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Examining Scott Peterson's Appeals

by

Paige Bonavito

In Partial Fulfillment of the Requirements  
for the Degree of Master of Science  
in Criminal Justice

Department of Criminal Justice

Thesis Mentor: \_\_\_\_\_

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### **Abstract**

This work discusses the Scott Peterson case, which took place from 2002-2004. Scott Peterson was convicted of murdering his wife Laci and unborn son Conner in 2004, and was given the death penalty. Peterson has filed automatic appeals and habeas corpus appeals since his trial, which have made their way through the California court system. Peterson's death sentence was overturned by the California Supreme Court in 2020, and the California Supreme Court ordered the San Mateo trial court to look into overturning Peterson's conviction. This work not only discusses the Peterson case at great length, it also serves to examine and evaluate claims made in both of Scott Peterson's Appeals. This work also analyzes claims made by Janey Peterson, Peterson's sister-in-law, and other advocates of Peterson's innocence. This work mainly uses information from the documentary series *The Murder of Laci Peterson*, Peterson's appellant briefs, the State of California's response briefs, and the Scott Peterson Appeal website to support and refute these claims. By examining these claims, this work seeks to evaluate the legitimacy of claims that Scott Peterson was not given a fair trial, and/or is innocent.

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### Case Overview

Laci Peterson, a pregnant woman living in Modesto, California, went missing on Christmas Eve in 2002. She was 7 and a half months pregnant at the time of her disappearance, which put her family and the community on high alert. Laci was about to be a first time mother and was excited about her life, so it was hard to imagine that she would "...take off into the night and leave everything behind" (Dunn, 2015). Thus, law enforcement suspected foul play was involved in her disappearance. The people of Modesto searched the neighborhood, determined to find Laci before her approaching February due date, and soon the case garnered national attention (Frey, 2005). Laci was known as a kind, bubbly person who did not have any enemies, so it was difficult to imagine who could be responsible for her disappearance. The police focused on Laci's husband, Scott, as their first suspect, as is customary in cases of missing spouses (Dunn, 2015). The police described Scott Peterson as "...somewhat helpful, but not helpful like you would expect" (Dunn, 2015). He was cooperative with police, but somewhat secretive and not as distraught as you would expect a man to be when his pregnant wife is missing. He calmly told police that he went fishing that day (Christmas Eve—the day Laci went missing), at Berkley Marina near San Francisco Bay. People found it odd that Peterson was out fishing on Christmas Eve, especially with a very pregnant wife at home. He also couldn't come up with an answer for what he was fishing for, or what bait he used (Dunn, 2015). Also, he left a voicemail on Laci's cellphone on the way home from the marina, which police later described as sounding staged and overly-romantic (Berry, 2017). However, when he arrived home from fishing and noticed he and Laci's dog in the yard with its leash still attached, and no sign of Laci even though her car was in the driveway, he did not call anyone right away. He did not call Laci's mother Sharon Rocha until after he took a shower and had some leftover pizza, assuming

Laci was at her parents' house. Only then did Laci's stepfather, Ron Grantski, call the police (Dunn, 2015). Laci's friends and family did not suspect Peterson in Laci's disappearance at first, but police found Peterson's behavior suspicious throughout the investigation. Despite the detectives' intuition, it would be hard to make a case against Peterson with no specific evidence connecting him to Laci's disappearance.

About a month after Laci's disappearance with no leads, a woman from Fresno named Amber Frey called the Modesto police department. She had seen an article about Laci's disappearance in a newspaper, and was calling to inform that she had been in a relationship with Scott Peterson since November 2002 (Frey, 2005). Peterson initially told Amber Frey that he was single, but then confessed to her—before Laci's disappearance—that he had “lost his wife” (Dunn, 2015). Police met with Frey, and discovered the pictures, gifts, and stories with friends that backed up her relationship with Peterson. They requested that she record her future phone calls with Peterson, so the police could find out who he really was. The recorded phone calls that Amber had with Peterson did not produce any outright admissions of guilt, but were still damning evidence against him. He talked romantically with Frey (who pretended to remain in the dark about Peterson) about their future together, and how much he missed her while he was away in Europe (one of his many lies). During a candlelight vigil for Laci on New Years Eve, in Modesto, Scott Peterson stood far back in the crowd, not on the stage with Laci's family, and was calling Amber Frey during the vigil. He fictitiously described to Frey his New Years Evening in Paris, while he was in Modesto at a candlelight vigil for his missing pregnant wife. When he finally came clean to Frey about his missing wife, she demanded answers, but he lacked reasonable explanations (Dunn, 2015). Once Frey told the press about her affair with Peterson, the case made national headlines, and Peterson became the most hated man in

America. Many lost hope that Laci and her unborn son (who the couple planned to name Conner) would be found alive, and Laci's family and friends realized immediately that Scott Peterson was responsible (Dunn, 2015).

Even with the knowledge of Peterson's infidelity, it was hard for police to make an arrest without knowing what had happened to Laci. On April 13th, 2003, a couple walking their dog discovered the remains of a fetus washed up on the shore of San Francisco Bay ("Scott Peterson trial fast facts," 2019). A day later, a decomposed female torso— with head and limbs missing— washed up nearby. These remains were identified to be those of Laci and Conner, found right where Peterson said he was fishing when Laci went missing. The police arrested Scott Peterson at a golf course in San Diego, and charged him with two felony counts of murder ("Scott Peterson trial fast facts," 2019).

Scott Peterson's trial started on June 1st, 2004. He was tried in San Mateo county, California. The jurors for the trial were selected with great care over the course of two months, since the case had become so widely publicized. Peterson was represented by high-profile attorney Mark Geragos, and the prosecution was led by Rick Distaso ("Prosecutors make case against Scott Peterson," 2004). The case against Peterson was somewhat of a challenge, since there was a lot of circumstantial evidence against Peterson, but very little forensic evidence ("Prosecutors make case against Scott Peterson," 2004). At first, the defense seemed to be prevailing, since the prosecution has a tough time making a case without the defense's rebuttal (Berry, 2017). However, the case went downhill for the defense when Amber Frey took the stand to walk jurors through her relationship with Scott Peterson. The prosecution's theory of the crime was that Peterson strangled his wife on Christmas Eve morning and transported her in his fishing boat to Berkley Marina, where, far from shore, he attached homemade concrete

anchors to her arms and legs, and dumped her overboard. This would explain why Laci Peterson's arms and legs were missing when she was found, and the lack of forensic evidence in the Peterson home. The suspected motive behind the crime was that Peterson did not want to become a father, and wanted to be free of his life with Laci to continue seeing Amber Frey. The jurors believed the prosecution's theory, and found Peterson guilty of the first degree murder of Laci, and second degree murder of Conner, on November 12th, 2004 ("Scott Peterson trial fast facts," 2019).

On March 16, 2005, Scott Peterson was sentenced to death by lethal injection ("Scott Peterson trial fast facts", 2019). He remains on death row in San Quentin Prison to this day, appealing his case. The constitutionality and morality of the death penalty have been debated in California, and the death penalty process in California is notoriously slow, so it was unlikely that Scott Peterson would ever be executed. In 2019, California Governor Gavin Newsom signed an executive order issuing a moratorium on the death penalty in the state. This abolishes the death penalty in California while Newsom is in office ("Scott Peterson trial fast facts," 2019). In 2020, The California Supreme Court overturned Peterson's death sentence, due to errors in jury selection that were cited in his appeal. The California Supreme Court also ordered the San Mateo trial court (where the case was originally tried) to look into overturning his conviction as well.

### **Detailed Timeline of Laci's Disappearance**

On December 23rd 2002, Laci and Scott Peterson went to Salon Salon for haircuts, where Laci's sister, Amy Rocha, worked. During their 5:45 pm visit, Peterson offered to pick up a fruit basket from Vella Farms that Amy had ordered the next day, telling her he would be playing golf nearby. She assumed he was planning on golfing at Del Rio Country Club, where he had a membership. Prosecutors said that Peterson also told other people that he would be playing golf on Christmas Eve day ("Stepsister describes last sighting," 2004). Amy Rocha said that her sister was wearing "...a black top with cream-colored polka dots, cream-colored pants, a black jacket and a cream-colored scarf" at the salon ("Stepsister describes last sighting," 2004). At 8:30 pm, Laci had a brief phone conversation with her mother, Sharon Rocha. This was the last time anyone had seen or heard from Laci Peterson.

On the morning of December 24th 2002, as Peterson describes it, he and Laci got up and had breakfast. According to Peterson, Laci ate as soon as she woke up at about 7:00 am, to prevent morning sickness. Peterson claims he woke up at around 8:00 or 8:30 am, and had breakfast after her. The Peterson's computer, located in their spare room, showed activity from 8:40 to 8:45 am. Scott Peterson claims that as he got dressed, Laci told him about her plans for the day. These plans included walking their dog McKenzie, going to the store, and making Gingerbread. She also needed to purchase ingredients for the Creme Brûlée french toast she was going to serve at their Christmas brunch the following day. Peterson said he loaded three patio umbrellas from the back yard into the bed of his truck. He was going to store them at his warehouse. Neighbor Kristen Dempewolf walked by while Scott was loading the umbrellas. She said Peterson was smiling and called out, "Good Morning" to her (Case Facts, 2021).

According to the Scott Peterson Appeal website, Peterson then went back in the house and filled the mop bucket for Laci so she could mop the floor (Case Facts, 2021).

Scott Peterson recalled that they watched the Martha Stewart show that morning, which was Laci's favorite program. He recalled that the program discussed meringue and cookies. Meringue and cookies were, in fact, mentioned on Martha Stewart on December 24th at 9:48 am. Peterson said he left while Laci was mopping (Case Facts, 2021). Sometime after 9:48 am, Scott made the nine minute drive to his warehouse, checking the voicemail on his cell phone at 10:08am (Case Facts, 2021) (Berry, 2017). From approximately 10:30 am to 10:56 am, Scott was on his computer at his warehouse, reading and sending emails. He also looked up instructions on how to assemble a mortiser, a woodworking tool he had just received. Evidence showed that Peterson had just received the mortiser on December 20th, and the mortiser was found assembled on a trailer in Peterson's warehouse. In the 20 minutes between logging off the computer and leaving the warehouse, Peterson said he straightened up his office a bit and began assembling the mortiser. He unloaded some tools from the tool box in the bed of his truck. Peterson said he felt it was too cold to golf so he decided to head to the Berkeley Marina to try out his new fishing boat (Case Facts, 2021). He then attached his small fishing boat to his truck, and drove an hour and a half to Berkley Marina. Peterson purchased a boat launch ticket when he arrived to the marina at 12:54 pm. He told police he then launched his boat and headed north for about two miles, and found a small island with a "No Landing" sign and some trash on it. He assumed it would be a decent shallow area for fishing. This island was later confirmed to be Brooks Island, which was indeed a shallow area. Peterson allegedly fished, then headed back to the marina because he was getting wet. When Peterson arrived back at the marina, he talked to a couple of guys about fishing, and reported that "...a couple maintenance guys got a good laugh

from him trying to back his trailer down the ramp to load the boat” (Case Facts, 2021). A maintenance worker named Mike Ilvestri was interviewed by Detective Rick Armendariz. Ilvestri confirmed that he saw Peterson’s vehicle, and that the driver of the vehicle was having difficulty backing the trailer in to get the boat out of the water. Peterson estimated being at the bay for about 90 minutes. From the time Peterson bought the boat launch ticket to when his cell phone records show him leaving the area is about 78 minutes (Case Facts, 2021).

At 2:15 pm, shortly after he leaves the marina, Peterson calls Laci on their home phone as well as her cell phone. He leaves a voicemail message on her cell phone, informing her that he was on his way back from the marina (Berry, 2017). On the voicemail he says,

“Hey beautiful, just left a message at home. Uh it’s 2:15, I’m leaving Berkley, I won’t be able to get to Vella Farms to get that basket for papa. I was hoping you would get this message and, uh, go on out there. I’ll see you in a bit, sweetie. Love you, bye” (Berry, 2017).

On his way home from the marina, he also called his friend, Greg Reed, and his parents, but does not mention that he was just fishing (Appeal Information, 2021). He stopped for gas at Chevron in Livermore. Bank records showed that this purchase was made at 3:25 pm. Peterson makes another call to Laci’s phone at 3:52 pm but does not leave a message. At about 4:15 pm, Peterson arrived back at his warehouse and parked his boat. He then drove home, arriving between 4:30 pm and 4:45 pm (Case Facts, 2021). He noticed that the front door was not locked, Laci’s car was in the driveway, and their dog was in the yard with a leash on. According to Peterson, he assumed Laci was at her mother’s house, preparing for the holiday festivities that were going to occur later that day. Peterson then put his damp clothes in the washing machine. He claimed he often did this when he would get home, as he worked with chemicals (Case Facts,

2021). Peterson ate some leftover pizza with milk, and took a shower. After getting dressed, he went into the kitchen and listened to the phone messages. He listened to the voicemail he had left for Laci after leaving Berkeley Marina, and another message from Ron Grantski, Laci's stepfather, asking if Scott and Laci could bring whipped cream when they would come later that day. Assuming Laci was already there, Peterson called Sharon Rocha and Ron Grantski's house at 5:17pm (Case Facts, 2021) (Berry, 2017). When Sharon Rocha told Peterson that Laci was not with them, Peterson informed them that she was missing. Sharon Rocha later recalls, "When he said 'missing', that's what concerned me. It wasn't that she wasn't there, or he couldn't find her, but that she was missing" (Coté & Stapley, 2007). It was at this point that the search for Laci began. At 5:47 pm, Ron Grantski called 911. He told the 911 operator that Laci had been missing since that morning, was about eight months pregnant, and had taken her dog for a walk in the park. The dog had returned but she had not (Berry, 2017).

The Modesto Police arrived around 6:00 pm, and met Scott Peterson and Sharon Rocha in East La Loma park, where Laci usually walked McKenzie. Detective Al Brocchini suggested that they go back to the Peterson home. He searched the home, and observed no signs of forced entry. In fact, they could not find anything incriminating or suspicious in the Peterson home. The police searched the house, as well as Peterson's warehouse, from 6:20 pm to 1:19 am. From 12:00 am to 1:00 am, Peterson voluntarily sat down for a videotaped interview with Detective Brocchini. During this interview, Peterson claimed he was willing to take a polygraph test. The next day, Peterson went back to Modesto Police Department, where Detective John Buehler met Peterson for the first time (Berry, 2017). According to Buehler,

"I gotta tell you, I was really expecting more from him. I was expecting him to start asking us 'What have you been doing?', 'Have you done *this*?', 'Is *this* a priority?', and

so, his behavior was a little bit different than other people we've dealt with. He just didn't seem to be as... interested in what we were doing" (Berry, 2017).

Peterson did not take a polygraph test, as he previously said he would do, under the advice of his father. According to Buehler, police wanted to have Peterson take a polygraph test so they could eliminate him as a suspect, and use their resources elsewhere to find his missing wife. The fact that Peterson did not seem incredibly distressed about finding his wife, in addition his unwillingness to take a polygraph test, made detectives more suspicious of him (Berry, 2017).

