No. 18-648

In the Supreme Court of the United States

BURDETTE SEARCEY, *et al.*,
Petitioners,

v.

JAMES L. DEAN, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION

MAREN LYNN CHALOUPKA
CHALOUPKA, HOLYOKE, SNYDER, CHALOUPKA & LONGORIA, P.C., L.L.O.
1714 Second Ave.
Scottsbluff, NE 69361

MATTHEW KOSMICKI
140 N. 8th St., Suite 250
Lincoln, NE 68508

Attorneys for Respondent Debra Shelden

HERBERT J. FRIEDMAN
FRIEDMAN LAW OFFICE, P.C., L.L.O.
3800 Normal Blvd., Suite 200
Lincoln, NE 68506

Attorney for Respondent James Dean

ROBERT F. BARTLE
Counsel of Record
BARTLE & GEIER LAW FIRM
1141 "H" Street
Lincoln, NE 68508
(402) 476-2847
tpetsche@bartlegeierlaw.com

DOUGLAS J. STRATTON
STRATTON, DELAY & DOELE LAW FIRM
200 West Benjamin Ave.
Norfolk, NE 68702

Attorneys for Respondents Lois White, Kathleen A. Gonzalez, Thomas Winslow, and Ada JoAnn Taylor

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

OBJECTION TO PETITIONERS' QUESTIONS PRESENTED

Petitioners' questions presented falsely represent that there is a circuit split. Petitioners actually want the Court to interfere with the jury's verdict and the Eighth Circuit Court of Appeals' correct application of properly stated rules of law. Petitioners' Writ should be denied.

STATEMENT OF THE CASE

I. Introduction

In 1989, Joseph White, Thomas Winslow, Ada JoAnn Taylor, James Dean, Kathleen Gonzalez and Debra Shelden were convicted for the 1985 murder and rape of Helen Wilson. App. 3. A jury convicted White. Shelden, Dean and Taylor pled guilty and testified against White. Each believed they "recalled" Wilson's murder in dreams. Gonzalez and Winslow, although knowing they were not guilty, pled no contest. They were certain the evidence used to convict White would also convict them. In 2008, DNA testing established that Bruce Allen Smith was the sole source of the crime scene male DNA. A task force determined Smith was unconnected to the six convicted for Wilson's murder. Accordingly, White's conviction was reversed, and all charges were dismissed. The others received full pardons.

A four-week trial of Respondents' consolidated cases exposed the greatest miscarriage of justice in Nebraska history and ended with a verdict for all Respondents. App. 4. Review of the jury's verdict is extremely deferential. "[W]e only overturn a verdict when 'the evidence is such that, without weighing the credibility

of witnesses, there is a complete absence of probative facts to support the verdict.'" App. 8. Petitioners unwillingness to acknowledge this standard of review is the predicate for their petition. The following recitation is a very attenuated summary of the trial record, and is intended to help the Court understand the facts that the jury heard and believed.

II. The 1985 investigation

On February 6, 1985, around 9:15 a.m., Helen Wilson's body was discovered on the living room floor of her tiny apartment. App. 64. There was obvious blood on Wilson's bed and the bedding was in disarray. Wilson was raped vaginally and anally, with vaginal penetration likely occurring after her heart had stopped. A scarf wrapped tightly around Wilson's face caused her to suffocate.

Wilson's son and his wife were with her in Wilson's apartment until around 9:45 p.m. the evening of February 5. A note found in Wilson's kitchen indicated that she had taken medication at 11:45 p.m. Tenants came and went from the building until around 12:55 a.m. Although tenants in their apartments could hear other tenants coming into the building, no one reported hearing anything unusual.

Blood evidence from Wilson's bedroom indicated both type O and type B blood. The type O blood was attributed to Wilson, and the type B blood was assumed to be the assailant's. Semen recovered from Wilson indicated the assailant was a non-secretor of blood group substance. The 1985 investigation focused on finding a person who was a non-secretor with type B blood.

The Beatrice Police (BPD) was the lead investigative agency, and had assistance from the Lincoln Police (LPD), the Nebraska State Patrol (NSP), and the FBI. BPD Sgt. Ralph "Sam" Stevens was the lead investigator. Stevens investigated rumors about Joseph "Lobo" White, but ruled him out when White voluntarily came to the police station a week or so after the murder with proof that his blood type was O. Stevens also investigated rumors that involved Tom Winslow and James Dean, but ruled both out, also because their blood type was not B.

Burdette "Burt" Searcey was a BPD patrolman from 1976 to 1982, when he resigned. App. 64. Searcey reapplied in 1984, but was not rehired. After learning about Wilson's murder, Searcey contacted Wilson's daughter and offered to investigate privately for the family. Searcey did not document his private investigation activities contemporaneously. He claimed a 17-year old girl, Lisa Podendorf, told him JoAnn Taylor confessed she and Lobo murdered Wilson. But Podendorf's story was obviously false, and there is no record showing Searcey shared Podendorf's claim with the BPD.

III. The 1989 investigation

Jerry DeWitt became the Gage County Sheriff in January 1987, and hired Searcey as a deputy. App. 64. Searcey pestered DeWitt for two years until DeWitt finally allowed him to investigate Wilson's murder. Instead of studying the BPD case file, Searcey's first act, on January 12, 1989, was to record Podendorf's statement. Podendorf committed to her same false story—that she and Taylor saw police cars all around Wilson's apartment building around 7:30 a.m. on

February 6 while standing outside in the snow in sub-zero weather. The claim is obviously false because Wilson's murder was not reported until around 9:30 that morning and there would not be police cars all around Wilson's building two hours before it was reported. App. 65.

Podendorf also claimed that the night before the murder she and her boyfriend followed Winslow's car over a specific route, ending when Winslow pulled into the parking lot south and east of Wilson's apartment building at exactly 10:18 p.m. Podendorf said she saw Winslow, Beth Johnson, "Lobo," and Taylor get out of the car, but nothing else. Searcey ignored the fact that a bank building blocked Podendorf from seeing what she claimed to have seen, and that in 1985 he had confirmed Beth Johnson's alibi that she was with her parents.

