosecutor argued absolutely nothing similar to what Humes falsely portrays:*

"The crime was particularly sophisticated and heinous because he raped and sodomized Maria before murdering her. Rape was the motive for murder, it was argued, probably because Offord got angry when Maria refused his request to have anal sex." (Humes, p. 185)

Common sense dictates that the prosecutor wouldn't argue anything with regard to rape since rape was never a charge to begin with. Instead, the prosecutor simply argued that,

“The evidence in this case shows cold blooded murder. He beat up this young lady and then he executed her. He tried to hide her body in the bushes. There was nothing juvenile about the crime at all. He’s an adult now, over 18 now, he should be tried as an adult.”

The defense attorney then argued that Rollins should be housed in juvenile hall, rather than in jail because “he is charged with sodomy...” The court then asked the prosecutor to elaborate on defense counsel’s statements.

The prosecutor responded,

“...I believe the evidence in this case is that Mr. Rollins murdered Maria Madera, that he sodomized her and left her body out in the bushes. He is not a juvenile; he is 18. At juvenile Hall there are kids detained there much younger than Mr. Rollins. He’s an impressionable kid. I think it would be best if he were housed in jail. Nothing further than that.” (RT 23-24)

An amended autopsy report showing the results of the “microscopic studies” did indicate that the victim’s tissue showed signs of chronic sodomy with no signs of acute or recent sodomy. This report, however, was not available until November 13, 1991. Receipts from the Coroner’s office confirm pick-up of the amended report by the District Attorney’s office on November 13, 1991. ***The prosecutor who argued that Rollins was unfit for juvenile court on October 18, 1991, relied on the only information he had -- the initial autopsy report that indicated sodomy. The amended report wasn’t available until one month after the fitness hearing.***

FALSE CLAIM:

“Later, though, despite what was initially observed and reported, the authorities would claim all of the blood puddles were hard and dry when first found — they only *looked* wet because they had appeared shiny in the beams of the deputies’ flashlights. This change was crucial, because it meant the murder could have occurred earlier in the day, a convenient revision, since the prime suspect had an airtight alibi for the late afternoon and evening.” (p. 175-176)

FACT:

Humes alleges that there was a change of testimony about the state of the blood at the crime scene "which was crucial, because it meant the murder could have occurred earlier in the day, a convenient revision, since the prime suspect had an airtight alibi for the late afternoon and evening." Both allegations are unfounded. The only person who actually touched the blood was technical investigator Jim Ray. He testified that the blood was dry. He dug the blood out of the ground and put it into an evidence envelope. There was no transfer of blood inside of the envelope which would have occurred if the blood had been wet.

The defendant's alibi for the late afternoon and evening was not "airtight" as the author claims. His alibi witnesses were his friends and family, who gave conflicting testimony, and often contradicted themselves from one hearing to the next. Rollins had no credible alibi before 3 p.m. or for the period between 4:30 and 7:50 p.m. on August 2, 1991.

FALSE CLAIM:

"Susan Penninger had found another interesting fact that kept cropping up in the police reports from the Rollins case: The girl's body, and everyone who went near it, came away covered with sticky brambles from a dry desert weed, the tamarisk pentandara, whose distinctive clinging burrs under a microscope resemble nothing more than a dark-winged angel with halo. The lowly tamarisk weed would become crucial in the case much later, because the killer should have been covered with the burrs. This would mark another point where evidence and theory in the case did not match up." (p. 171)

FACT:

There were leaves from a tamarisk pentandara tree [not a weed] in the victim's hair [but not all over her body] when she was found at the scene. She had been dragged down a trail by her ankles from where she had been shot to where her body had been found. There was no reason to believe that the "killer should have been covered with the burrs." Offord Rollins was not contacted by law enforcement until two days after the murder. He had ample time to clean himself up, change, and wash his clothes.

FALSE CLAIM:

"Within forty-eight hours of the murder, two breaks turned the case firmly in one direction. First, a Bakersfield businessman named Dale Knox read in the newspaper about the unidentified

body found in the desert and called the sheriff's department. Knox said he had been driving near that very spot early on the afternoon before the body was found and had seen an older-model maroon Buick or Oldsmobile speeding from the area, kicking up dust and driving in an erratic manner, even cutting him off after tailgating him. "It was some dumb Mexican," Knox told Deputy Paul Hussey, an old friend. This information was passed on to Detective Randy Raymond, the homicide investigator in charge of the case." (p. 171)

FACT:

A totally misleading statement. Dale Knox did not tell Deputy Hussey the driver was a "dumb Mexican." He said that at 2 p.m. on August 2, 1991, he saw a 10-15 year old maroon Oldsmobile or Buick drive erratically from the dirt road onto the highway in front of him. He consistently described the driver as a black or Hispanic male who he thought was young.

Mr. Knox told Susan Penninger, the defense investigator, that his first thought, when he was almost cut off by the erratic driving, was that the driver was a "dumb Mexican," meaning, as he explained, someone from Mexico who wasn't used to driving on California roads. This unfortunate statement, Mr. Knox explained, was his first thought when the car pulled out in front of him; it was not based on any observation of the driver, which came a few minutes later when Mr. Knox passed the maroon vehicle that had slowed in front of him.

FALSE CLAIM:

"There were, however, ...pieces of evidence that supported the prosecution's case: Authorities found Maria's [the victim's] palm print on the outside (but not inside) of the maroon Oldsmobile that Offord drove that weekend, as if she had leaned against the car while waiting or talking." "... [This] was a disturbing bit of evidence...but far from conclusive." (p. 179)

FACT:

Humes tries to minimize this significant piece of evidence. Rollins' initial story and the one he told his mother was that he had not seen Maria recently and that he had been driving his father's (who lived in LA) maroon Oldsmobile in Kern County only on August 1st and 2nd. Maria's prints were found on the car, thereby disproving Rollins' story. If his story had been true, there would have been no opportunity for Maria to leave her prints on the car.

When he took the stand at his first trial on March 25, 1992, however, Offord Rollins changed his story; he testified that he met Maria at the Fastrip in Shafter between 4 and 4:30 p.m. on Thursday, August 1. They talked for five or ten minutes, then he drove her to an intersection near her house and dropped her off. Both Rollins' mother and his father, with whom he was close, testified that they never heard this story before the defendant testified -- almost eight months after their son was arrested and after they learned that Maria's fingerprints were on the maroon Oldsmobile."

Humes reports, in a footnote, that Offord's father in an interview with the author, asserted that an attorney had prompted the young suspect to claim that he had met Maria on Thursday in order to explain away the evidence, when in fact he had not. (p. 409, fn. 27)

If Rollins' father's claim is true, Offord Rollins committed perjury during his first trial.

FALSE CLAIMS (2)

1) "Victor had also told police that Offord called that last morning and arranged to meet Maria in a park across the street. The only completely accurate part of this statement was that Maria did receive a phone call in the morning from someone, and she did in fact, go to the park saying she was meeting Offord. But this was something she often claimed, sometimes falsely, to get permission to go out because her mother trusted Offord more than any of her other friends. 2) No one actually heard Offord on the phone that day or saw Maria with him that morning at the park."

FACT:

First, Victor Perez did not tell the police anything — he merely acted as the interpreter when the victim's mother, Miriam Rodriguez talked to law enforcement. Second, ***Humes neglects to inform the reader that Offord Rollins himself admitted calling Maria that morning! Rollins testified that he did in fact call Maria on the morning of Friday, August 2, 1991.***

FALSE CLAIM:

“A double murderer named Floyd Gore...was granted a new trial in 1992 because Kern County prosecutors had stacked the jury by excluding minorities — a constitutional violation that warranted overturning Gore’s life sentences, despite overwhelming evidence of his guilt. (p. 315)

FACT:

Absolutely false. Gore was granted a new trial because the trial court erroneously held that a motion by the defense with regard to the jury panel was not timely made. The case was not reversed in total; the case was remanded with instructions from the Appellate Court that the trial court hold a hearing on the defendant’s motion with regard to the jury panel. The trial court judge did hold the hearing, but since the re-hearing was a full two years later and memories had faded as to the details, the judge decided a new trial should be ordered instead. Floyd Gore was re-convicted and sentenced to life in prison.

FALSE CLAIM:

“Sergio Venegas saw his 1992 conviction and sixty-five year prison sentence for a brutal rape and assault overturned because the prosecution used erroneous evidence against him. The California Supreme Court ruled that Kern County Deputy District Attorney Lisa Green... had won the conviction only because the DNA she relied upon, the only hard evidence against Venegas, vastly overstated the likelihood of his guilt. The more conservative numbers reduced those odds to as little in 1 in 378.” (p.316, 432)

FACT:

This case was reversed because the FBI’s National Laboratory failed to follow accepted scientific procedures in calculating the probability of a DNA match. Based on DNA technology at that time, only 1 in 65,000 persons had DNA characteristics identical to the defendant’s and the semen deposited in the victim’s vagina. The jury, in fact, heard the defense evidence that reduced this number to 1 in 378. Now, at the retrial, based on further analysis of the evidence and using currently accepted scientific procedures, the evidence will be that only 1 person in 13 billion has the same DNA characteristics of the semen and Venegas!

