

DECLARATION OF HARRY J. BONNELL, M.D.

REGARDING ROBERT ROBERSON

I, Harry J. Bonnell, M.D., am over the age of twenty-one and competent to make this declaration. I declare as follows:

1. I am a medical doctor, currently self-employed as a Forensic Pathology consultant licensed to practice Medicine in the State of California. A true and correct copy of my curriculum vitae is attached as **Exhibit A**.

2. I attended Georgetown University Medical School in Washington, D.C., and graduated from that program in 1979. I have taught at the University of Washington, Madigan Army Medical Center, King County Corrections Center, Uniformed Services University of Health Sciences, University of Cincinnati College of Medicine, and the School of Medicine of the University of California, San Diego.

3. From 1991-2001, I was the Chief Deputy Medical Examiner for the Office of the Medical Examiner in San Diego, California. I have also been Chief Deputy Coroner and Director of Forensic Pathology of Hamilton County, Ohio, Staff Pathologist in the Forensic Sciences Department at the Armed Forces Institute of Pathology, and Assistant Medical Examiner of King County, Washington.

4. I have personally performed over 7000 autopsies and provided sworn testimony more than 900 times in the Superior Courts of twenty states, six Federal Court jurisdictions and eight military courts.

5. I have reviewed and analyzed:

- Records of the Southwestern Institute of Forensic Sciences, to include the autopsy report, photos and microscopic slides related to Nikki CURTIS, SWIFS Case number 0456-02-0299JU;
- Medical records for Nikki CURTIS from birth to death;
- Children's Protective Service reports regarding Nikki's caretakers throughout her life;
- Palestine Police Department records and scene photos; and
- Transcripts of the trial testimony of Doctors Janet SQUIRES (42RR90-129), Jill URBAN (43RR54-99), John M. ROSS (42RR3-44), and Thomas R. KONJOYAN (42RR79-90), as well as Nurses Kelly GURGANUS (41RR63-81), Robbin ODEM (41RR81-101), Andrea SIMS (41RR101-152), and Detective Brian WHARTON (41RR152-188).

6. These documents and testimony reveal that:

- There were multiple investigations by Child Protective Services involving the caretakers and the living conditions in which Nikki CURTIS grew up. Persons investigated included the Bowman family, who were caring for Nikki CURTIS until approximately 9:30 pm the day before she became unresponsive under Robert ROBERSON's care.
- Nikki CURTIS suffered from recurrent middle ear infections, starting when she was only days old. These

chronic infections did not respond to antibiotic therapy and ultimately required that the ear drums be surgically pierced and drainage tubes placed.

- Nikki CURTIS also experienced several episodes of apnea, starting at approximately nine months old. She would stop breathing, collapse, and turn blue. These episodes went unexplained and were dismissed by her treating physicians, without explanation, as “breathing-hold spells,” suggesting, absent evidence, a scientifically unsound understanding that the events were somehow volitional on the part of a child this young.
- Nikki CURTIS was in the Emergency Room on January 29, 2002, two days before her death, with a fever of 104.5 and respiratory congestion which can block the eustachian tube that drains the ear and thus increase the risk/severity of middle ear infections. Her caretakers reported that she had had severe diarrhea and vomiting for a week before that. She was sent home with prescriptions for an antibiotic and codeine cough syrup.
- On January 30, 2002, the night before her death, Nikki CURTIS was still ill when her caretakers at the time, the Bowmans, asked Robert ROBERSON to retrieve the child from their home and take charge of her, which occurred at approximately 9:30 pm.
- She was brought to the hospital the next morning at approximately 10:00 am unresponsive. Emergency

Room records from Dallas Children's Hospital indicate they relied on social workers for the medical history and did not examine the ears upon admission, even though the Emergency Room record from Palestine Regional Medical Center indicated the ear drums were erythematous (inflamed and possibly infected). The pediatrician who had treated her two days before (ROSS) and who had sent her home with a fever of 104.5 was at the hospital at the time when CURTIS was admitted. Dr. ROSS was summoned to the Emergency Room where CURTIS was being treated and was surprised to find her there. He testified that his clinical notes from that day contained multiple errors, including a statement that his conclusion was that CURTIS had previously been "free of illness" when his notes should have said that she had "a viral illness." He also admitted that his notes were incorrect about when he had last seen her and where. 42RR6-11.

- Neither medical facility performed a lumbar puncture (to obtain cerebrospinal fluid for evidence of meningitis or bleeding) but started the patient on antibiotics which would mask any meningitis or sepsis (blood infection) present.
- The CT report does not mention the presence or absence of central vein or superior sagittal sinus thrombosis which can result from meningitis and cause intra-cerebral

bleeding such as was seen with Nikki CURTIS. The CT imaging (digital records) were requested, but the hospital reports that these records had been subsequently destroyed for whatever reason. Therefore, the evidence upon which Dr. SQUIRES based her testimony is no longer available and thus could not be verified.