Next, Searcey interrogated Winslow on February 13. App. 65. Searcey told Winslow (falsely) that he was not a suspect in the Wilson homicide and did not Mirandize him, even though Podendorf put Winslow at the crime scene with "Lobo" and Taylor. Contradicting Podendorf, Winslow told Searcey that on February 5, he loaned his car to Taylor, "Lobo" and Clifford Shelden, and did not see them again until "Lobo" and Taylor returned his car to his apartment around 7:30 the next morning.

On March 14, Searcey prepared a false and misleading affidavit for the arrests of White and Taylor. App. 67. Searcey swore that Podendorf "would further state" that she and Taylor saw police cars around Wilson's building "within 24 hours of the Wilson homicide's discovery." In fact, Podendorf stated

she and Taylor saw police cars around Wilson's building at 7:30 a.m.—which was before law enforcement knew that Wilson had been murdered. Searcey misrepresented the sequence of when police cars were supposedly observed versus when Wilson's body was discovered because he knew Podendorf's claim was implausible. Searcey falsely claimed that Winslow corroborated Podendorf, when Winslow directly contradicted Podendorf regarding who was in Winslow's car. DeWitt approved Searcey's false affidavit before it was submitted to the county attorney.

White was arrested at home in Alabama on March 15. Searcey, Deputy Dr. Wayne Price and Sam Stevens interrogated White into the night. White consistently denied any knowledge of Wilson's murder. White demanded an attorney three times before Stevens cut Searcey off. DeWitt was present in Alabama, participated in White's arrest, and allowed, or acquiesced, when his deputies, Searcey and Price, ignored White's demand for a lawyer.

Taylor was arrested late at night on March 15 at her home in North Carolina and interrogated by the local deputies. App. 68. Taylor's story from this interrogation is bizarrely inconsistent with the Wilson crime scene. Among her bizarre claims were that Wilson lived in a house, she went there with Lobo and another boy she didn't know to do yardwork, the murder occurred around 5:30 in the early evening, and Wilson was repeatedly stabbed.

Searcey and Stevens interrogated Taylor the next day. Id. Taylor began by repeating the same bizarre story she told the North Carolina police. When Searcey

or Stevens questioned her "recollection" she admitted the arresting officers helped bring back her "memory." Taylor repeatedly blamed her lack of memory on her personality disorder. Taylor told Searcey if she could remember who else was involved she would sing like a canary. Searcey "refreshed" Taylor's memory by providing information Searcey thought important through leading and suggestive questions. With Searcey's help, Taylor said she recalled that Wilson was anally raped; Wilson lived in an apartment instead of a house; and the color of "the other boy's" car. App. 69. Stevens believed Taylor was out of touch with reality during this interrogation.

Taylor flew back to Beatrice with the officers in a small plane on March 17, and was interrogated again before counsel was appointed. Taylor named Winslow as the "other boy" with White – something she did not recall the day before. App. 70. But her identification of Winslow was due to an unduly suggestive photo array. The day before, Searcey and Stevens told Taylor she knew who the other boy was and got her to agree that she could identify him if she saw a photo. They also told her that the other boy was not Mark Goodson, Taylor's former boyfriend. The photo array that Searcey arranged had a photo of Winslow, one of Goodson, and four of boys Taylor didn't know. App. 20-21. Taylor picked Winslow. Winslow was arrested that night, recanted all previous statements, and repeatedly told Searcey he was innocent.

IV. Refusal to acknowledge the wrong people were arrested

After Winslow's arrest, Petitioners knew White, Winslow, and Taylor were not the source of the crime

scene type B blood. App. 71. Searcey's investigation was out of suspects, and as such, he could not explain the crime scene type-B blood. DeWitt and Searcey refused to acknowledge the possibility that the wrong people were arrested, even when Stevens and other BPD officers told them they had the wrong people. Instead, DeWitt told the BPD and Stevens to stay out of his investigation and to not muddy the water. App. 58.

V. Constructing a story of the murder without facts

With no actual leads, DeWitt assigned Searcey and Deputy Lamkin to interrogate Cliff Shelden, even though Cliff was a known liar. App. 16. Previously, Cliff had given an LPD detective two conflicting statements about Wilson's murder, naming White and Mark Goodson (not Tom Winslow) as Wilson's murderers. App. 16, 72. Searcey began Cliff's interview around 1:30 p.m., but did not start recording until around 5:00. Cliff now claimed Winslow told him about Wilson's murder. Cliff's new story contradicted all physical evidence of Wilson's murder, and statements made to this point in the investigation. Inexplicably, Cliff said his wife Debra was involved in the murder. Cliff said White pushed Debra against a dresser with a mirror. He said Debra hit her head on the mirror, breaking it and cutting her head. However, there was no broken mirror in Wilson's bedroom.

Searcey's report about Cliff's interrogation stated James Dean was a "possible" perpetrator of Wilson's murder. However, Lamkin's report did not reference anything about Dean, and Cliff never mentioned Dean during the recorded part of his interrogation. Ignoring

the fact that Cliff failed to identify a single fact that would indicate he actually knew something about Wilson's murder, the next day Searcey interrogated Debra at LPD headquarters. Just like with Cliff, Searcey began the interrogation around 3:00 or 4:00 p.m., but did not start recording until after 7:00. App. 72-73.

Like Cliff, Debra's statement contradicted the crime scene evidence and prior witness statements. App. 16. Debra told Searcey that Winslow picked her up at her apartment and took her to Kathy Bartak's apartment around 7:30 p.m. Kathy Bartak was James Dean's girlfriend. However, Cliff said Debra was with him in the hospital until around nine or ten o'clock. Debra told Searcey that she, White, Winslow and Taylor went directly from Bartak's apartment to Wilson's apartment around 7:30 p.m. However, Wilson's son was with her, in her apartment, from 6:45 until 9:45 that evening. Debra said they drove straight from Bartak's apartment to Wilson's apartment, which contradicted Podendorf. Also, Podendorf told Searcey that Beth Johnson, not Debra, got out of the car. Debra said nothing about being pushed into a dresser and breaking a mirror. Importantly, on April 13, Debra unequivocally said only White, Winslow and Taylor were with her when Wilson was murdered and raped. She told Searcey that there was nothing she wanted to change in her statement, and nothing was left out.

VI. Dreaming up a murder

Debra volunteered a blood sample on April 14, and testing confirmed she was type-AB. At DeWitt's direction, Dr. Price interrogated Debra without recording or reporting the interrogation. App. 19.

