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H. Vann Craig, M.D., Executive Director
Phillip Meredith, M.D., President
Mississippi State Board of Medical Licensure
1867 Crane Ridge Drive, Suite 200B
Jackson, MS 39216

Re: Chapter 22, § 700 Complaint against Dr. Steven T. Hayne

Dear Dr. Craig & Dr. Meredith:

Introduction

The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing, and improving the criminal justice system to reduce the risk of future wrongful convictions. We submit this complaint, pursuant to Chapter 22, § 700 of the Mississippi State Board of Medical Licensure Rules and Regulations, Laws and Policies (“Rules and Regulations”), against Dr. Steven T. Hayne (Rankin General, 1700 W. Government St., Suite G, Brandon, MS 39047), a physician who is licensed by the Board and provides expert testimony in criminal prosecutions throughout the State of Mississippi. Dr. Hayne routinely engages in “unprofessional conduct,” under Mississippi Code § 73-25-29 and Chapter 22, § 500, and is unqualified to practice as defined in Mississippi Code § 73-25-83 and Chapter 22, § 600. Dr. Hayne, by providing false and misleading autopsy reports and testimony in criminal prosecutions which carry a death sentence, has played a critical role in improperly sending an unknown number of people to death row or prison for life. Our own investigation was prompted by discovering that he had testified under oath falsely in two capital cases. In each case, Dr. Hayne testified to purported medical

conclusions for which there was simply no scientific basis. As a direct result of his testimony and actions, Kennedy Brewer was sentenced to death and Levon Brooks received a sentence of life without parole. We believe Dr. Hayne is a danger to the public. We urge the Board to conduct an immediate investigation of Dr. Hayne's egregious violations and, under the authority vested in the Board in Chapter 22, § 703(1) and Mississippi Code § 73-25-87, revoke Dr. Hayne's license to practice medicine in the State.

Dr. Hayne must be "held professionally accountable by the Board," under Chapter 22, § 600 of the Rules and Regulations. He has engaged in "incompetent professional practice, unprofessional conduct, [and] other dishonorable or unethical conduct likely to deceive, defraud, or harm the public." Dr. Hayne has violated the professional standards set out by the Board in Chapter 22, § 500 (3) and (5), which require a doctor to be "honest in all professional interactions including his or her medical expert activities" and directs medical experts "not [to] make or use any false, fraudulent, or forged statement or document." Under Chapter 22, § 601, violations of Chapter 22, § 500 constitute unprofessional conduct in violation of Mississippi Code, § 73-25-29(8). Dr. Hayne's actions also constitute "unprofessional conduct" as explicitly defined in § 73-25-29(8), including:

(c) making or willfully causing to be made any flamboyant claims concerning the licensee's professional excellence; (d) [b]eing guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public; ... [and] (f) [u]se of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the licensing requirements, including the signing in his professional capacity any certificate that is known to be false at the time he makes or signs such certificate.

Before turning to Dr. Hayne's false findings in specific cases, it is first important to understand the context in which Dr. Hayne operates and lay out some of the deceitful and "flamboyant" claims he makes under oath and in documents regarding his qualifications and work.

Dr. Hayne's Claim That He Conducts 1,500 Autopsies Per Year

The number of autopsies that Dr. Hayne claims to perform each year, alone, is cause for alarm and presents an immediate danger to the public. Dr. Hayne has testified under oath that he performs 1,500 autopsies per year, which amounts to more than four autopsies per day (if he conducts autopsies 365 days per year).¹ In addition to

¹ Testimony of Dr. Hayne in Charles Vessel et. al v. Anthony Alleman, M.D., et. al, 6/26/03 [hereinafter *Vessel Testimony* and attached hereto as Appendix 1] at 72-76. Dr. Hayne has testified that, "Both as the deputy coroner as the - - and the medical examiner's office" he has made cause of death determinations "in the range of some 35 to 40-thousand times." Testimony of Dr. Hayne from State v. Prater, 6/31/06 [hereinafter *Prater Testimony* and attached hereto as Appendix 2] at 230 (emphasis added). In trial testimony given *just two years earlier*, Dr. Hayne testified that he had performed postmortem examinations to determine the cause and manner of death "somewhere *in the range of 25,000.*" Testimony of Dr. Hayne

conducting 1,500 autopsies annually, Dr. Hayne has claimed to simultaneously work as the Medical Director of three different facilities: the Rankin Medical Center, the Madison County Medical Center, and the Renal Laboratory.²