### **Media Coverage, Trial, & Verdict**

One of the reasons that the Peterson case was picked up was that there is normally a slump in the news over the holidays. Around the time of Laci's disappearance, news networks were starting to evolve into 24/7 news cycles, and material was needed to fill up this space. A missing pregnant woman on Christmas Eve also resembles elements of Mary, the mother of the baby Jesus. Modesto was a small, rural community, where residents were very tight-knit. When word got out that the pregnant Modesto resident Laci Peterson was missing, the community was very eager to help. Media was attracted to this determined group of people, and wanted to know who Scott and Laci Peterson were. A good-looking, all-American couple like the Petersons experiencing this unexpected tragedy pulled viewers in. There was not much evidence to figure out what had happened to the beautiful, pregnant Laci Peterson, and those following the case were anxious to find answers. This led the press to actively pursue the case. Those following the case noted how Scott Peterson was rarely in front of the camera, pleading for viewers to help find his wife. Even when he did appear on camera to promote the search for Laci, he seemed calm, and not incredibly distressed like the rest of Laci's family. Peterson's demeanor created more mystery behind Laci's disappearance, which heightened press coverage.

Sometimes, information that was leaked to the press was untrue, as the media was anxious to give their audience the inside scoop on developments in the case (Berry, 2017). This includes the suspicion of Peterson's culpability for other murders. Somewhat early in Laci's disappearance, the media created a narrative that Peterson may have been responsible for murders of female Cal Poly students around the time he attended Cal Poly, but this was proven to not be true. Even though the media's allegations against Peterson were not factual, it still created

the perception in the public's minds that he was a murderer, long before he was actually charged with Laci's murder.

Since the press was so desperate for anything that could provide an explanation to Laci's disappearance, Peterson claimed, he refrained from talking to the press for fear of being framed. He claimed he was afraid that anything he said to the media could be used against him, to perpetuate the narrative of his guilt. Thus, Peterson allegedly refrained from giving interviews or otherwise talking to the press, to keep the focus of the case on Laci and not himself. However, Peterson's unwillingness to talk to the media, as spouses of missing persons would typically do, actually had the opposite effect that Peterson had allegedly intended. The media focused *more* on Peterson, determined to figure out why he was acting so suspiciously. Some in the media, such as TV anchor Nancy Grace, would give their opinion on Peterson, brazenly voicing their opinions of his guilt. Those like Grace have since been accused by advocates of Peterson's innocence of swaying the public's perception, in order to fire up their viewer base. Due to anchors like Grace prosecuting Peterson on television, they claim, he was convicted in the court of public opinion long before the trial (and jury selection) started. Despite the public's intuition, credible incriminating evidence on Peterson could not be found that could more directly indicate his possible involvement in Laci's disappearance. However, when it was revealed that Peterson was having an extramarital affair at the time of his wife's disappearance, the case became a national story. The affair provided a motive for Peterson to be involved in Laci's disappearance, which many followers of the case already suspected he was (Berry, 2017).

Scott Peterson's affair with Amber Frey, which was revealed to the press on January 23rd, 2003 in a press conference with various networks present, elevated the case from a mysterious tragedy to a bombshell soap-opera story. The press conference about Amber Frey

was “...breaking news on every station, everybody was taking this press conference live because we didn’t know what they were gonna announce” (Berry, 2017). Coverage of the Peterson case sometimes overtook political coverage of the Iraq War, which was happening around the same time. After Amber Frey came forward, new stories involving the case were on the cover of almost every magazine in the grocery store. The story of these attractive people involved in lies, affairs, and (possible) murder seemed impossible to be happening in real life, which made the case a sensational story. After his affair with Frey came out to the press, Peterson felt he had to talk to the media, despite his legal team’s efforts to convince him otherwise. He did four interviews— one with Diane Sawyer for Good Morning America, and three with local reporters which were done at his home. These interviews, especially the one with Diane Sawyer that was aired on national television, went unfavorably for Peterson. They further damaged Peterson’s credibility, making him the most hated man in America (Berry, 2017).

### **Diane Sawyer Interview**

On January 28th 2003, Good Morning America aired a taped interview between Scott Peterson and renowned interviewer Diane Sawyer (Scott Peterson Appeal, 2020). The likely goal of this interview was to diffuse the suspicion surrounding Peterson, and address his affair with Amber Frey, which had just come out to the press. By telling his side of the story, and showing that he was truly devastated over Laci’s disappearance, Peterson likely figured that the suspicion surrounding him would be cleared. The problem was that Peterson still seemed dishonest and not forthcoming for a variety of reasons. One thing viewers noted was that he referred to Laci in the past tense (Scott Peterson Appeal, 2020). An innocent man would have more faith that his wife was still alive, and Peterson’s use of past tense suggested to viewers that

he already knew Laci was dead. Interestingly, he refers to his affair with Amber Frey in the present tense, and then corrects himself. Secondly, while he does cry during the interview, viewers noticed that he does not make any effort to wipe the tears away (Scott Peterson Appeal, 2020). Normally, when one cries, they wipe their tears, unless they tried really hard to make those tears. Viewers suspected that his tears were manufactured, to try to show devastation that was not really there. Then, he is asked by Sawyer outright if he murdered his wife. He says no, and that he had nothing to do with her disappearance, but then goes on to say, “You use the word murder...and right now everyone’s looking for a body. And that is the hardest thing because that is not a possible resolution for us” (Scott Peterson Appeal, 2020). He says these words with a smirk-like smile on his face. Viewers questioned why he would ever be smiling when discussing the possibility of finding his wife’s dead body.

In the interview, Peterson does not try to deny his affair with Amber Frey. When asked by Sawyer why he had the affair with Frey he replies, “I can’t answer that, I don't know” (Scott Peterson Appeal, 2020). It is frustrating and strange to viewers that a man who has cheated on his now-missing wife would not be more remorseful for his infidelity, providing a response that shows more self-reflection. He apologizes to Frey and her family and friends, as well as he and Laci’s family and friends. When asked if he told police about the affair, he claims he told them “immediately” (Scott Peterson Appeal, 2020). He states that “...from December 24th [the day Laci went missing] on”, police knew of his affair with Frey (Scott Peterson Appeal, 2020). This is a blatant lie, since investigators did not know of any affair until Frey came forward. In an even more unbelievable lie, Peterson claims that he told Laci of the affair in early December. When asked if it caused a “rupture” in their marriage, Peterson claims that Laci was “...not ok with the idea”, but it was “...nothing that could tear [them] apart” (Scott Peterson Appeal, 2020).

When asked if there was a lot of anger between them after the alleged revelation of the affair, Peterson says no. Diane Sawyer then asks what viewers all around the country would ask, “Do you really expect people to believe that an eight and a half month pregnant woman learns her husband has had an affair, and is saintly and casual about it? Accommodating? Makes a peace with it?” (Scott Peterson Appeal, 2020). To this, Peterson replies, “No one knows our relationship but us” (Scott Peterson Appeal, 2020). When asked why he told his wife of the affair, Peterson says it was because it was the right thing to do (Scott Peterson Appeal, 2020). Viewers have been quick to argue that Peterson’s claim that he told his wife of the affair is utterly fanciful. Men usually never tell their wife of an affair unless they are caught. Even when they do, it causes a major break of trust, which most relationships fail to recover from. In fact, it is hard for a normal person watching to imagine any circumstances in which a partner would reveal an affair, and the other partner would merely be “not happy about it” as Peterson dismissively claims. Also, it is hard to believe that Laci, if she did learn of the affair, would not confide it in anyone. It is reasonable to suspect that Peterson would not have answers on how the “revealed” affair affected he and Laci’s marriage, because it was probably never revealed. Peterson says yes when asked if he continued seeing Amber Frey after he told Laci of the affair (Scott Peterson Appeal, 2020). This is even more confusing, because if he is suddenly concerned with “doing the right thing” and coming forward with the affair to Laci, it is assumed that he is going to stop having the affair. He also admits that he did not tell Amber Frey of his wife at home, who has allegedly been informed of their romantic relationship. He ends the interview by telling Diane Sawyer that he still wishes to help Laci’s family in their search, despite their distrust in him (Scott Peterson Appeal, 2020).

Throughout the interview, it is fair to say that Diane Sawyer is honestly trying to understand what was going on in his mind as this case unfolded. She is speaking for the people at home, who have imagined that Peterson killed Laci because of his love for Amber Frey, or that he killed Laci because of an angry confrontation over Amber Frey. Peterson denies both of these theories, but instead works himself into an unbelievable theory that he told Laci of the affair, which she confided in no one, and she goes missing weeks later while he is still seeing Amber Frey. Even if one could somehow believe Peterson, the statement that he told police right away of the affair is an indisputable lie. The interview might normally be a smart move for someone who is truly innocent and forthcoming, but the interview does even more damage to Peterson's already unfavorable image. Steve Helling, Senior Crime Editor for People Magazine, has said that he has "...never seen an interview do so much damage to someone's credibility" (Dunn, 2015). Helling recalls how viewers watched Peterson's interview and thought "Oh, well now we know he did it!" (Dunn, 2015). Not only does Peterson talk in circles and dance around truths in his interview, his creepy mannerisms indicate that he is guilty of something. While advocates for Peterson's innocence may argue that his interview performance was hindered by "nerves" or some other factor (though usually advocates for Peterson's innocence stay away from this interview, probably for good reason), this is not an excusable circumstance. If one imagines themselves being interviewed for a crime they did not commit, they would probably not see themselves struggling because they know that what they are saying is the truth. Even if there is damning evidence against them, if one is innocent they will answer questions genuinely and naturally, which is not what Peterson did. Guilty people, on the other hand, lie, stall, and dance around the truth, much like Peterson did in the interview. While Peterson cannot be

arrested on the basis of one interview, it certainly implicates him even further as a suspect in Laci's disappearance.

### **Laci and Conner are Found**

After the revelation of Peterson's affair with Amber Frey during the time of his wife's disappearance, and his bungled TV interviews, many were certain that he had murdered Laci. Police were eager to arrest Peterson, but could not make a solid case against him at trial without finding Laci's body. The case had gone silent for a while, with no leads on Laci's disappearance (or Peterson's guilt). Media coverage of the case also slowed. Police had noticed that Peterson was making trips to San Francisco Bay, but would only stay there for a few minutes at a time. He would observe the Bay, presumably observing the progress of divers who were searching the Bay (where he had been fishing) for Laci's body. However, the divers had been unsuccessful in finding Laci or Conner in the Bay.

Following a storm, a decomposing human fetus washed up on the shores of San Francisco Bay on April 13th, 2003. The following day, a couple walking their dog found the remains of a female torso on the shore of San Francisco Bay, not far from where the fetus had washed up. The female body was missing its head, arms, and legs. It lacked internal organs, and the only organ that remained inside the torso was the uterus. The body of the fetus was mostly in-tact, but its skin was jellylike and translucent. Both the female torso and the fetus washed up not far from where Peterson had been fishing on the day of Laci's disappearance. It would take several days for an autopsy to confirm that the torso and fetus were those of Laci and Conner (Berry, 2017).

During the time that the bodies were found, Peterson was staying in San Diego, having been hounded by media in Modesto. Detectives had an arrest warrant drafted for Peterson after

the bodies were discovered, but they were advised not to make the arrest until the DNA results confirmed that the bodies were those of Laci and Conner. On April 18th, Peterson had plans with his brothers Mark and Joe and their father Lee to play golf at Torrey Pines Golf Course in San Diego. While driving to the course, Peterson noticed suspicious vehicles that were following him. Peterson called his brother Joe and told him he would not be able to play golf because the media following was him, and he did not want the media harassing his brothers and his father. Peterson started driving aggressively, trying to lose the cars that were following him. These cars following him were actually those of police. Even though the police did not want to arrest Peterson until the DNA results of the autopsy came back, the manner in which he was driving on the highway gave police probable cause to make an arrest. They followed him to Torrey Pines golf course, where he was arrested (Berry, 2017).

### Peterson's Arrest

The circumstances surrounding Scott Peterson's arrest are a subject of debate by those who consider him guilty and those who consider him innocent. The media was quick to portray Peterson's police chase on the San Diego highway as a get-away attempt to flee to Mexico. Proponents of Peterson's innocence, such as Peterson's sister-in-law Janey, argue that Scott, Joe, Mark and Lee Peterson had planned to play at Torrey Pines that day. The fact that San Diego is close to the Mexico border is just a coincidence. Janey Peterson also argues that if Peterson *were* going to flee, the time to flee would be when the bodies were found, not pending the DNA confirmation. The search of Peterson's car unveiled suspicious items such as roughly \$15,000 in cash, four cell phones, camping equipment, and his brother's drivers license. The media argues that these items were possessions that Peterson would use to start a new life in Mexico. Janey has said that his possession of his brother's drivers license was for getting a discount at Torrey Pines. The large amount of cash was accidentally withdrawn by Peterson's mother Jackie from their joint account, and was given to him in cash to prevent a hold on the account. Detective Buehler said that the items found in Peterson's car were consistent with what one would have, "...if you were living out of your car, which would be consistent with what he was doing" (Berry, 2017). He also possessed weapons, and a map to Amber Frey's workplace. Some in the media have perpetuated the narrative that Peterson was planning on killing Amber, a witness against him, and fleeing to Mexico (Dunn, 2015). Peterson's hair was also dyed blond, and he had a blond goatee. Those who advocate for the Mexico theory argue this as evidence of Peterson attempting to dodge police, flee to Mexico, and start a new life. Peterson argued that he disguised himself to avoid media (Berry, 2017). Thus, while most who have seen coverage of

the Peterson case on TV believe that Peterson was about to flee to Mexico at the time of his arrest, there is some evidence to the contrary.

After he was arrested, Peterson rode with detectives back to Modesto from San Diego. During this drive, the detectives received a call from detective Craig Grogan, who confirmed that the decomposed torso and fetus that had washed ashore days prior were Laci and her unborn son. Peterson had little reaction to this news, shedding only a single tear out of his right eye. When they arrived at Stanislaus County jail in downtown Modesto, a large crowd had amassed even though it was around 11pm. Some of them had signs, and many of them were chanting “Murderer!”. At his arraignment on April 21st, Peterson was formally charged with two felony counts of murder for the murder of his wife and unborn son (Berry, 2017). According to CNN, “There are 2 counts because of California's fetal homicide statute, any fetus -- meaning eight weeks of development and onward -- is considered an equal victim” (“Scott Peterson trial fast facts”, 2019). After meeting with Laci’s family, the District Attorney announced that the state would seek the death penalty against Scott Peterson (Berry, 2017).

### **Peterson Defense Team**

On December 30th, 2002, Scott Peterson hired Kirk McAllister to represent him prior to his arrest. Once Peterson was arrested, however, McAllister quickly informed Peterson and his family that he would not have the resources to be able to take on a case of their size. He advised the family that they would not be able to afford an attorney for this case, and that they should hire a public defender. However, Lee Peterson and the family had taken note of Mark Geragos, who frequently appeared on Larry King Live, defending Scott Peterson. Geragos was a popular attorney in the media, and had taken on many high-profile cases before. Figuring that Geragos would fight for Peterson's innocence as he had done on Larry King Live, and guide Peterson and his family through the media storm, the Petersons hired Geragos as Scott's defense lawyer. Lee Peterson said that hiring Geragos to the case cost the family a million dollars (Berry, 2017). A lead attorney on the defense team was Matt Dalton, who worked for the Geragos & Geragos firm. He lived in Modesto full time for six months, tirelessly investigating any possible leads that would exonerate Peterson. Dalton looked through 30,000 pages of discovery (the compilation of all police documents related to the Peterson case, including but not limited to police reports, transcripts of phone calls, transcripts of interviews, receipts, and other records). He also spent over 100 hours at Stanislaus County jail, visiting Peterson (Berry, 2017). Private investigator Gary Ermoian had also worked on the case extensively, even prior to Geragos' involvement. He too investigated leads, namely witnesses who claim they saw Laci walking her dog after the time Peterson left for Berkley Marina. However, Mark Geragos and Pat Harris would be the ones representing Peterson at trial (Berry, 2017).