FALSE CLAIM: “Unlike the federal government and most states, which rely on secret grand juries dominated by prosecutors to make charging and probable-cause determinations, California grants every criminal defendant the right to a preliminary hearing, in which a judge reviews the state’s case to determine whether there is probable cause to proceed to trial.” (p. 405)

FACT: Once again, Humes demonstrates his ignorance of criminal law. Under current California law, a criminal defendant is entitled to either a preliminary hearing or a grand jury indictment as his or her probable cause hearing. A defendant is not entitled to both. A defendant who is indicted by the grand jury is not additionally entitled to a preliminary hearing.

FALSE CLAIM: “In the end, of the fifty three men and women formally prosecuted in Kern County as members of molestation rings, only six continue to serve their prison sentences.” (p. 335)

FACT: *Not only are Humes’ numbers just plain wrong, (see Section III) even he can’t keep them consistent in his own book. In Humes’ Appendix, on page 451, he says 83 people were formally charged as members of molestation rings, not the 53 claimed on page 335.⁵*

FALSE CLAIM: “And these figures do not include the eighty five other people suspected and traumatized, but never charged.” (p. 335)

FACTS: Once again, not only does Humes get the numbers wrong (see Section III) , they inexplicably contradict those which Humes reports in Appendix A. In Appendix A, Humes reports a number significantly larger than 85 in the “suspected but not charged in the molestation ring cases” category. In the Appendix, Humes reports that while 173-248 people were suspected in the ring cases, only 83 people were actually charged (including the 28 who never really were charged as discussed in Section III). Thus, conservatively, in the Appendix section, Humes says 90-165 people were suspected but not charged, not the 85 claimed on page 335.

FALSE CLAIM:

With the release of the Kniffen/McCuans and Harold Weimer, the number of people freed from erroneous or wrongful prosecutions in recent years in Bakersfield reached at least ninety-one. (p. 374)

FACT:

Again, Humes, using his best inflammatory rhetoric, is not only wrong on the numbers (see Section III), but the numbers contradict those which Humes reports in Appendix A. In *Appendix A, on page 453, Humes claims* that out of 56 convictions, only 9 were upheld, thereby implying that *47 individuals were released* due to their wrongful prosecution, not the 91 claimed on page 374.

ENDNOTES

1. Source: Superior Court Case 19448: Court dockets; witness lists; appellate opinions.
2. Rollins attended Wasco High, and according to yearbook records, the position Rollins held was that of “social director.” Additionally, Rollins himself testified during his trial that he held the student body “social chairperson” position at Wasco High. (RT 2908)
3. Source: Juvenile petition, subsequent complaint and information.
4. Source: 8/15/91 Autopsy report; 8/7/91 Post Mortem suspected sexual assault report.
5. This total number of defendants charged in ring molestation cases is footnoted in the Appendix. The footnote details the fact that Humes has included 10 individuals in his total of 83 who were not in fact charged with a crime. Thus, giving Humes the benefit of the doubt, and allowing for the fact that he includes 10 people not charged with a crime, the number he cites, 83, becomes 73. Then, giving Humes another huge benefit by adding the additional 18 people Humes includes as “charged” when they really weren’t (see page 449 and footnote on page 453), the 83 number becomes 55. This still does not match the 53 number Humes claims on page 335.

Appendix A:

The People v. Patrick Dunn

Domestic Violence Crime Report

Incident date: 10/19/89
Suspect: Patrick Dunn
Victim: Alexandra "Sandy" Paola Dunn

CRIME OR INCIDENT REPORT

MSIC - CAC1388

1 Case No. **10925184** 2 Date **25J** 3 Crime Code **1252** 4 Investigation Incident Info
 5 Reported by **CONTROL 1** 6 Reported to **JUSTICE** 7 Ident. No. **369** 8 Type of Premises/Area **DV-4**
 9 Location of Occurrence **1700 CRESTMONT**

10 Date/Time Reported **10/19/89 2050** 11 Arrived **2056** 12 Date/Time Occurred **10/19/89 2045** 13 Category **1** 14 Crime Classification **SPUSAL ABUSE CORPORAL WJ. WIFE AG.**
 15 Date/Time by Court Session **PC-273.5**

CODE V-Victim W-Witness C-Contact P-Parent RP-Reporting Party DC-Discovered Crime (List as V1, V2, W1, W2, etc)

RP	Last Name - First, Middle (Firm if Business) PAOLA ALEXANDRA JEANETTE				Residence Address 1700 CRESTMONT				City BKFO	Res. Phone 871-7744		
	Occupation SELF EMPLOY W/F	Race W	Sex F	Age 54	DOB 9-3-35	Business/School Address				Bus. Phone		
W	Last Name - First, Middle (Firm if Business)				Residence Address				City	Res. Phone		
	Occupation	Race	Sex	Age	DOB	Business/School Address				Bus. Phone		
D	Last Name - First, Middle (Firm if Business)				Residence Address				City	Res. Phone		
	Occupation	Race	Sex	Age	DOB	Business/School Address				Bus. Phone		
W	Last Name - First, Middle DUNN, PATRICK C.				Race W	Sex M	Age 53	DOB 9-27-36	Ht 6-2	Wt 240	Hair BLN	Eyes BLU
	Address/Shipping/Other Identifying Marks or Characteristics 1700 CRESTMONT CR.							Arrested <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	LAR No.			
W	Last Name - First, Middle				Race	Sex	Age	DOB	Ht	Wt	Hair	Eyes
	Address/Shipping/Other Identifying Marks or Characteristics							Arrested <input type="checkbox"/> Yes <input type="checkbox"/> No	LAR No.			

20 Vehicle Used - License No. - ID No. - Year - Make - Model - Colors (Other Identifying Characteristics)

LIST ADDITIONAL NAMES PRIOR TO BEGINNING THE NARRATIVE (Show Code and List in Same Sequence As Above)

21	Currency Notes, etc	A	Jewelry Prec. Metal	B	Clothing Fur	C	Office Equip.	E	ENT
	T.V., Radio, Stereo, etc	F	Furniture	G	Household Goods	H	Consumable Goods	J	CNCL
	Liquor	K	Miscellaneous	L	Check Offense	M	Arms	N	SFS
	Farm Equip. Supplies	P	Oilfield Equip. Supp.	Q	Other Heavy Equip.	R	TOTAL		CNCL

22 Teletypes

22 Complete/Additional Names/Property Description/Narrative Details - Continue on back if necessary.
PAOLA SAID THAT HER HUSBAND, DUNN, HIT HER TWICE WITH A CLENCHED FIST DURING AN ARGUMENT. PAOLA SUSTAINED A WOUND TO THE FOREHEAD AND DID NOT WANT MEDICAL ATTENTION. DUNN WAS ARRESTED FOR SPOUSAL ABUSE.

24 Additional Copy Distribution
 Deti ___ ABC ___ Vice ___ News ___ SPO ___
 Patrol ___ Adult Probation ___ Juv. Det./Prob ___

EC89-29184

DETAILS:

PAOLA said that she has been married to her husband, DUNN, for approximately three years. She said that tonight while they were in the atrium which is located on the west side of their residence, he became upset with her for an unknown reason. She said that he had been drinking at the time, and he started yelling at her. She said that she then went into the master bedroom, located on the north end of the residence, and he followed her. She said that she pulled the bed covers back and sat down on the bed because she was going to go to bed. She said at that point, he struck her with a clinched fist twice on the right side of her face. She said that it knocked her to the bed. She said she's not sure what hand he used and that it somewhat dazed her at the time. She said that he then left the room, and she left the room also.

She said that she returned to the room a few minutes later after deciding to call the Sheriff's Department. She said that when she attempted to use the phone, DUNN grabbed the phone and pulled it out of her hands. She said that the door bell rang, and a subject who she knows, by the name of KATE ROSELEEB, a friend, was at the door. She said that she and DUNN then spoke with her a few minutes, and then DUNN walked into the atrium with ROSELEEB and started talking with her.

PAOLA said that she then went back into the master bedroom and dialed #911 for the Sheriff. She then pulled her hair back on the right side of the head, and I saw a one-inch long shallow cut behind her right ear. There was blood on her ear and on her hair.

I then made contact with DUNN who was now seated in the atrium. I told him that his wife had told me that he had struck her during an argument. I did not ask DUNN any questions at that point, but he voluntarily said, "No, I did not hit her." I then told him he was under arrest for spousal abuse, and Deputy RASCOE transported him to the Kern County Jail. Deputy RASCOE advised me that he read DUNN his rights per Sheriff's Rights Card #710, and DUNN said that he wished to speak with an attorney.

I asked PAOLA if she wanted medical treatment, and she said, "No, she did not." TI FUGITT arrived at that point and took a photograph of PAOLA's injury.

I took no further action at this time. End of report.

Deputy JUSTICE #369

Lewis
10-20-89 0300 hrs.

Appendix B:

The People v. Patrick Dunn

- 1) *In Camera* Testimony of Dunn Lawyer Teri Bjorn (pp. 622-627)
- 2) Trial Testimony of Dunn Lawyer Teri Bjorn (pp.633-646)
- 3) Unsealing of *In Camera* Proceedings by the Trial Judge (p. 651)

Source: Official Reporter's Transcript

(In Camera Proceeding)

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2 5 THE COURT: All right. Miss Bjorn, you have
6 already laid the foundation that you were the
7 attorney for Patrick Dunn and for Alexandra Dunn
8 jointly as their attorneys advising them on certain
9 financial things including this theater project I
10 think it was.

