

Ray Milton Krone: Once Bitten, Twice Convicted¹

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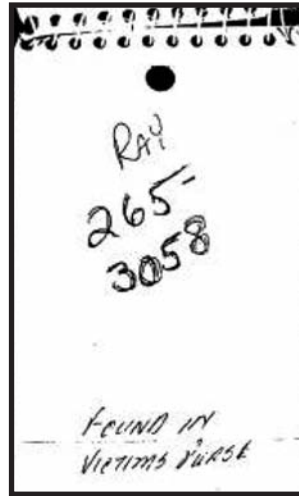
Kim Ancona was pretty, slender and a good-humoured barmaid. Most of the male divorcees and drifters who enjoyed the cold beer and dim lighting offered by the CBS Lounge in Phoenix, Arizona, found Kim to be a very attractive woman. She was also the mother of three young children.² So, on the morning of December 29, 1991, when the lounge's owner, Hank Arrendondo, opened the men's restroom door to find Kim brutally raped and murdered, Kim's family and the surrounding community were left deeply shaken.³

CSI: Phoenix

Kim had been stabbed six times, once in the back and five times in the neck.⁴ The many lacerations and abrasions that covered her body suggested that she had fought hard for her life. But one injury was prominent in its depravity – a bite-mark on the nipple area of her left breast.⁵

The crime scene investigation, supervised by Detective Chuck Gregory and Detective Dennis Olsen, was meticulous. Investigators took photographs, and gathered fingerprints, shoeprints, fluids, hairs, glasses and bottles from the bar area, along with Kim's clothes and handbag. The murder weapon – a knife taken from the kitchen – was found in the men's restroom trash-can beneath a bundle of paper towels.⁶ The lack of ingenuity and wealth of evidence left behind suggested that the attack had not been planned.

When police interviewed Kim's colleagues, friends and family, one name kept cropping up – Ray Krone. Kate Koester, Kim's colleague, informed detectives that Kim had told her that Ray was going to help Kim close the bar that night.⁷ Other witnesses suggested that Ray and Kim might be romantically involved. However, innuendos were not enough; the police required hard evidence linking Kim Ancona to Ray Krone. When Krone's phone number was found in Kim's address book, the picture came into sharp focus.⁸



The "Snaggle-Tooth Killer"

Apart from his undeniable connection to the victim, Ray Krone was not an obvious suspect. He was working for the post office and had no history of crime or violence. He had graduated in the top 15 percent of his high school class and then served in the Air Force before being honorably discharged.⁹

One of the first things Detective Gregory said to Krone was something like, "[y]our girlfriend is dead." Krone insisted that Kim was not his girlfriend, and cooperated willingly with the detective's investigation by allowing officers to check his body for signs of an altercation. They found nothing. Krone told Detective Gregory that he had been home all night the evening of the murder.¹⁰ This was confirmed by Krone's housemate, Steve Junkin.¹¹ Noticing that Krone's teeth were irregular, Detective Gregory asked him to bite into a Styrofoam plate. Krone did so.¹²

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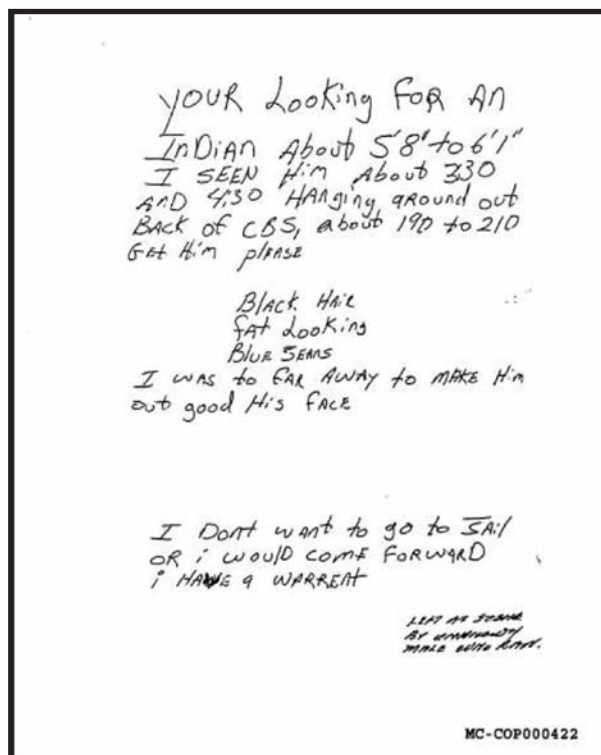
Police searched Krone's apartment and car. Underwear taken from his dryer appeared to have traces of blood on it, and a few beads from the CBS Lounge's shuffleboard game were also discovered in his car.¹³ Junkin later conceded that Krone could have left the house and returned without him noticing. However, Junkin protested that this was unlikely, because Krone's Corvette, which was parked immediately outside Junkin's bedroom window, made a loud rumble on starting. Most damning of all, the state medical examiner declared that Ray's bite impression was consistent with the bite-mark on the victim's left breast.¹⁴ Two days after Kim Ancona's body was discovered, Ray Krone was arrested and