Years before, Price had counseled Debra in his role as the clinical director of Blue Valley Mental Health. Price repeatedly asked Debra who else was involved in Wilson's murder. Price instructed Debra to go back to her cell, relax, and she may start to remember Wilson's murder in her dreams. Debra began to believe that James Dean must have been with the group and gave Searcey another recorded statement naming Dean. App. 89-90. The only explanation Debra gave for not naming Dean during her 4 to 5-hour interrogation the previous day was that she was "blocking it"—something a mental health professional like Price would have told her.

Searcey obtained a warrant for Dean's arrest based only on Debra's April 14 statement. Searcey concealed Debra's inconsistent April 13 statement, and concealed how Debra's story contradicted the crime scene facts and Podendorf's story. App. 17, 22. Dean was arrested on April 15. Searcey, DeWitt and County Attorney Smith interrogated Dean immediately upon his arrest and over the course of the next 22 days without recording or reporting their interrogations. Dean always maintained his innocence. Searcey and DeWitt repeatedly told Dean he needed to come clean or he would die in the electric chair. Also during this period, Dr. Price was called to the jail on at least four occasions to treat Dean's hysteria over being jailed for a murder he did not commit.

Testing proved Dean's blood type was not B. Dean believed a polygraph would prove his innocence. App. 74-75. Searcey lied and told the polygrapher he was certain Dean was involved in Wilson's murder, and

that Dean was close to admitting it. The polygrapher reported deception.

Price was brought in to "counsel" Dean. App. 75-76. Price reported "[a]fter a rather extended discussion with Mr. Dean as well as with his attorney, he had developed to the scenario that it was likely that Mr. Dean was present in the apartment . . .." Price told Dean "unconscious recall is evident in the polygraph examination." Price then counseled Dean that he was repressing his memory, and if Dean relaxed, he may recall the events of Wilson's murder in dreams. After working with Price, Dean started dreaming about Wilson's murder, and after viewing the crime scene video, his dreams became more explicit.

In a May 8 recorded statement, Dean said he believed he was present when Wilson was murdered but was unable to recall any details. Dean was asked why he now recalled Wilson's murder. Like Debra, Dean said, "Well I, I feel that I remembered it in my sleep. I obviously had some kind of a subconscious block or something . . .."

In a May 10 recorded interview, Dean still did not "remember" much about Wilson's murder, and what he now claimed to remember could not be reconciled with Debra's statements. Dean again attributed his "recall" to dreams after talking to "the psychiatrist"—meaning Price. "[L]ike I said I got this all [in] a dream you know and I'm just telling you bits and pieces of what I can tell you like you guys wanted to know." Dean gave additional statements on May 17, May 24, June 7, June 23, and July 16. His statements would continually change. Dean always maintained his "knowledge" of

the murder was 90% from his dreams, and 10% from viewing the crime scene video and working with Price.

VII. Ignoring forensic evidence proving innocence

Taylor, Debra and Dean all said that only White and Winslow raped Wilson. However, after May 11, it was known to a certainty that semen recovered from the crime scene could not be attributed to Joseph White or Tom Winslow. App. 17. In 1985, the source of the crime scene semen was conclusively determined to be a non-secretor—a person who does not secrete blood group substance in his other bodily fluids. NSP laboratory reports dated May 11, 1989, proved both White and Winslow were secretors. Both would secrete their blood group substance in semen. Thus, neither White or Winslow could be the source of the crime scene semen. Searcey received the reports within a day or two after May 11. Both Searcey and DeWitt understood that the person responsible for the semen had not been arrested. But Searcey, DeWitt, and Price never reconsidered the evidence they had gathered, which was based exclusively on the dreams Price had counseled Dean and Debra to have, even though it was certain White or Winslow were not the source of the crime scene semen.

As of May 17, Searcey and DeWitt also knew they had not identified the source of the type-B blood. Around May 24, both Dean and Debra had dreams and nightmares about another person at the crime scene. Debra didn't know who the person in her dream was and asked Searcey to show her a picture of a dishwater blonde, heavy-set person. Searcey showed Debra a single photo of Kathy Gonzalez by holding it up to her

jail cell door. Debra said Gonzalez was the person in her nightmare.

Debra and Dean gave recorded statements on May 24, both claiming Gonzalez was in Wilson's apartment. However, their statements were inconsistent. An arrest warrant was issued for Gonzalez based solely on Debra and Dean's May 24 "identifications." App. 80, 89-91. Gonzalez was arrested at her job in Denver on May 25. Gonzalez denied any involvement in Wilson's murder. DeWitt and Searcey repeatedly told her that she was there and was repressing her memory. Gonzalez voluntarily returned to Beatrice, and before she was booked into jail, she went to the hospital for a blood draw.

DeWitt assigned Price to do a consultation and recorded interrogation of Gonzalez. App. 80-81. Price told her the same thing he told Dean and Debra—she was repressing her memory and may be able to recovery her memory in her dreams. On June 13, the NSP laboratory reported that at least one genetic marker in Gonzalez' blood (Gc 2-1) differed from the type B blood (Gc 1) found in Wilson's bedroom. Searcey and DeWitt now knew Gonzalez could not be the source of the crime scene type B blood. However, DeWitt, Searcey, and County Attorney Smith told Gonzalez that her blood was confirmed as the blood in Wilson's apartment. App. 17. Gonzalez asked if they had tested DNA. Smith told her the blood in the bedroom was definitely hers, they had done all the testing they were going to do, and that DNA testing was too expensive. Gonzalez said DeWitt slammed his hand down on a table and shouted she was a damn liar.

DeWitt and Searcey frequently went to Gonzalez' jail cell and told her she needed to tell the truth for her own good and for Wilson's family. DeWitt brought up the death penalty three to four times a week. DeWitt also told Gonzalez about death threats his office had received from the Beatrice community.

Gonzalez was offered a plea deal on October 3, and given 24-hours to decide. App. 83. The deal required Gonzalez to plead no contest and agree to testify at all trials. Smith would recommend a 10-year sentence. Gonzalez' lawyer explained that pleading no contest was admitting there was evidence to convict her, but she was not admitting she was involved in Wilson's murder. Gonzalez made the agonizing decision to plead no contest to a crime she knew she did not commit so that she would not die in a cage. Kathy put it best: "I understood that by [pleading] I would not die in prison and the cost of that would be that I would have to explain this for the rest of my life."