11 A. There were actually two projects that I
12 was working on at the time.

13 Q. And the foundation has already been
14 laid that after Terri -- after Alexandra Dunn
15 disappeared, I'm not sure, and I think this is while
16 she was still missing on or about July 2 that you
17 received a call from -- no. Kate Rosenlieb says she
18 received a call from a friend, yourself, that you
19 called indicated that Patrick, that's the defendant,
20 called you and asked -- telling you that Sandy had
21 disappeared yesterday morning after she went for a
22 walk late last night and didn't come home, that he
23 wants a power of attorney.

24 Could you tell us about that and, of course,
25 understanding that there is a attorney-client
26 privilege, but I have already ruled that there is
27 enough prima facie case in the pending trial against
28 Mr. Dunn, the defendant, who was your client to

1 inquire into the nature of the contact with you and
2 any conversation with you and, of course, I'm to
3 determine on the nature of what that conversation
4 was whether or not that would be evidence of an
5 attempt to perpetrate a fraud or a crime. All
6 right? Could you tell us the nature of the
7 conversation with you, the full conversation?

8 A. Okay. To the best of my recollection,
9 this was eight months or so ago, sometime during the
10 morning of July 1, Mr. Dunn called me by telephone
11 and the essence of the conversation he told me that
12 Sandy was missing, he told me the circumstances
13 surrounding her being missing. Would you like to
14 hear that portion of the conversation?

15 Q. Yes.

16 A. Okay. To the best of my recollection,
17 it was basically that he had woken up sometime in
18 the late evening and Sandy was gone, he noticed that
19 the dog was gone also so he assumed they were both
20 had gone out for a walk. I don't recall if he said
21 he had gone out looking for her then or if he went
22 back to bed and woke up later.

23 In any event, at some time later he found she
24 was still missing either when he woke up again or
25 when he got back. I don't recall. But this time
26 the dog was back so this is when he became very
27 concerned and he had spent the night looking for her
28 driving in various parts of east Bakersfield where

1 she often would take her walks. He had not found
2 her by the time the morning had arrived. I believe
3 he told me he had either filed or was going to file
4 a missing persons report. That's really all the
5 details that I can recall relating to him reporting
6 Sandy being gone.

7 At the end of the conversation we discussed
8 some business transactions that were ongoing. One
9 of which was Morning Star Partners which was another
10 real estate project that we were working on.

11 This was a project where Mrs. Dunn was a
12 limited partner investor in a real estate
13 residential development project and she was also
14 acting as the construction lender on that project.
15 So she was obligated under the terms of an agreement
16 to pay bills for off-site improvement work as they
17 became due.

18 Pat and Sandy and I had been talking the
19 prior week because there had been some development
20 issues that had come up on the project and there
21 were some significant bills that were coming due.

22 So I'm giving you this background to tell you
23 that this was the subject that was -- we had been
24 talking about anyway the prior week.

25 The subject of that project was brought up
26 and Pat expressed a concern about the fact that
27 Sandy being gone and these bills were becoming due,
28 were shortly due and that Sandy would be very

1 concerned if she came back and found this project
2 had shut down because bills weren't paid and it was
3 in this context that he asked about what sort of
4 mechanism we might be able to get into place to get
5 these bills paid.

6 I believe, although I can't say for sure,
7 that he mentioned the word, you know, could I use a
8 power of attorney and I explained to him that a
9 power of attorney is a document that is signed in
10 advance by the person who wants to turn over control
11 of various financial affairs or whatever so that
12 would not be appropriate if Sandy had not already
13 signed a power of attorney, which I don't think she
14 had.

15 I told him that this was really outside of my
16 area of the law in terms of how we could, you know,
17 what happens when a person is gone and we have an
18 ongoing business transaction and that I would
19 consult with another attorney in my office who does
20 probate conservatorships, you know, that sort of
21 thing to find out what we could do if and when the
22 time came that she had not returned and those bills
23 had to be paid.

24 And that was to my best recollection the
25 essence of the conversation. I -- well, I'll let
26 you ask me more questions so I can continue.

27 THE COURT: I think that does it and I think
28 that's enough. I will order that the reporter will

1 seal the notes of this in-camera examination of the
2 witness Terri Bjorn and they are not to be opened
3 except upon further order of the court or of any
4 Appellate Court should that come up.

5 For the purpose of this hearing I'm going to
6 find that there is a prima facie case that the
7 service of and advice of the attorney were sought to
8 commit a crime or to commit a fraud in that there is
9 a prima facie case of -- there is evidence to
10 support a prima facie case of murder and that the
11 murder was for a financial gain.

12 I'm going to -- now that I've heard this,
13 first I'm going to have to -- that's prima facie
14 case and that the services of the attorney were
15 sought at a time when the victim was -- had just
16 been missing and there wasn't even any, at least as
17 of that time any evidence that she was not coming
18 back, but the evidence taken as a whole is that, in
19 fact, she was murdered. And this was when she had
20 only been missing for little over a day. I think
21 she had gone for the walk on the late June 30th and
22 this conversation with the attorney was July the
23 2nd. And at that early time the defendant was
24 seeking power of attorney.

25 Of course that power of attorney would give
26 him access to financially I suppose to the victim's
27 assets. And if you were to have a power of
28 attorney, if he were in fact the person who did --

1 who committed the murder, the purpose of a power of
2 attorney would be to get her assets and to convert
3 them which is -- which would be a crime under the
4 circumstances or and a fraud also, that he would be
5 obtaining assets of a person who had been murdered
6 by the person who was seeking these, who was seeking
7 the power of attorney.

8 And again I want to put on record that I as
9 the court am not making any judgment as to what the
10 final outcome of this case should be based upon the
11 evidence because, Number 1, I have not even heard
12 the defense side of the case yet and, Number 2, I
13 can see that both sides have cogent and persuasive
14 arguments for their point of view. I'm just looking
15 at the evidence as it can be interpreted in favor of
16 the prosecution's case.

17 Thank you for being here. I suppose we will
18 then call you to testify in court now.

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21 ---o0o---

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1 THE COURT: All right.

2 TERRI ANNETTE BJORN,
3 called as a witness on behalf of the People, being
4 first duly sworn, testified as follows:

5 THE COURT: Proceed.

6 MR. SOMERS: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. SOMERS:

9 Q. Miss Bjorn, could you state your name
10 and spell your last name for the court reporter?

11 A. Terri Annette Bjorn. B-j-o-r-n.

12 Q. What is your profession?

13 A. I'm an attorney.

14 Q. You are licensed to practice as an
15 attorney in the State of California; is that
16 correct?

17 A. Yes.

18 Q. And how long have you been an attorney?

19 A. Since 1979.

20 Q. Do you practice in the city of
21 Bakersfield?

22 A. Yes, I do.

23 Q. Miss Bjorn, prior to approximately July
24 of 1992, did you represent Patrick and Sandy Dunn?

25 A. Yes.

26 Q. What was the nature of the matters,
27 generally speaking, without going into details, in
28 which you represented them?

1 A. Generally real estate matters.

2 Q. So you represented them in some of the
3 real estate developments and so forth that they were
4 engaged in?

5 A. That's correct.

6 Q. I would like to direct your attention
7 to July of 1992. On July the 1st or the 2nd of 1992
8 did you receive a telephone call from Patrick Dunn?

9 A. Yes, I did.

10 Q. And the person that you know by the
11 name Patrick Dunn, is that person present in the
12 court today?

13 A. Yes.

14 Q. Could you point to where he is seated
15 and describe what he is wearing for the record,
16 please?

17 A. I'll just stand up. He is wearing a
18 navy blue blazer and a white shirt.

19 Q. Thank you.

20 THE COURT: Indicating the defendant Mr.
21 Dunn.

22 MR. SOMERS: Thank you, your Honor.

23 BY MR. SOMERS:

24 Q. Miss Bjorn, do you recall what day it
25 was specifically in early July on which date you
26 received the telephone call from Mr. Dunn?

27 A. I believe it was July 1st.

28 Q. And do you recall approximately what

1 time of day it was on July 1st when you received
2 that telephone call?

3 A. I believe it was mid to late morning.

4 Q. Sometime during the morning hours?

5 A. (Witness nods head.)

6 Q. It was definitely before noon; is that
7 correct?

8 A. That's correct.

9 Q. During that telephone conversation with
10 Mr. Dunn on the morning of July the 1st of 1992, did
11 Mr. Dunn say anything to you about his wife Sandy or
12 Alexandra Dunn being missing?

13 A. Yes, he did.

14 Q. And specifically what did he tell you?

15 A. To the best of my recollection, I don't
16 recall every detail of the conversation, but
17 basically that Sandy was missing, he indicated to me
18 that he had woken up I believe it was in the late
19 evening and that she was missing. As I recall, he
20 said that the dog was gone also so he assumed that
21 she had gone out on one of her evening walks with
22 the dog.

23 I don't recall if he said he had gone out
24 then to look for her or if not, being worried or
25 assuming she was walking, if he had gone back to
26 sleep, but I do remember something to the effect
27 that around midnight he found her again -- I mean,
28 he either woke up or returned home from looking for

1 her, I don't recall which, and that the dog was back
2 but she was still missing. And so he had spent the
3 evening, the rest of the night into the early
4 morning hours looking for her driving around in
5 areas of town that she generally had taken her
6 walks.

7 Q. All right. Did he indicate to you
8 whether as of the time of this telephone
9 conversation that you had with him whether he had
10 been able to locate Mrs. Dunn?

