Exhibit A

Declaration of Dr. Steven Gabaeff

DECLARATION OF DR. STEVEN C. GABAEFF

I, Dr. Steven C. Gabaeff, hereby declare:

1. I am a licensed California physician and have specialized in child abuse cases and served as a member of the Los Angeles Superior Court Expert Witness Panel, certified to testify for both the prosecution and defense in criminal cases with allegations of child abuse. I am also an Emeritus Diplomat of the American Board of Emergency Medicine, board certified in Emergency Medicine for 30 years ending 12-31-14. I have concurrently practiced clinical forensic medicine on a full time basis, for 27 years reviewing over 3500 cases from 1988 to the present. I was a formal examiner for law enforcement of suspected child abuse cases for a substantial part of my career in emergency medicine and a past supervisor of a SART program in San Diego. Child abuse is part of the core curriculum of emergency medicine.

2. In the last 30 years, I have witnessed a trend in the field of child abuse pediatrics where a group of specialists in child abuse, including those trained at the Chadwick Center at Children's Hospital in San Diego, have practiced child abuse pediatrics in a coordinated system dedicated and designed to follow widely used protocols in a persistent effort to protect children from abuse. Within this marriage of medicine and the legal system, erring on the side of doing forensic examinations, gathering biologic and DNA evidence, and doing forensic interviews, all needed to reach proper diagnostic conclusions, has been the practice. Physicians are an integral part of the Sexual Assault Response Teams (SART) made up of nurses and doctors. Their supervising role in modern pediatric abuse mandates consultation on key decisions. These teams work closely with, and are integral to training, police, prosecutors and social workers with the goal of convicting those who have actually committed child abuse and identifying those who have been falsely accused of child abuse, the latter, an occurrence that is known to occur in surprisingly large absolute numbers

In this process unfortunately, allegiance to protocols and proscribed data collection protocols are sometimes cast aside in an overzealous effort to charge and convict accused suspects. This is done at the expense of thoughtful analysis and often in the absence of vital evidence which could help determine whether abuse occurred or not. This process, when improperly applied, has led to a crisis where many innocent people have been convicted after false accusations based on statements which are not supported by physical evidence, or in the worst cases, in the absence of any physical evidence that abuse occurred. The problem is exacerbated when inconsistent histories and implausible circumstances are identified, and are then under analyzed, glossed over, or just incorrectly assumed to be irrelevant.

At times, the system ignores the scientific method, which is objective by nature and designed to identify false accusations. Even studies showing that false accusation rates can be as high as 16%[1] to 22%[2] are often ignored in favor of an unwarranted belief that the alleged victim is always telling

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[1] Slaughter L, et. al. Patterns of genital injury in female sexual assault victims. Amer J. of Obstetric and Gynecology. 1997; 176: 609-616

[2] Quinn KM. The credibility of children's allegations of sexual abuse. Behavioral Sciences & the Law. Volume 6, Issue 2, pages 181–199, 1988

the truth; something that is known to not be true. This known group of false accusers extends from children manipulated by adults who are capable of installing false memories, to adolescents with motives to falsely accuse, to adults with a variety of unseemly motives to manipulate the police, medical professionals involved, and the courts.

Regardless of the underlying nature of the accusations, it is noteworthy that the Legislature has granted the doctors involved in child abuse accusations and court testimony of abuse, immunity from civil liability and so there is no professional risk in the doctors advocating a position outside the scientific process. Furthermore, at times it appears to be a license to hypothesize about abuse mechanisms, without scientific evidence of abuse and/or an inconsistent narrative that would appear to undermine the veracity of the complaining parties.

3. I was recently contacted by Attorney Patrick Ford who is representing the defendant on appeal in the case of the People v. Richard Eric Ross (SCD241238).

4. Ross was convicted of several counts of touching, sexually molesting and sexually penetrating two young girls; a seven year-old stepdaughter and a nine year-old who was also regularly in Ross's home. In preparing this declaration, I have read the appellant's opening brief which describes the facts of the case and relevant transcripts of the witnesses. Having read these materials I understand the relevant facts to be as follows with some commentary interlaced by me:

A) Breanna, the defendant's seven year-old stepdaughter informed social workers at the Palomar Hospital Child Abuse Program that the defendant had touched her inappropriately on several occasions both over and under her clothes, and that on several occasions he penetrated her vagina with his fingers, mouth, penis and a vibrator. These stated alleged actions are virtually 100% likely to leave permanent damage to the genitalia in that child that can be seen for years (up to vaginal childbirth) after the alleged acts have occurred. Acute findings can be seen for days and subacute findings for weeks. Chronic states of permanent alteration of the genitalia is expected and easily seen on genital exams.