The National Association of Medical Examiners (NAME), in furtherance of its quality assurance program, established limits on the number of autopsies any doctor should conduct in a single year. Under NAME's accreditation standards, 250 autopsies per year conducted by a single doctor constitute a "Phase I" deficiency and 325 rise to a "Phase II" deficiency.³ Thus, Dr. Hayne conducts six times the number of autopsies approved by the relevant professional association. This is not just a matter of Dr. Hayne "working harder" than the rest. Phase II standards are "essential requirements" and failure to comply can "seriously impact the work or adversely affect the health and safety of the public" – in fact, a facility will not be fully accredited with even one Phase II deficiency.⁴ Vincent DiMaio, the author of *Forensic Pathology*, the profession's guiding textbook, provides a context for Hayne's conduct: "After 250 [forensic] autopsies, you start making small mistakes. At 300, you're going to get mental and physical strains on your body. Over 350, and you're talking about major fatigue and major mistakes."⁵ Yet, Hayne conducts over four to five times this amount.⁶

Dr. Hayne's Claim to Have Been Qualified as an Expert 4,000 Times

Despite the perilously high number of autopsies Dr. Hayne conducts annually, it is still hard to imagine that he has been "qualified as an expert in the field of medicine specializing in pathology" 4,000 times, as Dr. Hayne claimed at a 2006 trial.⁷ In testimony given in 1995, just eleven years earlier when asked how many times he had testified in the courts of Mississippi or any other jurisdiction as an expert in the area of forensic pathology, he responded "approximately 350 to 400 times."⁸ Taking his most

in *State v. Tyler Edmonds* [hereinafter *Edmonds Testimony* and attached hereto as Appendix 3] at 1639 (emphasis added).

² *Vessel Testimony* at 15.

³ National Association of Medical Examiners, Accreditation Checklist, effective January 2004; See also NAME Inspection & Accreditation Policies and Procedure Manual, Sept. 2003 at 2; Radley Balko, *CSI: Mississippi*, WALL ST. J., Oct. 6, 2007, at A20, available at http://online.wsj.com/article_email/SB119162544567850662-lMyQjAxMDE3OTAxNjYwMjY1Wj.html [hereinafter Balko, WALL. ST. J.].

⁴ See fn 3.

⁵ Balko, WALL. ST. J., *supra* note 2.

⁶ *Vessel Testimony* at 72-76. In addition to conducting 1,500 autopsies annually, Dr. Hayne has also claimed to simultaneously work as the Medical Director of three different facilities: the Rankin Medical Center, the Madison County Medical Center, and the Renal Laboratory. *Id.* at 15. Such high numbers, if at all believable, can only be performed under improper conditions. One person observing Dr. Hayne in action described seeing fifteen bodies opened at once, with Dr. Hayne and his assistants smoking cigars and eating sandwiches as they completed their work. Radley Balko, *CSI: Mississippi, A Case Study in Expert Testimony Gone Horribly Wrong*, REASON, Nov. 2007, available at <http://www.reason.com/news/show/122458.html> [hereinafter Balko, REASON].

⁷ *Prater Testimony* at 230; in his *Edmonds Testimony*, given two years previous, Dr. Hayne claimed to have testified "in the range of 4,000, maybe 4,500 times." *Edmonds Testimony* at 1639-1640, 1678.

⁸ Testimony of Dr. Hayne in *State v. Brewer* [hereinafter *Brewer Testimony* and attached hereto as Appendix 4] at 486. When asked at a 1992 trial how many times he has testified as an expert in the area of

conservative figures, this would mean that from 1995 to 2006, Dr. Hayne testified as an expert 327 times a year, when there are only 260 business days in a year (while also performing an average of four autopsies a day, and serving as the medical director of three medical facilities) – a seeming impossibility.⁹

Dr. Hayne’s Misrepresentations of His Credentials

In addition to his treacherous workload, the above seemingly exaggerated testimony regarding his work, and his substantively false testimony detailed below, Dr. Hayne has made fraudulent claims about his credentials in violation of Chapter 22, § 500 of the Rules and Regulations, and Mississippi Code § 73-25-29(8).

Dr. Hayne has testified under oath that he is “the chief state pathologist for the Department of Public Safety, medical examiners’ office with the State of Mississippi.”¹⁰ Dr. Hayne has further testified that since coming to Mississippi in approximately 1986, he has continuously worked as either state pathologist, the acting medical examiner for the State of Mississippi or **the chief state pathologist for the Department of Public Safety**.¹¹ While Dr. Hayne is a “designated state pathologist,” it appears that he simply invented the title “chief state pathologist.” Other than Dr. Hayne’s self proclamation, there is no indication that the position of “chief state pathologist” exists.

Moreover, Dr. Hayne routinely testifies that he is “board certified” in “forensic pathology” – a claim that is misleading and completely deceitful.¹² Dr. Hayne is not certified in forensic pathology by the American Board of Pathology, the only organization that NAME and the American Board of Medical Specialties recognize as capable of certifying forensic pathologists. While Dr. Hayne sought certification, he did not pass the examination.¹³ Dr. Hayne, according to his testimony and curriculum vitae, obtained “certification” in forensic pathology by organizations called the American Academy of Neurological and Orthopedic Surgeons (which is not recognized by the

pathology or forensic pathology, Dr. Hayne responded: “I don’t keep track, in the hundreds.” Testimony of Dr. Hayne in State v. Brooks [hereinafter *Brooks Testimony* and attached hereto as Appendix 5] at 684.