11 A. He had not been able to.

12 Q. So he did not know where she was or he
13 said he did not know where she was at the present
14 time?

15 A. Correct.

16 Q. Did he say anything to you or request
17 anything of you with regard to, I guess, if you
18 will, Mrs. Dunn's financial matters at the time that
19 you had this conversation?

20 A. Toward the end of the conversation,
21 yes, we discussed some business matters that were
22 pending, real estate matters that I had been working
23 on.

24 Q. All right. And did he ever talk to you
25 about what is known as a power of attorney?

26 A. I believe he used that word in a
27 layman's sense. As I recall, I don't think he
28 really understood or knew what a power of attorney

1 was. But I believe he either used that word or
2 intended to refer to something of that effect.

3 Q. Not asking necessarily for the exact
4 words because I know it's been a while, but do you
5 recall as closely, can you recall specifically what
6 he said with regard to power of attorney?

7 A. I don't recall specifically. We were
8 talking about the Morning Star project which was one
9 of the real estate projects that I was working with
10 them on and there were some bills that were coming
11 due or shortly to be due on that project. And as I
12 recall, his inquiry was related to those bills
13 needing to be paid and needing some mechanism to be
14 able to pay those bills.

15 Q. All right. Did he ask you if he could
16 obtain a power of attorney with regard to Mrs.
17 Dunn's investments in order to obtain funds?

18 A. It was -- as I recall, it was in the
19 context of the Morning Star Partner's project that
20 these bills were becoming due and that the inquiry
21 related to how would we get these bills paid given
22 the fact that Sandy was missing and that those bills
23 would need to be paid in a short order.

24 Q. You are a person acquainted with a
25 person by the name of Kate Rosenlieb; is that
26 correct?

27 A. Yes.

28 Q. And in fact the two of you are good

1 friends; is that correct?

2 A. I would not say we are good friends.

3 Q. But you are friendly or acquaintances;
4 is that correct?

5 A. Yes.

6 Q. Did you call and speak with Kate
7 Rosenlieb after receiving that conversation?

8 A. Yes, I did.

9 Q. And did you tell Kate Rosenlieb at that
10 time that Mr. Dunn had told you or that he had asked
11 you can I have a power of attorney with regard to
12 Mrs. Dunn's disappearance?

13 A. I don't recall specifically what I told
14 Kate. I knew that she was good friends with Mr. and
15 Mrs. Dunn and I wanted her to know that Mrs. Dunn
16 was missing and I recall telling her the general
17 items that Mr. Dunn had told me in terms of her
18 being missing.

19 MR. SOMERS: Thank you very much. I don't
20 have any further questions at this time, your Honor.

21 THE COURT: Mr. Pohlson?

22 MR. POHLSON: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. POHLSON:

25 Q. Good afternoon, Miss Bjorn. Miss
26 Bjorn, how long had you been the lawyer for Pat and
27 Sandy Dunn?

28 A. As I recall, about maybe a year and a

1 half or two years before July.

2 Q. What firm do you work for?

3 A. Clifford, Jenkins and Brown.

4 Q. Were there any other lawyers in your
5 firm that also did work for them?

6 A. Yes.

7 Q. Can you give us those names?

8 A. I don't know if I'm the best person to
9 know. I was not their primary lawyer within the
10 firm on anything other than real estate matters. I
11 believe Jim Wiens did some work for them, Mr. Leggio
12 did some work. I don't know who else beyond that.

19

13 Q. Previous to this July 1st phone call
14 when Pat told you that Sandy was missing, had you
15 already been working on this Morning Star project
16 with the Dunns?

17 A. That's correct.

18 Q. In the week or two previous to this
19 July 1st phone call, had you had conversations with
20 the Dunns about certain things that needed to be
21 done with regard to the project?

22 A. Yes.

23 Q. Can you tell us about that a little
24 bit?

25 A. As I recall, there was an issue that
26 had come up relating to sewer or water and there was
27 some potential refunds coming from one of the sewer
28 water districts and we had to work with those

1 districts, as I recall, to get some sort of refund,
2 but it was going to make a large difference in the
3 amount of money that the clients were going to have
4 to put up front for the work on the project.

5 Q. It was a situation where time was of
6 the essence; is that correct?

7 A. That's correct. We had to make the
8 decision to get that work done, whether it was sewer
9 or water I don't recall, and we had to make that
10 decision quickly and it was going to be a
11 substantial cost savings if we did it one way or the
12 other.

13 Q. And vice versa, if you didn't get it
14 done by a certain period of time, then it would cost
15 you a lot more money?

16 A. That's correct.

17 Q. You had been -- in the week or two
18 previous to July 1st, you had been discussing this
19 with both Pat and Sandy Dunn?

20 A. That's correct.

21 Q. On July 1st when you were having this
22 conversation with Pat Dunn, do you remember which
23 one of you brought up the question of the finances
24 or the --

25 A. I don't recall. It was in the context
26 of discussing Morning Star and I had been trying to
27 get ahold of them the week before. I really don't
28 recall if I brought it up or Pat brought it up

1 concerning this issue that we have been talking
2 about on Morning Star.

3 Q. It was something, though, that needed
4 to be talked about at that particular time, correct?

5 A. Well, yes, I had been trying to reach
6 them the week before or within say the last week to
7 10 days before July 1st to talk about that issue and
8 make a decision on it.

9 Q. When Mr. Dunn talked to you about the
10 fact that his wife was missing, did he act like he
11 was concerned and worried?

12 A. He sounded very tired. He had
13 apparently been up all night. He sounded down,
14 depressed.

15 Q. You are friends with the Dunns, right?

16 A. Yes.

17 Q. And you had been for quite a while?

18 A. I would say probably within the six
19 months to year period before July, I had become
20 somewhat social acquaintances with them.

21 Q. Do you have a relationship with a man
22 by the name of Kevin Knudsen?

23 A. Yes, I do.

24 Q. What is that?

25 A. We cohabit.

26 Q. During the month of June 1992, had you
27 happened to be over at the Dunns' in a social
28 situation?

1 A. Yes.

2 Q. Can you tell us when that was,
3 approximately?

4 A. I believe it was about the middle of
5 June.

6 MR. POHLSON: May I approach the clerk your
7 Honor?

8 THE COURT: Yes.

9 MR. POHLSON: May I have this marked as next
10 in order?

11 THE CLERK: Defendant's Exhibit Q is marked
12 for identification.

13 MR. POHLSON: May I approach, your Honor?

14 THE COURT: You may.

15 BY MR. POHLSON:

16 Q. Let me ask you a foundational question
17 that will sound a little crazy, but obviously since
18 you knew the Dunns during June of 1992, you knew
19 what Mr. Dunn's physical appearance was at that
20 time?

21 A. Yes.

22 Q. And looking at Mr. Dunn now, is he in
23 somewhat -- has he somewhat changed from how he was
24 in 1992?

25 A. I would say he is quite a bit thinner.

26 Q. Taking a look at what's been marked as
27 Defense Q for identification purposes, can you tell
28 us what's portrayed in that photograph?

1 A. It's two children and four adults
2 standing by a diving board.

3 Q. And are you one of the adults?

4 A. Yes.

5 Q. It's your child in that picture?

6 A. Yes.

7 Q. Is Mr. Dunn also in the picture?

8 A. Yes.

9 Q. Is the -- well, I guess the
10 configuration of Mr. Dunn's body, is that consistent
11 with how he looked in June of 1992?

12 A. As I recall, yes.

13 Q. Had a bit of a gut at that time, didn't
14 he?

15 A. Yes.

16 Q. How often would you say during the
17 normal course of a month would you see Pat and Sandy
18 Dunn?

19 A. On a social basis?

20 Q. No, just in general.

21 A. For what period of time?

22 Q. Say the year 1992. So the first six
23 months of 1992 before she disappeared.

24 A. Oh, probably both social and
25 professionally maybe once a month at the most.

26 Q. Did you also during that period of time
27 have regular phone contact with either one of them?

28 A. Maybe on a weekly, every other week. I

1 mean, there were periods where we were right in the
2 middle of something, we would talk more frequently
3 or we might go several weeks without talking.

4 Q. During that six months of 1992, did you
5 have an opportunity then to observe the way they
6 interacted?

7 A. On a limited basis, yes.

8 Q. During the times that you were able to
9 observe them, did they seem to get along?

10 A. Yes. I mean, you have to differentiate
11 between on a social basis and a professional basis.
12 People are on a professional basis much more perhaps
13 business like. On a social basis they let their
14 hair down more. That's why I answer with some
15 hesitation.

16 Q. Did you ever observe them to argue?

17 A. No, not particularly. I recall one
18 meeting where there were a number of individuals
19 sitting around at a table and I think there was a
20 little bit of a disagreement concerning an issue
21 that we were deciding on.

22 Q. Was Roger McIntosh present at that
23 meeting, if you know?

24 A. I believe he was.

25 Q. Did Pat at some point tell Sandy to
26 shut up?

27 A. I don't recall that. I don't recall
28 exactly what was said between them.

1 Q. But they got a little tense with each
2 other; is that right?

3 A. Yes.

4 Q. Did you have an opportunity during that
5 six months of '92 to have conversations with Sandy
6 Dunn on an individual basis?

7 A. There were times that I talked to her.
8 I'm not always sure if Pat was on the other -- you
9 are talking about over the phone or --

10 Q. Over the phone or in person.

11 A. I don't recall any meetings in my
12 office when it was just Sandy. That was usually
13 Sandy and Pat would come together. In terms of
14 telephone conversations, I'm sure there were times I
15 was talking just to Sandy although Pat may have been
16 on the line and I didn't realize it.