B) Hannah, the nine year-old, who was Breanna's step-sister and often in defendant' house, claimed that the defendant penetrated her vagina with his finger on May 21, 2012, and that he had previously touched her improperly.

C) The Sergeant from the San Diego Sheriff's Department, who was the lead investigator in the case, for reasons that do not comport with medical or police practices, opted not to have the girls examined to seek medical confirmation, or refutation, of the girls' claims. Compounding this error in judgment without consultation with the SART team or lead physician, he scheduled forensic social worker interviews nine days after Hannah's claim of digital penetration.

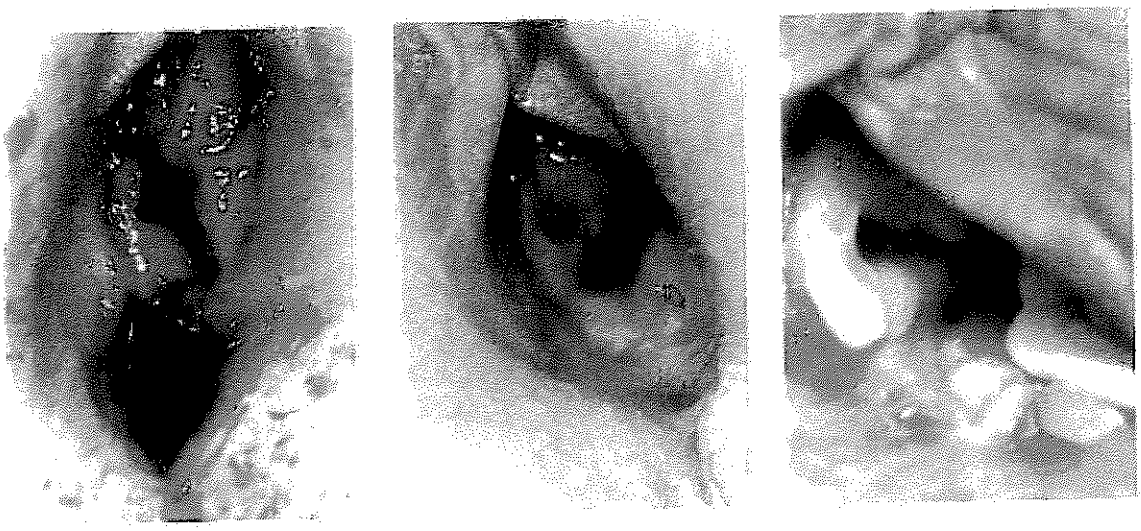
In the context of both children being placed with adults who had significant known animus to the appellant, this decision created a large block of time in which the children could be and probably were, subject to suggestions and even amplification of the allegations, as did occur. Initial disclosures of abuse without the most impactful acts even being mentioned is concerning that they did not occur. The period was sufficiently long, that repetition of any implanted ideas can get a

firm toe hold, and become sufficiently implanted to be incorporated and represented as 'true' in the suggestible child.