⁹ Moreover, in 2003, Dr. Hayne asserted that he has testified as a pathologist on behalf of a government agency 2,500 to 2,800 times, over the course of 30 years and has testified as to cause or manner of death approximately 175 or 200 times in civil cases on behalf of the defendant or plaintiff. See *Vessel Testimony* at 10. Hayne’s assertion only a year later that he had testified a total of 4,000 or 4,500 times, see note 5, would suggest that he has testified on behalf of defendants in criminal cases conservatively about 1,000 to 1,500 times. This would mean in almost one fourth of his cases he testified on behalf of a criminal defendant, also an unlikely number.

¹⁰ *Prater Testimony* at 228-230 (emphasis added); Dr. Hayne’s Testimony in State v. Julian Williams, 6/18/2007 [hereinafter *Williams Testimony* and attached hereto as Appendix 6] at 177-178 (testifying “I work as the chief state pathologist for the Department of Public Safety Medical Examiner’s Office.”). Dr. Hayne also testifies that he is “the state pathologist.” See *Edmonds Testimony* at 1639.

¹¹ See fn 10.

¹² *Williams Testimony* at 178; *Vessel Testimony* at 10. Dr. Hayne is, according to his C.V. certified by the American Board of Pathology in clinical and anatomic pathology, distinct from forensic pathology. In fact it was Dr. Hayne’s lack of certification in forensic pathology that disqualified him from the position of State Medical Examiner for the State of Mississippi; he was Acting State Medical Examiner for a year.

¹³ *Edmonds Testimony* at 1675-1676.

American Board of Medical Specialties and does not offer certification anymore), the American Board of Forensic Pathology (which also is not recognized by the American Board of Medical Specialties), and the American Academy of Forensic Examiners (which does not seem to exist, but may be the American College of Forensic Examiners, a “pay your money, get your certification” organization which certified Dr. Hayne through the mail based on “life experience” without any examination).¹⁴ Certification by these organizations is not at all what the medical community and public understand when a doctor claims to be “board certified” in forensic pathology. As NAME’s president, Joseph Prahlow put it: “When you say you’re ‘certified’ it means the American Board of Pathology.” When told that Dr. Hayne routinely testified he is “certified,” Prahlow replied, “That is very disturbing. . .There’s definitely a problem with that.”¹⁵

Dr. Hayne’s Knowingly False and Misleading “Medical” Findings

The Innocence Project is by no means the first to allege serious misconduct on the part of Dr. Hayne. For instance, Leroy Riddick, a respected state medical examiner in Alabama has commented: “Every prosecutor in Mississippi knows that if you don’t like the results you got from an autopsy, you can always take the body to Dr. Hayne.”¹⁶ Dr. Hayne’s problematic work and fictitious findings are well known by his peers and colleagues. After reviewing one of Dr. Hayne’s autopsies while practicing in Alabama, Dr. Dwayne Wolf of the Harris County Medical Examiner’s Office in Houston, Texas remarked: “Dr. Hayne’s deficiencies are glowingly obvious when you review his work. There were a lot of things done in a substandard way.”¹⁷ The implications of Dr. Hayne’s work could not be more serious. J.D. Sanders, a former Columbus, Mississippi, police chief who now works as an assistant police chief in Franklin, Tennessee, stated: “There’s no question in my mind that there are innocent people doing time at Parchman Penitentiary due to the testimony of Dr. Hayne. . .There may even be some on death row.”¹⁸ The Innocence Project can not and need not vouch for the opinions of other professionals. Instead, we offer the two cases in which we have first hand knowledge and for which we provided pro bono representation: Kennedy Brewer and Levon Brooks.

¹⁴ *Vessel Testimony* at 67-68, 70; *State v. Edmonds*, 955 So.2d 787, 804 (2007). (Published Edmonds decision attached hereto as Appendix 7).

¹⁵ Balko, REASON, *supra* note 5. Moreover, in a version of Dr. Hayne’s curriculum vitae, which he provided to doctors and lawyers, includes under the category “Other Publications” a list of published papers that he neither authored nor co-authored. This is clearly contrary to the established protocols of medicine and science. Nevertheless, he claimed in later testimony that since he felt he had collaborated with the notorious dentist, Michael West on numerous West publications, it was professionally appropriate to list those publications on his C.V. Moreover, under the heading “Presentations” he lists presentations that he did not actually give. In his defense he proclaims, “Where does it say I made [them]? I don’t see that. . .I generated the information . . .” These too, Dr. Hayne contended were collaborations with Michael West. *See Vessel Testimony* at 64-65. (Dr. Hayne’s C.V. is attached hereto as Appendix 8). *See also* Letter from Dawn B. Young, Research Director at the North Louisiana Regional Forensic Laboratory, to Don Harper Mills, Chairman, Ethics Committee, American Academy of Forensic Sciences, 5/21/99, attached hereto as Appendix 9.