VIII. Substituting delusions for evidence

Price was JoAnn Taylor's treating psychologist in 1984 before the murder. He diagnosed her with borderline personality disorder—which is characterized by a loss of touch with reality, delusional thoughts, and hallucinations. During her 1989 confinement in the Gage County jail, Taylor believed a ghost inhabited her cell. She could describe the ghost's appearance, the clothes the ghost wore, and knew the ghost's name. Taylor believed photographs of her son and fiancé spoke to her. She also had a hysterical pregnancy. Taylor's loss of touch with reality was well known. Price recommended a prescription of the antipsychotic drug Mellaril, which he would not have recommended

unless he knew Taylor was actually having psychotic symptoms.

In late August, while actively psychotic, Taylor came to believe she was involved in Wilson's murder, and agreed to plead guilty. App. 83. She provided a recorded statement on August 30, which was inconsistent with the crime scene facts and the statements made by Dean and Shelden.

IX. The result of using unreliable false and fabricated evidence

White's trial began November 3, 1989. Dean, Debra, and Taylor testified about what they "recalled." Smith presented a materially false stipulation regarding the forensic evidence. This false stipulation was necessary to bolster Dean, Debra, and Taylor's testimony about their dream-memories. White was convicted of first-degree murder and sentenced to life in prison. Winslow wanted to avoid a death sentence, and realized that the same evidence that convicted White would convict him too, so he pled no contest to second-degree murder and was sentenced to 50 years in prison.

In 2005 White, and Winslow in 2006, moved for post-conviction DNA testing. County Attorney Smith fought their motions. After the motions were denied by the district court, the Nebraska Supreme Court reversed and allowed DNA testing to proceed.

The initial round of DNA testing proved that White and Winslow were not the source of the suspect blood or semen found in Wilson's apartment. The testing also showed that there were only two DNA sources present in the crime scene evidence – one source was a

female who was definitively linked to a known sample from Mrs. Wilson, and the other source was an unknown male. Additional testing of around 40 more crime scene items gave the same result, but because the BPD had saved biological samples collected during the 1985 investigation, the source of the male crime scene DNA was discovered—Bruce Allen Smith—who had no connection to White, Winslow, Taylor, Dean, Shelden, or Gonzalez.

On October 15, 2008, Joseph White was released from prison and on November 7, all charges were dismissed. Tom Winslow was released from prison on October 17, after he was resentenced to time served. JoAnn Taylor received an emergency parole hearing on November 10, and was released from prison that same day. On January 26, 2009, Tom Winslow, JoAnn Taylor, James Dean, Kathleen Gonzalez, and Debra Shelden received full pardons.

X. The jury's decision dictated by the law and the evidence

Trial of Respondents' consolidated § 1983 claims began June 6, 2016. The case was submitted to the jury on Thursday, June 30, at 1:30 in the afternoon. On Wednesday, July 6, the jury returned a verdict in favor of all Respondents, and against the Petitioners in varying degrees. The jury made the following liability findings.

1. For each Respondent and against Searcey on the claim of reckless investigation.

2. For White, Gonzalez, Winslow, and Taylor and against Searcey on the claim of manufacturing false evidence.

> 3. For Dean, Taylor, and Shelden and against Price on the claim of reckless investigation.
>
> 4. For Dean, White, Gonzalez, and Shelden and against Price on the claim of manufacturing false evidence.
>
> 5. For each Respondent on the claim of County liability.
>
> 6. For DeWitt on each Respondent's reckless investigation and manufacturing false evidence claim.
>
> 7. For each Petitioner on each Respondent's conspiracy claim.

App. 5.

On September 6, the district court denied Petitioners' motion for judgment as a matter of law, or a new trial. In denying Petitioners' motion, Senior District Court Judge Richard Kopf—the judge who dismissed four Respondents' lawsuits in 2011 (see App. 107-365)—wrote: "The defendants may not like the rulings of the Court of Appeals, but the Court of Appeals has made it abundantly clear that the evidence was plainly sufficient to go to the jury against all defendants on all claims. After hearing all the evidence in the second trial, that is also my conclusion." App. 36.

The Eighth Circuit Court of Appeals affirmed the jury's verdict with the following.

> To conclude, we note that there are certain types of law enforcement conduct that "do more than offend some fastidious squeamishness or

> private sentimentalism about combatting crime" and which the Constitution forbids. *Rochin v. California*, 342 U.S. 165, 172 (1952). Over the course of now four opinions, and our multiple meticulous reviews of the evidence presented, we have recognized this case is an example of such conduct—and a jury has agreed.

REASONS FOR DENYING THE PETITION

Introduction

Petitioners' "reasons for granting certiorari" often fail to address their "questions presented." By not addressing their questions presented in their "reasons for granting" section, Petitioners have waived the Court's consideration of their "questions presented." In addition, the matters argued in their "reasons for granting" section that are not included in the questions presented are not before the Court for consideration. Nonetheless, Respondents will address the questions presented the only way we can—in summary fashion, and respond to the "reasons for granting" in greater detail.

Because there are four separate Court of Appeals opinions in this matter, two of which have the title *Dean v. County of Gage*, this response will refer to the 2015 *Dean* opinion as *Dean* I (app. 40-59) and the 2018 opinion as *Dean* II (app. 1-33).

I. PETITIONERS' FIRST ISSUE

Response to Question Presented

Consistent with the instructions, the jury found that Searcey and Price (1) "fabricated, that is, made-up false evidence" knowing the evidence to be false, and (2) gathered false *or* unreliable evidence recklessly—meaning, "without heed or concern for the consequences." The jury also found that "as a direct result of such actions, the Plaintiff suffered some damage."

Searcey and Price are responsible for the natural consequences of their actions. *Malley v. Briggs*, 475 U.S. 335, 345 n.7 (1986). The natural consequence of knowingly making up false evidence, or gathering evidence known to be false, for the purpose of using that evidence in a criminal prosecution without heed or concern for the consequences, is to convict persons for crimes they did not commit. *See, Jones v. City of Chicago,* 856 F.2d 985, 993-94 (7th Cir. 1988)("If police officers have been instrumental in the plaintiff's continued confinement or prosecution, they cannot escape liability by pointing to the decisions of prosecutors or grand jurors or magistrates to confine or prosecute him."); *Ricciuti v. N.Y.C. Transit Authority*, 124 F.3d 123, 130 (2nd Cir. 1997)("When a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial, and the harm occasioned by such an unconscionable action is redressable in an action for damages under 42 U.S.C. § 1983."); *Burke v. McDonald*, 572 F.3d 51, 60 (1st Cir. 2009); *Halsey v.*

Pfiefer, 750 F.3d 273, 295 (3rd Cir. 2014); *Winfrey v. Rogers*, 901 F.3d 483, 497 (5th Cir. 2018).