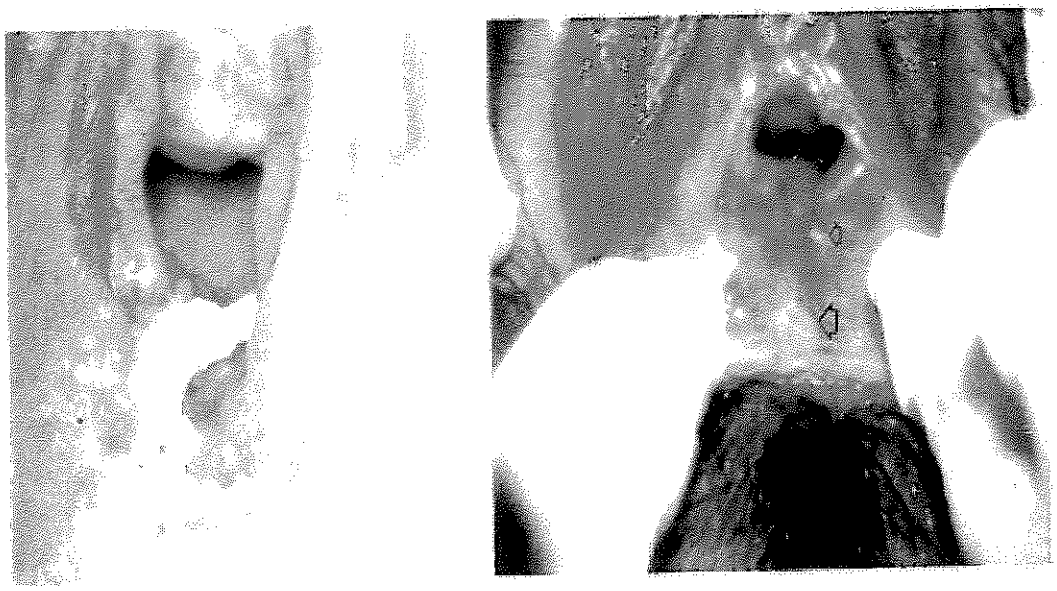
D) After the social worker's interviews of the girls nine days later, an interview that included inconsistent and not credible statements by both girls, the Sergeant again decided to forego a physical exam of the girls based on his opinion and mistakenly relaying on a narrow band of the SART protocol. That narrow band suggests that much of the biologic evidence of abuse will disappear after 72 hours from the time of a vaginal penetration; a time limit that has since been recognized as too short to completely rule out the collection of biologic material (DNA) after penetration. The detective was of course also disregarding the likelihood of seeing physical findings and damage to the genitalia that the alleged acts would cause.

Stating his belief that it was unlikely that any evidence confirming abuse would be found, he did "not want to" put the girls through the "uncomfortable" medical examination. With the allegations as stated in the forensic interview generating a life sentence worth of charges, he was deciding that 5 minutes of discomfort to the girls that might help reach the correct conclusion for a man facing a life sentence, would be too much for them. This is a suspect and concerning decision considering the stakes and one decidedly against the appellant's interests. It should be noted the exams are like pelvic exams and are not that "uncomfortable," often causing no discomfort or duress at all. It might be considered axiomatic that a moment of discomfort in a brief exam, which might discover possible exculpatory or inculpatory evidence to support or undermine a conviction, should never be considered an excuse to not seek and document relevant evidence that may be present. Blocking the exams precluded a proper investigation, particularly in the context of improbable accusations by easily manipulated children whose parents appeared to have interests and motives related to custody that they could exercise by manipulating the girls. That situation is more probable considering the stated animus to the appellant by the biofather and biomother of the girls. These factors are often under-considered in making arrest and charging decisions and particularly in this case, with no physical or clinical evidence of abuse (symptoms at the time of the alleged intercourse and with other acts) and inconsistent and incredible histories gathered from both girls.

5) In my opinion, the Sergeant's decision to forego the medical examination was profoundly wrong because a physical exam of Hannah within hours of her claim that the defendant digitally penetrated her would have confirmed her claim if true. DNA was likely to be present if the last contact was close in time to the disclosure. The scope of damage within days of the last penetration would have been obvious as well, as the picture below showing the expected consequences of intercourse with an 8 year old (from a teaching case) clearly shows. There is nothing subtle about the consequences of intercourse and significant vaginal penetrations in child in the 6-8 year old age bracket. Findings in a 6 year old would be worse. Physical damage and emotional upset are profound.



8-year-old assaulted by stranger. Acute injuries evaluated under anesthesia. **Left:** Repair of introital injuries was successful, but at 3 months the hymenal transection persists (arrow, **center panel**). **Right:** Two years later, at puberty, the hymen has become more redundant with response to estrogen, but the transection remains.



8-year-old lost to follow-up. An 8-year-old who presented to the local hospital with a history of being "found down" in a neighborhood park. She was taken to the operating room and a vaginal tear was "repaired" (no photographs taken; no police report filed). The child was discharged from the hospital without antibiotics and returned 5 days later with a serious abscess of the vaginal introitus, at which time the case was reported to Social Services. This child was then referred for examination after hospital discharge. **Left:** Note 6-o'clock transection with adherent white discharge. No history of sexual abuse was reported by the child, and the family was lost to follow-up. Five years later, the same child presented to the clinic after disclosing to school authorities that she had been sexually assaulted as a young child. **Right:** Examination revealed post-pubertal persistence of midline hymenal transection (small arrow) and avascular midline area of posterior fourchette (large arrow). Comparison of the two photographs suggests that the white perineal area is scar tissue.