17 Q. During any of those conversations you
18 had with Sandy Dunn, did she ever express to you her
19 dissatisfaction with Pat Dunn as a husband?

20 A. No.

21 MR. SOMERS: Objection. Calling for hearsay,
22 your Honor.

23 MR. POHLSON: Your Honor, it goes directly to
24 the point.

25 MR. SOMERS: Calling for hearsay.

26 THE COURT: Did she ever hear any statement
27 by Sandra?

28 MR. POHLSON: By Sandy.

1 THE COURT: Expressing any dissatisfaction.

2 MR. SOMERS: I object on hearsay, your Honor.

3 THE COURT: I realize. Well, I'll overrule
4 the objection. What was your answer?

5 THE WITNESS: My answer was no, I don't
6 recall.

7 BY MR. POHLSON:

8 Q. Did she ever indicate to you at all
9 that she intended to divorce Mr. Dunn?

10 A. No, I never had such conversation.

11 MR. POHLSON: Thank you. I don't have --

12 THE COURT: I might indicate also, Mr.
13 Somers, that testimony that no such conversation
14 ever came about, that testimony is not hearsay.

15 MR. SOMERS: I think I realized later. I
16 think that's probably the opposite of hearsay, your
17 Honor. Lack thereof.

18 THE COURT: Do you have any further
19 questions? Maybe let me call -- I would like to see
20 counsel and the witness and Mr. Leggio in chambers,
21 if you will. Just be seated, ladies and gentlemen.
22 It will take about a few minutes. Not very long.

23 (Off the record.)

24 MR. SOMERS: No redirect, your Honor.

25 THE COURT: Now we are at another point.
26 I'll have to rule on the 1118.1.

27 MR. POHLSON: Pardon me, your Honor?

28 THE COURT: We are at another point. I have

1 personally present with his attorneys, Mr. Pohlson
2 and Mr. Carreon. Mr. Somers is here representing
3 the People. The jurors are not yet present.

4 And as I did have a side bar with counsel, I
5 indicated to them although I made the order in the
6 chambers proceedings where the matter with Terri
7 Bjorn, that those -- the reporter's notes were to be
8 sealed until further order of the court. Now that
9 Miss Bjorn has testified and I did have an informal
10 conference with counsel dealing with them, I'm going
11 to reverse that order and order that they be
12 unsealed and the clerk will supply you with a
13 transcript.

14 MR. SOMERS: Thank you, your Honor.

15 THE COURT: We will bring out the jury now.
16 I'll let you state formally in the presence of the
17 jury about the People resting and I will tell them
18 about the admission of the exhibits and allow you to
19 publish those exhibits that are photos to the jury.

20 MR. SOMERS: All right. Thank you, your
21 Honor.

22 THE COURT: Let the record show that the 12
23 jurors and four alternates have entered the
24 courtroom. They are in their places in the jury
25 box. At this time, Mr. Somers, do you rest your
26 case?

27 MR. SOMERS: Yes, your Honor. At this time
28 the People rest.

Appendix C:

The People v. Patrick Dunn

Trial Testimony of Dunn Housekeeper Cindi Montes (pp. 203-222)

Source: Official Reporter's Transcript

1 CINDI MONTES,

2 Called as a witness, being first duly sworn
3 by the Clerk, testified upon her oath as follows:
4

5 DIRECT EXAMINATION

6 BY MR. SOMERS:

7 Q Ms. Montes, could you state your full name and
8 spell your last name for the record?

9 A Cynthia Marie Montes, M-O-N-T-E-S.

10 Q And what is your occupation?

11 A Right now I am a cashier clerk.

12 Q Have you previously worked doing maid or
13 housecleaning type of work?

14 A Yes, I have.

15 Q And during the time that you were doing that,
16 did you work for a married couple by the name of Patrick and
17 Alexandra Dunn?

18 A Yes, I have.

19 Q And did you start working for them sometime in
20 the latter part of 1991?

21 A Yes, sir. I think it was about the middle of
22 October 1991.

23 Q All right. And do you know approximately when
24 that it was that you worked for them or for Mr. Dunn? When did
25 you stop working for him?

26 A Could you repeat that?

27 Q When did you stop working for him?

28 A Okay. The last day I worked for Mr. Dunn was

1 -- okay, it was July 21st. That was on a Tuesday. That was
2 the last day I worked.

3 Q Of 1992?

4 A '92, correct.

5 Q All right. Ms. Montes, when you started
6 working for the Dunns, how frequently would you go over to
7 clean their house?

8 A It was normally once a week. There was about a
9 three-week period towards June of '92 that I was going twice a
10 week, but normally it was once a week.

11 Q Initially did you have a set or specific day of
12 the week that you would go to clean house on?

13 A Yes, I started out on Fridays and I picked up
14 another client and I switched them to Wednesday.

15 Q As of approximately the latter part of June,
16 the first half of July, 1992, were you going to clean on
17 Wednesday?

18 A Yes, that was my normal day.

19 Q Now I'd like to direct your attention to July
20 1st of 1992. Did you actually go to the Dunn house to clean
21 house on that particular Wednesday?

22 A No, I didn't.

23 Q Okay. At some point in time did you have or
24 did you contact either of them about going over to clean the
25 house?

26 A Yes. They had had an appointment that week,
27 and I had made prior arrangements to go in on the Tuesday
28 before, and I was to show up at 5:00 in the morning. And I

1 called that morning to just let them know I was heading over,
2 and Mr. Dunn answered the phone and at that time he said that
3 he wanted to cancel and that we would reschedule.

4 Q All right. Now, you indicated it was 5:00 that
5 you called. Was that 5:00 a.m. on Wednesday, July 1st?

6 A Yes, correct.

7 Q When you called Mr. Dunn did you notice
8 anything unusual to you about the way that he sounded?

9 A He sounded a little out of breath. It sounded
10 like maybe he was getting ready to get in the shower or
11 something. There was water in the background. It was unusual
12 for him to answer the phone. Normally it was the recorder or
13 Sandy.

14 Q All right. When he answered the phone you
15 indicated he sounded somewhat out of breath. Did you hear any
16 water running in the background?

17 A I heard a sound. The only thing I could make
18 of it was it sounded like a shower running.

19 Q All right. When you spoke with Mr. Dunn at
20 that time, did you tell him that you were going to come over
21 that morning?

22 A Yes. I told him I was calling to let him know
23 I was heading over.

24 Q And what was his response to that?

25 A Exact words I don't remember, but it was that
26 we were going to cancel and that he had that appointment that
27 day. And it threw me off and I hesitated, and then he says,
28 well, let's just reschedule, and I told him I'd call him later

1 on and we'd set up a date.

2 Q During that first conversation you had with him
3 about 5:00 a.m. -- and I take it it wasn't a real long
4 conversation.

5 A No, real short.

6 Q During that conversation did he indicate to you
7 how many appointments he had that day?

8 A No, he did not.

9 Q He just said he had an appointment?

10 A Right.

11 Q Okay. Now, did you call later on on July 1st?

12 A Yes, I called that evening, I would say maybe
13 between 6:00 and 7:30, I believe, and I called to reschedule
14 the appointment. When he answered the phone I asked him how
15 his appointment went, and he was in a real good mood and he
16 said real good, as a matter of fact, I had two appointments
17 today.

18 Q Did he indicate that both appointments had gone
19 well?

20 A Yes.

21 Q All right.

22 Ms. Montes, during either of those phone
23 conversations with you on July 1st, either the one at 5:00 that
24 morning or the one during the evening hours, did Mr. Dunn say
25 anything to you about his wife Sandy Dunn being missing?

26 A No, he did not.

27 Q He didn't mention it at all?

28 A No, not at all.

1 Q What time would you ordinarily get to the Dunn
2 residence when you were going to clean house?

3 A Anywhere from 5:50 to 6:00 a.m. in the morning.

4 Q So you'd get there around 6:00?

5 A Right.

6 Q Okay. When you were at the residence were you
7 able to observe how Sandy Dunn ordinarily dressed?

8 A Yes.

9 Q And what kind of clothes did she wear; dressy,
10 casual?

11 A Very casual.

12 Q Can you describe it in a little more detail?

13 A Yeah, when the weather got a little bit warmer
14 she normally just had on shorts, a T-shirt, tennis shoes. She
15 didn't wear a bunch of jewelry, just wore her watch. Always
16 had her glasses on.

17 Q Did you always observe her to wear her glasses
18 even around the house?

19 A Oh, yes, she had them on no matter what.

20 MR. POHLSON: I'm sorry. Couldn't hear the
21 last part.

22 THE WITNESS: Oh, I just said I always saw her
23 wear her glasses.

24 Q (By Mr. Somers) You have a fairly soft voice.
25 You need to get just a bit closer to the microphone.

26 A Oh, yes.

27 Q During the last few weeks before Mrs. Dunn's
28 disappearance, had you been at the house cleaning on occasions

1 where both Mr. and Mrs. Dunn were present?

2 A Yes.

3 Q Okay. Did you observe any, ever observe any
4 arguments or anything of that nature between the two of them?

5 A Yeah, they had their disagreements like anybody
6 else.

7 Q Okay. The last couple of weeks or so, the last
8 few weeks, I guess, did they appear, from what you had observed
9 in the past, to be getting along well, or did you observe any
10 difference in the way they treated each other the last few
11 weeks?