### **Jury Selection**

Per Mark Geragos' request, Scott Peterson's trial was moved from Stanislaus County in Modesto to San Mateo County in Redwood City. Geragos argued that it was impossible for Peterson to receive a fair trial in Modesto, where everyone knew of the case and was already certain of his guilt. The jury pool would be too tainted to hold a fair trial in Stanislaus County. Geragos tried to move the trial to Los Angeles, but this request was denied (Beratlis et al., 2006).

The jury selection process began in February 2004. Potential jurors were summonsed, and then given a questionnaire, where they were asked various questions relating to their ability to judge the case fairly. The potential jurors were asked various questions relating to programs or magazines that they had watched or read, whether they had been exposed to anything relating to Scott Peterson, or if they had any beliefs that would make them opposed to giving the death penalty. There were questions on whether the jurors were interested in golfing or fishing, which were relevant to the Peterson case. Some of the 116 questions on the questionnaire included:

- Do you have any knowledge of boats?
- What television and radio programs do you view or listen to on a regular basis?
- Have you, any friends or relatives ever been involved in law enforcement (for example, FBI, DEA, Sheriff's Department, County Prosecutor's Office) or been employed by any such agency?
- Have you formed or expressed any opinions about the guilt or innocence of the defendant, Scott Peterson?
- Has anyone expressed any opinion as to his guilt or innocence to you? (Beratlis et al., 2006, pp. 24)

Overall, they were asked about anything that may cause bias in how they process evidence and determine the verdict in the case. The jurors were then put through voir dire, where they were

questioned by both the prosecutors and the defense. This is done in a courtroom with the defendant present. In this case, there were also reporters and spectators present. Jurors would be questioned on any factor that may infringe their ability to be impartial. Then, a computer would randomly select eligible jurors to go through the final stages of jury selection, in what trial Judge Al Delucchi called “The Big Spin”. The goal was to produce 12 jurors and six alternates, the required amount of jurors for a death penalty case (Beratlis et al., 2006).

Both the defense and the prosecution hired expert jury consultants to help them strategize their jury selection. Geragos hired Jo-Ellan Dimitrius, who had helped Johnny Cochran with jury selection in the O.J. Simpson murder case. The prosecution hired Howard Varinsky, who had just previously helped federal prosecutors pick the jury that convicted Martha Stewart in her infamous insider trading case. During voir dire, the jury consultants would look for any indication of how each of the potential jurors might vote on Peterson’s guilt (Beratlis et al., 2006).

The trial was expected to last six months, and potential jurors were allowed to be excused of their civic duty if their employers could not give them paid leave. Over 900 potential jurors were dismissed in the Peterson case out of 1,500 summonses that were issued, primarily for financial reasons, health reasons, or peremptory challenges (Beratlis et al., 2006). The final randomized computer selection, which took place on May 27th, 2004, would select 12 jurors and 6 alternates from 76 potential jurors (Beratlis et al., 2006). The jury of six men and six women were selected as follows:

- Juror No. 1: Greg Beratlis, a PG&E engineer who coached youth sports on weekends.
- Juror No. 2: Thomas Marino, a retired postman. Marino was a golfer like Peterson.
- Juror No. 3: Lorena Gonzalez, a social services worker and the only Hispanic on the jury.

- Juror No. 4: Michael Belmessieri, a Marine Vietnam Veteran and former police officer who is a project manager for a major manufacturer.
- Juror No. 5: Justin Falconer, a disabled airport security screener and single parent.
- Juror No. 6: Steve Cardosi, a firefighter and paramedic.
- Juror No. 7: Frances Gorman, a Filipina, the only Asian on the jury, and an auditor for PG&E.
- Juror No. 8: John Guinasso, who works for San Francisco Parking Garage Inc.
- Juror No. 9: Julie Zanartu, a clinical trial inspector at Genentech.
- Juror No. 10: Mary Mylett, who had suffered the loss of her young son. This was discussed with the Judge in voir dire, but not revealed to the other jurors until during deliberations.
- Juror No. 11: Fairy Sorrell, an accountant and the only African American juror.
- Juror No. 12: Kristy Lamore, a former social worker who once handled child abuse cases.

Like Peterson, she was also a golfer. (Beratlis et al, 2006, pp. 27-29)

The four alternates, who would listen at the trial but not participate in deliberations unless a member of the jury was removed, were selected as:

- Alternate No. 1: Greg Jackson, a doctor and lawyer.
- Alternate No. 2: Richelle Nice, a single mother of four.
- Alternate No. 3: Dennis Lear, a retired United Airlines mechanic whose son-in-law worked for Laci and Scott Peterson in the restaurant they formerly owned, The Shack.
- Alternate No. 4: Debbie Germanis, whose nickname was Shannon.

- Alternate No. 5: Sharon McNeal, the only one to not attend the jury press conference after the trial.
- Alternate No. 6: Michael Church, a British-born San Mateo County employee. (Beratlis et al, 2006, pp. 29-30)

Even though some of these jurors had what seem to be glaring biases that would keep them from serving on the trial, both sides seemed happy with the final result. For example, one would think that a firefighter/paramedic in charge of saving lives, or a social worker who handled child abuse cases, would be biased against Peterson in a murder case (especially involving an unborn child). Also, considering all the questions on the juror questionnaire relating to any interest in golf, a couple of golfers were selected to the jury, whom one might think would show bias towards Peterson. There was also a lawyer present on the jury in Greg Jackson. Normally, one would not think that lawyers, similar to law enforcement professionals, would be wanted as jurors. However, according to Beratlis et al. (2006), Varinsky explains that this is a myth. If Jackson were a criminal defense lawyer or legal aid lawyer, he would have likely been removed, but Jackson worked for a biotech firm. Varinsky valued that Jackson was upper-middle class and well-educated, making it unlikely that he would acquit a murderer. Juror Mary Mylett revealed to other jurors during deliberations that she accidentally hit and killed her 22-month-old son with her car, when she did not see him as she pulled into her driveway. One would think such a horrific experience would make her biased against Peterson, knowing the pain of losing a young child. However, the tragedy she faced may have made her an ideal juror— Mylett later told the Modesto Bee, “I know what it’s like to lose a life, and I know what it’s like to take one” (Beratlis et al, 2006, pp. 147). Perhaps most glaring of all potential juror biases, Dennis Lear’s son-in-law worked for Laci and Scott Peterson. One would normally assume that having some sort of

relation to the defendant (and victim) would be a cause for automatic disqualification from the jury. However, Geragos approved of Lear after questioning him during voir dire, to Lear's surprise. According to Varinsky, it seemed that the jurors were chosen more on the grounds of their upstanding moral character. Jurors' ability to process the evidence and make logical, responsible decisions regarding Peterson's guilt superseded interests or experiences that would, at first glance, indicate potential bias for or against Peterson.

Jurors were not allowed to make any gestures or facial expressions, or verbalize to anyone in the courtroom. They were not allowed to talk about the trial to anyone, including each other (until deliberations). They were not sequestered for the trial, meaning that they could go home after each day in court. Jurors were paid once a month for their service, receiving \$15 a day, and \$10 for travel one-way. They were told to report back to court on June 1st for the first day of trial (Beratlis et al., 2006).

### **Events of the Trial**

The Scott Peterson case is viewed by law professionals as a circumstantial evidence case. According to Hill and Hill, circumstantial evidence is "evidence in a trial which is not directly from an eyewitness or participant and requires some reasoning to prove a fact" (Hill & Hill, 2019). Such evidence is thought to be insufficient to secure a conviction, but circumstantial evidence can be so powerful that there is little doubt that it can be taken seriously. Hill and Hill (2019) explain,

"Prior threats to the victim, fingerprints found at the scene of the crime, ownership of the murder weapon, and the accused being seen in the neighborhood, certainly point to the suspect as being the killer, but each bit of evidence is circumstantial" (Hill & Hill, 2019).

In the context of the Peterson case, Peterson's affair with Amber Frey is a piece of circumstantial evidence. It is not direct evidence that Peterson killed Laci, but raises enough suspicion that may secure a conviction. Even though the affair is circumstantial evidence, it is powerful because a person could fairly reason that an innocent man whose pregnant wife was missing would not be having an affair. The prosecution and the defense's opening statements, as well as the trial itself, would be based on circumstantial evidence. This means that they would have to speculate on Peterson's possible motive for committing the crime, as well as the manner in which Laci was killed (Beratlis et al., 2006).

The trial took place in Redwood City, and began with the prosecution and the defense giving opening statements. The jurors noticed right away that Mark Geragos, who led Peterson's defense, and Rick Distaso, who led the prosecution, conducted themselves very differently. Geragos' opening statement was captivating, whereas jurors felt that Distaso's opening statement lacked conviction. According to jurors, Distaso sometimes talked abstractly, and it would take him a while to make a point. Rick Distaso's opening statement took all day, whereas Mark Geragos' opening statement was finished within a morning (Beratlis et al., 2006). Prosecutors are not allowed to present an argument during opening statements, and are only allowed to give a recitation of the facts. Therefore, the main focus of the prosecution's opening statement was to attack Scott Peterson's character. Distaso pointed to Peterson's affair with Amber Frey, as well as his various other lies, to illustrate Peterson's moral deviance. He painted Peterson as a master manipulator of women, and that he premeditated Laci's murder after he met Amber Frey. His fishing trip to San Francisco Bay was merely an alibi, as well as a way to dispose of his wife's body, on the day of her disappearance. Distaso argued that this case was a common sense case, and that Peterson was the only one who could have committed this crime (Beratlis et al., 2006).

When Geragos began his opening statement, he was quick to dispel the notion that Scott Peterson was the all-American boy. He confronted his infidelity head-on. He argued that many married men have affairs, and just because Scott Peterson is an adulterer does not make him a murderer. He said that the members of a jury, "...may want to call him a cad", but there was no evidence to support Peterson's guilt (Beratlis et al., 2006, pp. 71). Geragos held up a stack of reports from the Modesto Police, representing reports from searches conducted on Peterson's home, truck, and warehouse. He loudly dropped the stack of reports onto the defense table, and emphasized that the Modesto Police were able to find no incriminating evidence against Peterson from these searches. Geragos also claimed that he would prove that Laci was alive on the morning of December 24th (after Peterson went to his warehouse). If such were true, jurors would have to acquit Peterson. Geragos concluded his opening statement by saying, "The evidence will show that not only is Scott Peterson not guilty, but Scott Peterson is stone cold innocent" (Beratlis et al., 2006, pp. 72).

The prosecution had a weak start to the case, having a difficult time making a case without the defense's rebuttal. Some of the prosecution's witnesses worked in the defense's favor upon cross-examination. One of the major mistakes that the prosecution made was incorrectly claiming that Peterson lied about watching Martha Stewart on December 24th 2002. In Peterson's first interview with Detective Brocchini, Peterson claimed that he and Laci watched Martha Stewart on the morning of her disappearance. He did not recall the program entirely, but remembered that there was a mention of meringue. The prosecution claimed that there was no mention of meringue on the episode of Martha Stewart that aired that day. Distaso used this to fuel his argument that Peterson was a compulsive liar. However, Geragos returned the following day with a tape of the episode from the morning of December 24th. When the tape

was showed to the courtroom, they discovered that the episode did mention meringue. This made the prosecutors look incompetent, or worse, like fabricators. Also, the prosecution appeared unethical when they called upon a Modesto Police officer to testify about Peterson's demeanor. The officer testified that during a search at the Peterson home, Peterson accidentally threw a flashlight on the ground and cursed through gritted teeth. With this, the prosecution tried to create the narrative that Peterson had a dark (possibly violent) side. This not only negates the prosecution's previous argument that Peterson is cold and uncaring, but this evidence was not included in discovery. Discovery means that, prior to trial, both sides are legally mandated to be informed of any and all evidence that can be used for or against a defendant at trial. Despite what is depicted in movies, neither side is allowed to present "surprise" evidence that has not been made known to both sides. On these grounds, Geragos objected the testimony from the police officer. This flaw was damaging to the prosecution's integrity, and made jurors wonder what other evidence was being hidden. The media, who were constantly covering the case, took note of the fact that the prosecution was performing poorly. When juror Justin Falconer was dismissed for juror misconduct, he fueled this media speculation. He agreed that the prosecution had not yet made a convincing case, and if he were to vote on Peterson's guilt, based on what he had heard thus far, he would vote not guilty. This led not only the public, but also the prosecution, to worry that Peterson may be acquitted, or that there would be a hung jury (Beratlis et al., 2006). This was a clear sign to the prosecution that their case against Peterson had been mediocre, and that they needed to perform better if they were to convict Peterson.

Amber Frey's testimony began to change the trajectory of the case. Though nervous upon taking the stand, Frey had been carefully prepped by her attorneys for the questioning that would ensue. After Frey testified, jurors heard numerous taped recordings of her and Peterson's

phone conversations. The jurors seemed to agree that even though listening to the many hours of taped conversations between Peterson and Frey was strenuous and exhaustive, the tapes were important. Despite popular belief that Amber Frey's testimony was the deciding factor in Peterson's guilt, jurors had mixed feelings on how big of a role her testimony played in the final verdict. Some, such as legal analyst Anne Bremner, consider her testimony the turning point in the trial, stating that, "Once the jury saw that he was such a liar, it was no longer a quantum leap to finding that he murdered Laci" (Beratlis et al., 2006, pp. 97). Some jurors were unimpressed by her testimony, but were impressed by her courage and bravery in coming forward and working with police. Julie Zanartu, juror number nine, agreed that Amber was the turning point, stating that up until then, she believed that Peterson might be innocent. Mike Belmessieri, juror number four, agreed that Peterson "...might have walked if there were no tapes" (Beratlis et al., 2006, pp. 99). John Guinasso, juror number eight, was less impressed with Amber Frey. He disliked aspects of her character, such as deciding to leave her daughter in the care of her friend Shawn Sibley to embark on a sexual relationship with Peterson, and letting him pick up her daughter at school only after just meeting. Guinasso and some other jurors felt that Frey's testimony held more weight in the penalty phase of the trial than the guilt phase. The tapes did not directly show that Peterson had committed murder, they argued, but were detrimental to his character. Even though the individual jurors weighed Frey's testimony (and the taped conversations between her and Peterson) differently when deciding Peterson's guilt, they agreed that her information provided motive for premeditation of Laci's murder. They were incredibly damaging to Peterson's credibility, because the recorded conversations showed how easily he could lie. However, Frey's testimony was not the sole factor in deciding Peterson's guilt, but was a piece of the puzzle that depicted his guilt (Beratlis et al., 2006).