¹⁶ *State v. Edmonds*, 955 So.2d 787, 803-804 (2007).

¹⁷ Balko, REASON, *supra* note 5.

¹⁸ Balko, WALL. ST. J, *supra* note 2.

During our review of the Brooks and Brewer cases, two other cases came to our attention, State v. Edmonds and State v. Funderburk. For the cases discussed below, we consulted with Dr. Michael Baden, who helped explain and clarify fundamental principles of medicine and science related to these cases. Dr. Baden is one of the nation's leading board certified forensic pathologists and medical examiners and in this review he served without fee.¹⁹

In each of the four cases below, which serve primarily as the basis of this complaint, Dr. Hayne has presented false and misleading findings in violation of Mississippi Code § 73-25-29(8) and Chapter 22, § 500(3) & (5) of the Rules and Regulations.

State v. Levon Brooks & State v. Kennedy Brewer

Two innocent men were wrongfully convicted for separate child rape-murders based in large part on Dr. Hayne's incorrect and improper findings and trial testimony. Levon Brooks was convicted of capital murder, sentenced to life imprisonment and served nearly eighteen years in prison before his exoneration earlier last month. Kennedy Brewer was sentenced to death and was incarcerated for over twelve years (five of which he served on death row) before his exoneration this February. Justin Albert Johnson was identified through DNA typing of the semen deposited inside the little girl as the actual assailant in the Brewer case and has since confessed to and been indicted for committing both crimes alone.

State v. Brooks

Levon Brooks was wrongfully convicted of the rape and murder of his ex-girlfriend's three-year-old daughter, Courtney Smith, who was abducted from her Brooksville home during the night of September 15, 1990. Her body was discovered in a pond near her home two days later. Later that night, on September 17, 1990, Dr. Hayne performed an autopsy on Smith.²⁰ Dr. Hayne found evidence indicating that Smith had been sexually assaulted and determined that she had been alive when she was deposited in the pond, and that her cause of death was fresh water drowning.²¹

Dr. Hayne observed numerous marks on Smith's body that he believed were caused by animal bites, but testified there were others that he believed to be human bite marks, small ill-defined marks which he described as "contusion like" on the back side of the victim's right wrist, which measured up to about three-eighths of an inch.²² As appears his modus operandi in many cases we have learned of, he brought in the forensic dentist Michael West to corroborate and confirm his false conclusion that they were bite marks.²³ Dr. West declared the mark a human bite mark and several days later matched

¹⁹ Dr. Baden's C.V. is attached hereto as Appendix 10.

²⁰ Dr. Hayne's Report of Autopsy of Courtney Smith, 9/17/90, attached hereto as Appendix 11.

²¹ *Brooks Testimony* at 690, 694, 702.

²² *Brooks Testimony* at 687, 697.

²³ *Brooks Testimony* at 687, 697.

it to the dentition of Levon Brooks, the ex-boyfriend of the victim's mother. This alleged "bite mark" was the only physical evidence linking Levon Brooks to the crime at his capital murder trial.

However, during Smith's autopsy, Dr. Hayne took samples of tissue from several areas on Smith's body, including the lacerations to her vagina and the "bruise" on her wrist alleged to be a human bite mark for the purpose of determining if the injuries occurred before death (ante-mortem) or after death (post-mortem).²⁴ Although Dr. Hayne's microscopic examination showed evidence of hemorrhage at the victim's genitals, "no bleeding underneath the skin surface" was observed in the excisions of the marks on the wrist attributed to human bite marks.²⁵ It is a fundamental principle of forensic pathology – taught in any introductory course on the subject – that a lack of bleeding in tissues indicates no active blood pressure, establishing that this injury occurred post-mortem. Nor could it be argued that the absence of blood was due to the presence of water. Although water can wash away surface blood, it does not wash away the hemorrhage of a bruise, which by definition is beneath the surface. Nevertheless, Dr. Hayne continued to mislead the jury by calling the marks on the victim's wrist "contusion like" even though he knew that it could not be a contusion unless hemorrhaging had been observed microscopically in the tissue beneath the skin. Post-mortem marks like those observed on the child's wrist are often due to decomposition and animal or aquatic activity.

Of course, Dr. Hayne's microscopic observations were inconsistent with the state's theory, and only physical evidence linking Levon Brooks to the crime, that the marks on the little girl's wrist were human bite marks inflicted by Brooks. This is because Courtney Smith had drowned in the pond in which her body was recovered, making it highly unlikely that her assailant abducted her, sexually assaulted her, tossed her into the pond to kill her, and after she drowned, lifted her dead body from the water to bite her before returning her to the pond.