Compounding concerns of false accusations by the accusing parties, after the initial disclosures, the officer instead of getting an exam and ordering a forensic interview, released Hannah to the accusing bioparents with full time, unsupervised access to the children. With this unrestricted access by potentially witness tampering adults, one child was taken almost immediately to a swimming pool by a relative, and swimming in the pool at this time would have corrupted significant available evidence. It was never determined if this was done intentionally to obfuscate the situation and tamper with evidence or destroy evidence, or out of ignorance. The timing was concerning for the former. This release of the child to the accusing family, who would then have access to the children for 9 days before a forensic interview was scheduled, was the second major deviation from protocol and normal police procedure. It is naïve to assume that people known to have significant animus toward the appellant, if they had an interest in falsely accusing, would not avail themselves of the time to invent new allegations and then alter the girls memory of events; effectively creating "new memories" in their young minds; a form of brainwashing.

Had the girls been interviewed by the social workers soon after the initial complaint there would also have been less time to potentially fabricate, install and solidify claims, using direct or subtle discussions between family members and the girls. Since new more sensational accusations, beyond the initials accusations, emerged at the delayed interviews, the red flag of false accusations should have been raised. Substantiating fears of manipulation, during and after Breanna's interview with her social worker, nine days after Hannah's first claim, the social worker made specific comments about inconsistencies, non-credible accounts of what the girls now said had happened, and even expressed outright skepticism of their stated stories.

At this point there is no doubt the sergeant should have ordered a medical exam on her, which could have been done in a nearby exam room designed for that purpose. With claims of penetration of her vagina with his fingers, mouth, penis and a vibrator, the need to look for physical evidence of penetration and healing, as shown in the teaching case above, mandated an exam.

Absent evidence of physical penetration, their stories of penetration would be shown to be false. Even if those claims were nonspecific as to the dates they occurred and could have taken place months earlier, the physical findings related to healing would have been present at 9 days. The detective either failed to consider this, was ignorant the arc of abusive genital injury, or consciously turned away from possible exculpatory evidence. It should also be noted that in this circumstance the Sheriff's department pays for these expensive exams. These decisions collectively reduced or negated the chances of finding certain confirming evidence including semen or DNA delivered through the touching, or evidence of damaged tissue, scarring, etc., or the lack thereof.

Additionally, any time a child claims to have been raped as a result of sexual intercourse, the young victim should be tested for sexually transmitted diseases in order to protect her. One would have to wonder if this possibility was dismissed due to a belief than no substantial sexual contract occurred or just pure negligence. There can be no excuse for not conducting the medical exam after two young girls claimed to have been vaginally penetrated many times. If the defendant committed the acts he was accused of, it is virtually certain the medical exam would have shown it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Carmichael, California on August 12, 2015.

Respectfully submitted,

Steven C. Gabaeff, MD, FAAEM, FACEP, AMAAFS

Exhibit B

Declaration of Attorney Euketa Oliver

RANDY MIZE, Chief Deputy
Office of the Primary Public Defender
County of San Diego
EUKETA OLIVER
Deputy Public Defender
State Bar No. 236296
450 "B" Street, Suite 900
San Diego, California 92101
Telephone: (619) 338-4722

Attorneys for Defendant
RICHARD ROSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. RICHARD ROSS, Defendant.	Case No.: SCD241238 DA No.: ADE743 **DECLARATION**

I, Euketa Oliver, declare:

1. That the Department of the Public Defender was the attorney of record for Defendant, Richard Ross.

2. I am a Deputy Public Defender employed by the Primary Public Defender's Office.

3. I was the attorney assigned to represent Defendant, Richard Ross.

4. I represented Mr. Ross in his jury trial in the case at hand.

5. On March 31, 2014, I consulted with Deputy Public Defenders Saba Sheibani and Melissa Tralla regarding why Detective Lopez said no physical exam was ordered in this case.

6. During the March 31, 2014 consultation, Deputy Public Defender, Melissa Tralla suggested that I speak with Dr. Fitzgerald and placed the initial call on my behalf.