Amber Frey and the tapes she provided were a major boost for the prosecution, but the jurors agreed that the person who brought the case home for the prosecution was attorney Birgit Fladager. Fladager had been supervising the prosecution behind-the-scenes. When she became more involved in the case, she matched Geragos' presence in the courtroom, which Distaso had been unable to do. She also brought Laci to life for the courtroom, showing pictures and videos of the mother-to-be. The first time Fladager presented to the jurors, was when she called on Detective Craig Grogan to testify. Detective Grogan had worked on the Peterson case since the beginning, and constructed a list of evidence that pointed towards Peterson's guilt. This list was called the 41 Reasons. The purpose of this list was to show that even though there was mainly circumstantial evidence against Peterson, there was an overwhelming amount of circumstantial evidence against Peterson. A partial listing of the 41 reasons includes:

- Cement debris on the flatbed trailer in Peterson's warehouse.
- The secretly bought fishing boat found in the warehouse.
- The parking stub from the Berkeley Marina, dated December 24th.
- Cell phone data that he made phone calls near the San Francisco Bay.
- Dog scent of Laci detected at the Berkeley Marina.
- Scott Peterson said he was at the marina.
- He had a two-day fishing license bought on December 20th and filled out for December 23rd and 24th.
- He made three trips to Berkeley Marina after December 24th, which directed the investigators back to the Bay.

- The authorities discovered that Peterson had been searching the internet for fishing sites and places to launch boats throughout California.
- The usually meticulous Peterson left a mess of concrete debris his warehouse, creating the suspicion that he never thought anyone would return to search the facility for the fishing boat.
- Records showed little activity on his cell phone on December 24th until after 2pm when he began leaving messages to Laci that he would be late, in a possible attempt to create an alibi.
- A probe of his computer searches on the Internet showed that Peterson was looking for areas in the Bay with deep water currents.
- He paid cash for his fishing boat and did not register it (Beratlis et al., 2006, pp. 115-116).

The jurors found this list incredibly helpful, since it was an easy-to-follow outline of the prosecution's case. This list was shown to jurors as part of detective Grogan's testimony, for which he was on the stand for eight days. Fladager's presentation of easily understandable evidence, as well as her physical presence in the courtroom and her capturing of Laci's humility, elevated the trial in favor of the prosecution. Amber Frey and her testimony had done damage to the defense, and Fladager helped secure a conviction for the prosecution.

In contrast with his opening statement, Rick Distaso gave an impassioned closing argument on behalf of the prosecution. He attacked Peterson, showing photos of the smiling expecting mother Laci, on a split screen with her autopsy photos. Distaso emphasized how Peterson was undoubtedly at San Francisco Bay on the day of Laci's disappearance, just two miles from where Laci was found. He explained,

“The only person that we know without any doubt who was there in the exact location where Laci and Conner Peterson’s bodies washed ashore at the exact time they went missing is sitting right there [pointing at the defendant]. That alone is proof beyond reasonable doubt” (Beratlis et al., 2006, pp. 129).

Distaso went on to dismiss the defense’s theory that Laci was kidnapped. He also dismissed the notion that Peterson killed Laci to be with Amber Frey, explaining that Amber was merely a symbol of the freedom that Peterson strongly desired. Distaso showed a portion of Peterson’s interview with Diane Sawyer, particularly the part where he claims he told Laci of his affair (with Amber Frey). The prosecutor hammered home how this claim is unbelievable. He admitted that the prosecution did not know exactly how Laci was killed, but the evidence suggested that she was likely strangled or suffocated in the Peterson home. Distaso concluded that it was a straightforward case, where a man murdered his wife. The only person who could have killed Laci, and her unborn son, was Scott Peterson.

The following day, Mark Geragos gave the defense’s closing arguments. He emphasized that his client might be a liar and a cheater, but not a killer. He supported this claim by reminding the jury that Peterson had no history of (domestic) violence. Geragos explained, “I don't think he’s the kind of person, one with absolutely no history of domestic violence, who just snaps and one day murders his wife. What the stark reality is, is this guy got caught with his pants down” (Beratlis et al., 2006, pp. 130). Geragos reminded the jury that there was no (forensic) evidence that can prove Laci was murdered in the Peterson home, as the defense claimed. He argued that this is because she was not killed in the home, and was alive when Peterson left to go fishing on Christmas Eve. Geragos stated that Peterson did not have any motive to murder his wife, because even the prosecution believed that Amber Frey was not a

motive. The theory that Peterson wanted freedom was just a theory, proving nothing. Geragos claimed that his client was a victim of a rush to judgement by police, and was wrongfully accused of the crime at hand. He concluded by saying that there is not clear and convincing evidence that Peterson is guilty of murder. Distaso made a brief rebuttal, discussing how Laci's struggle for survival may have caused the cuts on Peterson's hands.

During deliberations, two jurors were dismissed due to juror misconduct. At this point, Richelle Nice was added to the jury. Each time a juror was dismissed and replaced during deliberations, deliberations had to be restarted, which was stressful for the jurors. Yet, after the removal of the previous jurors, deliberations were much more productive. The jurors unanimously voted that Peterson was guilty. Even though the final jury had concluded a verdict after less than a day of deliberations, they were confident in their decision. Even though it is not clear how or when Laci was killed, there were so many pieces of (albeit circumstantial) evidence that pointed to Peterson's guilt. In *We the Jury: Deciding the Scott Peterson Case*, the jurors cite various pieces of evidence that convinced them of Peterson's guilt. This includes Peterson's own admission that he was at San Francisco Bay on the day Laci went missing, placing himself near where her body was found. They noted the scars on his hands, which could have been the result of Laci's struggle for survival. They believed the strong possibility that he made anchors to weigh down Laci's body. They also considered Peterson's infamous interview with Diane Sawyer. They examined the timeline of the morning of December 24th, 2002, and concluded that Laci would have had a very narrow amount of time to be kidnapped while walking her dog. They cited the purchase of the fishing boat in cash, and his study of the currents in San Francisco Bay. The jurors also believed he had a motive— not necessarily to be with Amber Frey, but to

be free of the impending permanent responsibility of fatherhood. They also felt that Mark Geragos did an insufficient job of raising doubts about his client's innocence.

The verdict to convict Peterson of the first degree murder of Laci and second degree murder of Conner was delivered on November 12th, 2004. Spectators waited outside for the verdict, and cheered when the guilty verdict was read. Peterson did not show any outward signs of emotion when the verdict was read.

After going through the grueling process of deciding a verdict in the Peterson case, jurors had to meet and deliberate yet again on the penalty Peterson would receive. There were only two options: death by lethal injection, or life in prison without the possibility of parole. Initially, jurors were divided on whether or not to impose the death penalty. The decision was not a matter of the jurors own opinions (or their personal views on the death penalty), they had to decide the sentence according to the law. Before deliberating on the sentence Peterson would receive, jurors had to listen to more testimony from defense and prosecution witnesses. This time, each side would try to convince jurors whether or not Peterson deserved the death penalty. Those who knew Peterson would testify in his defense, in hopes of raising sympathy to spare Peterson's life. Those who knew Laci would testify as to how her loss affected them, and why Peterson deserved the death penalty. The penalty phase testimony was incredibly emotional. Those who testified on behalf of Peterson were "frightened and depressed" at the thought of Peterson receiving the death penalty (Beratlis et. al., 2006). Many who knew Peterson claimed that he did not have a violent bone in his body, and it was unimaginable that he could have committed this heinous crime. However, the most powerful witnesses were those of the prosecution. The prosecution only called upon Laci's immediate family (her mother, stepfather, sister and brother) to testify, yet they had the most profound impact on the jurors as well as the

courtroom. They talked about how much they missed their beloved Laci, and how she was a positive force that brought everyone together. They mourned the grandson they were expecting, and could not get the image out of their minds of how Laci and her baby could have died. Laci's mother, Sharon Rocha, described that, while Laci and her baby were buried together, she had no arms to hold her own child. Laci would not even see her child, because she had no head. Sharon Rocha's testimony painted a vivid image for the jurors of the manner in which Laci was killed, and eight of the jurors cried while she spoke. Spectators in the courtroom wept as well (Beratlis et al., 2006).

Jurors did not rush to a decision, and considered the aggravating and mitigating factors that would determine Peterson's sentence. They felt that Peterson's knowledge of Laci's body in the Bay, during the months that Laci's family was desperately searching for her, "...outweighed any mitigating factors by tenfold" (Beratlis et al., 2006, pp. 195). They also weighed Peterson's conversations with Amber Frey heavily in their deliberations. They felt that these conversations showed who the real Scott Peterson was: a manipulator, who, "...planned events to accomplish a devious and heinous goal" (Beratlis et al., 2006, pp. 195). After reviewing the rules of aggravating and mitigating circumstances, and further deliberations, the jury came to a unanimous decision. The jury sentenced Peterson to death by lethal injection, which Judge Delucchi upheld. Peterson again showed little reaction when the verdict was read (Beratlis et al., 2006).

### **A Brief Overview of the Appeals Process**

An appeal can be filed by a defendant who loses their criminal case, if there is some legal basis to challenge the verdict of the original case. The losing party cannot file an appeal simply because they do not like the verdict— there must be some legal grounds that the defendant’s constitutional rights to a fair trial were violated. To challenge the trial court’s decision, a defendant/appellant must show that the trial court made a legal mistake, and the legal mistake impacted the court’s decision (Knowledge Center, 2021). As the California Appellate Court’s Self-Help Resource Center states, it is hard to win an appeal. They state, “In California, less than 20% of all civil appeals succeed in reversing the original ruling” (Knowledge Center, 2021). This is because the Court of Appeals must uphold the trial court’s decision, unless the appellant can prove that the trial court’s decision was incorrect. An appeal must make a strong legal argument in order to achieve this goal. The California Appellate Court’s Self-Help Resource Center notes that some valid legal arguments to appeal are:

- “The trial judge erroneously admitted evidence over objection, and the inadmissible evidence prejudiced the appellant’s case.
- The trial judge erroneously refused to admit relevant evidence and thus prejudiced the appellant’s case.
- The jury instructions were legally incorrect.
- The evidence is legally insufficient to support the findings or to support the judgment” (Knowledge Center, 2021).

If there are sufficient grounds to file an appeal, the next step is to file a notice of appeal with the trial court where the case was decided. This begins the appeals process by letting the court and the prosecution know that the decision is being challenged.

After filing a notice of appeal, the appellant and respondent (i.e. the State/prosecution) usually work together to designate the record. This is a record of what happened at the original trial, that the appellant and the respondent will use to support both sides of their arguments. The California Appellate Court's Self-Help Resource Center notes that, "Anything not designated in the record on appeal cannot be examined and considered by the Court of Appeal" (Knowledge Center, 2021). After the record is compiled and agreed to by all parties, the record is filed with the Court of Appeal, and the parties receive notice telling them when the appellant's opening brief is due. The appeals process involves an incredible amount of paperwork, which must be filed on time, or the case will be dismissed (Knowledge Center, 2021).

The written briefs, starting with the appellant's opening brief, are the most important part of the appeals process ( Knowledge Center, 2021). The Court of Appeals makes their decision based on what is in these briefs. The opening brief is where the appellant argues "...why the trial court made a legal mistake, how the mistake impacted the decision, what could be corrected or reversed in the judgment, and why the judgment should be reversed" (Knowledge Center, 2021). Next, the respondent can file a response brief, which addresses the issues raised in the opening brief. The respondent's brief essentially argues that the trial court's decision was correct, and even if a mistake/error was made, it would not have affected the outcome of the trial. Then the appellant has the opportunity to file a reply brief that addresses what is included in the respondent's brief. The final step in this process is oral arguments. During oral arguments, the appellant and respondent are allowed to speak before the Court of Appeals on the issues raised in

their respective briefs. At this time, both parties can explain the most important aspects of their briefs, as well as answer questions from the Court of Appeals justices. Then the Court of Appeals makes their decision. A party may then file a petition for review in the California Supreme Court (Knowledge Center, 2021).

After an appellant has filed an appeal, they can also submit a habeas corpus petition. Habeas corpus is similar to the appeal process in that a defendant challenges their conviction. Yet, the issues raised in habeas corpus must be different than those raised in the appeal. It is considered the last effort one can make in order to overturn their conviction or reduce their sentence. Shouse Law Group notes that a petitioner has to raise and prove one or more of the following issues to succeed:

- “He/she was convicted under a law that is unconstitutional
- he/she did not have a competent lawyer (or no lawyer was provided)
- there were instances of prosecutorial misconduct
- he/she was incompetent to stand trial
- new evidence was discovered showing the petitioner’s innocence
- there have been changes in the law since the petitioner was convicted, and
- he/she suffers from unsafe or challenging conditions of confinement” (Habeas Corpus Petitions in California, 2020)

If a court grants a petition, the conviction may be thrown out and the petitioner may be released, or they may have their charges and/or sentence reduced. Similar to the regular appeals process, there are usually several steps before a decision is reached. Shouse Law Group explains, “If the court finds that the facts alleged in a petition are true, then it issues an order to show cause and invites the government to file a response to the petition” (Habeas Corpus Petitions in California,

2020). The petitioner can then file a response. Similar to oral arguments, a hearing may then be scheduled to consider evidence presented by both the petitioner and the State/government. A decision is rendered at the end of this hearing. A petitioner may file a habeas corpus petition in federal court if it gets denied by California state courts, including the California Supreme Court. Unfortunately, federal law takes an extremely strict approach to habeas corpus petitions challenging state sentences. For example, Shouse Law Group notes, "...a petitioner can only get federal habeas corpus relief if he/she can show that:

- his/her custody violated the United States Constitution or federal law
- the petitioner has exhausted all possible remedies available in California, and
- the California courts made an obvious mistake in the case" (Habeas Corpus Petitions in California, 2020).

The appeals process takes several years, especially in capital cases.

Scott Peterson is represented by Attorney Cliff Gardner during his appeals process. His opening brief was filed in June 2012. The State filed their response brief in January 2015. Peterson's response to the State's brief was filed in July 2015. Peterson's habeas appeal was filed in November 2015. The State's Habeas Response was filed in August 2017. Peterson's response to the State's response in August 2018. All of these briefs can be found and read on the Scott Peterson Appeal website (Appeal Information, 2021). In June 2020, the California Supreme Court heard oral arguments on Peterson's (direct) appeal, via Zoom. In August 2020, in a 7-0 decision, the Supreme Court of California upheld Peterson's conviction, but overturned his death sentence. They also ordered that the trial court re-examine Peterson's conviction, namely with respect to allegations of juror misconduct (Dolan, 2020). Peterson is guaranteed a new trial for the penalty phase, but his lawyers are delaying the penalty phase trial in hopes that

his conviction will be overturned, and he will receive a new trial for the guilt phase as well. Both Peterson's direct appeal and habeas appeal are being handled simultaneously by San Francisco Superior Court Judge Anne-Christine Massullo. The next two conferences on both these issues will be held in June 2021 (Dolan, 2020).

### **Introduction to Peterson's Appeals**

The following is a summary of some of the issues raised in both of Peterson's appeals, as well as general arguments that Peterson is innocent. The information is sourced from Peterson's appeal documents, the State of California's response briefs to these documents, the documentary series *The Murder of Laci Peterson*, and the Scott Peterson Appeal website. The following seeks to present and dispute claims that Peterson is innocent and/or deserves a new trial, using relevant information from both sides. Any claims made here that are not in Peterson's appeals, are those promoted by Peterson's sister-in-law, Janey Peterson. Janey Peterson is the founder of the Scott Peterson Appeal website and the Scott Peterson Appeal team, and has publicly advocated for Scott Peterson's innocence. Peterson's attorney Pat Harris recently referred to Janey Peterson as "the heart of our case" (Stevenson & DeVoe, 2021).