12 A There seemed to be a little tension. It seemed
13 different to me.

14 Q How did you observe Mr. Dunn to act toward
15 Mrs. Dunn during that time period?

16 A They evidently -- there was some discussion of
17 some sort or something --

18 MR. POHLSON: Excuse me, Your Honor. I'm going
19 to have to object. Sounds like speculation and opinion.

20 THE WITNESS: There was just --

21 THE COURT: Just a minute. Hold it. Well --

22 MR. SOMERS: Perhaps I could rephrase the
23 question.

24 THE COURT: Okay. Do that.

25 Q (By Mr. Somers) How did you observe Mr. Dunn
26 to act toward Mrs. Dunn, not specifically anything that he
27 said, but just simply did he appear affectionate toward her,
28 angry toward her, or --

1 A More abrupt and stern in his mannerism.

2 Q Now, during the time that you knew Alexandra
3 Dunn, did you ever observe her to have problems with forgetting
4 things or seem to have any memory problems?

5 A No, none at all.

6 Q Have you ever had contact with individuals who
7 have Alzheimer's Disease?

8 A Yes, I have.

9 Q And under what circumstances?

10 A I used to work for Bakersfield Hospice where I
11 would go into other people's homes and take care of them, so I
12 have been subject and worked right side by side with people
13 with the disease of Alzheimer's.

14 Q So you have some familiarity with the symptoms
15 of Alzheimer's?

16 A Yes, I do.

17 Q Did you ever observe any of those symptoms that
18 you had observed previously in Alzheimer's patients in Mrs.
19 Dunn?

20 A No. She was very alert.

21 Q During the period of time after Mrs. Dunn's
22 disappearance, did you ever observe any books or literature of
23 any type about Alzheimer's at the Dunn residence?

24 A Yes. About two, three weeks after she
25 disappeared, there was a brochure and it was opened up to
26 Alzheimer's.

27 Q Where did you observe that in the residence?

28 A In the main room that they basically lived out

1 of, they had a table, and it was laying on that next to a
2 sliding door.

3 Q Which room was that?

4 A The pool room. There's a pool table in there.
5 It's kind of where they used to entertain their guests and
6 everything.

7 Q That room is kind of in the corner of the house
8 between the back yard and the driveway that comes off Hillburn;
9 is that correct?

10 A Yes.

11 Q And that was where they spent the majority of
12 their time?

13 A Yes.

14 Q Ms. Montes, were you familiar with a particular
15 jogging type jacket or sweater that Mrs. Dunn owned?

16 A Yes, I was.

17 Q Can you describe that garment?

18 A It was a light powder blue jogging jacket, the
19 more softer type. It zipped up the front. No special designs
20 or anything on it, just solid.

21 Q Did you ever observe her when she was coming
22 back from walks in the morning?

23 A Out of the whole time I worked for them, there
24 was just a couple of times when she was like coming in from
25 outside after I had gotten there. They used to go to the
26 bakery a lot of times in the morning, Smith's Bakery, but
27 normally she was there in the house when I did show up.

28 Q Did you ever observe her wear that garment when

1 she was coming back in from say going to the bakery or
2 anything?

3 A Just when the weather was cooler, just that
4 time.

5 Q Okay. After Mrs. Dunn's disappearance, at some
6 point in time did you make an attempt to locate that particular
7 jogging jacket, the powder blue one you described?

8 A Yeah, it was located in the hall closet in the
9 main entryway. That's where they kept the vacuum at. And I
10 noticed that the jacket was in the hall closet.

11 Q Did she ordinarily keep it there?

12 A Yes.

13 Q And were you looking specifically for that
14 jacket?

15 A After I had heard the description, you know, I
16 was curious, and when I opened up the closet door -- you know,
17 before I never paid attention, and when I opened it and saw it,
18 that kind of baffled me.

19 Q That would have been after she disappeared in
20 July; is that correct?

21 A Yes, that's correct.

22 Q Ms. Montes, did you go to the Dunn residence to
23 clean house on the morning of July 15th of 1992?

24 A Yes, I did.

25 Q And that was a Wednesday?

26 A Yes, that's correct.

27 Q During the morning were you there at
28 approximately 10:30 a.m.?

1 A Yes, I was.

2 Q Okay. And was Mr. Dunn present at about that
3 time?

4 A I'd say no. He pretty much was out. When I
5 would get there in the mornings, he would take off, go looking
6 for her, and so he was in and out quite a bit.

7 Q Okay. Was there a period of time that morning
8 when he was out on the 15th?

9 A Yes.

10 Q And at some point that morning did a phone call
11 come to the house?

12 A Yes, it did.

13 Q And do you recall whether you answered that
14 phone call or did the recorder, if they have a phone recorder,
15 pick it up?

16 A Right offhand I really don't recall.

17 Q Either by answering it or by hearing it on the
18 message machine, did you hear a telephone message?

19 A Yes, it was from a lady named Terri. I'm not
20 sure where she worked at or anything.

21 Q Do you recall the last name?

22 A No, I do not.

23 Q All right.

24 Do you recall previously telling Detective
25 Soliz of the Sheriff's Department it was a lady named Terri
26 Bjorn?

27 A Yes.

28 Q Okay. Now, you don't recall the details, and

1 I'm not going to ask you about the details or contents of that
2 message, but at some point did Mr. Dunn return to the residence
3 after that message had come in?

4 A Yes, he returned maybe 20 minutes after the
5 actual phone call took place.

6 Q Okay. And after he returned to the residence,
7 did he obtain that message either from yourself or from the
8 machine?

9 A Yes, he did obtain the message.

10 Q And did he make a telephone call at that point
11 in time?

12 A Yes, he called her back.

13 Q And what did he do after he had finished making
14 that phone call?

15 A Picked up his checkbook. There was a will
16 laying on top of the bar. He picked that up and said he'd be
17 back in a little bit, and he left.

18 Q Okay. Now, on July 15th when you observed
19 this, did you actually see him physically carrying his
20 checkbook?

21 A Yes, it looked like a checkbook, you know, from
22 the cover and stuff, yeah.

23 Q What looks like an ordinary routine checkbook?

24 A Yeah.

25 Q Okay. The document that you said he was
26 carrying, you stated that was a will. How did you know that
27 particular document was a will?

28 A It was in a plain white envelope, and when I

1 was cleaning off the top of the bar I could see, you know, the
2 testament will thing on the top of it.

3 Q It said "Last Will and Testament"?

4 A Yes.

5 Q And you could actually physically see that
6 yourself while it was on the bar?

7 A Yes, I could.

8 Q Was that the same document that he picked up
9 when he left the house after making that phone call?

10 A Yes, it was.

11 MR. SOMERS: Thank you.

12 I don't have any further questions at this
13 time.

14 THE COURT: Mr. Pohlson?

15 MR. POHLSON: Thank you, Your Honor.

16 Your Honor, could I have four pictures marked
17 as defendant's exhibits next in order?

18

19

CROSS-EXAMINATION

20 BY MR. POHLSON:

21 Q Ms. Montes, how long did you work for them,
22 total time?

23 A Approximately nine months.

24 Q And you ended working for them July 21st, 1992?

25 A Yes, that's correct, the 21st.

26 Q Did you always go there early in the morning?

27 A Normally I was there a.m. hours. Some mornings
28 I wouldn't get there until 8:30, but normal days it was usually

1 6:00 in the morning.

2 Q Were they usually up when you got there?

3 A Oh, yes. They were both up.

4 Q How late would you stay in the day?

5 A Anywhere from 3:30 in the afternoon to 4:30.

6 Q When you'd be there between 3:30 and 4:30, did
7 it appear that the Dunns were pretty much wrapping up their day
8 at about that time?

9 A Yes, they were.

10 Q You were aware that they had a habit of going
11 to bed fairly early in the evening?

12 A Yes.

13 Q You smile because --

14 A And getting up real early.

15 Q You were also aware that Mrs. Dunn would
16 typically go walking in the early hours of the morning?

17 A Correct.

18 Q Now, you indicated that she typically wore her
19 glasses; is that correct?

20 A Yes, she always had her glasses on.

21 Q That's when she was walking around the house
22 and things like that?

23 A Right.

24 Q Did you ever see her when she'd come back from
25 walking?

26 A The only time I saw her come, like I said,
27 there was just a couple of times out of the nine months that
28 she was outside somewhere when I was actually in the house and

1 then she would walk in. I don't know if she was out on the
2 walk. Normally her walks, she was completed with them by the
3 time I got there.

4 Q I assume then you don't remember whether she
5 was wearing her glasses on those two particular times.

6 A Oh, she always had her glasses on. Always.

7 Q Okay. Well, I'm asking you if you remember
8 specifically either one of those times that you noticed that
9 she had her glasses on.

10 A Yes. Are you talking about when I was in the
11 house and she came back? Yes, she had her glasses on.

12 Q What were the dates of those?

13 A The dates I don't remember. Like I said, it
14 was just within that nine-month period, but she always wore her
15 glasses. Every time I saw her, you know, get there in the
16 morning, she always had them on.