- During the early critical period in the Emergency Room of Palestine Regional Medical Center, doctors mis-intubated Nikki CURTIS by inserting the breathing tube too far down her trachea and entered the right mainstem bronchus; this prevented half of her lung from receiving air until the mistake was identified on a later chest x-ray film and the tube re-positioned.
- Retinal hemorrhages (bleeding in the back of the eyes) was attributed to a shaking injury despite the fact that Nikki CURTIS had cerebral swelling and edema which are known to cause retinal hemorrhages.
- A diagnosis of anal trauma was made and anal swabs were obtained purely for evidentiary reasons (per medical record); more detailed examination at autopsy revealed no anal trauma.
- The only person to observe the supposed anal lacerations was Nurse SIMS who was unable to photograph them for no apparent reason and who is also **not** certified as a Sexual Assault Nurse Examiner, meaning that she does not meet the minimum specifications necessary to

practice as such. She is basically a self-appointed SANE expert.

- Her portion of the Emergency department records describes the oral cavity as normal yet she testifies that she could not identify an injury to the frenulum because the endotracheal tube was in the way. Contrary to her erroneous testimony, intubation is known to commonly cause tearing of the frenulum in children
- Her testimony that an anus that dilates in less than 15 sec is indicative of sexual assault must be a personal belief because there is no scientific evidence that documents this theory.
- Robert ROBERSON reported that Nikki CURTIS suffered a short fall from a bed onto a floor. But the Palestine Police Department records do not reflect any attempt to take a precise measurement of this height or to investigate the precise character of the floor (covering, wood vs concrete, etc.). The testimony of Detective Wharton contains only vague testimony that the height was 22-24 inches and that the house was pier and beam construction. Photographs of the scene of the injury show a thin carpet, but no information about the subsurface beyond Wharton's testimony. The fall was unwitnessed so it is unknown whether or not the head impacted first.

- The impacts to the head were not visible until scalp hair was removed at the hospital. Nothing indicates that Nikki CURTIS was undressed or bathed during the period she was in ROBERSON's care beginning some time after 9:30 pm and the time he took her to the hospital before 10:00 am the next morning.

7. Based on this review and analysis as well as my education, training and experience it is my opinion to a reasonable degree of medical certainty that the existing evidence suggests the possibility of multiple potential causes of death, which were not recognized or investigated at the time. Yet generally accepted clinical standards governing the science of forensic pathology requires that the cause of death be determined with reasonable medical certainty, and that all other possible causes of death be ruled out on a scientific basis. The manner of death, which is an opinion and not scientific fact, relies upon an accurate determination of the cause of death and thorough knowledge of the circumstances surrounding the incident or disease causing the death. For instance, in my professional opinion:

- Based on the lack of evaluation by medical personnel at the time, the diagnosis of intracerebral bleed due to central vein or sagittal sinus thrombosis due to meningitis due to middle ear infection cannot be ruled out as the cause of Nikki CURTIS's death with a reasonable degree of medical certainty;
- The findings on x-ray imaging are consistent with the diagnosis that the intracerebral bleed was due to central vein or sagittal sinus thrombosis due to meningitis due to middle ear infection,

and there are no medical or autopsy findings that rule out that diagnosis.

- The time interval between Robert ROBERSON taking sole care of Nikki CURTIS (9:30 pm on 1/30/2012) and the time last seen apparently normal (approximately 5 am on 1/31/2012) is seven and ½ hours. The non-visible injuries to the scalp and shoulders that were visible only after her head was shaved in the hospital could well have occurred prior to ROBERSON taking sole custody of CURTIS with the resulting subdural hematoma (bleeding from low-pressure small veins) continuing during that time frame until becoming symptomatic (unresponsive). The microscopic appearance of the occipital scalp injury and the subdural hematoma are consistent with this scenario.
- The injury to the frenulum (behind the upper lip) could have occurred during intubation attempts and this complication is well-described in the literature although Dr. URBAN testified that she had never seen it personally; it might also have occurred if ROBERSON was too vigorous in wiping her mouth and face as he described.
- Recent literature confirms that fatal injuries can occur from short falls of less than three feet in height; one study sponsored by the Department of Justice found linear skull fractures after falls of less than a foot onto concrete surfaces. See Todd W. Fenton et al., *A Forensic Pathology Tool to Predict Pediatric Skull Fracture Patterns – Part 1: Investigations on Infant*