### **Errors in the Jury Selection Process**

One of the major claims that is made in Scott Peterson's Appeals is that there were significant errors in the jury selection process. Peterson (via his attorneys) claims that potential jurors were dismissed in a way that would make the resulting jury more likely to impose the death penalty. Peterson's appeals also highlight errors that juror Richelle Nice (who was originally an alternate) made when responding to the juror questionnaire. Peterson claims that Nice may have been biased against Peterson, and purposely concealed information in order to serve on the jury (and convict him). Supporters of Scott Peterson also believe that it was impossible for him to receive a fair trial, due to the overwhelming negative press coverage he received. Due to these errors, Peterson claims his constitutional rights to a fair trial (and a fair

and impartial jury) were violated, and he should receive a new trial (Berry, 2017) (Appeal Information, 2021).

#### A. Jurors were Improperly Excused

During the jury selection process, potential jurors are asked numerous questions relating to the facts of the case, and their ability to serve on a jury. They are questioned by the prosecution and defense, in what is known as voir dire, on any personal reasons why they may not be able to serve fairly on a jury. For example, the jurors were asked about their beliefs on the death penalty, given that the Peterson case was to be tried as a capital case. The issue that Peterson's claim makes is that Judge Delucchi asked the potential jurors if they were personally opposed to the death penalty, and then would dismiss them on these grounds. However, when a potential juror is personally opposed to the death penalty, they must then be asked whether they could still impose it in a criminal trial. Dworetzky (2021) explains that, "...the trial judge excluded jurors who were personally opposed to the death penalty without first determining if they would nevertheless follow the law as the trial judge instructed" (Dworetzky, 2021). Peterson contends that by dismissing these jurors without asking this "followup" question, the final jury that resulted was one that was more likely to impose the death penalty.

#### B. Richelle Nice's Errors in Juror Questionnaire

Additionally, it was discovered that juror Richelle Nice filled out her juror questionnaire incorrectly, in a way that may indicate that she purposefully omitted information and harbored bias. Potential jurors are given a questionnaire when put through jury selection, to gage their ability to be a fair and impartial juror (Beratlis et al., 2006). One of the questions on the

questionnaire for the Peterson trial was if the potential juror had ever been involved in a lawsuit. Richelle Nice answered no to this question. However, Nice actually was involved in a lawsuit. In November of 2000, Nice— who was four and a half months pregnant at the time— filed a lawsuit against her boyfriend’s ex-girlfriend, Marcella Kinsey. Nice alleged that because of Kinsey’s conduct, she “fears for her unborn child” (Appeal Information, 2021). Nice alleged that Kinsey “committed acts of violence against her” and “would try to hurt the baby” (Appeal Information, 2021). Nice later testified at a hearing in Superior Court and obtained a restraining order against Kinsey (Appeal Information, 2021). Not only did she inaccurately fill out her questionnaire, she was involved in legal case *while she was pregnant*. Peterson’s appeal argues that Nice’s experience with this woman, who made her fear for the life of her unborn child, may have made her prejudiced to his case. Due to her experiences, Nice may have been more sympathetic to the State’s arguments against Peterson, and more inclined to punish him for harming an unborn child. Nice claims this was an honest mistake— that her and Kinsey have since made amends, and the lawsuit simply did not cross her mind when filling out the questionnaire. She did not think of the restraining order she filed against Kinsey as a lawsuit (Berry, 2017). Yet, Nice had filled out paperwork relating to the lawsuit, naming herself as the plaintiff and Kinsey as the defendant. The paperwork noted a court date being set in the very same court where the Scott Peterson trial was taking place. She even added a request for “attorneys fees and costs” (Appeal Information, 2021). Peterson’s appeal argues that therefore it is unlikely that she did not consider this case when asked about the lawsuit. The appeal notes that,

“In fact, Ms. Nice stated in her questionnaire that she had wanted to be a lawyer when she was younger, she had been to college and had even worked in a law office prior to

the trial. It seems very unlikely she would not understand terms like “witness,” “plaintiff” and “lawsuit” (Appeal Information, 2021).

Not only did she fill out her questionnaire inaccurately, her inaccuracies suggest that she may have had an ulterior motive to get on the jury (to convict Peterson). It would not be unbelievable that Nice could have been a stealth juror, as the Scott Peterson case attracted many of these during juror selection. A stealth juror is a juror who wishes to be put on a jury to fulfill an agenda. They give the court the answers that they want to hear in order to advance to the jury. Due to the widespread media attention the case received, the defense and prosecution had to be aware of potential stealth jurors who wanted to convict Peterson. Mark Geragos, who represented Peterson during his trial, shared in *The Murder of Laci Peterson* that there was at least one stealth juror that they discovered during jury selection. He described how the woman appeared to be a good potential juror, but was secretly in an online chat room expressing her agenda to give Scott Peterson the death penalty (this potential juror was dismissed after this was discovered) (Berry, 2017). Peterson’s Appeals also note that Nice was still willing to serve on the jury, even though her employer could not compensate her in her absence (Appeal Information, 2021). Peterson’s counsel alleges that her willingness to serve on this jury, despite the (financial) hardships it may have caused her, suggests that she may have had an agenda. Not only does Richelle Nice’s error mean that Nice herself may have been biased, which in itself could be grounds for a new trial. It raises the question if Scott Peterson could ever get a fair trial unless the trial were to be done in the present day, where there are less people who know about the case. Even though his trial was moved from Modesto to Redwood City to avoid a biased jury pool, the media attention his case got could not be avoided. One cannot help but question how much this media coverage may have tainted a jury pool.

### C. Evaluation

Nice denies that she purposely concealed this information or was biased against Peterson. She divulged that her and Kinsey have since made peace since the incident, so it did not occur to her when filling out the questionnaire (Stapley, 2017). The State of California, in its Response Brief to Peterson's Habeas Appeal, also agrees that the incident may have just been buried in Nice's mind. They mention that there was about a four year difference between the incident and the time Richelle Nice filled out the jury questionnaire (Appeal Information, 2021). The State's brief also notes that Peterson's defense counsel was anxious to keep Nice on the jury, and said that her desire to serve on the jury despite lack of salary was not unusual. Geragos had then remarked, "We've got a couple of others who have said the same thing" (Appeal Information, 2021). Perhaps the opportunity to serve on such a relevant case was Nice's motivation for serving on the jury. However, the State contends in its Habeas Response Brief that we can only speculate on Nice's motivations for serving on the trial. Just because she filled out her questionnaire incorrectly, does not mean that she may have done so with malicious intent. The State also holds in its Habeas Response Brief that jurors who were dismissed based on their personal death penalty views, were dismissed on the grounds of other information in their questionnaires that indicated they could not impose the death penalty. Also, a number of the prospective jurors were properly excused on alternative grounds. The State also suggests that, "At any rate, even if one or more of these identified jurors was erroneously excluded, the error was harmless." (Appeal Information, 2021). The State concludes that Peterson and his defense counsel played an active role in jury selection, agreed with the jury that was selected, and had the

power to dismiss any of the jurors for any reason. Therefore the State's Habeas Response dismisses these claims.

Since the State's Habeas Response was filed, there have been some crucial developments regarding these claims. In 2020, the California Supreme Court granted Peterson a retrial of the penalty phase of his case, based on the claim that jurors were improperly excused. The California Supreme Court also instructed the trial court to consider Peterson's claim that his guilty conviction should be overturned due to juror misconduct. The next hearings on these issues are scheduled for June 2021 (Dworetzky, 2021). Even though the State's initial response dismissed these claims, they are clearly quite important for the California Supreme Court to decide that they may warrant a new trial. There is guaranteed to be a retrial of the penalty phase, yet Peterson's legal team is holding off on this retrial, in hopes that there will be a retrial of the guilt phase as well. Personal opinions differ on whether or not the Peterson jury was fair, yet the only opinion that matters is that of the courts. While no jury is entirely perfect, there were steps taken (such as the relocation of the trial) to ensure the fairest jury possible, given the extenuating circumstances. Yet, perhaps Peterson would benefit from a new trial in these many years after the case's conclusion, with a jury pool that has had little to no exposure to the case.

### **Evidence that was Wrongfully Admitted**

Another claim that Peterson's Appeal makes is that some of the State's evidence should have never been admitted into the trial, because it was unreliable. The Appeal takes issue with the dog scent trailing evidence, the evidence of tidal currents in the San Francisco Bay, and the

evidence regarding baby Conner's age and time of death. Peterson contends that these subjects of scientific expert testimony, were unreliable and improper. Peterson's appeal attacks the methods used to draw the State's conclusions, and also attacks the credibility of the sciences themselves. This evidence was wrongfully admitted, Peterson claims, and baselessly influenced the jury against him (Berry, 2017).

#### A. Dog Trailing Evidence

One of the issues that the Scott Peterson Appeal team raises is the reliability of trailing dog evidence that placed Laci's scent at the marina. A trailing dog named Trimble was used in the search for Laci Peterson. The dog located Laci's scent at Berkeley Marina near the boat launch ramp. This was damning evidence towards Peterson's case. Juror Richelle Nice reported on *The Murder of Laci Peterson* that Trimble's search and findings were important to her decision to find Peterson guilty. Scott Peterson's appeal has attacked this dog scent-tracking evidence, calling it "junk science" (Berry, 2017). Peterson's legal team alleges that Trimble's trailing record was inconsistent at best, and that Trimble was not qualified to perform as a reliable trailing dog. Thus, Peterson's appeal team believes that this evidence should have never been introduced (Berry, 2017) (Appeal Information, 2021).

#### B. Tidal Evidence

Peterson's legal team also takes issue with "experts" who testified to the movement of currents in San Francisco Bay. The prosecution called upon a hydrologist, Dr. Ralph Cheng, to testify to the movement of Laci and Conner's bodies in San Francisco Bay. In doing so, the prosecution was attempting to establish that Laci and Conner could have washed up in their

respective locations, if dumped from where Peterson was fishing. Yet, upon questioning from defense counsel, Cheng admitted that he had never conducted any experiments or studies regarding the movement of bodies in water. Thus, Peterson alleges, he had no scientific expertise to make any conclusions about the movement of bodies in water (Berry, 2021) (Appeal Information, 2021).

### C. Fetal Development Evidence

One of the issues Peterson raises on appeal is that the prosecution presented false evidence regarding Conner's date of death. The prosecution's expert witness, Dr. Gregory DeVore, used a formula from renowned Dr. Phillippe Jeanty to determine Conner's date of death. In determining that Conner must have died on either December 23rd or 24th, 2002, and no other time, Scott Peterson would be responsible for the murders. If evidence showed that it was more likely that Conner died after December 24th, then Scott Peterson could not be the murderer. Dr. DeVore claimed that baby Conner had died on December 23rd, hours after Laci's last visit to an obstetrician and the day before Laci disappeared. He estimated that the gestation period for Conner was 33 weeks and one day. DeVore based his findings on the size of the child's femur post-mortem, as well as ultrasounds taken during the first trimester. He told Geragos upon cross-examination that this method was "the gold standard" (Beratlis et al., 2006, pp. 120). Jurors viewed DeVore's testimony as straightforward, indisputable, and overall credible. The State of California in its Habeas Response Brief also concluded that "Nor was there anything in DeVore's background that might signal that he was unqualified to offer a credible expert opinion on gestational age. Quite the contrary, his credentials were extraordinarily impressive" (Appeal Information, 2021). However, Peterson's Appeal team alleges that DeVore used Jeanty's

formula incorrectly, perhaps to elicit a predetermined response that fit the prosecution's theories. Peterson's Appellate Lawyer Cliff Gardner states in *The Murder of Laci Peterson* that DeVore "...used the wrong formula, measured the wrong bones, and he came out with the wrong result" (Berry, 2017). The documentary alleges that when Peterson's legal team reached out to Dr. Jeanty themselves, he confirmed that this formula was used incorrectly. When using his own formula, Jeanty allegedly determined that Conner "...may have been alive as late as January 3rd" (Berry, 2017). This obviously unravels the prosecution's theory.

The defense called their own expert witness at trial, Dr. Charles March, a former USC medical professor and expert on fertility. March was not an expert on gestation period of a fetus, as Dr. DeVore was. March concluded, based on a pregnancy test taken in June 2002 and an ultrasound in September 2002, that Conner did not die on the 23rd, but on the 29th. However, he admitted that it is nearly impossible to determine the time of conception of the fetus, and there is no way to completely guarantee the age of a fetus at death (Beratlis et al., 2006). March also alleged that the date of conception was "minimally important" to his conclusions (Appeal Information, 2021). DeVore estimated that the date of conception was May 20th, two weeks after Laci's last menstrual cycle on May 6th (Appeal Information, 2021). March estimated that June 9th was the date of conception—this is the day that Laci called her friend Renee Tomlinson to tell her that she was pregnant. This date was not found in Laci's medical records and was attacked on cross-examination. Taking the woman's last menstrual cycle and adding two weeks, as DeVore had done, is the more generally accepted computation for determining date of conception. March's conclusion rested on the assumption that Laci called Tomlinson the same day she took her pregnancy test. March was attacked by prosecutors for forming a medical

opinion based on an assumption, undermining his credibility. March subsequently crumbled on the stand, badly wounding the defense's case (Beratlis et al., 2006).

#### D. Evaluation

The State held in its first Habeas Response Brief that there is no substantial evidence that the prosecution deliberately presented false evidence at trial. The State also believes that disagreements on expert testimony, are nothing more than standard disagreements amongst members of the scientific community. With regards to the fetal development evidence, the State details,

“As the testimony recounted below reveals, the experts arrived at different conclusions using different information. There is nothing deceptive or false about that. In fact, disagreement among parties' experts is commonplace. With respect to Peterson's claim as it concerns his federal constitutional rights, even if DeVore's testimony was patently false, there is no evidence demonstrating—or even suggesting—that the prosecution knew it to be so. In any event, it is not reasonably likely that DeVore's testimony, if false, affected the verdicts” (Appeal Information, 2021).

The State alleges that disagreements not only between Jeanty and DeVore, but Jeanty and other experts (such as March), is standard for this matter that was, “...difficult to pinpoint with any degree of accuracy” (Appeal Information, 2021). The disagreements on the age and time of death of Conner are standard debate, which typically occurs in the scientific community.

The State also remarks, in regards to the dog trailing evidence, that there is no stronger testimony to Trimble's abilities, than the fact that Laci and Conner washed up near San

Francisco Bay. It may also be debatable how the bodies of Laci and Conner moved in water, but the indisputable fact of the matter is that Scott Peterson was at San Francisco Bay on the day of Laci's disappearance. Laci (and Conner) had undeniably been submerged in the Bay for a significant amount of time. Unless Laci and Conner were somehow planted in the Bay, which would have had to be quite soon after Peterson's fishing trip, this is still major evidence against Scott Peterson. Even though exact science may conflict, Peterson was fishing on San Francisco Bay on the day of Laci's disappearance, and Laci and Conner were found washed up on the shores of San Francisco Bay.