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charged with her murder, as well as rape and kidnapping. The local press dubbed Krone, “the snaggletooth killer.”¹⁵

A Mysterious Note

Unbeknownst to the imprisoned Krone, there were clues pointing to another possible suspect. Just before midnight on December 29, 1991, the evening after the murder, a hooded man approached the CBS Lounge which was being patrolled by Phoenix police officers. The hooded man attracted the attention of an officer, but as the officer approached, he ran from the scene, dropping a blank envelope on to the sidewalk.¹⁶ A note inside the envelope read:



Police enquiries revealed that there had been several prior altercations at the CBS Lounge involving American Indian males. One witness claimed that he had seen an Indian hanging around by the backdoor of the CBS Lounge after closing time on December 28, 1991. Another witness alleged that Kim Ancona had argued with an Indian on that same night because he was drunk and she had refused to serve him. It appears that the police saw no reason to pursue these promising leads.¹⁷

Early on, “target fixation” permeated the investigation. The police focused their efforts on connecting Ray Krone to the murder, and ignored evidence inconsistent with their theory that Krone was guilty. Target fixation helps explain the decisions of investigators to not pursue significant leads which

presented alternative suspects. It is apparent that, once the police had settled on Krone as their primary (if not sole) suspect, the path of the investigation would be dictated by this tunnel vision.

Trial One

Ray Krone’s capital murder trial started on July 27, 1992. His court-appointed defence attorney, Jeffrey Jones, was a hard-working lawyer, but had limited funds. Opposing Jones, and seeking to kill his client, was Noel Levy, a zealous prosecutor who had the virtually limitless resources of the state at his disposal.¹⁸ The prosecution’s case centered on three main topics: the relationship between Ray Krone and Kim Ancona; various scientific findings regarding DNA and hairs collected from Ancona’s body; and the bite-mark left by the killer on Ancona’s left breast.

With regard to the Krone/Ancona relationship, a witness testified that Krone was going to help Kim close the bar on the night of her death.¹⁹ Krone denied that he ever had such plans or that he had seen Ancona the night she was murdered. However, it became apparent that Krone had socialized with Ancona in the past.²⁰ Krone acknowledged that he had known Ancona casually and that he had driven her to a Christmas party a week before her murder.²¹

According to the state, Krone had initially denied all acquaintance with Ancona, only to later admit that he had socialized with her outside of the CBS Lounge.²² Krone’s inconsistent statements, according to the prosecution, indicated that he was guilty. Krone offered a more mundane, and far less sinister, explanation for the inconsistencies. Krone explained that, when asked, he had denied that he had “been with” Ancona. Krone only meant to suggest that he was not Kim Ancona’s boyfriend, not that he had never been in her company.²³

DNA tests were not conclusive enough to include or exclude Krone. Seventeen single hairs had been obtained from Ancona’s body, and the court heard evidence that those hairs were consistent with both Krone and Ancona’s head and pubic hair.²⁴ All of the blood at the crime scene matched Ancona’s blood type.²⁵ The state informed the court that there was no single patch of blood at the crime scene that could have been uniquely identified. There were no fingerprints presented to include or exclude Krone.²⁶

The main premise of the state’s case was that Krone had left the bite-mark on Ancona’s left breast. To prove this, prosecutor Levy called two expert witnesses, medical examiner Dr. John Piakis, and Nevada state senator and celebrated forensic

odontologist, Dr. Raymond Rawson.²⁷ Dr. Piakis testified that Krone had made the bite-mark.²⁸ The centrepiece of the state's evidence, however, was a videotape produced by Dr. Rawson entitled, "Bite-mark Evidence Ray Krone." Dr. Rawson's videotape, which the jury undeniably found to be compelling,²⁹ used overlapping images to demonstrate that Ray Krone's teeth matched the bite-marks found on Kim Ancona's breast.³⁰