Response to Reasons to Grant Certiorari

I.A. Conduct showing a reckless investigation was a clearly established well before 1989.

Petitioners argue that their *conduct* was not a clearly established due process violation in 1989. Petitioners do not argue or assert that liability for the conduct could not be predicated on a reckless state of mind. As such, only conduct will be discussed—not whether recklessness as a state-of-mind is sufficient to shock the conscience—an issue Petitioners did not raise.

Petitioners argue that the Eighth Circuit erred in concluding that the conduct described in *Wilson v. Lawrence County, Mo.,* 260 F.3d 946 (8th Cir. 2001), identified a clearly established substantive due process violation. Yet Petitioners never discuss the kind of conduct that the *Wilson* panel found violative of Johnny Wilson's right to fair criminal proceedings. This is the defect in Petitioners' argument—it is the nature of the specific conduct that informs a reasonable law enforcement officer whether their conduct violates a clearly established constitutional right.

Qualified immunity protects law enforcement officers from liability as long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In determining whether the right is clearly established, "[t]he dispositive question is 'whether the violative nature of *particular* conduct is clearly

established.' [*Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)] This inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Millenix v. Luna*, 136 S. Ct. 305, 308 (2015) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004)).

It is therefore necessary to examine the conduct that the *Wilson* panel found violative of Johnny Wilson's right to fair criminal proceedings. Wilson was a twenty-year old former special education student still living at home. He was considered mentally handicapped, had difficulty distinguishing fantasy from reality, and could be talked into anything. *Wilson*, 260 F.3d at 949, 952. He was interrogated for over four hours, by four different officers, with no family, friend, guardian, or advisor present. *Id.* at 950, 952. Wilson consistently told the interrogators that he was shopping with his mother at the time of the fire. *Id.* at 950.

The officers took a statement from Gary Wall, also a special education student, known to be a very skilled liar. *Id.* at 949. Wall supposedly told the officers that Wilson confessed. *Id.* at 950. Wall would later claim he never told the officers he talked to Wilson and was tricked into giving details about the crime he did not know. He also would claim he was threatened with jail if he did not implicate Wilson. *Id.*

The interrogators told Wilson about Wall's statement implicating him, and falsely told Wilson that an eyewitness put him at the scene of the crime. *Id.* They began asking leading questions and strongly rebuked and threatened Wilson when his answers were inconsistent with crime scene evidence. *Id.*

"Ultimately, a collection of discombobulated facts about the murder evolved into a confession. Wilson has stated that he only confessed because he was extremely scared, nervous, anxious, and was pressured to make a confession." *Id.* There was "no independent physical or circumstantial evidence linking Wilson to the crime, or corroborating his confession." *Id.*

Relying on *Wilson*, the Eighth Circuit identified three indicia of conscience-shocking reckless investigation conduct: "(1) evidence that the state actor attempted to coerce or threaten the defendant, (2) evidence that investigators purposefully ignored evidence suggesting the defendant's innocence, (3) evidence of systematic pressure to implicate the defendant in the face of contrary evidence." App. 88. The *Dean* II panel concluded that "the jury had sufficient evidence that Searcey conducted a reckless investigation as to all six plaintiffs by 'purposefully ignor[ing]" the physical evidence—which he admitted was crucial—at the crime scene." App. 18. Specifically, the panel concluded Searcey:

- Ignored that no one matched the crime scene blood evidence.
- Turned to Cliff Shelden, "a notoriously unreliable witness" who could not identify a single crime scene fact (which Searcey ignored), and seemingly out of nowhere implicated his wife Debra in the murder claiming she cut her head and bled everywhere.
- Picked Debra up, interrogated her (for hours), She confessed to being at the murder,

but her confession "contained glaring inconsistencies with Cliff's statement" (and the crime scene evidence), which Searcey ignored. Searcey ignored testing that proved Debra's blood was not at the crime scene.

- Lied to obtain an arrest warrant for James Dean. Ignored Dean's protestations of innocence for 22 days, and continued to pressure him to confess or face the death penalty, knowing Dean's blood did not match the crime scene blood.
- Knew White and Winslow could not be the source of the crime scene semen. Ignored the confessors' claims that only White and Winslow raped Wilson.
- Ignored that Gonzalez was not the source of the type B crime scene blood. Knew he had not arrested anyone who could be the source of the crime scene semen or type B blood when the investigation closed.

App. 16-18.

The *Dean* II panel also found the jury could conclude that Price deliberately ignored evidence of innocence and systematically pressured Dean, Taylor and Shelden to confess to a crime in the face of clear evidence suggesting their innocence. App. 18-19. Specifically, the panel concluded Price:

- Ignored Dean's "protestations of innocence and instead encouraged him to dream up evidence of his presence at the crime scene"

by telling Dean he had an "unconscious awareness" of being present at the murder.

- Had previously treated Debra, knew of her mental vulnerabilities, and used that knowledge to counsel her into remembering the murder in her dreams, notwithstanding that she had no memory of being at the scene of the crime before Price's "counseling."
- Previously diagnosed Taylor as suffering from Borderline Personality Disorder, (knew she was susceptible to delusional thought, knew she was having active delusions while in jail), and took advantage of his prior clinical relationship in order to get her to implicate herself (and others) in the Wilson murder.

Id.

The conduct identified in *Wilson, White, Winslow, Dean* I and *Dean* II that the Eighth Circuit Court of Appeals found violative of the clearly established constitutional due process right to fair criminal proceedings is the same kind of conduct other circuits have found to be violative of that right.

- Seventh Circuit, *Jones,* 856 F.2d at 988-91; systematically concealed and misrepresented facts and evidence, arranged unduly suggestive identification procedures, fabricated reports, omitted exculpatory facts from reports, pressured another officer to suppress newly discovered exculpatory evidence.