To salvage the "bite mark evidence," Dr. Hayne falsely testified at Mr. Brooks' trial that, even though there was no "blood underneath the skin surface," to a reasonable degree of medical certainty, the mark on the victim's wrist "could have occurred ten to fifteen minutes prior to death."²⁶ There is no scientific basis for that conclusion. On cross examination he was asked, "any time you have a contusion of any kind, there is going to be some sort of - - uh - - uh - - bleeding under the skin, is that correct doctor?" He responded, that "over a period of time that would develop." He went on to provide the following explanation for the absence of any blood underneath the surface of the skin on the alleged "bite mark": "The smaller the vessels that are torn, the longer it takes for - - uh - - blood to seep out into the tissues."²⁷ This testimony is simply wrong. As soon as blood vessels are torn – no matter how small – blood seeps into the tissues immediately. The volume of blood may be dependent on the size of the vessel, but not the timing. That

²⁴ *Brooks Testimony* at 695, 702-703.

²⁵ *Brooks Testimony* at 695, 703.

²⁶ *Brooks Testimony* at 703-704.

²⁷ *Brooks Testimony* at 704.

is why Dr. Hayne, like other pathologists, made his observations with the aid of a microscope. If vessels carrying blood had been torn while she was living, evidence of hemorrhage would have been observed under the microscope. However, none was.

Dr. Hayne's false testimony placing the time of the marks before death was necessary for West's testimony, that the mark was created by human teeth. Dr. West went on to testify that two front upper teeth made the marks on Smith's wrist, the "teeth of Levon Brooks did and indeed leave the bite mark on the wrist of Courtney Smith," and "it could be no one but Levon Brooks that bit this girl's arm."²⁸

In fact, Smith's abduction and murder appears to have been committed by a man named Justin Albert Johnson, who was an original suspect early on in Smith's murder investigation. After being arrested in February 2008 and questioned on video tape by investigators from the Mississippi Attorney General's office, Johnson readily admitted to abducting, sexually assaulting and murdering Courtney Smith, but was adamant that he did not bite the child. This is not surprising since the markings on the girl's wrist were so meager that West falsely declared that the bite came from Brooks' upper teeth only, even though Mr. Brooks has both an upper and lower set of teeth. Because of the misguided focus on Levon Brooks, based significantly on Hayne's false testimony and the fabricated bite mark evidence, Johnson remained free on the streets, while Levon Brooks, an innocent man was sent to prison for life. A year and a half later Johnson abducted, raped, and murdered another little girl.

State v. Brewer

On May 3, 1992, less than eighteen months after Courtney Smith's abduction and murder, an identical crime occurred in Noxubee County. Another little girl, three-year old Christine Jackson, was abducted in the middle of the night from her home, just three miles from the Smith residence. Two days after her abduction, Jackson's body was found in a nearby creek. She also had been sexually assaulted. Dr. Hayne observed marks on the little girl's body that he believed to be bite marks and again called in Dr. West. Dr. Hayne performed an autopsy, along with Dr. West, on May 9, 1992.²⁹

Justin Albert Johnson – the true perpetrator of the crime – was also a suspect in this case early on in the investigation into Jackson's murder. Johnson was on the radar of the Noxubee County Sheriff's office because he lived less than two-tenths of a mile from the crime scene and, at the time, he was nearing trial for a home invasion attempted sexual assault, which he committed a year earlier and then pled guilty to on May 20, 1992. Johnson was quickly dropped as a suspect in the Jackson case, however, based on Dr. West's fabricated "bite mark" comparison during the May 9 autopsy, which singled out as the assailant Kennedy Brewer, the boyfriend of the victim's mother who was asleep when the child was abducted. In a letter dated May 14, 1994, and in an accompanying video made by West, Dr. West reported that "nineteen (19) human

²⁸ *Brooks Testimony* (Dr. West) at 726, 730-732, attached hereto as Appendix 12.

²⁹ Dr. Hayne's Report of Post Mortem Examination of Christine Jackson, 5/9/92, attached hereto as Appendix 13.

bitemarks were found” on Christine’s body and they were “indeed and without doubt inflected [sic] by Kennedy Brewer.” Notably, Dr. West reported that the marks on the victim’s body were partial bite marks or “half bites” made by only the upper teeth. The existence of one single arch bite from a person with full upper and lower dentition is an extremely rare occurrence (astonishingly the exact same occurrence as alleged in the Brooks case), and Dr. West’s claim of 19 such bites was plainly false and had absolutely no precedent in the annals of forensic dentistry. Nevertheless, Dr. West’s bite mark evidence, bolstered by Dr. Hayne’s testimony, was the primary evidence against Mr. Brewer at his capital murder trial.