The defence denied that Krone had made the bite-mark. Crucially, Dr. Rawson's videotape was not made available for the defence to view until the eve of the trial. Defence attorney Jones moved to exclude the videotape on the ground that its late disclosure violated discovery procedures. The trial court denied the motion. Subsequently, Jones requested a one-month continuance so that he could uncover evidence to rebut the video and impeach its creator. The trial court also denied this motion.³¹

The author of the mysterious note left outside the CBS Lounge on the day of the murder was identified by police in April 1992. Robert Fredrickson lived in an apartment adjacent to the CBS Lounge. During Krone's trial, Fredrickson testified that he saw an "Indian" standing outside the back of the CBS Lounge at about 3:30 a.m. on December 29, 1991.³²

Verdict and Sentence

Krone was convicted of first degree murder and kidnapping, but was acquitted of sexual assault.³³ During the sentencing phase of the trial, the state put forward evidence in aggravation to persuade the jury to return a death sentence. Conversely, the defence argued that mitigating factors should persuade the jury to spare Krone's life. The jury decided that Kim Ancona's murder had been committed in an especially "heinous, cruel or depraved manner," and that Krone's lack of criminal record and his honorable discharge from the United States Air Force did not warrant leniency. In the words of trial Judge Jeffrey Hotham, "[the murder] was so shocking and repugnant that it stands out from the norm of first degree murders." In large part the bite-mark compelled this conclusion: to viciously bite a woman's breast after violently raping and stabbing her could have only been the work of a depraved mind. This depravity exposed Krone to the death penalty, which the jury dutifully imposed.³⁴ On December 3, 1992, Ray Krone was transported to death row.

The state put forward evidence in aggravation to persuade the jury to return a death sentence.

For years, the media extolled the Krone case as the perfect prosecution. A reliable, secure conviction had been obtained through effective investigative work by police and careful analysis by scientists. Unfortunately, numerous investigative errors and the fatally misleading use of junk science had gone unnoticed.

A Second Chance

Ray Krone's family always believed in his innocence. In fact, Krone's mother and step-father re-mortgaged their home to pay for his legal bills. In 1995, Jim Rix first heard he had a distant cousin on death row. He was immediately intrigued and began exchanging letters with Krone. After much research into bite-mark evidence, Rix made acquaintance with bite-mark expert Dr. Homer Campbell. When Dr. Campbell reviewed images of the bite-mark and Krone's dentition he exclaimed, "[t]his is bullshit!"³⁵ Rix came to be an integral member of Krone's defence team.³⁶

However deeply felt, a family's conviction is not enough to overturn a criminal conviction. Failures in the criminal justice system must be remedied through pre-existing mechanisms, such as direct appeal, state post-conviction, federal habeas corpus or clemency proceedings.³⁷ Accordingly, in June 1995, Krone's direct appeal was considered by the Arizona Supreme Court. Krone's appellate lawyers raised three issues, including the failure of the state to turn over to the defence Dr. Rawson's videotape until just before the trial began. The Arizona Supreme Court reversed Krone's conviction solely because of the late disclosure of Dr. Rawson's videotape. The court found that the last minute disclosure had prejudiced the defence because the videotape was "the singular

most important evidence to the jury." Krone's case was remanded for retrial.³⁸

Trial Two

In preparation for his second trial, Ray Krone engaged the services of private lawyer Chris Plourd, whose comprehensive investigation uncovered information that gave real hope that Krone would be exonerated.³⁹ Noel Levy agreed to prosecute again on behalf of the state.⁴⁰

The second trial took place in early 1996.⁴¹ The prosecution's case continued to focus on the bite-mark. However, this time the defence produced what

it thought to be more than enough exculpatory evidence.⁴²

The state suggested that bite-marks were as unique as fingerprints.⁴³ Once again, Dr. Piakis and Dr. Rawson testified in support of this theory.⁴⁴ This time, the defence called four nationally-recognised expert witnesses to rebut the testimony of Piakis and Rawson.