7. On March 31, 2014, I personally spoke with Dr. Deborah Fitzgerald on the telephone regarding why a physical examination was not ordered or conducted on the minor victims in this case. Dr. Fitzgerald informed me that she would speak with me briefly over the phone but would not testify. She said it was unusual for a physical examination to not be done given the accusations and that if a physical exam had been performed in a timely manner, there most likely could have been physical findings if there in fact had been sexual penetration especially with a penis. However, since one was not ordered, no one would be able to say there were injuries consistent or inconsistent with the allegations.

7. Since there was no physical examination ordered, I did not call Dr. Deborah Fitzgerald or any other medical doctor to talk about the lack of a physical examination because there was no evidence for a doctor to explain or challenge. I made the tactical decision to cross exam the prosecution witnesses on the lack of physical examinations and argue the points on that topic in closing arguments.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of August, 2015, at San Diego, California.

Euketa Oliver (e-signature)

Euketa Oliver
Deputy Public Defender
Declarant

Exhibit C

Declaration of Attorney Bob Boyce

Declaration of Robert Boyce

I, Robert Boyce, declare:

1. I am an attorney licensed to practice law in the state of California since 1978. My practice is devoted solely to criminal defense. I have been a Board Certified Criminal Law Specialist since 1985. I am the past President of the San Diego Criminal Defense Bar Association and the Criminal Defense Lawyers Club. I was named Trial Lawyer of the Year by the Criminal Defense Bar Association in 2003 and 2011. I have represented numerous clients charged with adult and child sexual abuse at trial and on appeal. I have been a speaker at criminal defense seminars on sexual abuse.

2. Attorney Pat Ford has asked me to provide an opinion on whether trial counsel in *People* v. *Richard Ross* (SCD241238) rendered ineffective assistance of counsel within the meaning of *Strickland* v. *Washington* (1984) 466 U.S. 668, by failing to present a medical expert to refute a crucial medical opinion provided by a police officer testifying for the prosecution. In that regard I have reviewed the discovery, trial transcripts, appellant's opening and reply briefs and respondent's brief, and appellant's petition for writ of habeas corpus and exhibits (a draft), including declarations by Dr. Gabaeff, trial counsel and Pat Ford in the case of *People* v. *Ross*.

3. Cases involving claims of sexual abuse against children are more difficult than other cases in certain respects. Due the nature of the charges, jurors in child sexual abuse cases have difficulty remaining objective and setting emotion aside. When the jurors are faced with deciding whether to believe the testimony of an adult defendant or a child accuser, jurors have a strong tendency to believe the child's testimony for no other reason than the witness is a child. The United States Supreme Court has expressed this concern regarding child sexual abuse testimony in *Kennedy* v. *Louisiana* (2008) 554 U.S. 407. Justice Kennedy, writing for the Court in holding the death penalty for non-homicidal child rape violative of the Eighth Amendment, noted the difficulties in cases where children accuse adults of heinous sexual offenses:

Studies conclude that children are highly susceptible to suggestive questioning techniques like repetition, guided imagery, and selective reinforcement. [Citations.]¶ Similar criticisms pertain to other cases involving child witnesses; but child rape cases present heightened concerns because the central narrative and account of the crime often comes from the child herself. She and the accused are, in most instances, the only ones present when the crime was committed. [Citations] ...These matters are subject to fabrication or exaggeration, or both. [Citation]. (*Id.* at 443, 444.)

4. Although not a rape case, the above considerations apply because child molestation accusations are crimes "that in many cases will overwhelm a decent person's judgment." (*Id.* at 439.) Thus, it is essential an attorney representing a client charged in a child sexual abuse case fully consider, investigate, explore and present any expert medical testimony which contradicts or undermines the child's testimony.

5. In all cases where a child has claimed to have been vaginally penetrated, the SART team should conduct a medical examination of the child to substantiate the claim. And defense counsel must retain a medical expert to review the results of the exam. In cases where the child claims multiple vaginal penetrations but the police officer in charge of the SART team at that time decides to forego a medical test, defense counsel must present a medical expert to explain to a jury a medical exam would have resulted in physical findings if penetration in fact occurred. The medical exam is the best tool to use in detecting false accusations, and is especially important in cases where there is no other direct evidence of guilt and the alleged victims have a dispute with the accused.