During Jackson’s autopsy, Dr. Hayne took biopsies of injuries he found to the victim’s neck to determine whether the injuries were ante-mortem. In his microscopic examination, he found hemorrhaging in the strap muscles, and bleeding or hemorrhage underneath the voice box, indicating the child was alive when the injuries occurred. Dr. Hayne determined Jackson’s cause of death to be strangulation, consistent with manual strangulation. Dr. Hayne also took biopsies of the tissue from the victim’s vaginal vault to see if there was any hemorrhage, and found hemorrhaging showing the injuries occurred before death.³⁰

Dr. Hayne incorporated in his official autopsy report a diagram that Dr. West prepared of the false bite marks, which indicated that biopsies were taken of three of the marks. The sole purpose for the biopsies would be to determine the presence of hemorrhaging, and if present to infer that, like the neck and genital wounds, these too were ante-mortem. However, at Brewer’s trial, Dr. Hayne claimed that he did not biopsy any of the nineteen marks on the little girl’s body that Dr. West called human bite marks – despite these notations in his autopsy report and despite the fact that he collected tissue samples of all of the other injuries (including to the neck and vagina) to determine whether they occurred before or after death.³¹ The conclusion is inescapable – either Dr. Hayne did in fact take samples of the alleged bite marks, but as in the Courtney Smith case, examination of the marks ended up showing that the marks were made after death, or he purposefully chose not to biopsy these marks (so he would not have to report the absence of blood), a departure from standard practice.³²

Dr. West testified at Brewer’s trial that the marks were peri-mortem.³³ When asked on cross examination about whether biopsies were taken of these wounds, Dr. West testified: “. . . you’ve got to – you’ve got to understand how me and Steve work. . . I went ahead and did my work, made my notes, and then I got back to Steve, he had moved to an adjacent table doing some other work, and I told him, I said, ‘Look I want you to do some biopsies on three of these bites,’ and he asked me, you know, what – what kind of answer did I want to know. I said, ‘Well, you know, can you tell me what it is.’ He said, ‘Look they’re peri-mortem in nature; you’ve got advanced tissue slippage from the body

³⁰ *Brewer Testimony* at 492-493, 502, 503-504.

³¹ *Brewer Testimony* at 520.

³² *Brewer Testimony* at 523.

³³ *Brewer Testimony* (Dr. West) at 758, attached hereto as Appendix 14.

exposed to water.’ It’s – would be worthless for him to biopsy those to give me the answers I wanted. . .’³⁴

Dr. Hayne testified falsely at Brewer’s trial that he believed these marks on the child’s body were bite marks and that to a reasonable degree of medical certainty the marks were not evidence of decomposition and tissue sloughing, nor the result of insect activity.³⁵

At the request of the Innocence Project, in September 2006, Dr. Baden reviewed the autopsy report and photographs of the marks on Christine Jackson’s body. Dr. Baden explained that the marks (falsely called human bite marks) were common post-mortem artifacts due to a variety of factors including decomposition, putrification changes, drying of the skin, and feeding marks from aquatic life. Importantly, Baden found **the marks were not caused by human teeth and were not present at the time of death**. Dr. Baden noted that there was no evidence of bleeding into the tissues of the skin, nor of any other vital reactions that would indicate that these injuries had occurred while the victim was still alive.

The Innocence Project also submitted the marks on Christine Jackson’s body, which West had contemporaneously photographed and videotaped, to leading academic odontologists in the United States, as well as Canada and England. Their unanimous conclusion was that none of the 19 marks on the child’s body (which West matched to Kennedy Brewer’s dentition) were even human bite marks.

In February 2008, Justin Albert Johnson was arrested for Jackson’s murder. Mr. Brewer was officially exonerated after DNA evidence linked Johnson to sperm from Jackson’s rape kit. While admitting to many gruesome details of this crime to investigators with the Mississippi Attorney General’s Office, Johnson has remained adamant that he did not bite the child.

State v. Tyler Edmonds

Dr. Hayne conducted the autopsy on Joey Fulgham, who was found dead in his home in Oktibbeha County on May 9, 2003. Mr. Fulgham died from a gunshot to the back of his head. The prosecution’s theory was that two people, the victim’s wife and her 13-year-old half-brother, Tyler Edmonds, simultaneously pulled the trigger of the gun used to shoot and kill Fulgham. This theory was based on a “confession” police obtained from the 13 year old after lengthy custodial interrogation that he and his older sister shot the victim – a statement which he immediately recanted. He tried to explain to officials that, after he learned of the murder, his sister asked him to take the blame because he was a minor, and she told him she would lose her children if he didn’t. Edmonds further testified at trial that he believed, by falsely confessing, he was helping his sister avoid the death penalty.³⁶

³⁴ *Brewer Testimony* (Dr. West) at 794.

³⁵ *Brewer Testimony* at 507-508.

³⁶ *Edmonds v. State*, 955 So.2d 787, 804 (2007).