Three defence experts testified that it was impossible for the bite-mark to belong to Krone.⁴⁵

Collectively, the four defence experts suggested that odontology is as much an art as it is a science. The defence experts disputed the absolutist findings of the state's experts. They further pointed out that Dr. Piakis should not have testified at the first trial because he was not a certified forensic odontologist at the time. Moreover, they clarified Dr. Piakis' use of the term, "consistent with" which, according to the American Board of Forensic Odontology, means "could be . . . maybe . . . can't be ruled out" but is not at all suggestive that there is a definite match.⁴⁶

The defence's main expert witness, Dr. Steven Sperber, testified that he had engaged in a telephone conversation with Dr. Piakis (which was corroborated by telephone records) about the Krone case some six weeks after Ancona's murder. Dr. Sperber suggested that Dr. Piakis considered him as a mentor, and thus called Dr. Sperber to ask his opinion about whether Krone's dentition matched the bite-mark. Dr. Sperber stated that he told Dr. Piakis that there was "no match." Dr. Sperber's opinion never reached the court until 1996.⁴⁷

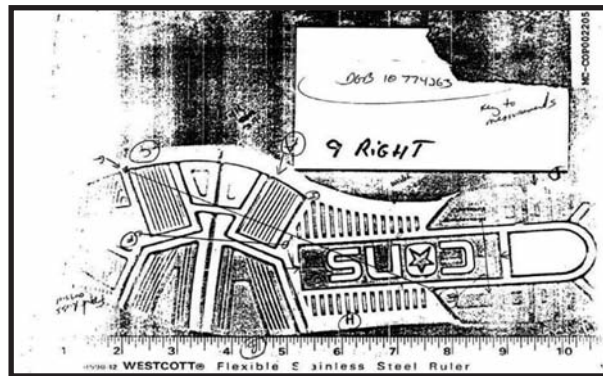
Furthermore, defence counsel Plourd realised that images in Dr. Rawson's videotape had been manipulated so as to make Krone's teeth match the bite-mark. Plourd demonstrated that the distance between Krone's two canines was too short to match the bite-mark on Ancona's breast; nonetheless, Dr. Rawson's trial videotape displayed an exact match. Dr. Rawson anticipated Plourd's cross-examination, and produced a second videotape for the second trial.⁴⁸

One aspect of the trace evidence pertained to the shoe impressions left at the crime scene. The footprints were unusually clear because Ancona had mopped the floors only moments before her killer appeared.⁴⁹ Photographs indicated that Converse shoe prints, corresponding to a U.S. size 10 or 10½, had been left in the kitchen (where the murder weapon was taken from) and in the men's restroom by Ancona's body.⁵⁰

The defence argued that not only had Krone never owned any Converse shoes, but also the shoe did not fit. All of the shoes seized during the initial search of Krone's house were either U.S. size 11 or 11½. However, the state produced police records that indicated that Krone had a pair of LA Gear shoes that were a size 10½.⁵¹ These records assisted in tying Krone to the crime scene. Krone later contended, in civil proceedings,

that detectives had altered their records so as to link him to the shoe prints left at the crime scene.⁵² Arguably, this would have been an action taken in accordance with the state's fixation on Krone.

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DNA testing established that the blood found on the inside pocket flap of Ancona's jeans belonged to someone with a genotype different from both Krone and Ancona.⁵³ Research indicated that the reported genotype was very prominent in the American Indian population.⁵⁴ Also, a poly marker test revealed a genetic profile not belonging to Krone or Ancona at the crime scene.⁵⁵

Crucially, hair evidence pointed away from Krone and toward another suspect in the case. Three hairs found on Ancona's body were shown to be Mongoloid.⁵⁶ This finding highlighted another instance of professional error. First of all, it meant that the testimony of state criminologist Scott Piette, during the first trial, was severely flawed.⁵⁷ Second, it revealed that Piette had failed to test all 17 hairs found on Ancona's body. Failing to test any physical evidence is a serious matter, especially when the state is seeking to take the defendant's life.

The second trial highlighted an abundance of scientific evidence that was available at the time of the first trial but not used. Of course, there always exists the possibility that incompetence can occur within crime laboratories rendering their scientific conclusions invalid. Far worse than worthless, erroneous scientific conclusions are demonstrably dangerous, as false positives tending to inculcate a

defendant are given special credence by unsuspecting jurors who may believe that science is truth. The risk of wrongful convictions based on junk science is compounded by the fact that very few crime laboratories operate independent of the state. In fact, the National Academy of Sciences recently recommended that Congress create an independent National Institute of Forensic Science to formulate national standards for various forensic disciplines and regulate professional training and accreditation.⁵⁸

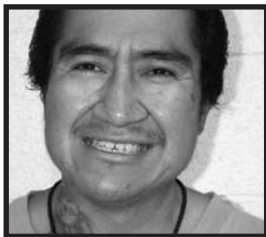
Verdict Two

Despite substantial evidence to the contrary, the jury once again returned a guilty verdict. However, because the trial judge had lingering doubts as to Krone's guilt, he sentenced Krone to a life sentence. Subsequently, in his Special Verdict, Judge McDougall stated:

*It appears frightening to think that Mr. Krone did this because it appears completely out of character. It is just as frightening to think that he did not do it and has been convicted on the basis of circumstantial evidence – one piece of DNA evidence potentially consistent with his DNA and the similarity of three of the marks on the victim's breast to three of Mr. Krone's teeth. . . .*⁵⁹

The Real Truth

In 2000, Arizona attorney Alan Simpson joined Krone's defence team. Simpson filed a motion on March 18, 2001 to have biological evidence present on Ancona's bra, jeans and tank top tested. Two days short of a year later, Simpson received the results. The crime lab reported that none of the items matched Krone's DNA; however, several items contained DNA evidence that matched a person listed on the FBI database.⁶⁰



That person was Kenneth Phillips. At the time the DNA testing implicated him in Kim Ancona's murder, Phillips was in prison serving time for sexually assaulting a 7-year-old girl. At the time of Ancona's murder, Phillips was on probation for breaking into a woman's apartment and assaulting her. He lived just 600 yards from the CBS Lounge. Three weeks after Kim Ancona's murder, Phillips was arrested for

the offence on the 7-year-old girl.⁶¹

Krone's legal team interviewed Phillips at the Arizona prison where he was incarcerated. Within a matter of hours, they had elicited from Phillips what appeared to be admissions of guilt. Phillips stated that he had awakened on the morning of December 29, 1991 with blood on his jeans and shoes. He also revealed that on that same morning, after seeing the news reports about Ancona's murder, he remembered hoping that he had not committed the crime.⁶²

Based on the crime lab results and Phillips's admissions, Ray Krone walked free from prison on April 8, 2002. Shortly after Krone was officially exonerated, the speckles of blood found on Ancona's jeans and panties were determined to match Phillips' DNA.⁶³ Fingerprints found on the interior front door of the CBS Lounge and on the condom machine in the men's restroom were also found to be

Phillips'.⁶⁴ Dr. Piakis's examination of Phillips' "normal" dentition revealed a better match to the notorious bite-mark. The "snaggletooth" killer was a myth. Phillips was indicted for first degree murder and sexual assault, pleading guilty to both in 2006. He was sentenced to life for murder and 28 years for sexual assault.



After more than ten years in prison, including four on death row awaiting execution, Ray Krone, age 45, returned home to his family and friends with the immense task of having to rebuild his life. Since his release, Krone has worked to use his

experiences in a number of positive ways. He is currently one of the most compelling advocates for the abolition of the death penalty in America – travelling nationally and internationally telling his story. In late 2007, Krone joined a panel session at the UN headquarters, hosted by Amnesty International, to remind the world how anyone can fall victim to wrongful conviction and the irreversible punishment of death.

Conclusion

Ray Krone's case highlights significant malfunctions within the criminal justice system, some of which pertain to junk science and faulty procedures, and others that relate purely to the fallibility of human judgment. Of course, just as no person is perfect, no system of justice is perfect. However, Krone's case powerfully illustrates that the system that so many people trust to reliably determine not only who is guilty but also who deserves to die is not worthy of our trust. If the time is taken to review carefully cases such as Ray Krone's, potentially lethal errors can be more readily identified and rectified.

Krone's case suggests that several areas are in need of serious attention, including: the independence of state crime laboratories; the reliability of bite-mark

evidence; methods of educating jurors about technical evidence; and avoiding target fixation within investigations.

The time for this action has never been clearer, evidenced by the fact that more than 130 prisoners have been exonerated from death row since the restoration of capital punishment in the United States. The exact number of innocent people executed is still unknown, but the tragic truth is that it is reasonable to believe that innocent people, at this very moment, sit on death row. Unfortunately, those stolen years cannot be given back to exonerates like Ray Krone. Nonetheless, there are steps we can take to reduce the risk that perfectly innocent people will be unfairly accused, wrongfully convicted, and undeservedly sentenced to die.

¹ Ray M. Krone was the 100th prisoner to be exonerated from death row in the United States since 1973. This article was made possible by the lawyer and student volunteers of the Arizona Justice Project, whose efforts have helped produce a "Post-Mortem of a Wrongful Conviction" relating to Ray Krone's case.

² Bill Kurtis, *The Death Penalty on Trial: Crisis in American Justice*, Public Affairs 27-28 (2004).

³ *Id.* at 30.

⁴ *Id.*

⁵ *Id.* at 32.