### **Laci's Body was Planted**

As previously noted, the fact that Scott Peterson was fishing at San Francisco Bay on the day of Laci's disappearance, and Laci's body was found washed up on the shores of San Francisco Bay, is quite the coincidence. This is obviously a very damaging element of Peterson's case, as it is a very compelling indicator of his guilt. Yet, supporters of Peterson argue that Laci's true murderers may have taken advantage of media coverage in order to frame Scott Peterson. By publicizing Peterson's alibi, they argue, Peterson could have easily been framed.

In *The Murder of Laci Peterson*, Scott Peterson's appeal team proposes that Laci's body may have been planted in San Francisco Bay in order to frame Peterson. Janey Peterson alleges that Modesto Police held a press conference shortly after Laci's disappearance which "publicizes" Peterson's alibi. By publicly revealing Scott Peterson's whereabouts on December 24th so early on in the case, namely the fact that he was fishing at Berkeley Marina, Janey Peterson alleges that this could have damaged the case. She alleges that a third party who may

have kidnapped Laci would have known where to discard Laci's body in order to frame Scott Peterson. In a meeting, the appeal team speculates that someone could have "driven right up" to the marina and disposed of Laci's body, "without even needing a boat", due to lack of security at the marina (Berry, 2017).

Firstly, the speculation that someone could have disposed of Laci without a boat is baseless. The autopsy of Laci Peterson showed that her body had undeniably spent significant time submerged in the Bay. It would be impossible for someone to have disposed of her body at the shoreline, for her (and her unborn child) to have been found in such condition. Secondly, while police did not begin searching the marina until December 28th, this is also the approximate time that they had publicly revealed that they were focusing on Berkeley Marina. A look into the Modesto Police Department's press conference transcripts, which can be located through the Scott Peterson Appeal website, shows no mention of the marina to the public until December 28th. Prior to December 28th, the police note that Scott Peterson was fishing in "the Bay area". Yet this could allude to a number of places, not specifically Berkeley Marina. In fact, Peterson's attorney Mark Geragos notes in his closing statement (which also can be found through the Scott Peterson Appeal website) that Modesto PD asked the public for help verifying Peterson's alibi on *January 2nd 2003* (Court Docs, 2021). Anne Bird also notes in her book that the police asked the public to help verify Peterson's alibi on January 2nd (Bird, 2005). This is likely the press conference Janey Peterson is referencing, yet it takes place after police have started searching the Bay. There is no evidence to support that Modesto Police publicized Scott Peterson's alibi prior to December 28th, which is simultaneously when police started searching the Bay. Unless Peterson's alibi was somehow leaked, it is improbable that a third party could have dumped Laci's body in the Bay between December 24th and 28th, or after December 28th.

### **Condition of Baby Conner**

The condition of Conner's body when he was found leads some to speculate on what may have happened to him. The prosecution's theory is that Conner was naturally separated from his mother's womb as a result of marine activity and ocean currents. This is something that would likely happen as part of the decomposition process, especially taking place in a marine environment. Yet, the relatively fair condition of Conner's body in comparison to Laci's has suggested to some that perhaps Conner was handled outside the womb. While Laci's body was missing some limbs when it was found and was badly decomposed, Conner was whole. The main difference is that his skin was somewhat translucent and he was a bit liquified. When the body of Conner Peterson was found, there was a piece of twine/tape wrapped around the baby's neck, which was tied in a knot. The space between the twine/tape and the baby's neck was about two centimeters. There was also a piece of dark material on the baby's ear (Berry, 2017) (Appeal Information, 2021) (Court Docs, 2021).

#### **A. Conner was Handled Outside the Womb**

The Peterson team has interpreted this evidence to mean that Conner must have been handled outside the womb. The tape/twine around Conner's neck was likely not debris, because it could not have been removed easily over the baby's head without being cut. According to a summary of forensic pathologist Brian Peterson's testimony, "Dr. Peterson suspected he might damage Conner's head if he attempted to remove the twine over the head and so he cut it on the right side, removed it, and handed it to Officer Soler" (Court Docs, 2021). This record is supported by trial transcripts. There was also some material found on Conner's ear. Brian

Peterson suspected it was kelp/seaweed. Geragos thought it could be electrical tape. The material was not saved so it could not be determined what it was, but Conner's ear was flattened against his head. Brian Peterson explained that this could be typical for a baby that had been liquified such as Conner. Geragos interpreted this evidence to mean that Conner's ear had been taped. To have had his ear taped, and have had this tape/twine tied in a knot around his neck, Peterson's supporters allege that Conner must have been handled outside the womb (Appeal Information, 2021). Therefore, Scott Peterson could not have been the last one to see her, or the one to kill her.

#### B. No Substantial Evidence of This

There was no evidence that any parts of either of the bodies had been forcibly cut or wounded. Brian Peterson found no knife wounds or gunshot wounds of any kind on Laci or Conner. There were no tool marks on Laci's joints to indicate that her limbs had been dismembered with tools. And her uterus was not forcibly cut open, it was torn. As the State explains, "Laci's uterus was still enlarged, her birth canal was closed, and there was no evidence of a birth, which indicated she had died while still pregnant" (Appeal Information, 2021). Even if Conner was in fact born or even forcibly removed from his mother's womb like some Peterson supporters suspect, he could not have been thrown into the Bay separately or he would have been eaten (Appeal Information, 2021).

#### C. Evaluation

The science seems to be consistent with the prosecution's theory of the crime. To imply that Conner must have been handled outside of the womb (not by Scott Peterson), you have to explain how she could have given birth when the evidence is against this. Dr. Brian Peterson's conclusions are based on the state of Laci's reproductive organs, the only surviving organs in her body. There is no evidence to support that the baby had been forcibly cut out of Laci's womb either. Even when convicting Scott Peterson, the jury decided that he did not inflict any direct harm to her uterus (thus resulting in a second degree conviction for Conner) (Beratlis et. al., 2006). It is up to the courts to decide if this matter should be looked into, but it is reasonable to conclude that the theory that Conner was handled outside the womb does not seem to hold much merit.

#### **Laci's Alleged Computer Use on December 24th**

The Scott Peterson Appeal team notes certain computer activity on December 24th 2002 as being proof that Laci was alive on the morning of her disappearance. According to the Scott Peterson Appeal website's timeline of December 24th 2002, there is computer activity in the Peterson home between 8:40 and 8:45 am. This is corroborated by the timeline found on the Scott Peterson Appeal website, and the timeline found in the State's response brief to Scott Peterson's appeal. According to the Appeal website, "The MSN home page, a weather site from Yahoo!, and two Yahoo! shopping sites are accessed. One shopping site was for a red GAP scarf and the other a sunflower umbrella stand" (Case Facts, 2021). The appeal team alleges that Laci must have made these searches, since these were items that she would have searched for (Laci shopped at GAP and loves sunflowers). The appeal website alleges that the computer activity ceased at 8:45 am, which is consistent with the State's response brief. The State's brief also confirms the weather site, GAP scarf and umbrella stand. However, the State's response brief

then notes that “At 8:45, an email document was created bearing appellant’s name regarding an eBay transaction involving a golf bag” (Appeal Information, 2021). The appellant that the document refers to is Scott Peterson. The State’s brief notes that Laci and Scott had separate email addresses, the email that was created was in fact from Scott Peterson’s email address, and there was no evidence to support that Laci had ever used or accessed Scott Peterson’s email account (Appeal Information, 2021). Also, following the appeal team’s logic that the searches correlated to Laci’s interests, a transaction relating to a golf bag would most likely be from Scott, as he was an avid golfer. The email created at 8:45 am is something that the appeal team conveniently leaves out. This is likely because it shows that it was likely Scott on the computer at that time.

While it does not prove that Peterson murdered his wife, it discredits a part of the Scott Peterson Appeal team’s timeline that they believe is crucial to his innocence. Not only is their claim inaccurate because it speculates based on Laci’s interests, it completely ignores the email activity that was likely Scott Peterson. Therefore is not conclusive that Laci was on the computer that morning, despite the Appeal team believing otherwise. The computer activity does not provide substantial evidence that Laci was alive at that time.

### **Laci Sightings**

In the investigation of Laci’s disappearance, several witnesses who lived near the Peterson home came forward to claim that they had seen Laci walking her dog on the morning of December 24th 2002. These sightings are important to examine, because if any of these witnesses saw Laci Peterson walking her dog after Scott Peterson left to go fishing, then Scott Peterson could not be responsible for Laci’s murder. In fact, this is what the Scott Peterson

Appeal Team alleges. They claim that there were several witnesses who saw Laci, whose sightings of Laci would match up with the walk she would have taken towards East La Loma Park with McKenzie (Berry, 2017). However, there is reason to believe that these alleged sightings are not corroborated and unreliable.

There were numerous reported sightings of Laci Peterson as the case unfolded. There are several sightings that may seem plausible, which are relied upon by supporters of Scott Peterson's innocence. Yet these supporters leave out other reported sightings of Laci across 26 states and overseas (Appeal Information, 2021). As the State's Response Brief details, "Only a few of the reported sightings fit the relevant timeframe and location, as authorities could best determine. Most were not viable and none were corroborated" (Appeal Information, 2021). Sources like *The Murder of Laci Peterson* highlight several witnesses who claim to have seen Laci walking her dog on Christmas Eve day. Some of these witnesses allege that they were never contacted by police, suggesting incompetent investigation by police (Berry, 2017). However, this is likely because these sightings are non-verifiable, non-corroborated, and/or may not have fit the likely timeline of the day's events.

Furthermore, eyewitness identification can be unreliable in criminal trials. Even in crimes where an attacker makes close contact with the victim, such as rape or robbery, a victim may have trouble correctly identifying the perpetrator in i.e. a lineup. There have been many exonerations over the years in cases where a perpetrator was identified in a lineup and convicted, but later proven innocent. This even happens in cases where the victim was certain that they had identified the right perpetrator. Incorrect identification can happen for a number of reasons. The main reason being that the human mind is not foolproof. We may not remember things correctly, or our memories may be distorted. This is especially true for victims who may be experiencing a

traumatic incident, which affects the brain's ability to remember details. Sometimes, authorities may conduct improper lineups, or "tip off" the victim as to who their suspect is. In some cases, a victim or eyewitness may be eager to make an identification, and may pick the closest match out of a lineup even when the real perpetrator is not present. In the Peterson case, it is likely that these eyewitnesses simply wanted to aid in the case. When the case began to make news, many people in the community wanted to help in whatever way they could. Perhaps after hearing about the case, these witnesses remembered that they had seen a woman walking a dog, and believed their tip may be useful. These witnesses are not being intentionally deceitful, but their memories may be influenced by the information of the case. Also, it is worth noting that none of these witnesses knew Laci. If Laci had been reportedly seen walking by a friend or acquaintance, this account would be much more credible. As the State's response brief explains, there could have been a number of pregnant or large/overweight dark-haired women walking their dog (Appeal Information, 2021). In fact, detectives working the case found that there were several pregnant women in the area who had dogs (Stevenson & DeVoe, 2021). Therefore, it is possible that the sightings of Laci were mistaken for another pregnant woman walking her dog. It is not able to be confirmed that any of these Laci sightings are correct.

While Peterson supporters also emphasize possible sightings of Laci being potentially abducted by homeless men in a van (or some variation of the story), there are also witnesses who provide evidence to the contrary. Witnesses Brian Lee and Kim Westphal both testified at trial that they were on Covena Avenue between 10 and 11 am on Christmas Eve 2002, and did not see any suspicious activity. The State's response brief repeats from the prosecution's closing arguments that, "...there were plenty of people out and about in the neighborhood that morning, including in the park, who reported seeing nothing unusual or troubling at the time in question"

(Appeal Information, 2021). Even the Peterson's mailman, who knew Laci and was delivering mail in the area between 10 and 11 am, did not report seeing any suspicious activity. In addition, Detective Buehler notes that it is unlikely that Laci was kidnapped without anyone seeing, hearing any screams, or hearing McKenzie bark (Stevenson & DeVoe, 2021).

### **Was Laci alive after 10:18?**

As previously mentioned, Scott Peterson left his home on December 24th 2002 between 9:48 am and 10:08 am. Neighbor Karen Servas finds McKenzie outside the Peterson home with his leash on at 10:18 am. She puts the dog in the Peterson's backyard, noticing that the backyard gate had been open (Appeal Information, 2021). According to the prosecution's theory, 10:18 am concludes the time period that Laci could have been alive until. The state/prosecution reasons that Laci must have been killed or abducted by this time for the dog to return to the home with its leash on, without Laci. However, Karen Servas testified that it was not unusual for McKenzie to have gotten out of the Petersons' yard. Sharon Rocha confirmed that McKenzie spent a lot of time outside, and "only occasionally" came into the house. Also, Servas testified that when she returned McKenzie to the backyard, she did not check to see if anyone was home. According to Peterson's appeal, "Not only could Laci have simply been in the house at the time, but Servas herself conceded that she had found McKenzie out loose in the neighborhood on prior occasions" (Appeal Information, 2021). The appeal alleges that this undermines the State's theory that Laci had to have been killed (or abducted) by 10:18 am for the dog to have been loose in the yard. They allege that Laci could have been inside the home at this time. They also allege that this theory is supported by the account of Russell Graybill, the Peterson's mailman.

In the documentary, *The Murder of Laci Peterson*, Peterson's appeal lawyer Cliff Gardner and Peterson's sister-in-law Janey Peterson discuss the route of mailman Russell Graybill on December 24th 2002. Gardner and Janey Peterson allege that Russell Graybill's statements were excluded from discovery because of a glitch in a scanning machine (Berry, 2017). They allege that Graybill was at the Peterson house after 10:18 am, as supported by his mail scanner. He was in the area of the Peterson home between 10:30 and 10:50 am. Graybill claims that when he was at the Peterson's house on December 24th, McKenzie did not bark. McKenzie always barked if he was home at the time Graybill delivered the mail (Berry, 2017). This supports the previously mentioned theory that Laci could have been alive after 10:18 am. This theory suggests that Laci must have taken McKenzie for a walk after 10:18 am, leaving the possibility for her to be abducted, while Scott Peterson is confirmed to be not at home. Under this alternate theory, Peterson leaves the home between 9:48 am and 10:08 am (as previously recorded), McKenzie is (perhaps accidentally) let out with a leash on, Karen Servas returns McKenzie to the backyard, and *then* Laci takes the dog for a walk, and is not home by the time Graybill delivers mail. Perhaps Laci put McKenzie's leash on, let McKenzie out (or she put the dog's leash on outside), and then went back inside. Perhaps she changed her pants at this time, considering Scott Peterson insisted she was wearing black pants when he left the house, but her body was found in tan pants. Even if she did not change her clothes, perhaps Laci was inside when Karen Servas returned the dog, and then took the dog for a walk and was abducted.

However, upon closer examination, there are several issues with the theory that Laci walked McKenzie on December 24th. Firstly, the Scott Peterson Appeal team's insinuation that Russell Graybill's statements were not heard is false. By asserting that his statements were not "scanned in" to Peterson's discovery, they insinuate that Graybill's information was not part of

the trial. Nothing can be presented at trial which is not included in discovery. Yet, Graybill testified extensively at trial. Graybill's testimony can be found in transcripts of trial testimony, which can actually be found on the Scott Peterson Appeal website. We learn from Graybill's testimony that McKenzie was not in front of the house at this time, because if McKenzie was alone in the front yard, McKenzie would have been territorial with Graybill and would not have allowed him to deliver the mail. When asked, Graybill said that McKenzie did not bark at him that day (December 24th). Graybill testified that he had not had any problems with McKenzie that day, and did not notice anything out of the ordinary (Court Docs, 2021).