- Third Circuit, *Yarris v. County of Delaware*, 465 F.3d 129, 132-33 (3rd Cir. 2006); obscured and destroyed exculpatory evidence, manufactured evidence, pressured a defendant into implicating himself, cultivated testimony from a jailhouse informant known to be unreliable, impeded DNA testing.

- Fifth Circuit, *Winfrey*, 901 F.3d at 488-90; ignored exculpatory forensic evidence, cultivated false and unreliable jailhouse informant testimony, made false statement in arrest affidavits, excluded exculpatory facts from affidavits and reports.

- Second Circuit, *Ricciuti*, 124 F.3d at 125-27; created false and misleading reports to bolster a weak case against the defendant.

- First Circuit, *Burke*, 572 F.3d at 54; represented that defendant matched a bitemark and hid that DNA from saliva associated with the bitemark excluded the defendant.

- Third Circuit, *Halsey,* 750 F.3d at 278-86; young man with limited intelligence pressured by interrogators over several days to confess, confession signed "in a great state of fear," confession contradicted by known crime scene facts, fraudulent polygraph examination, confession written by the officers, witnesses pressured into false testimony.

- Seventh Circuit, *Fields v. Wharrie*, 740 F.3d. 1107, 1109-13 (7th Cir. 2014); fabricated evidence, coerced false testimony from witnesses.
- Fifth Circuit, *Good v. Curtis*, 601 F.3d 393, 395 (5th Cir. 2010); photographic line-up manipulated for false identification.
- First Circuit, *Limone v. Condon*, 372 F.3d 39, 42-44 (1st Cir. 2004); officers cultivated testimony from known perjurer who would implicate three innocent men, suppressed exculpatory evidence to bolster their case and shield the true murderers.
- Seventh Circuit, *Whitlock v. Brueggemann*, 682 F.3d 567, 570-72 (7th Cir. 2012); vulnerable individuals coerced to be witnesses, witnesses fed crime details, witness stories continually changed, witnesses repeated erroneous crime scene facts that were consistent with what the officers mistakenly believed were the facts.

Petitioners substantially ignored the *Dean* II panel's clearly established analysis. The panel stood by the clearly established analysis in *White* and *Wilson*, but took that analysis one step further. The *Dean* II panel recognized that the right to fair criminal proceedings was a right enshrined in the Magna Carta. App. 25-26. The panel then cited in support *Mooney v. Holohan*, 294 U.S. 103, 112 (1935) (recognizing a process which 'contrived a conviction' violates 'fundamental conceptions of justice which lie at the base of our civil and political institutions'). This Court has also held

that a defendant's Fourth Amendment rights are violated if an affiant included "a false statement [made] knowingly and intentionally, or with reckless disregard for the truth" in an arrest affidavit. *Franks v. Delaware*, 438 U.S. 154, 155 (1978).

The *Dean* II panel correctly concluded that this case is an "obvious case where the unlawfulness of the [deputies'] conduct is sufficiently clear" and that the "illegality of this was well-established long before 1989." Every circuit that has considered the same question agrees.

- Seventh Circuit, *Jones,* 856 F.2d 985; 14th Amendment due process claim regarding investigative conduct in 1981.
- Second Circuit, *Ricciuti*, 124 F.3d at 130; 1989 conduct; "When a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial, and the harm occasioned by such an unconscionable action is redressable in an action for damages under 42 U.S.C. § 1983."
- Third Circuit, *Halsey*, 750 F.3d at 273; 1985 investigation caused wrongful conviction where plaintiff spent 22 years in prison; 14th Amendment claim predicated on the use of fabricated evidence clearly established; "The obviousness of this violation would be difficult to escape even without the closely analogous Supreme Court precedent discussed above."

- Seventh Circuit, *Fields*, 740 F.3d. at 1113; 1985 conduct; plaintiff spent 14 years in prison on wrongful conviction, prosecutor acting as an investigator fabricated evidence.
- First Circuit, *Limone*, 372 F.3d at 45-46; 1965 murder and investigation; "More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. There has been no deviation from that established principle. *Miller v. Pate*, 386 U.S. 1, 7 (1967)."
- Seventh Circuit, *Whitlock*, 682 F.3d 567; 1987 wrongful conviction; 21 years in prison; found clearly established knowing use of false or fabricated evidence a due process violation.

The Petitioners gathered what were clearly unreliable statements from Debra Shelden, Dean and Taylor. Each claimed that only White and Winslow raped Wilson. But around May 11, the Petitioners knew to an absolute certainty that those statements were false when the NSP laboratory reported White and Winslow were secretors. The same is true with Kathy Gonzalez' blood. Petitioners knew to a certainty the statements that Gonzalez' blood was at the crime scene were false. Yet, they continued, knowing their evidence was false, for the sole purpose of convicting six individuals for a crime they did not commit. This Court and all of the circuit courts have never found this conduct consistent with the due process right to fair criminal proceedings secured by the 14th Amendment.

There is no doubt that Respondents have a substantive due process cause of action against Petitioners for their unlawful, unconstitutional conduct.

I.B. The Eighth Circuit's conclusion that recklessly gathering unreliable or false evidence to convict an innocent person does not require review.

Petitioners vaguely argue that Respondents' claim is a 4th Amendment claim, and barred by an undisclosed statute of limitation. However, the Court has expressly disagreed. "[O]nce a trial has occurred, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment." *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 920 n.8 (2017).

Petitioners argue that the pleas entered by five of the Respondents somehow dissipates the "taint" of an unlawful investigation. Notwithstanding that this argument admits Petitioners' conduct was unlawful, the "taint" of unlawful police conduct is only dissipated if the product of the conduct plays no role in the plea. The intervening event must be truly independent from the unlawful conduct. *Zahrey v. Coffey*, 221 F.3d 342, 351 (2nd Cir. 2000); *Jones*, 856 F.2d at 994; *Burke*, 572 F.3d at 58; *Winfrey*, 901 F.3d at 497 (chain of causation only broken if all of the facts and malicious motives are presented to an independent intermediary). Petitioners are responsible for the natural consequences of their actions of gathering false evidence without heed or concern for the consequences.

> [Section] 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." Since the common law recognized the causal link between the submission of a complaint and an ensuing arrest, we read § 1983 as recognizing the same causal link.