At Edmonds' capital murder trial, Dr. Hayne again testified to a conclusion that he knew had no scientific basis in order to support the state's theory of the case. Specifically, Dr. Hayne testified that based on the trajectory of the bullet wound in the victim's head it was **more likely that two people (as opposed to one person) had fired the fatal shot** – a determination that is impossible to make from examining bullet wounds. Dr. Hayne testified the bullet wound and likely position of the gun were “consistent with one person assisting another person to achieve that trajectory, the aiming of the weapon. Since it would be past the center line of the decedent's head when fired, 20 degrees past the center line of the head, so, therefore, it would be consistent with two people involved. I can't exclude one, but I think *that would be less likely*.”³⁷ His testimony was nonsense. It again illustrates Dr. Hayne's willingness to exploit his medical license for the improper purpose of attributing mythical infallibility to a finding that not only was not infallible, it was demonstrably false.

On appeal, the Mississippi Supreme Court found that Dr. Hayne's “two shooter testimony” impermissibly bolstered the state's theory of the case, that Edmonds and his half sister together fired the gun that killed the victim. The prejudice of Dr. Hayne's knowing falsehood was extremely significant since Dr. Hayne's testimony was the only evidence – other than Edmond's contested confession – to support the State's theory of the case.³⁸ In reversing Edmonds' capital murder conviction, based, in significant part, on Dr. Hayne's false testimony, the Court noted that Dr. Hayne's testimony in the case was simply “scientifically unfounded: ‘You cannot look at a bullet wound and tell whether it was made by a bullet fired by one person pulling the trigger or by two persons pulling the trigger simultaneously.’”³⁹ The Court further commented:

While Dr. Hayne is qualified to proffer expert opinions in forensic pathology, a court should not give such an expert carte blanche to proffer any opinion he chooses. There was no showing that Dr. Hayne's testimony was based, not on opinion or speculation, but rather on scientific methods and procedures.⁴⁰

Unfortunately, it has been extremely rare for Dr. Hayne's false testimony to be recognized and contested by defense counsel, and for the court to fulfill its gate-keeping role to reject such “off-the-cuff,” unfounded findings misleadingly cloaked in science.

Tina Funderburk

Tina Funderburk was charged with murdering her three-year-old daughter, Reina Russell, whose skeletal remains were found in a wooded area near the Jackson, Mississippi, bus terminal in September 2003, about three months after she had gone

³⁷ *Edmonds Testimony* at 1666-1669, 1674-1675, 1679 (emphasis added).

³⁸ *Edmonds v. State*, 955 So.2d 787, 792 (2007).

³⁹ *Edmonds v. State*, 955 So.2d 787, 793 (2007).

⁴⁰ *Edmonds v. State*, 955 So. 2d 787, 793 (2007).

missing.⁴¹ According to Ms. Funderburk, while passing through town on a trip with her daughter and son, she left her child in a wooded area near the bus terminal, lost her way when she went back to get the child, and could not find her. On September 23, 2003, Russell's remains were delivered to Dr. Hayne, who conducted an autopsy. Hayne then engaged the services of Dr. Marie Danforth, a forensic anthropologist employed at the University of Southern Mississippi, to help determine the cause of death.

Dr. Danforth noted: "Based upon the completeness of decomposition and the small size of the remains, the time since death is consistent with a period from a month or so to much longer." In fact, the child was missing for three months. While Dr. Danforth observed one area of the skull that suggested the likelihood of trauma, based, in part, on "possibly a very small crack of about 3/8" long in the occipital in this region" she also noted that "this might be the late stages of a developmental fusion of the occipital."⁴² In October 2003, Dr. Danforth completed her analysis of the skeletal remains and **reported that neither the cause nor manner of death could be determined.**

Nevertheless, on December 3, 2003, Dr. Hayne issued his "Final Report of Autopsy," **stating the manner of death was homicide and reporting the cause of death to be "changes consistent with compression of the head and consistent with suffocation."**⁴³ There is simply no scientific basis for Dr. Hayne's conclusions. There is nothing in the case to suggest that the child died from suffocation, as opposed to dehydration as a result of being lost in the woods.

Despite his unsupported findings, Dr. Hayne's declaration of cause of death continue to buttress the state's case. Tina Funderburk is currently awaiting trial for murder. Unfortunately, without a state medical examiner, there has been no mechanism for the state to review Hayne's work.

Other Potential Misconduct

In addition to the four cases discussed above, there are several other cases involving potentially false findings and testimony by Dr. Hayne. Because of the seriousness of the potential misconduct, we submit these cases to be included in your investigation, even though we have not vetted them ourselves.

- ***State v. Walter Conlee.*** On September 30, 2002, Dr. Hayne performed an autopsy on a Jane Doe, whose body was recovered from a rural site in Rankin County. Her remains were in the advanced stages of decomposition, and it appeared that a branch entered into her remains through the crotch area. Dr. Hayne conducted the autopsy and reported the cause of death to be "Changes consistent with Suffocation/Strangulation."⁴⁴ Pathologist Harry J. Bonnell, a

⁴¹ Jimmie Gates, *Lawyer Calls for Autopsy Review*, Clarion Ledger, Feb. 25, 2008.