*Cranial Bone Fracture Initiation and Interface Dependent Fracture Patterns*, In: Proceeding of the American Academy of Forensic Sciences, Feb. 26, 2009 (Abstract) copy attached. The key component is whether or not the head hits first and takes the full force of the impact. Because the conditions of the fall were not investigated with any precision, the variables are largely unknown. But even as described, the fall cannot be ruled out as the cause of Nikki CURTIS's death with a reasonable degree of medical certainty

Although it was known in the medical literature at the time of this death that increased intracranial pressure (as was present in this case), could cause retinal hemorrhages, many child abuse pediatricians and forensic pathologists were ignorant of this and thought that retinal hemorrhages were proof positive of shaking injuries. This "belief" has previously and subsequently been proven scientifically to be fallacious. See, e.g., S. Agrawal et al., *Prevalence of Retinal Hemorrhages in Critically Ill Children*, 129 PEDIATRICS 1388 (2012); Brett P. Bielory et al., *Fluorescein Angiographic and Histopathologic Findings of Bilateral Peripheral Retinal Nonperfusion in Nonaccidental Injury: A Case Series*, 130 ARCH OPHTHALMOL 383 (2012); L. Gnanaraj et al., *Ocular Manifestations of Crush Injury*, 21 EYE 5 (2005); Fang Ko & David L. Knox, *Pathology of Terson's Syndrome*, 117 OPHTHALMOLOGY 1423 (2010); E. Matshes, *Retinal And Optic Nerve Sheath Hemorrhages Are Not Pathognomic of Abusive Head Injury*, In: Proceeding of the American Academy of Forensic Sciences, Feb. 24, 2010; Marie Hughes & Mike Leach, *Dietary Folate Deficiency And Bilateral Retinal Hemorrhages*, 368 THE LANCET 2155 (2006); P. Watts &

E. Obi, *Retinal folds and Retinoschisis in Accidental And Non-accidental Head Injury*, 22 EYE 1514 (2008).

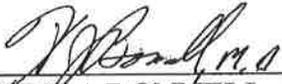
8. In summary, the head and shoulder injuries concealed until Nikki CURTIS's hair was shaved could well have occurred prior to ROBERSON becoming the caretaker of CURTIS. In that case, the short fall would be irrelevant except for possibly exacerbating a pre-existing injury. It is, however, not reasonable based on the available evidence to rule out an accidental fall, as described, from causing a serious or even life-threatening injury. Additionally, the fall itself may have been symptomatic of a serious illness that was ultimately the cause of death. The medical findings are all consistent with complications of the underlying middle ear infection and were masked by treatment provided before making a differential diagnosis. There was no anal trauma. The lacerated frenulum was not an intentional injury. Retinal hemorrhages are not indicative of a "shaking" injury and retinal hemorrhages result from increased intracranial pressure and not "shaking". But because the medical personnel in this case seemed to adopt the presumption that child abuse was the root cause from the outset, that presumption appears to have imposed a cognitive bias that prevented them from investigating all reasonable possible causes of death either before or after her death. For instance, Dr. ROSS, who had treated CURTIS two days before and sent her home from the Emergency Room with a temperature of 104.5, offered an unsupported opinion that neither a fall nor an infection could explain CURTIS'S injuries. Dr. ROSS testified that he had no experience as a forensic pathologist or medical examiner. But he speculated that CURTIS's injuries were "intentionally inflicted" even as he admitted that he thinks the law requiring the reporting of suspected child abuse makes

doctors "jump at child abuse diagnoses." 42RR21. Nothing in his testimony suggests that Dr. ROSS was qualified by education, training or experience to offer opinions about the cause of death.

9. I am not being reimbursed in any manner for rendering this opinion, and if I had been consulted by defense counsel prior to trial, I would have been ready and willing to provide counsel with this opinion and testify if requested. I am still willing to testify if required.

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

Executed this 6<sup>th</sup> day of June 2016 in San Diego, California.

  
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HARRY J. BONNELL, M.D.

# EXHIBIT A

## CURRICULUM VITAE

Harry J. BONNELL, M.D.  
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San Diego, California 92119-1511

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### EDUCATION AND TRAINING

UNDERGRADUATE: Georgetown University BA 1965-1968  
Washington, D.C.

MEDICAL EDUCATION: Georgetown University MD 1975-1979  
Washington, D.C.