Malley, 475 U.S. at 345 n.7 (quoting *Monroe v. Pape*, 365 U.S. 167, 187 (1961)).

Petitioners want this Court to give preclusive effect to pleas that have now been obviated by full and complete pardons based on the Nebraska Attorney General's determination of actual innocence. The records of conviction and incarceration have been completely expunged. At this juncture, the convictions and pleas no longer exist. Moreover, the Court has held that a guilty plea did not preclude challenging the police conduct that caused the plea in a subsequent civil rights action pursuant to § 1983. *Haring v. Prosise*, 462 U.S. 306, 323 (1983).

Petitioners argue that "merely gathering" unreliable evidence does not violate the Constitution. But that is not what the jury found, and not what the *Dean* II panel affirmed. The jury found Searcey and Price "gathered false or unreliable evidence" recklessly, that is, "without heed or concern for the consequences" and that as a direct result a Respondent suffered some damage. Thus, the jury found that false or unreliable evidence was not just gathered. Instead, the jury found the false evidence gathered was the direct result of the Respondents' damages. In the words of *Malley*, the "natural consequences" of the gathering of false evidence directly resulted in Respondents' damages.

The district court and the *Dean* II panel found a sufficient basis for the jury's conclusion. The Court has no interest in reviewing a jury finding fully supported by the trial evidence.

Finally, Petitioners make the incredible argument that assessing reliability of evidence is not "within the province of law enforcement . . .." Each and every day law enforcement officers make credibility and reliability determinations as a normal function of their job. As this Court has held, "reliability is the linchpin in determining the admissibility of identification testimony." *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977).

Petitioners would have the Court believe that law enforcement agencies are agnostic regarding the procedures an officer should use to obtain an identification. That's absurd. No law enforcement agency wants its officers to obtain an identification by way of an unduly suggestive procedure and simply allow a prosecutor or court sort out whether the identification was reliable. Law enforcement officers are expected to do their job and present proper and true evidence to a prosecutor—not evidence known to be false obtained without heed or concern for the consequences.

II. PETITIONERS' SECOND ISSUE

Response to Question Presented

Contrary to Petitioners' assertion, the jury found that Searcey and Price intentionally fabricated false evidence against each of the Respondents. The jury did not find Searcey and Price merely conducted interviews or interrogations during which false statements were

made. In affirming the verdict, the *Dean* II panel cited specific examples where the jury could have found that Searcey and Price intentionally fabricated false evidence—Searcey by "coaching or coercing" false statements and arranging unduly suggestive identifications, and Price by actively cajoling and encouraging mentally infirmed individuals "to simply make up evidence from their dreams." App. 20-23.

Response to Reasons to Grant Certiorari

II.A. The jury found Searcey and Price intentionally fabricated false evidence; not that they merely obtained false statements through interviews.

As noted above, the *Dean* II panel cited specific examples that would allow a jury to conclude Searcey and Price intentionally fabricating false evidence. As such, Petitioners challenge the jury's verdict by claiming they only *obtained* false statements through interviews or interrogations. But Petitioners have not cited the Court to any evidence supporting their claim of only obtaining false evidence instead of fabricating it. The rest of Petitioners' argument flows from this same false premise—that Searcey and Price had no responsibility for fabricating false evidence.

There is no circuit split that framing innocent individuals for a crime with false evidence violates the Constitution.

> Although constitutional interpretation occasionally can prove recondite, some truths are self-evident. This is one such: if any concept is fundamental to our American system of justice, it is that those charged with upholding

> the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit.

Limone, 372 F.3d at 44-45 (First Circuit).

> The district court did not define this "basic concept" [clearly established]. Perhaps this is because the idea that an investigating prosecutor (or any other state actor) should know not to fabricate evidence in order to frame a suspect is so elementary that the court felt that it needed no further explanation.

Whitlock, 682 F.3d at 585 (Seventh Circuit). *See also, Good*, 601 F.3d at 398 (Fifth Circuit).

Petitioners seem to question whether framing an individual for a crime is actually unconstitutional. (Petition at 23)("Even if 'framing' were unconstitutional . . . ."). That argument is baseless. To repeat, in 1967 Justice Stewart wrote: "More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence." *Miller*, 386 U.S. at 15.

The jury found Searcey and Price intentionally fabricated false evidence. The *Dean* II panel concluded that some of that fabricated false evidence were the false dream-induced statements made by Debra, Dean and Taylor—the three individuals that testified at White's trial. "Fabricated testimony is testimony that is made up; it is invariably false. False testimony is the equivalent; it is testimony known to be untrue by the witness and by whoever cajoled or coerced the witness to give it." *Fields*, 740 F.3d at 1110. Petitioners want

the Court to accept review to reverse the jury's verdict—a request that is rarely granted—that false evidence was intentionally fabricated.

Petitioners argue that it is the technique used, and not whether false evidence is produced, that determines whether a constitutional violation occurs. They argue only physical torture—"forcing an emetic down a person's throat"—can shock the conscience. (Petition at 29) This argument has no support in the law. None of the cases cited in the prior sections of this Response report physical torture as the cause of the false evidence, yet all hold the non-physical conduct was unlawful. Plainly, false evidence generated by unduly suggestive identifications, coerced statements, feeding witnesses facts, ignoring exculpatory evidence, lying in reports and affidavit, and much more, can give rise to a due process claim for violating one's right to fair criminal proceedings.

II.B. Everyone is responsible for the natural consequences of their actions, including the Petitioners.

Petitioners claimed the *Dean* II panel focused on collection rather than use, but failed to cite to any part of the panel's opinion supporting their claim—probably because there is no part of the opinion supporting Petitioners' claim. In fact, the *Dean* II panel recited the relevant portion of the jury instruction at the start of its analysis of manufactured evidence. App. 20. The instruction identified the three elements of the claim (1) "Defendant fabricated, that is, made-up, false evidence . . . during the investigation", (2) "the Defendant intentionally fabricated false evidence",

(3) "as a direct result of such action, the Plaintiff suffered some damage." Id.

