

**THIRTEENTH JUDICIAL DISTRICT COURT
SANDOVAL COUNTY
STATE OF NEW MEXICO**

GALE COOPER and DE BACA COUNTY NEWS, a New Mexico corporation

Complainants,

vs.

CAUSE No. D1329 CV 07 1364

RICK VIRDEN, LINCOLN COUNTY SHERIFF and CUSTODIAN OF RECORDS; and STEVEN M. SEDERWALL, FORMER LINCOLN COUNTY DEPUTY SHERIFF; and THOMAS T. SULLIVAN, FORMER LINCOLN COUNTY SHERIFF AND FORMER LINCOLN COUNTY DEPUTY SHERIFF

Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND OVERVIEW

A. THE LAW ENFORCEMENT CASE

In 2003, the Lincoln County Sheriff's Department, under then Sheriff, Tom Sullivan, with his commissioned Deputy, Steven Sederwall, initiated a cold-case murder investigation filed as Case No. 2003-274. In 2005, Lincoln County Sheriff's Department Case No. 2003-274 was continued by current Sheriff, Rick Virden, who became its records custodian, and under whom all its forensic documents were generated.

Lincoln County Sheriff's Department Case No. 2003-274 is a murder investigation, the suspect for which, as established by its Probable Cause Statement, is past Lincoln County Sheriff Pat Garrett. (EXHIBIT A) In it, Pat Garrett is accused of an unjustifiable murder, on July 14, 1881, of an innocent victim instead of his alleged justifiable victim, William H. Bonney aka Billy the Kid, with whom he is alleged to have

conspired to permit escape. Further justification for conducting this law enforcement case was alleged as the lack of a statute of limitations for murder.

In that Probable Cause Statement is included a sub-investigation of Billy the Kid's murders of his two deputy guards (James Bell and Robert Olinger) in his April 28, 1881 jail break. The purpose of that sub-investigation was to establish a Pat Garrett murder motive by claiming that if Garrett assisted the Kid in that jailbreak, he would also have again assisted the Kid's escape, 2 ½ months later, by killing an innocent victim instead of him.

In addition, as presented in that Probable Cause Statement, Lincoln County Sheriff's Department Case No. 2003-274 was a forensic investigation, seeking to establish the murder guilt of Sheriff Pat Garrett by DNA comparison of the Silver City, New Mexico exhumed remains of Billy the Kid's mother, Catherine Antrim (his only known kin), with exhumed remains from the Billy the Kid grave in Fort Sumner, New Mexico.

To that effect, exhumation petitions were made in Grant and De Baca Counties for Lincoln County Sheriff's Department Case No. 2003-274 in 2003 and 2004.

Failing in those Silver City and Fort Sumner exhumation petitions, the defendants next claimed to have obtained the DNA of Billy the Kid from his alleged blood on an alleged carpenter's bench on which he was allegedly laid out (further claiming that, when laid out, he was not actually dead, though shot by Sheriff Garrett). That forensic investigation of the carpenter's bench for DNA was performed by forensic expert, Dr. Henry Lee in 2004. Dr. Lee sent his carpenter's bench specimens to Orchid Cellmark Lab for DNA extraction. In 2005, Dr. Lee sent his forensic report to the Lincoln County

Sheriff's Department. (EXHIBIT B) Dr. Lee stated: "If you want a copy of the report, you should contact the Lincoln County Sheriff's Department directly."

Next, claiming possession of the DNA of Billy the Kid from that carpenter's bench, the defendants continued their pursuit of Lincoln County Sheriff's Department Case No. 2003-274 through intended exhumations of Billy the Kid claimants. That investigative direction was for indirect proof that Garrett's victim was a not William Bonney but an innocent, since, if one of those old men proved to be Billy the Kid, then Garrett had not killed him on July 14, 1881.