17 Q Basically what you're telling us is that's just
18 generally what she did, she wore glasses.

19 A Yeah, right.

20 Q I assume there were some times you saw her
21 without her glasses on, right?

22 A No. Actually, I never saw her without her
23 glasses on.

24 Q She had more than one pair of glasses, didn't
25 she?

26 A Yes.

27 Q In fact, she had quite a few pairs of glasses,
28 didn't she?

1 A As far as I know, she only had two.

2 Q You just saw those two around the house?

3 A There was the pair that she wore, and then she
4 had a spare pair that she had in their bedroom.

5 Q What about Pat Dunn; do you know how many pairs
6 of glasses he had?

7 A I have no idea. He always wears his glasses.
8 I have always seen him with his on, too.

9 Q You saw more than one pair of glasses around
10 the house for him, too, didn't you?

11 A I never really paid attention. I imagine he's
12 got more than one pair. Most people do.

13 Q Okay, but you don't remember picking those up
14 or anything like that?

15 A No.

16 Q Now, at the point -- I guess it's the last
17 couple of months they cut you down to one day --

18 A Yes.

19 Q -- one day a week; is that right?

20 A Uh-huh.

21 Q Is that about the same point they were starting
22 to work on the Morning Star project a lot?

23 A Yeah.

24 Q You were aware of that Morning Star project,
25 right?

26 A Oh, yes. You're talking about the land
27 development, yeah.

28 Q And so a lot of times while they were working

1 that Morning Star project, the two of them would go off
2 together, correct?

3 A Oh, yeah, it was the normal thing for them.

4 Q So they would typically not be there in the
5 morning when you were working in the mornings during that
6 period of time, right?

7 A The way it worked is they would both be there
8 in the morning when I'd get there, and I'd start getting my
9 things together, and they might be there ten, twenty minutes,
10 and they both would take a ride out to the land development
11 area, be gone anywhere from half an hour to an hour and both
12 return and then go about their business.

13 Q During the nine months that you worked for
14 them, you were able to observe the two of them interacting
15 between each other, correct?

16 A Yes.

17 Q And would it be fair to say that your opinion
18 is that they really got along very well?

19 A Yes, normal. They seemed to have a good
20 relationship, got along, cooked dinner together.

21 Q But it seemed like it got a little more intense
22 during the period of time they were working on the Morning Star
23 project, right?

24 A Yes, just the last couple of weeks I worked I
25 could notice there was some tension in there.

26 Q Had you heard anything about the Morning Star
27 project getting turned down by the City Council? Do you
28 remember anything about that?

1 A No.

2 Q You were interviewed by both Detective Soliz
3 and the defense investigator David Sandberg, right?

4 A Yes.

5 Q Do you remember making a comment to Mr.
6 Sandberg that you thought this was a great couple?

7 A Yeah, I thought they had a good relationship to
8 be able to work together and, you know, day in, day out,
9 evening time, mornings, they're both drinking coffee, she'd
10 read the paper to him, they worked good together. And in the
11 evenings, like I said, you know, they seemed to get along real
12 good.

13 Q Do you also remember them working on a project
14 where they were going to put up a movie theater?

15 A I didn't know nothing about that.

16 Q Okay.

17 MR. POHLSON: Your Honor, I'm go to show Mr.
18 Somers four pictures that I'm going to show her.

19 May I approach, Your Honor?

20 THE COURT: Yes.

21 MR. POHLSON: Thank you.

22 Q (By Mr. Pohlson) Ms. Montes, let me show you
23 four photographs that the clerk has marked. Starting with C
24 for identification, I'm going to show you them all and then
25 I'll ask you about them all. D for identification, E for
26 identification and F for identification.

27 First pointing to C, what is that a picture of?

28 A A car.

1 Q Do you recognize the car?

2 A Yes, I do.

3 Q Can you describe for the jury what that car is,
4 whose car that is?

5 A It's the Dunns' car. I'm not sure whose
6 initially before they got married it was. That car usually
7 sat. I don't think they really used it that much.

8 Q That's the antique Cadillac, right?

9 A Yeah. Normally it had a cover on it. I can't
10 remember what color, but they --

11 Q Also pictured in this photograph -- is that the
12 interior of the carport?

13 A Yes.

14 Q Right. there by the driveway?

15 A Right.

16 Q And now showing you D, do you recognize what
17 that's a photo of?

18 A Yes, it's a photo of this car right here.

19 Q You're pointing to F. D and F go together,
20 right?

21 A Right.

22 Q Okay. D is a picture of F with a cover on it;
23 is that right?

24 A Yes.

25 Q And did that car usually sit in their driveway
26 with that cover on it?

27 A No, it was used a couple of times, from what I
28 recall. It was used very rarely. Most of the time the Bronco

1 was used.

2 Q For the most part this car sat in the driveway
3 with a cover on it, correct?

4 A Well, the cover was on it in the beginning, but
5 then the cover was taken off and it just sat out in the open.

6 Q But it would sit there in the driveway?

7 A Uh-huh.

8 Q The white Cordova?

9 A Yes.

10 Q And showing you what's marked as E, that's the
11 Chevy Blazer that they typically drove, right?

12 A Right.

13 Q And those were the cars that they had the end
14 of June, beginning of July, 1992, correct?

15 A Correct.

16 Q You didn't ever see them owning a Ford Tempo,
17 did you?

18 A No.

19 Q Did you ever see them owning a full-sized white
20 truck?

21 A I have seen a white truck parked alongside of
22 the house. I don't know if it was a, you know, somebody that
23 worked for them or what, but I have seen a white truck.

24 Q Did you ever know the Dunns to own a full-sized
25 white truck?

26 A Not to my knowledge.

27 MR. POHLSON: Okay. Thanks.

28 I don't have anything further, Your Honor.

1 THE COURT: Anything further, Mr. Somers?

2 MR. SOMERS: No, Your Honor.

3 THE COURT: You may step down. Thank you.

4 MR. SOMERS: The next witness for the People
5 will be Kate Rosenlieb, Your Honor.

6 Ms. Montes wants to know if she can stay and
7 listen for a few minutes.

8 MR. POHLSON: That may be a problem. We also
9 have her under subpoena. There may be some other areas that we
10 want to question her on.

11 MR. SOMERS: She's also subject to recall.

12 THE COURT: You are subject to recall, but you
13 can leave now.

14 THE WITNESS: Okay.

15 MR. POHLSON: Your Honor, can we approach the
16 bench real briefly?

17 (Whereupon, a conference between court
18 and counsel was held)

19 THE COURT: Proceed.

20

21 KATHERINE DIANE ROSENLIEB,

22 Called as a witness, being first duly sworn
23 by the Clerk, testified upon her oath as follows:

24

25 DIRECT EXAMINATION

26 BY MR. SOMERS:

27 Q Ma'am, could you state your full name and spell
28 your last name for the record?

Appendix D:

The People v. Patrick Dunn

Detective Banducci's Supplemental Crime Report Case #KC91-06787

Crime Report Date: 3/28/91
Suspect: Jerry Lee Coble
Victim: South Valley Pump Company
Suspect Interview Date: 4/4/91

ATT. (3)

KERN COUNTY SHERIFF'S DEPARTMENT

SUPPLEMENTAL REPORT

CASE NUMBER

KC91-06787

DATE REPORTED

3-28-91

DATE THIS REPORT

4-5-91/0800 HOURS

CRIME

PC 487

VICTIM: LAST, FIRST, MIDDLE

SOUTH VALLEY PUMP COMPANY

PLACE OF OCCURRENCE

816 TAFT HIGHWAY

SUSPECT:

COBLE, JERRY LEE
WMA, DOB (2-23-57)
5'6", 145, BRO. BLU
SS#: 563-15-3059
CDL#: C5207279

BKG #: 129389

CONTACT #1:

JACKSON, DENISE VICTORIA
WFA, DOB (1-18-55)
509 Oleander Apt. B
323-6953
CDL #: N3372742

CONTACT #2:

GAY, MARK
K.C.S.D. Deputy #214

VEHICLE:

1982 BLUE EL CAMINO
CA. LIC. #: 4D80212

EVIDENCE:

ITEM #1: One California Driver's License (=C5207279), in the name of
JERRY LEE COBLE.

CHAIN OF EVIDENCE:

I seized the driver's license from JERRY LEE COBLE and kept it in my possession until it was booked into the Kern County Sheriff's Department Property Room.

RELATED CASE:

Bakersfield Police Department, 91-010879. Refer to attached copy (victim, Kern Electric Distributors).

DETAILS:

On 4-4-91 at approximately 1000 hours, I received a call from the secretary of South Valley Pump Company. I was told that JIM CURTIS was driving on the road with a radio in his vehicle. JIM CURTIS had advised that JERRY COBLE was at TERRY COBLE's house on Stine Road, and that TERRY COBLE was driving a dark blue El Camino.

Detective STANTON said that he recalled seeing that El Camino parked at JERRY COBLE's address of record, 509 Oleander, while he (STANTON) was at that location with Parole Officer JERRY SHIPMAN on 3-29-91.

I called the parole office and told JERRY SHIPMAN that JERRY COBLE was currently at TERRY COBLE's house. SHIPMAN told me that he wanted JERRY COBLE arrested for violation of parole, but that he did not have any agents available to respond.

I called the Communications Center and was told that all the patrol deputies were not available to respond. I told the dispatcher that when a unit became available to start them to 7400 Stine Road and that I would be enroute to that location.