⁴² "An Analysis of the Human Remains Recovered in Hinds, Co, Mississippi, October 2003," Dr. Marie Danforth, attached hereto as Appendix 15.

⁴³ Dr. Hayne's Final Report of Autopsy, AME #9-L7-03, 9/27/03, attached hereto as Appendix 16.

⁴⁴ Dr. Hayne's Final Report of Autopsy, AME# 9-P2-02, 9/28-30/02, attached hereto as Appendix 17.

medical examiner in private practice in San Diego who sits on NAME's ethics board, later reviewed and found Hayne's findings to be "near-total speculation" and that the "changes described in the autopsy report are consistent with almost **any** cause of death with few exceptions such as shotgun wound of head, decapitation, etc."⁴⁵ Dr. Bonnell found that Dr. Hayne's failure to perform toxicology studies on remaining tissue and failure to describe the microscopic findings in lung and liver tissue constituted "egregious error." Further Dr. Bonnell stated: "the reported finding of 'Focal areas of hemorrhage are identified to involve the deep strap muscles of the right and left surfaces of the neck to include the right and left sternocleidomastoid muscles' is ludicrous when compared to the objective findings seen in the autopsy and scene photographs." The victim's body was skeletonized. Dr. Bonnell commented that Dr. Hayne's "autopsy statement that 'The scalp is reflected, and no evidence of cephalohematoma is appreciated' is equally as ludicrous **since photos obvious [sic] show post-mortem scavenging that exposes the entire skull. There is no scalp to reflect.**" (Emphasis added). Moreover, according to Dr. Bonnell, there was "absolutely no evidence to establish the fact that the stick entering the crotch area of the remains was inserted before or any time near the time of death." Based, in part, on Dr. Hayne's findings, Walter Conlee was prosecuted for murder.

- ***State v. Devin Allen Bennett.*** In 2003, Devin Bennett was charged with capital murder for the death of his two-month-old son. After the child's death, Dr. Hayne conducted the autopsy. According to Dr. Hayne's expert testimony at Bennett's trial, the infant's death was not an accident, but a homicide. Former Mississippi State Medical Examiner Emily Ward disputed Dr. Hayne's findings, and testified that what Dr. Hayne called a fracture was actually a space where the baby's skull had not yet fused together and that other abrasions on the body were a result of resuscitation efforts. Bennett was found guilty and sentenced to death in February 2003.⁴⁶
- ***Case of Tanya Ward.*** In 1999 the body of Prentiss, Mississippi, resident Tanya Ward was found in a wooded area. She was completely skeletonized from the waist up due to decomposition and wild animals. Dr. Hayne examined Ward's skeletal remains and testified at the trial of her accused killer that Ward's remains showed signs consistent with strangulation. Other medical examiners rebutted the testimony saying it was not possible to reach such a conclusion without any muscle tissue to examine. The defendant was acquitted.⁴⁷
- ***Case of Jane Doe.*** In 1998, after a woman's body was found in the Mississippi Delta, Hayne concluded she died of natural causes.⁴⁸ Because the woman was a resident of Alabama, the state's medical examiner asked Stephen Pustilnik, then a

⁴⁵ Report of Dr. Harry J. Bonnell, 11/24/04, attached hereto as Appendix 18.

⁴⁶ Balko, REASON, *supra* note 5.

⁴⁷ Balko, REASON, *supra* note 5.

⁴⁸ Balko, WALL. ST. J., *supra* note 2.

state medical examiner in Birmingham, to perform a second autopsy. Hayne had not even emptied the pockets of the woman's robe. Many of the organs Hayne claimed to have examined in the autopsy report hadn't been touched. The woman was later determined to have died from a blow to the head. Pustilnik described Hayne's autopsy in the case as "near complete malpractice."

The cases highlighted above are just a few of the examples that evidence a pattern of Dr. Steven Hayne's unprofessional, dishonorable, and unethical conduct likely to deceive, defraud, or harm the public by providing false, fraudulent, or forged statements under the pretext of his allegedly "medical expert" status. See Rules and Regulations, Chapter 22, §§ 500(5), 600; Mississippi Code, § 73-25-29(8)(d). We believe there are many more and we are reaching out to other lawyers in cases where it is alleged that Dr. Hayne engaged in misconduct. However, we believe the conduct in this complaint alone is sufficient to justify immediate revocation of his license.

The consequences of Dr. Hayne's false testimony could not be more severe, nor more dangerous to the public welfare. He sends innocent men and women to prison and to death row, and in at least one known case has enabled the true perpetrator to remain free at large to commit more egregious crimes. His work compromises the accuracy and integrity of medicine and criminal justice throughout the state. We urge you to put an end to his misconduct through an expeditious, thorough investigation of his work and revocation of his license.

Sincerely,

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