Obviously, without the use of the false evidence to force a plea, or as the factual basis for a plea, or at Joseph White's trial, no Respondent would have suffered damage. As the *Winslow* panel noted; "if an officer fabricates evidence and puts that fabricated evidence in a drawer, making no further use of it, then the officer has not violated due process; the action did not cause an infringement of anyone's interest." App. 94-94 (quoting *Whitlock*, 682 F.3d at 582). By finding that the Respondents' suffered damage, the jury necessarily found the Petitioners' made use of the false evidence they intentionally fabricated.

Petitioners pretend that by passing the intentionally fabricated false evidence on to County Attorney Smith, they are somehow absolved because Smith wasn't deceived about the lies they concocted. But, as argued above, Smith's prosecution was not independent of Petitioners' intentionally fabricated false evidence. In fact, the jury heard how Smith was fully onboard with what the Petitioners were doing. Smith, however, is deemed to not have been involved in the investigation (regardless what his conduct actually showed at trial) and is individually cloaked with prosecutorial immunity. App. 103-104.

Smith performed as the Petitioners hoped and expected—he used the intentionally fabricated false evidence to force pleas and provide a factual basis for each plea hearing, and as the only evidence of guilt supporting White's conviction. Petitioners are responsible for the natural consequences of their actions. *Malley*, 475 U.S. at 345 n.7. "If police officers

have been instrumental in the plaintiff's continued confinement or prosecution, they cannot escape liability by pointing to the decisions of prosecutors or grand jurors or magistrates to confine or prosecute him." *Jones,* 856 F.2d at 993-94.

Finally, Petitioners assert (again) that the pleas absolve their intentional fabrication of false evidence. But, a guilty plea does not preclude challenging the police conduct in a subsequent civil rights action pursuant to § 1983. *Haring*, 462 U.S. at 323.

III. PETITIONERS' THIRD ISSUE

Response to Question Presented

The jury did not find the county liable because Sheriff DeWitt failed to stop an investigation. The jury instruction required finding that "DeWitt deliberately adopted a formal or informal policy by words or deeds which affirmatively commanded that the deprivation of rights take place." That is what the jury found, and what the *Dean* II panel affirmed.

Response to Reasons to Grant Certiorari

III.A. The jury found DeWitt liable for his role in supervising his officers' unlawful conduct.

Petitioners' argument is, yet again, predicated on a false premise. Contrary to Petitioners' argument, the conspiracy claim had nothing to do with DeWitt's managerial conduct. The jury was instructed to determine whether there was a conspiracy regarding the reckless investigation or the fabrication of false evidence. The jury was not instructed to consider whether anyone conspired with DeWitt regarding his

duties as the county's final policymaker for law enforcement. Thus, a finding of no liability for DeWitt on the investigation conspiracy claim had no relationship to the jury's determination regarding DeWitt's supervisory role, that he either "(a) directed that the violation occur, or (b) authorized the violation, or (c) agreed to a subordinate's decision to engage in the violation." App. 9.

Also contrary to Petitioner's argument, the *Dean* II panel reconciled the two verdicts by concluding "the jury could have drawn a logical distinction between Sheriff Dewitt's investigatory role and his policymaking and managerial role." App. 10. The County's liability is not due to DeWitt not intervening and stopping his officers' unlawful investigation. The County is liable because the jury found that DeWitt, by his words and deeds, directed, authorized or agreed to his officers' unlawful conduct.

III.B. The Eighth Circuit provided more than sufficient detail of DeWitt's decisions that cause the Respondents' damage—twice.

Both *Dean* I and *Dean* II identified several, but not all, of the managerial decisions DeWitt made that resulted in the County's liability. App. 11-12 & 58-59. Petitioners essentially argue that because DeWitt did not instruct his officers to torture the Respondents, his direction, authorization, or ratification of his officers' conduct was not unconstitutional. That is again an absurd argument. Actually, what Petitioners want the Court to do is ignore that the jury found that DeWitt knew his officers had obtained false evidence but instead of putting the false evidence in a drawer, he directed them to intentionally fabricate more false

evidence. DeWitt knew the lab results proved White and Winslow were not the source of crime scene semen, but he directed, or authorized his officers to take more statements from Dean and Debra, each claiming that only White and Winslow raped Wilson. Those statements, and Price's fabricated repressed memory meme, were used to force confessions, and cause pleas and White's conviction. That is what the jury could find, and the Eighth Circuit concluded the evidence supported such finding. Accordingly, the County was liable for Respondents' damages.

III.C. DeWitt is also responsible for the nature consequences of his actions.

Petitioners argue, again, that Smith, not DeWitt, had the final authority to dismiss the charges against the Respondents. The response to this tired argument is the same as before—everyone is responsible for the natural consequences of their actions. *Malley*, 475 U.S. at 345 n.7. "If police officers have been instrumental in the plaintiff's continued confinement or prosecution, they cannot escape liability by pointing to the decisions of prosecutors or grand jurors or magistrates to confine or prosecute him." *Jones,* 856 F.2d at 993-94.

CONCLUSION

Petitioners have not identified an actual circuit court split of authority, or a departure from well-settled precedent. Petitioners merely want the Court to review the Eighth Circuit Court of Appeals' application of properly stated rules of law and interfere with the jury's determination of facts. The Court should deny Petitioners' Writ.

Respectfully submitted,

Robert F. Bartle
Counsel of Record
Bartle & Geier Law Firm
1141 "H" Street
Lincoln, NE 68508
(402) 476-2847
tpetsche@bartlegeierlaw.com

Douglas J. Stratton
Stratton, DeLay & Doele Law Firm
200 West Benjamin Ave.
Norfolk, NE 68702
(402) 371-3100
dstratton@norfolknelaw.com

Attorneys for Respondents Lois White, Kathleen A. Gonzalez, Thomas Winslow, and Ada JoAnn Taylor

AND

Maren Lynn Chaloupka
Chaloupka, Holyoke, Snyder,
Chaloupka & Longoria, P.C., L.L.O.
1714 Second Ave.
Scottsbluff, NE 69361
(308) 635-5000
mlc@chhsclaw.net

Matthew Kosmicki
140 N. 8th St., Suite 250
Lincoln, NE 68508
(402) 476-6585
mattkosmickilaw@gmail.com

Attorneys for Respondent Debra Shelden

AND

Herbert J. Friedman
Friedman Law Office, P.C., L.L.O.
3800 Normal Blvd., Suite 200
Lincoln, NE 68506
(402) 476-1093
hfriedman@friedmanlaw.com

Attorney for Respondent James Dean