### **Medina Burglary**

Between December 24th and December 26th, 2002, Rudy and Susan Medina, who lived across the street from the Petersons, were away on a short Christmas trip. The Medina home was burglarized during this time, which happens to be around the same time that Laci disappeared. Diane Jackson was driving on Covena Avenue at around 11:40 am on December 24th, and noticed suspicious people and a suspicious vehicle parked at the Medina house. Supporters of Peterson's innocence say that these could have been the Medina Burglars. When Modesto Police arrested the burglars, Steven Wayne Todd and Donald Glenn Pearce, the burglars said that the burglary took place on the 26th. They were forthcoming with information about the burglary. They also stated at the start of questioning that they had nothing to do with Laci's disappearance. Diane Jackson's record was not allowed at trial because she was hypnotized by an unqualified hypnotist (Berry, 2017).

#### **A. Medina Burglars are Responsible for Laci's Murder**

Supporters of Peterson believe that the burglary must have taken place on December 24th, as it relates to what Diane Jackson witnessed. They believe that perhaps Laci was walking McKenzie and saw the burglary in progress, and there was a confrontation between Laci and the burglars. Diane Jackson's testimony was not allowed because it was given under hypnosis by an unqualified hypnotist. The Modesto Police arranged for this hypnotist, but subsequently would not let her record into trial. Peterson's supporters believe that Jackson's testimony was wrongfully tampered with and wrongfully excluded because police hyper-focused their investigation on Peterson. They allege that Modesto Police believed the burglars too easily, who told them they had nothing to do with Laci's disappearance. This was information that *the burglars volunteered themselves before questioning began*, which Peterson's supporters interpret as suspicious. They believe that police manipulated the burglars into saying that the burglary happened on the 26th, and let it go without thorough investigation, in order to frame Scott Peterson. Peterson's supporters also allege that the burglary could not possibly have occurred on December 26th, due to the media and police presence in the area (investigating Laci's disappearance). Reporter Ted Rowlands was allegedly on Covena Avenue with a TV Crew on the morning of December 26th. Therefore the burglary could not have taken place on the 26th (Berry, 2017).

#### B. The Aponte Tip

Peterson's supporters cite The Aponte Tip as evidence that corroborates their theory of The Medina Burglary. About six to eight weeks before the Peterson trial concluded, the prosecution provided the defense with a letter from an inmate at a correctional facility in Modesto, who claimed to have information on Laci's disappearance. The unnamed inmate

provided defense investigator Carl Jensen with a list of names, one of which was Shawn Tenbrink. Tenbrink was imprisoned at the California Rehabilitation Center in Norco. The motion alleges that Shawn Tenbrink had a phone conversation with his brother Adam, who told him details about the Medina burglary, having been told by Stephen Todd. Lieutenant Xavier Aponte worked at the Norco facility during this time. Aponte explained that a dorm officer at the facility (also unnamed) was monitoring Shawn Tenbrink's calls and heard the conversation. The conversation was recorded, and Aponte listened to this conversation. He called Modesto Police regarding this information, and his tip was recorded on January 22nd 2003 (Appeal Information, 2021). The tip was provided to Peterson's defense team five months before the preliminary hearing. Aponte facilitated a call between Shawn Tenbrink and the Modesto Police, during which Tenbrink denied any knowledge Laci's disappearance and was not cooperative with detectives. Defense Investigator Jensen spoke to Adam Tenbrink, who said that Stephen Todd was a close friend of his, and that Todd approached Adam on the evening of December 24th 2002, about helping him with a burglary that "was already started" (Appeal Information, 2021). The recording of the call between Shawn and Adam Tenbrink regarding the details of the burglary was lost, due to administrative changes at the Norco facility (the facility changed their recording systems, so the old recordings were lost). Yet, Peterson's supporters cite this as evidence that there was a confrontation between Laci and the Medina Burglars. This tip supports their theory that the Medina Burglars are responsible for Laci's murder, not Scott Peterson.

### C. Police had Tunnel Vision towards Peterson

Peterson's supporters allege that the Modesto Police did not investigate Laci's disappearance thoroughly enough. They believe that police exhibited "tunnel vision" towards

Peterson, and that they were determined that Peterson was the perpetrator. When a police officer or detective/investigator has tunnel vision, they shape evidence to fit their theory of the guilt of their suspect, ignoring evidence that points elsewhere. Godsey (2018) describes, “Because they’re so sure they have the right guy, it causes them to cut corners, ignore contradictory evidence, and to try to fit a square peg into a round hole to confirm their initial suspicions” (Godsey, 2018). Peterson’s supporters believe that the lack of investigation into the Medina burglars, and the reported Laci sightings, is evidence that Modesto Police ignored exonerating evidence against Scott Peterson. They also claim that some police officers altered or removed information in their reports to point towards Peterson’s guilt. Lieutenant Aponte also allegedly gave Modesto Police a copy of the taped conversation between the Tenbrinks, but it was conveniently lost (Godsey, 2018). Peterson’s supporters believe that the intense media interest in the case put pressure on Modesto Police to secure a conviction in the case. Police and Detectives who worked on the case will admit that they received a bad impression of Peterson from the start (Berry, 2017). Therefore Peterson’s supporters believe that police prematurely and wrongfully focused their investigation on him, ignoring all other leads.

#### D. Evaluation

In regards to the Aponte Tip, the State found that this evidence could not be classified as new evidence, since it was made known to the defense in May 2003. Peterson claims that this evidence was not thoroughly investigated, yet Peterson’s defense team pursued this matter and chose not to present it at trial. According to the State’s Response Brief to Peterson’s Habeas Petition, Stephen Todd was on the main witness list of jurors who were available to testify. A defense witness file existed for Todd. Therefore, Todd was available to testify as a defense

witness, yet defense counsel made the decision to not call Todd as a witness. Geragos speaks freely of several issues in Peterson's habeas petition, yet does not comment on this particular decision. Perhaps he did not call Todd as a witness because investigators determined the burglary to have taken place on December 26th, or perhaps because Todd never had a confrontation with Laci, regardless of when the burglary took place (Appeal Information, 2021). Furthermore, the Aponte tip lead relies mainly on hearsay evidence, from at least one unidentified individual. The recorded call between Shawn and Adam Tenbrink is irretrievably lost, so this evidence does not exist. Therefore there is no hard evidence behind this claim. Furthermore, Detective Buehler divulged that during the investigation of the burglary, it was discovered that the Medina Burglars had entered the Medina home through a back entrance. This makes it fully possible, he alleges, that they could have burglarized the home on the 26th without media noticing (Stevenson & DeVoe, 2021).

The Modesto Police willingly admit that Scott Peterson was the first person they examined, but this is customary in missing persons cases. Interpretation of the Modesto Police investigation depends on one's opinion of police. While there are bad cops and detectives who conduct improper investigations, this is not true of every criminal case. It is unlikely that Modesto Police would not have ignored significant evidence that was right in front of them (such as the Medina Burglary), especially with the media watching. Police could not have arrested Peterson if they did not have enough evidence to do so. There is definitely quite a bit of circumstantial evidence against Scott Peterson, that would have to be equally ignored in order to believe Peterson is innocent. Furthermore, Scott Peterson was an upstanding member of society with no criminal or deviant behavior *ever*. Supporters of Scott Peterson will be the first to tell

you this fact. Therefore there was no reason for the police to have bias towards Peterson, let alone enough try him in a capital murder case, if they knew Peterson was innocent.

### **Ineffective Assistance of Counsel**

One claim that an appellant can make in their appeal is that they received “ineffective assistance of counsel”. This means that the legal assistance they received at trial was so poor, that it infringed on their rights to a fair trial. In the Peterson case, the decision of whether this claim is valid is a matter of personal opinion, and legal evaluation. The only opinion that really matters on this issue is that of the courts, who must base their opinion on legal standards. They must decide if Geragos’ actions (or lack thereof) are sufficient enough to warrant a new trial. Yet, according to the notes of Professor Martin O’Conner (2019), this is something that is very difficult to prove.

One of the claims that Peterson’s appeal makes is that Geragos promised jurors in his opening statement that he would call witnesses to testify that they had seen Laci and McKenzie on December 24th 2002. By making this claim in his opening statement, Peterson’s brief alleges, he made false promises to jurors, which would naturally leave them unfulfilled when these witnesses were not called. Informing the jury in his opening statement of alleged witnesses who saw Laci on the day of her disappearance, and failing to call upon these witnesses for testimony, hurt Peterson’s defense enough to claim ineffective assistance of counsel. Yet, the State’s response brief to Peterson’s appeal explains that “The closest that counsel came to anything remotely resembling a promise was the statement that the defense had located one of these witnesses and convinced her to come forward” (Appeal Information, 2021). This implies that the witness came forward to authorities, more so than a promise that they would testify. The

State contrasts this with another remark that Geragos made in his opening statement, “We do have Dr. Yip who will come in here and testify...” (Appeal Information, 2021). This is much more of a promise, and Dr. Yip did in fact testify. The State also elaborates that counsel’s opening statement does not have to exactly mirror the evidence that is then presented at trial. An attorney may change their strategy, or may decide to not present evidence for a number of reasons. One such reason for Geragos to decide not to have these witnesses testify, for example, is that they would contradict Karen Servas’ confirmed timeline. Servas’ timeline is backed up by cell phone records and store receipts (Appeal Information, 2021). The State’s brief also notes that the information of the witnesses who claim to have seen Laci alive was relayed through the testimony of Detective Grogan. In this manner, these witnesses cannot be cross-examined by the prosecution, which may have been a strategy employed by Geragos. Geragos also employs this strategy with regards to a witness who claimed to have seen a homeless man holding a woman who looked “just like Laci” near a van. This strategy is also utilized in regards to witnesses who may have seen Peterson at Berkeley Marina (Appeal Information, 2021). Extracting information to support the defense, via cross-examination of other prosecution witnesses, may have been a *more* effective move by Geragos. Geragos may have known that calling these various witnesses may have been risky, in that they may have contradicted each other, and hurt the defense’s case rather than helped it. Therefore, there is no substantial evidence that Mark Geragos acted ineffectively as counsel for Scott Peterson. The State also notes that even if his actions (or lack of actions) were ineffective at providing a defense for Peterson, it likely would not have changed the jury’s verdict on the case.

### **Mark Geragos’ Boat Experiment**

A subject of debate in the case of Scott Peterson is whether or not he could have actually committed the crime in the way that the prosecution suggested. Namely, it is debated whether Peterson could have thrown his pregnant wife overboard his fishing boat, with anchors attached to her, without the boat capsizing. Peterson's supporters believe that it is impossible. To present evidence to support this belief, Mark Geragos (Peterson's lead attorney) attempted an experiment replicating the conditions. This experiment is discussed in *The Murder of Laci Peterson*.

According to Geragos in the documentary, he uses the same boat as Peterson's, with a man of Peterson's weight (with the help of weights to make the man's weight the same as Peterson). They use a test dummy that is the same weight as Laci, with anchors attached, in San Francisco Bay. We see footage of the experiment in the documentary, where the boat capsizes and the man falls overboard while attempting to unload the test dummy. This taped experiment was denied by Judge Delucchi and thus not shown to the jury. Yet during deliberations, jurors were allowed to step inside Peterson's boat, at which point they moved around the boat to test its stability. However the boat was on land and not water, and could not accurately simulate the conditions on San Francisco Bay (Berry, 2017).

Supporters of Peterson believe that the experiment was wrongly barred from trial. The fact that jurors requested to see and step inside Peterson's boat (and move it around) during deliberations, showed that the jurors were "hip to the defense's theory" (Berry, 2017). It would have greatly helped the jurors to have seen such an experiment, and this experiment should have been admitted, they allege. However, the State held in its response brief that the experiment was rightfully denied by Judge Delucchi. The State explains that the boat in the experiment had a higher center of gravity than Peterson's. They also observe in the experiment that "...the man hefting a weighted dummy overboard seemed to try to tip it by leaning on the gunwale, or rim of

the boat” (Stapley, 2015). It is also worth noting that “...the judge offered to let Geragos try another experiment with Peterson’s actual boat, with prosecutors watching this time, but Peterson’s camp declined” (Stapley, 2015).

Therefore, the Peterson defense team did have an opportunity to submit a boat experiment, but chose not to recreate one. This could be because it could damage their case, if it were possible that Peterson could have dumped his pregnant wife overboard. Regardless of whether Geragos’ team knew what the outcome of a proper experiment would be, a proper experiment could have been a risk. We will never know whether Peterson could have committed the crime in this manner, until a proper experiment is conducted.

### **Not Enough Evidence**

Another general argument that Peterson’s supporters like to make, is that there is simply not enough evidence to support that Peterson committed this crime. They find it impossible that he could have killed her in their home and left behind no forensic evidence. They find it improbable that he could have killed her in the suggested time frame. They do not believe that he could have concealed her body in the back of his truck, at his warehouse, and in his boat at the San Francisco Bay. They allege that in order to dump his wife in the Bay, Peterson would have needed to pass by several boats that were docked at the marina. His supporters do not believe that Peterson could have concealed his wife’s pregnant body in his small fishing boat in broad daylight (Berry, 2017). They also allege that he did not have motive to commit this crime. He had been having an affair, but he had only been seeing Amber Frey for about two weeks before Laci’s disappearance. They allege that it is unlikely that he would have killed his wife for a woman he has only known for two weeks, and only been on a couple of dates with. Peterson

built the nursery in he and Laci's home, went to most of Laci's prenatal appointments, and was excited about fatherhood (Appeal Information, 2021). The evidence does not show that he could have done what he is convicted of doing.

Firstly, the premise that Peterson would not have had time to kill his wife is supported by Laci's alleged computer activity on the morning of December 24th 2002. This has been debunked, as previously mentioned, as an email is created from Peterson's account at this time. It is not conclusive that Laci was alive at this time based on computer activity. Even regardless of this computer activity, Peterson would have had time to kill his wife. The lack of forensic evidence in the home is consistent with strangulation or suffocation, which can be achieved in a matter of minutes. During a February 18th 2003 search of the Peterson home, "Investigators also noticed one of the bed pillows at the house was missing a pillow case." (Appeal Information, 2021). We can speculate that Peterson could have smothered his wife in the middle of the night with a pillowcase while she was asleep, and disposed of this pillowcase. Police also "...found two very small spots on the comforter on the bed in the master bedroom that were later confirmed to be appellant's blood" (Appeal Information, 2021). Peterson also had cuts on his hands at the time of his wife's disappearance, which he insisted was a result of cutting himself when he reached in the side pocket of his car door (Appeal Information, 2021). However, the Scott Peterson Appeal website alleges that Peterson cut himself on his tool box (Case Facts, 2021). Prosecution alleged that these cuts on his hands were the result of Laci's struggle for survival. This is all speculation, but suggests that Peterson could have done what he was accused of.

Also, according to employees of the Berkeley Marina, Christmas Eve was typically a slow day at the Bay. December 24th 2002 was a cold, cloudy, windy, and somewhat rainy day

on the Bay, and there were very few people at the marina (Appeal Information, 2021). According to the State's Response Brief, "There were no bookings for fishing trips out of the marina that day and only three boat launch fees were collected from December 23 through December 27" (Appeal Information, 2021). Therefore, even though Peterson was there in the middle of the day, it was not as populated at Berkeley Marina as Peterson's supporters would have you believe.