6. In these cases, trial counsel renders ineffective assistance by failing to retain an expert to explain this to a jury. A few simple cross-examination questions of the police officer as to whether an exam might have shown something is not nearly enough. If the prosecution has presented an incorrect medical opinion by a doctor, or in this case a police officer, it is essential that defense counsel present a medical expert to explain the state's mistaken medical premise.

7. Here, trial counsel consulted and was informed by Dr. Deborah Fitzgerald that: "...it was unusual for a physical examination to not be done given the accusations and that if a physical exam had been performed in a timely manner, there most likely could have been physical findings if there in fact had been sexual penetration especially with a penis. However, since one was not ordered, no one would be able to say there were injuries consistent or inconsistent with the allegations. ¶ Since there were no physical examinations ordered, I did not call Dr. Deborah Fitzgerald or any other medical doctor to talk about the lack of a physical examination because there was no evidence for a doctor to explain or challenge. I made the tactical decision to cross exam [sic] the prosecution witnesses on the lack of physical examinations and argue the points on that topic in closing arguments." (Dec. of Euketa Oliver)

8. Ms. Oliver's decision not to call a medical doctor was not a reasonable tactical decision. Ms. Oliver was aware from her conversation with Dr. Fitzpatrick that if the accuser was telling the truth, a physical exam would have revealed physical findings; the absence of physical findings would have been compelling evidence of the innocence of Mr. Ross. The failure to conduct a physical exam under these circumstances, especially when requested to do so by the forensic social worker, at the very least demonstrates a bias on the part of the police officer in charge of the investigation and more importantly is a strong argument the prosecution has not met its burden of proof and Mr. Ross must be found not guilty. In fact, the law provides that the state's failure to collect or preserve important evidence may, by itself, be sufficient to establish reasonable doubt and the jury may be instructed on that point. (See, *People* v. *Wimberly* (1992) 5 Cal.App.4th 773, 793.) The failure to present this powerfully exculpatory testimony deprived Mr. Ross of the effective assistance of counsel. As demonstrated by Dr. Gabaeff's declaration, cross examination of a hostile, unqualified police officer is no substitute for expert testimony from a neutral, qualified medical doctor.

9. Reasonably competent counsel in the present situation would have presented a medical expert to explain to the jury that a medical exam would likely have shown whether the girls' allegations of penetration were true or false. Counsel's failure to present that evidence was below the standard of

reasonableness in our legal community.

I declare under penalty of perjury under the laws of California that the above is true and correct.

Dated: 10/26/15

Robert Boyce

Exhibit D

Declaration of Attorney Patrick Morgan Ford

DECLARATION OF PATRICK MORGAN FORD

I, Patrick Morgan Ford hereby declare:

1. I am an attorney licensed to practice in all California courts.

2. I am appellate counsel of record for Richard Eric Ross in his pending direct appeal (D066786) and the present habeas corpus petition.

3. On August 25th, 2015, trial counsel Euketa Oliver informed me that while preparing the defense in the present case, she contacted a medical expert — Dr. Deborah Fitzgerald and discussed the case with her over the phone.

4. Ms. Oliver provided me with Dr. Fitzgerald's phone number so I contacted her.

5. Dr. Fitzgerald informed me that while she used to occasionally work as an expert witness on sex abuse cases, she had not done so for approximately five years, as she preferred to concentrate on her OB-GYN practice.

6. Dr. Fitzgerald was unfamiliar with Ms. Oliver and had no recollection of speaking with her. However, she said she believed her phone number was still on file at the public defender's office.

7. She said she gets a call every once in a while and informs the caller immediately that she no longer consults as an expert witness. However, if the attorney calling her asks a couple of questions, she doesn't mind providing answers.

8. In response to my questions she then said that any time a child claims to have been vaginally penetrated the SART team should conduct a medical exam of the child. The child should be given an exam even if the last reported occurrence was months or years earlier because the exam would likely show signs of penetration if it happened. While DNA, semen and saliva will no longer be available and cuts and tears in the tissue have healed, there will usually be signs of scarring in

the tissue where the tears have healed.

9. Dr. Fitzgerald informed me that she would have provided this information to Ms. Oliver if asked on the phone.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. Executed at San Diego, California.

Dated: 10/07/15

Respectfully submitted,

Patrick Morgan Ford,
Attorney for Petitioner
Richard Eric Ross