⁶ *Id.* at 31.

⁷ *Id.* at 29.

⁸ *Id.* at 33.

⁹ *Id.* at 38.

¹⁰ *Id.* at 34.

¹¹ *Id.*

¹² *Id.* at 35-36.

¹³ Detective Dennis Olsen, Trial Testimony, July 29, 1992, Tr. at 86-115; July 30, 1992, Tr. at 5-42, 23-29.

¹⁴ Bill Kurtis, *supra* note 2, at 36.

¹⁵ Justice Denied: The Magazine for the Wrongfully Convicted, Issue 32, Spring 2006, at 16.

¹⁶ These facts were culled from the transcript of the deposition of Officer Michael Kurtenbach, (Civil Proceedings) taken on Mar. 11, 2005, and from conversations between Alan Simpson and the author.

¹⁷ Bill Kurtis, *supra* note 2, at 33.

¹⁸ *Id.* at 39.

¹⁹ *State v. Krone*, 897 P.2d 621, 623 (Ariz. 1995).

²⁰ Bill Kurtis, *supra* note 2, at 39.

²¹ Justice Denied: The Magazine for the Wrongfully Convicted, Issue 32, Spring 2006, at 16.

²² Bill Kurtis, *supra* note 2, at 34.

²³ *Id.*

²⁴ *State v. Krone*, 897 P.2d at 622.

²⁵ *Id.*

²⁶ Bill Kurtis, *supra* note 2, at 46.

²⁷ *Id.* at 40.

²⁸ *State v. Krone*, 897 P.2d at 623.

²⁹ *Id.* at 41-42.

³⁰ Bill Kurtis, *supra* note 2, at 41.

³¹ *Id.* at 42-43.

³² Robert Fredrickson, Trial Testimony, Aug. 4, 1992, Tr. at 59-73.

³³ *Krone*, 897 P.2d at 622.

³⁴ *Id.* at 623.

³⁵ Bill Kurtis, *supra* note 2, at 76.

³⁶ JIM RIX, JINGLE, JANGLE, THE PERFECT CRIME TURNED INSIDE OUT (Broken Bench Press 2007).

³⁷ In the state of Arizona, a person sentenced to death has a right to a direct appeal to the Arizona Supreme Court. 17 A.R.S. Rules Crim. Proc., Rule 31.2(b).

³⁸ *Krone*, 897 P.2d at 621.

³⁹ Bill Kurtis, *supra* note 2, at 78.

⁴⁰ *Id.* at 95.

⁴¹ Justice Denied: The Magazine for the Wrongfully Convicted, Issue 32, Spring 2006, at 16.

⁴² Bill Kurtis, *supra* note 2, at 75.

⁴³ Jana Bommersbach, *Arizona Sent an Innocent Man to Death Row; How the Hell did this Happen?*, Phoenix Magazine, July 2004.

⁴⁴ Bill Kurtis, *supra* note 2, at 75.

⁴⁵ *Id.*

⁴⁶ American Board of Forensic Odontology Inc, Diplomats Reference Manual, Section III: *Policies, Procedures, Guidelines & Standards, Point 3; Terms to Indicate the Link between Bitemark and the Biter*, 1991.

⁴⁷ Bill Kurtis, *supra* note 2, at 80-82.

⁴⁸ *Id.* at 85.

⁴⁹ *Id.* at 88.

⁵⁰ *Id.* at 89.

⁵¹ *Id.*

⁵² Bommersbach, *supra* note 43.

⁵³ Bill Kurtis, *supra* note 2, at 92-94.

⁵⁴ *Id.* at 94.

⁵⁵ *Id.* at 95.

⁵⁶ *Id.* at 91.

⁵⁷ *Id.* at 89.

⁵⁸ The National Academy of Sciences, *Strengthening Forensic Science in the United States: A Path Forward*, (2009).

⁵⁹ Special Verdict, Dec. 9, 1996, Superior Court of Arizona, Maricopa County, Hon. James E. McDougall. No. CR92-00121.

⁶⁰ Bill Kurtis, *supra* note 2, at 99-100.

⁶¹ Justice Denied: The Magazine for the Wrongfully Convicted, Issue 32, Spring 2006, at 16.

⁶² Bommersbach, *supra* note 43.

⁶³ Phoenix Police Department, Laboratory Services Bureau, Report on the Examination of Physical Evidence, Report dated: Apr. 17, 2002.

⁶⁴ Bill Kurtis, *supra* note 2, at 100-101.