RESIDENCY: Veterans Administration Medical Center  
Martinez, California Anatomic Path 1979-1981

University of Washington  
Seattle, Washington Anatomic Path 1982-1983

FELLOWSHIP: Office of the Medical Examiner  
Seattle, Washington Forensic Path 1981-1984

CERTIFICATION: Anatomic & Forensic Pathology 1985

LICENSURE: California, 1979 & 1991 (active)  
Washington, 1981 (inactive)  
Ohio, 1987 (inactive)

### MILITARY SERVICE

U.S. Army, Military Police Rank of Captain 1969-1973  
U.S. Air Force, Medical Corps Rank of Major 1984-1987

**ACADEMIC APPOINTMENTS**

Instructor in Pathology University of Washington Seattle, Washington	1981-1984
Instructor in Pathology Madigan Army Medical Center Fort Lewis, Washington	1981-1984
Instructor, King County Corrections Center Rehabilitation Program Seattle, Washington	1983-1984
Adjunct Assistant Professor Uniformed Services University of Health Sciences Bethesda, Maryland	1985-1987
Assistant Clinical Professor, Pathology University of Cincinnati College of Medicine Cincinnati, Ohio	1987-1991
Associate Clinical Professor, Pathology U.C. San Diego School of Medicine San Diego, California	1992-2006

**EMPLOYMENT HISTORY**

1981-1984: Assistant Medical Examiner, King County (Seattle)  
Washington

1984-1987: Staff Pathologist, Forensic Sciences Department,  
Armed Forces Institute of Pathology, Washington, D.C.

1987-1991: Chief Deputy Coroner and Director of Forensic  
Pathology, Hamilton County (Cincinnati), Ohio

1991-2001: Chief Deputy Medical Examiner  
San Diego County, California

2001-Present: Self-employed consultant

**PROFESSIONAL AFFILIATIONS**

American Academy of Forensic Sciences (1980-present)  
National Association of Medical Examiners (1980-2011)  
Parents of Murdered Children  
    Member, Board of Trustees (1991- 2015)  
    Member, Second Opinion Services (1998-present)  
San Diego County Child Fatality Review Committee (1991- 2001)  
    Chair/Co-Chair 1993-98  
San Diego County Domestic Violence Review Committee (1997-2001)  
San Diego Citizen Review Board on Police Practices (2005-2013)

**PUBLICATIONS**

Terminal Air Embolus Associated with Pneumatoxis Cystoides  
Intestinalis, Am J For Med & Path, March, 1982.

Antemortem Chemical Hypothyroxinemia, J For Sci, January, 1983.

Boot Top Fractures in Pedestrians: A Forensic Masquerade, Am J For  
Med & Path, June, 1983.

Synchronous Bilateral Seminomas and Teratoma, Henry Ford Hospital  
Med Journal, December, 1983.

Ethanol in Sequestered Hematomas: Quantitative Evaluation, Am J  
Clin Path, 1984.

Left Pontine Lipoma, Arch of Path, 1985.

Correlation of Physical Findings with Circumstances Surrounding  
Death in Hangings, J For Sci, 1985.

A Procedure for the Investigation of Anesthetic/Surgical Deaths, J For Sci, 1985.

Fatty Liver in Sudden Childhood Death: Implications for Reye's  
Syndrome, Am J Dis Children, 1986.  
\*\*also printed in French edition.

Wah Mee Massacre: the Murder of 13 Chinese Adults, Am J For Med &  
Path, December, 1986.

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Clinical and Pathologic Aspects of Cardiomyopathy from Ipecac Administration in Munchausen's Syndrome by Proxy, Pediatrics, 1996.

\*\*\* also extracted for Quarterly Child Abuse Medical Update

Post-mortem Drug Redistribution, Forensic Sciences Review, July, 2001.

### OTHER QUALIFICATIONS

Medicolegal autopsies: More than 7000 performed personally.

Testimony experience: Provided sworn testimony more than 590 times in 20 states, as well as federal courts and courts martial.

Aircraft Mishaps: 37 on-site investigations to include autopsies.

2008 – present: Appointed to Expert Witness Panel, Los Angeles Superior Court

### OTHER ACTIVITIES

Eucharistic Minister, St. Therese Parish, San Diego	1992 – present
Parish Council (Communications Chair)	1996-1998.
Little League Umpire (Volunteer)	1992 - present
San Carlos LL Umpire-in-Chief	1994 – 1998
District 33 Patriot League (Seniors) Umpire-in-Chief	1997 – 2008
Synchronized Swimming Judge (volunteer) Level III	1994 – 2008

### MOST VALUED AWARDS

1973 – US Army Meritorious Service Medal

1986 – US Army Meritorious Service Medal (1<sup>st</sup> Oak Leaf Cluster) while serving in US Air Force

1987 – Department of Defense Commendation Medal

1996 – Foundation For Improvement of Justice Medal (\$10,000 award)

1999 – Physician of the Year, San Diego County Child Abuse Coordinating Committee

2001 – Little League Umpire Service Award

2002 – First Responder Award (San Diego International Airport)

2003 – Empty Shoes Award (Parents of Murdered Children)

2007 - Selected for Europe/Middle East/Africa Little League Regional Tournaments

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