I left enroute to that location with Detective TERRY STANTON. Detective JEFF NICCOLI left enroute to that location in another vehicle. While I was Southbound on Freeway 99, at about Ming Avenue, I heard Deputy MARK GAY advise the dispatcher that he was following the suspect in suspect vehicle Eastbound on Panama Lane from Stine. I then heard Deputy MARK GAY advise the dispatcher that JERRY COBLE had run from the vehicle at the corner of Panama Lane and Wible Road. Deputy GAY pursued JERRY COBLE to the housing area on the North side of the shopping center located at the North East corner of Panama Lane and Wible Road.

I drove to the location of the vehicle was parked; at the shopping center on Panama and Wible. I spoke with the vehicle owner and passenger in the vehicle, DENISE VICTORIA JACKSON. JACKSON said that she is the wife of PERRY COBLE who is the brother of JERRY COBLE. JACKSON said that JERRY had called her in the morning and asked for a ride, to run some errands. JACKSON said that she had run errands with JERRY and that they had been looking for BOBBIE COBLE.

JACKSON said that they went to BOBBIE and TERRY's house on Stine Road and that JERRY argued with little TERRY. JACKSON said the argument was over who should take the blame for the trouble that they were in.

JACKSON said that when JERRY saw the Sheriff's car behind them, he told her, "I'm bailing". He then jumped out of the car, while the car was still moving.

JACKSON said that TERRY, BOBBY and the COBLE family would want JERRY to do the time because TERRY has a family. JACKSON eventually told me that JERRY had a \$400.00 a day heroin habit.

I asked JACKSON if JERRY was living with her on Oleander. JACKSON said he was not. I told JACKSON that JERRY had advised State Parole that he was living at the same address that she lives. JACKSON said that on some occasions JERRY would stay with her.

After about 20 minutes, JERRY COBLE was pursued on foot by Detectives, LARRY COOK and JEFF NICCOLI in the area of 6200 Derrick. 6200 Derick is approximately two the three blocks from the location where the El Camino was parked.

I instructed Deputy GAY to transport JERRY COBLE to 1350 Norris Road for an interview.

On 4-4-91 at approximately 1200 hours, I talked with JERRY COBLE in an interview room at 1350 Norris Road. With me at that time was Detective STANTON. JERRY appeared to be short winded from the foot pursuit. He asked for a drink of water. I left the interview room to get a drink of water for JERRY. While I was gone Detective STANTON sat with JERRY COBLE in the room. When I returned, Detective STANTON told me that while they were waiting for me, JERRY COBLE made a spontaneous statement, "I didn't fucking do it. This is bullshit. I don't want to go back. I'll do whatever it takes".

At approximately 1215 hours, I asked JERRY COBLE if he had heard his rights before. He said yes. By that time, State Parole Officer LUANNE FISHER had arrived and was sitting in the interview room with us.

I read JERRY Sheriff's Form 710, I then read waiver question #1, asking JERRY if he understood his rights. JERRY said, "yea". I then read waiver question #2, and JERRY answered, "yea".

I asked JERRY where he was last Friday (3-29-91) while Sheriff's Detectives and Parole Agents were outside his mother's house. JERRY said he was inside the house. I asked JERRY why he did not come out. JERRY said he was afraid they would take him to jail.

I asked JERRY if he was using any drugs. JERRY said the last time he used was yesterday. I asked him what kind. He said, "heroin". I asked him what time yesterday. He said at about 3:00 p.m.

I asked JERRY how much heroin he used yesterday at 3:00 p.m.. He said, "about one half of a gram". I asked JERRY when he would have needed heroin again. He said, "at about 6:00 a.m. today". I asked JERRY if he had got his fix yet today. JERRY said that he had not and that he was going to get some more heroin when the patrol deputy stopped him.

I asked JERRY what was going on with South Valley Pump. JERRY said that he wanted to talk with me alone. I told JERRY that he could talk to me along with Parole Agent FISHER and Detective NICCOLI (NICCOLI had replaced STANTON in the interview room because NICCOLI had been with me on Monday 4-1-91, when we identified the stolen property at the scrap metal yard).

JERRY told us that he had talked with NORMAN every day since last Friday. JERRY said that NORMAN had told him that the loss keeps going up every time he looks. JERRY said that his dad talked to NORMAN about paying NORMAN back. JERRY said that everybody takes the scrap and that some of it was scrap from Mastco (Mastco was the previous name of South Valley Pump). JERRY said that everything that he took was old Mastco property.

JERRY said that there were old scraps that could not be machined and were of no value. JERRY said that he has not had any keys since about one month ago. JERRY said that he had left the keys in the company truck.

JERRY said the MIKE (RAMIREZ) told him (JERRY) that the company does not do anything with the scrap. JERRY said that other employees strip the scrap as it comes out of the ground. JERRY said that he only took items which had been authorized by either MIKE or UTAH.

JERRY said that he would take scraps of wire to his mom and dad's house or strip it on the job. JERRY said that he had never taken any wire to his brother's house and that his brother and nephew (TERRY JR.) never helped him strip wire.

JERRY said, "what they did, they did on their own". JERRY said he would call for the best price for a particular day when he was selling. JERRY said he did not give anything to his nephew (TERRY JR.) to scrap for him. JERRY said that he would not do that to his nephew.

JERRY said that he had been to the scrap metal recyclers one or two times during the month of March.

I then placed on the table the one page copy of "invoices located for March of 1991". I pointed out to JERRY that he had been to recyclers on at least five occasions during the month of March. JERRY said that the whole case was a bunch of "bullshit", and that NORMAN knew it. JERRY insisted that he only took old junk items. I pointed out to JERRY that some of the items that we had located at the recyclers were brand new bushings and brand new bearings.

I told him that the total amount of brass sold by him, his brother, and TERRY JR., was over two tons. JERRY said that he could tell me all about it, but first he wanted a deal.

I asked JERRY what he meant by a deal. JERRY said that he wanted to talk to a dope cop and that he could "do" a dope dealer that does not deal in anything less than quarters. I told JERRY that I was not a dope cop and that I was investigating the theft of brass and copper from South Valley Pump Company.

JERRY told me that I could get somebody in the office with us now so that he could make a deal. JERRY said that he could "cop" to the whole thing, but first he wanted a promise. I told JERRY that I was not talking with him to make a promise of a deal and that I was here to investigate the incriminating circumstances of his employment at South Valley Pump, in the sales of copper and brass.

I asked JERRY what he was doing at TERRY's house the day before TERRY and TERRY JR. were arrested. He said to get money from "little TERRY". I asked JERRY what he did with the money. He said he and TERRY bought drugs. (Note: On Thursday, 3-28-91, TERRY JR. sold over 650 pounds of brass.) I asked JERRY if he gave TERRY JR. the brass to sell. JERRY said "no". JERRY said any brass sold by TERRY and TERRY JR. was done so "on their own". I asked JERRY how he knew to go to TERRY's house to get the money on the day TERRY JR. sold brass. JERRY insisted he was not involved in brass thefts.

JERRY said "well what do you want, you've already got a case without me copping to it". I told JERRY that what I wanted was for him to act like a grown up, to tell the truth, and to accept responsibility for his actions. JERRY said that it was all junk and that he never sold anything new.

I then showed JERRY the invoice from Kern Electric Distributors which showed purchases of wire which are unaccounted for. Included in those purchases are 150 feet of 500 MCM. I pointed out to JERRY that he had ordered the wire and that he had signed for the wire when he picked it up. I told JERRY that I knew that he did not have a job going at South Valley Pump which required the use of any 500 MCM wire. I also told JERRY that I knew that if he was stripping wire, the higher wire content was in the 500. I told JERRY that it was obvious from the sales on 3-26-91, that all the wire had been sold by TERRY JR..

I explained to JERRY that the wire purchases from Kern Electric Distributor matched with sales of #1 copper wire by him (JERRY), TERRY and TERRY JR.. I told JERRY that I had the other purchase orders and other pick up shipment tickets from Kern Electric Distributors and I had invoices for all three of them selling copper and brass for the month. JERRY said, "I've been straight with you, be straight with me, what kind of deal"?

I told JERRY that he was not being straight with me because he had denied taking any new materials, being brass or copper, from his employer. I told JERRY that I suspected he was lying, and that he had made those purchases. I also told JERRY, that I was being straight with him and that the only promise I could make to him was that I would tell the truth in my reports and accurately reflect any information he provided to me that would assist in the recovery of the outstanding stolen property.

I then asked JERRY if he was willing to tell me the truth. JERRY said he could tell me the truth about the whole thing, but first he wanted a deal. Every time I asked JERRY about a specific item of inventory or loss, JERRY would again ask about making a deal.

After awhile it appeared evident to me that JERRY was not willing to admit to his participation in the thefts until I was willing to promise him some immunity for prosecution. I explained to him that was not possible and concluded the interview. JERRY was transported by Patrol Deputy ONSUM to the Kern County Jail, where he was to be booked for violation of PC 487.

Parole Officer FISHER also responded to the jail to sign a hold for violation of parole. Upon arrival at the jail, JERRY told jail staff that he was an epileptic on phenobarbital and that he was suffering withdrawals of heroin addiction. JERRY was transported to Kern Medical Center.

I had seized JERRY COBLE's drivers license while at 1350 Norris Road. I kept possession of the drivers license until it was booked into the Kern County Sheriff's Department Property Room.

<u>REPORTING OFFICER</u>	<u>TYPED BY</u>	<u>DATE/TIME TYPED</u>	<u>REVIEWED BY</u>	<u>DATE</u>
Senior Deputy E. Banducci #143	Byrd	4-9-91/0727 hours	<i>m</i>	4-11-91