Furthermore, both the prosecution and defense agreed at Peterson's original trial that Amber Frey was not the motive for Peterson to murder his wife. His motive for murdering his wife would be freedom, which Frey represented. He mentioned in one of his conversations with Frey that he had not had a prolonged period of freedom from responsibility in his life, and he was hoping that she could bring some of that into his life (Appeal Information, 2021). Laci's brother Brent's wife Rose also recalled a conversation with Peterson, where she asked him if he was excited about having a child, and he responded that he was "kind of hoping for infertility" (Appeal Information, 2021). She was unsure if he was joking or not; he was not laughing or smiling when he made the comment (Appeal Information, 2021). According to Beratlis et. al., one of Laci's ovaries became infected and was removed when she was eight years old, threatening her chances of having children later in life (Beratlis et al., 2006). Perhaps Peterson merely obliged to her wishes of having children, while secretly hoping she would never become pregnant.

This is purely speculation, and we may never know if, how, or why Peterson committed the crime. However it is worth noting that it is not impossible that he could have done so. While there may be evidence to suggest that he could not have, or would not have, committed the crime, there is equal and opposite evidence that he could have, and did. In fact, if there was truly

not enough evidence in the case against Scott Peterson, he would have claimed on appeal that there was insufficient evidence. The State explains in their response brief:

“The prosecution presented an abundance of evidence that pointed the finger of guilt squarely at Scott Peterson. To be sure, if that were not the case, Peterson, appellant here, would have advanced a claim on appeal that the evidence at trial was insufficient to support the jury’s verdicts. Appellant makes no such legal contention. Therefore, any intimation by him to the contrary is “shoveling smoke,” to borrow a turn of phrase from Justice Oliver Wendell Holmes, Jr.” (Appeal Information, 2021).

Albeit circumstantial, there was a large amount of evidence to suggest that Scott Peterson was guilty of this crime. The State cites this evidence, including the fact that he bought a boat weeks before Laci’s disappearance, right after telling Amber Frey that that year would be the first holidays without his wife. He went fishing on Christmas Eve with the wrong gear in inclement weather, and hesitated to tell police what he was fishing for or what bait he used. He made several trips to San Francisco Bay (a 90 mile drive from Modesto) after his wife’s disappearance in different vehicles. He lied to family and friends on numerous occasions regarding his whereabouts. When questioned by police, he said that there were no marital problems between he and Laci and there were no third parties to the marriage. He sold Laci’s car and inquired about selling the couple’s home just weeks after Laci’s disappearance. He added pornography channels to the couple’s home cable package while the search for Laci was still ongoing. Laci and Conner's bodies washed ashore not far from Peterson's location on the Bay on December 24th, and the condition of the bodies correlated with the timing of Laci's disappearance (Appeal

Information, 2021). Therefore, the claim that there is not enough evidence against Peterson does not hold much weight, as it is not even suggested in his appeals.

### **Behavioral Analysis through Anne Bird's Book**

An incredibly valuable resource when discussing the guilt or innocence of Scott Peterson, is the book written by his sister, Anne Bird. Anne Bird knew both Scott<sup>1</sup> and Laci personally prior to her disappearance, and is the closest we can get to a non-biased individual who also knows both Scott and Laci Peterson.

Anne Bird is the child of Jackie Peterson, Scott's mother, who she had prior to her marriage to Lee Peterson, Scott's father. Anne Bird was the second child put up for adoption by Jackie Peterson. Anne Bird was subsequently raised by the well-adjusted Grady family, and given a good upbringing. She did not have much desire to reconnect with her birth mother, until she was contacted by Don, her half brother, who was also put up for adoption by Jackie (prior to her marriage to Lee). She was introduced to Jackie, her birth mother, and her family, which included Scott. Bird details a good impression of Scott. She also meets Laci, and becomes close with her as well. This is especially true when they have overlapping pregnancies. Anne develops a good relationship with Scott and Laci, and the rest of the family. She notes that as newlyweds, Scott and Laci appeared to be very much in love (Bird, 2005).

Through Bird's book, we learn details of the Peterson family that can only be obtained from an insider point of view. For example, Bird details some disdain for Laci from Jackie Peterson, which of course was never discussed at the time of her disappearance. For example, Bird's book reveals that Jackie did not like the idea of Scott living in Modesto. She called Modesto "...a nothing little town on the wrong side of the tracks", and expressed to Bird that she hoped Laci would not convince Scott to move there (Bird, 2005, pp. 36). Bird also includes

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<sup>1</sup> Since this section deals primarily with family relationships, Peterson and his family will be referred to here by their first names.

several comments in her book, where Jackie is quite critical of Laci. For example, when Laci tells Bird that she is considering the name Logan for her son, Bird says she loves the name, yet Jackie says from the other side of the table, “I don’t. I don’t like it at all” (Bird, 2005, pp.52).

Bird writes about the exchange,

“She said it in a very mean way, and when I looked over at Laci I was surprised by how distressed she looked. It was as if someone had slapped her across the face. This was a girl who was always happy, always smiling; I’d never seen her smile disappear that way before” (Bird, 2005, pp. 52).

Jackie also expresses dissatisfaction to Anne about a thank you card that Laci wrote to Jackie following Laci’s baby shower. She also critiques Laci’s outfits during a phone call with Anne. Jackie complained, “Laci looked so silly. She was wearing white gloves and a white scarf. She looked like Minnie Mouse” (Bird, 2005, pp.64). Jackie also alludes to a couple of instances of Scott and Laci “having problems”, but is very vague. Of the relationship between Jackie and Laci, Bird writes, “I was beginning to understand why Jackie was so critical of Laci. No one was good enough for her golden boy” (Bird, 2005, pp. 46). This is a different narrative than we were exposed to from the Peterson family’s television appearances following Laci’s disappearance. Perhaps Scott and Laci did not have the perfect marriage, as was alleged by Peterson’s family.

Through Bird’s book, we also learn a little more about Scott as a person. While Bird highlights the seemingly good relationship between Scott and Laci, she notes certain actions of Scott that seemed inconsiderate or not genuine. For example, she recalls that when her own son briefly goes missing in Disneyland, Scott is on the phone and does not appear concerned. Anne’s son only goes missing for about a minute while the family is opening gifts, but Anne

panics because they are in a fourth floor room with the windows open. After the brief moment of chaos as the family is looking for Anne's son (Ryan), she recalls,

“I looked up and noticed that Scott was still in the wheelchair, still on the cell phone.

That struck me as very odd indeed. For thirty seconds everyone in that room had been thrown into a panic by my screams; the entire place was in motion, as Tim, Jackie, Laci, John, Alison—everyone—dashed around looking for Ryan. Only Scott was oblivious”

(Bird, 2005, pp.57).

While this information does not mean that Scott is a murderer, it conveys a lack of empathy on his part.

Bird details her own concern when Laci went missing. She is obviously distraught as she became close with Laci, and was excited to share the experience of motherhood with her. She recalls her initial support for Peterson, which was consistent amongst both families at the time. Yet her support weakens over time. Bird recalls comments Peterson made that raised suspicions. For example, when she asks him about possible places where Laci might be, he is dismissive and even mildly irritated. When watching news coverage of the case, he asks nonchalant questions about his appearance in news footage, rather than showing concern for his missing wife and child (Bird, 2005). When news coverage details the search for Laci, Scott remarks, “They're looking in the wrong places” (Bird, 2005, pp.84). When Bird follows up this remark by questioning where *should* they be looking, Scott is dismissive. Despite Scott's behavior, the person who helps Anne open her eyes is her husband Tim. He broaches the discussion with her of whether Peterson may have had something to do with Laci's disappearance. At first, Bird vehemently denies this possibility. When Scott is hounded by media in Modesto, Anne lets Scott stay with her as a favor to him and the Petersons, despite her husband's resistance. While Scott is living

with her, and the case against Scott Peterson persists (and his affair with Amber Frey is revealed), Anne notes more suspicious behavior from Scott. In one instance, Scott flirts with Anne's babysitter (who she refers to as Lorraine) (Bird, 2005, pp. 85). When Jackie calls Anne's house and Lorraine answers the phone, Jackie remarks, "I wish Scott could meet someone like you" (Bird, 2005, pp. 105). This is while the search for Laci is still ongoing.

Bird deliberates for a while whether or not Scott is guilty. During the trial, she learns even more incriminating things about Scott Peterson than she previously knew. In fact, she finds out he was calling Amber Frey during the time he was staying with her. She consults with a therapist to help work through the trauma that the case has caused her, and to help decide her thoughts on Scott's guilt. She comes to the difficult conclusion that he is guilty, and subsequently loses contact with Scott and the Peterson family (Bird, 2005).

Anne Bird's book is incredibly valuable because it lets us know more about Scott Peterson's character and how he is normally perceived by those close to him. A point that the Peterson family makes in regards to Scott's unfair conviction, is that we simply do not know Scott. We do not know the kind of person Scott was prior to the disappearance of his wife, which is a traumatizing event. We do not have a basis, they allege, to judge Scott on his behavior, and use that judgement to determine his guilt. According to Mark Geragos in *The Murder of Laci Peterson*, "There is no set playbook for grief" (Berry, 2017). Everyone processes grief differently, and it is therefore unreliable to judge someone based on their actions/behavior. Yet, Bird is someone who knew Scott personally, and believes in his guilt. Even though she is considered a Peterson, she did not need to stay loyal to the Petersons, as she has her own family who raised her. Her relation to the Petersons is strictly by choice, not out of necessity. She was loyal to Scott *and* Laci, yet biased towards neither of them, as she was not

obligated to conform to either family's beliefs. Her motivation is justice for Laci and Conner, *and* a fair treatment of her half-brother Scott. Bird acts as an objective fact-finder in this case out of concern for all parties involved. Therefore, her decision that Scott is guilty holds a tremendous amount of weight when considering Scott Peterson's culpability for this crime.

## Conclusion

Programs like *The Murder of Laci Peterson* shed light on the movement of people who strongly believe that Scott Peterson is innocent. When watching programs like these, where people like Janey Peterson advocate for Peterson's innocence, we may wonder if our previously conceived notions about the case were wrong. Perhaps the media shaped our biases towards Peterson, and tainted the jury pool, and Peterson did not get a fair trial. We as a society would hope that a man is not wrongfully convicted, and then sentenced to death. If there is any chance that someone convicted of a crime may be innocent, we like to investigate that possibility.

Luckily, there are a number of resources available that provide information on the Peterson case. While some dismiss Janey Peterson and the Scott Peterson Appeal team's beliefs, the resources that they have compiled, and have generously provided to the public, are incredibly helpful. Yet, ironically, some of the arguments that the Appeal team makes can also be debunked using information found through their website. This is why it is important to independently assess these arguments, and not simply believe what Janey Peterson and the Appeal team are alleging.

It is incredibly important to note that it is entirely up to the courts to decide whether Scott Peterson was given an unfair trial, and/or was wrongfully convicted. The justices who serve on the Appellate Courts, and the California Supreme Court, have vast legal knowledge, and will hopefully decide the fairest outcome with the consideration of the Law. However, based on what has been considered in this work, it is doubtful that many of the Scott Peterson Appeal team's claims do much to exonerate Peterson.

Even though the State of California originally dismissed it, there may have been evidence of errors in the jury selection process. The California Supreme Court already decided that this

claim warrants a reversal of Peterson's death sentence, and ordered that this matter should be investigated by the San Mateo trial court. Therefore, while this claim may have initially seemed insignificant, there may be legal grounds that Peterson deserves a new trial based on this claim. This claim of errors in the jury selection process is therefore notable, yet the other claims made in Peterson's appeals, and by the Scott Peterson Appeal team, seem to not hold as much merit. The Peterson Appeal team debates the scientific evidence that was presented by the prosecution at trial. While the science may be debatable, the indisputable fact is that Scott Peterson was fishing at San Francisco Bay on the day of Laci's disappearance. Laci undoubtedly was submerged in the Bay for an extended period of time, and her and Conner were found washed up on the shore of San Francisco Bay. Laci's body was likely not planted, as the Appeal team also claims. This would imply that whoever abducted Laci read or saw Peterson's alibi before police started searching the Bay, and had a boat to transport Laci's body to the Bay, without being noticed. To have dumped Laci after the police revealed to the public that Peterson had been fishing in San Francisco Bay, Laci's abductors/murderers would have had to evade law enforcement, who were searching the Bay. Laci could not have been dumped from shore, as Janey Peterson alleges in *The Murder of Laci Peterson*. The condition of Laci's body and reproductive organs show that she could not have given birth, and Conner was not forcibly removed from her womb, so there is no evidence that Conner was handled outside the womb. The lack of decomposition of baby Conner means that he must have been protected by Laci's uterus. If he was handled outside the womb and discarded into the Bay separately, he would have been much more decomposed. Therefore the theory that someone else other than Peterson committed the murders does not hold much merit.

Peterson could have absolutely committed the crime that he was convicted of, despite the Appeal team's claims that this is impossible. Since it is not conclusive that Laci was not on the computer on the morning of December 24th 2002, there is no solid evidence that Laci was alive on the morning of December 24th. Therefore, Peterson could have killed Laci any time between the evening of December 23rd, after Laci's phone call with her mother, and the time he left home on December 24th. The alleged manner of death was smothering, suffocation or strangling, which takes place in a manner of minutes. The cuts on Peterson's hands, the differing explanations on how these cuts occurred, the drop of blood on the comforter of their bed, and the missing pillowcase could indicate that Laci was smothered in the couple's bed, possibly in the middle of the night. While this is speculation, it is supported by evidence, and shows that Peterson could have committed the crime in question. Workers at Berkeley Marina testified that there were few people at the marina that day, so Peterson would not have to hide from many people. We will never know if Peterson could have dumped his wife's body from his boat, unless a proper experiment is conducted, which Peterson's defense refused.

The Laci sightings are unreliable, as eyewitness testimony can be, as there were reported to be several pregnant women in the area with dogs at the time of Laci's disappearance. It is unlikely that Laci would have let McKenzie roam around with a leash on before taking the dog for a walk, even if McKenzie was let out on accident. Mailman Russell Graybill was given the opportunity to testify at trial, and said he saw nothing out of the ordinary that day. The Medina Burglary could very well have taken place on December 26th, if it could be determined that the burglars used a back entrance to the Medina home that was out of sight of the media, as Detective Buehler reports. The Aponte Tip is based on hearsay evidence, and is unsupported because the recorded conversation is lost. Police had no motive to frame Scott Peterson, and

would likely not have ignored crucial evidence regarding Laci's disappearance, especially with the world watching. Anne Bird's book also supports the notion that Peterson was acting suspiciously during his wife's disappearance, and our initial opinions on Peterson were not a result of media bias. Bird knew Peterson and Laci quite well, and still comes to the conclusion that Peterson is guilty, despite being his half-sister.

A reasonable conclusion that can be reached is that the case of Scott Peterson must continue to be investigated. If Cliff Gardner, Janey Peterson and the Scott Peterson Appeal team raise claims that Peterson was wrongfully convicted, these matters should be addressed. However, while these parties cite evidence to support their claims, their evidence can also be refuted in certain instances. While it is important to investigate possibilities that Peterson might be innocent, we must also not forget the evidence that points to Peterson's guilt, as well.

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