The first and only exhumations to that effect occurred on May 19, 2005, in Prescott, Arizona, where, under a Lincoln County Sheriff's Department Supplemental Report for Case No. 2003-274 (EXHIBIT C), the defendants were involved in exhumation of two bodies for DNA matching with the carpenter's bench DNA. One was of a Billy the Kid claimant, John Miller. Another was from the random adjacent grave of a William Hudspeth. The Director of Orchid Cellmark Lab was on site to receive the bones of both men for 1) DNA extraction, and 2) comparison with the carpenter's bench DNA. Subsequently, the defendants claimed to have gotten a matching result.

B. PUBLIC NATURE OF THE LAW ENFORCEMENT CASE

Lincoln County Sheriff's Department Case No. 2003-274 was pursued by its law enforcement officers solely under their official titles; on official letterhead stationery or by official documents: in official entities of sheriff's departments and district courts; and with utilization of Lincoln County Attorney services and New Mexico Risk Management attorney services, available only through their law enforcement positions.

That entirely public, law enforcement nature of Lincoln County Sheriff's Department Case No. 2003-274 was fully established by documents and acts of its promulgators as follows:

1. It was filed in the Lincoln County Sheriff's Department as a murder investigation with a formal Probable Cause Statement.
2. Its exhumation petitions claimed a real murder investigation against Pat Garrett. The petition of October 3, 2003 for Grant County (EXHIBIT D) stated that the case was "for the purpose of determining guilt or innocence of Sheriff Pat Garrett in the death of William Bonney aka "Billy the Kid.' "
3. Its exhumation petitions claimed law enforcement status of its petitioners. Messrs. Tom Sullivan and Steven Sederwall, as Lincoln County Sheriff and Deputy Sheriff respectively. The petition of February 26, 2004 for DeBaca County (EXHIBIT E) stated: "The Co-Petitioners are Gary Graves, Sheriff of DeBaca County, Tom Sullivan, (Sheriff) and Steve Seederwall [sic] (Deputy Sheriff) of Lincoln County, New Mexico (hereinafter the "Sheriff-Petitioners')."
4. Its exhumation petitions also claimed law enforcement status of its petitioners as justification for court standing. The petition of July 29,2004 for DeBaca County (EXHIBIT F) stated: "Tom Sullivan, Steve Sederwall, and Gary Graves are law enforcement officers. Prior to filing of the Petition of Exhumation of the Remains of Billy the Kid, a.k.a. William H. Bonney, Sullivan, Sederwall, and Graves, acting in their capacity as law enforcement officers, initiated investigation No. 2004 filed in Lincoln County and Case No.

03-06-136-01 in DeBaca County ... Petitioners assert that they maintain standing in the instant action as law enforcement officers engaged in the investigation of criminal violations, namely the alleged killing of Billy the Kid by the legendary Sheriff, Pat Garrett.”

5. Its law enforcement promulgators used the New Mexico Inspection of Public Records Act (hereinafter IPRA) exception for criminal investigations to refuse IPRA records requests. In an October 8, 2003 records denial (EXHIBIT G), then Sheriff Sullivan, on an official departmental form, denied records based on “an ongoing investigation,” and claimed exception “as per Section 14-2-1(A)(4) of the Inspection of Public Records Act.” In a May 9, 2004 records denial (EXHIBIT H), Lincoln County Attorney Alan Morel stated: Sheriff Sullivan maintains that the case involving Billy the Kid is an ongoing criminal investigation, and, as such, the records you have requested pertaining to the investigation are not subject to disclosure at this time, pursuant to Public Records Act, Sec. 14-2-1, subparagraph A4.” In his November 28, 2006 records denial (EXHIBIT I), Sheriff Virden stated: “There is an ongoing investigation being conducted. When the investigating officers conclude their investigation I will gladly avail you of all the information you request in case # 2003-274.”

C. INSPECTION OF PUBLIC RECORDS REQUEST

Given the entirely public nature of Lincoln County Sheriff's Department Case No. 2003-274, plaintiff Gale Cooper, using the law firm of Attorney Mickey Barnett,

made IPRA records requests to Lincoln County Sheriff Rick Virden, as Records Custodian, for all forensic records of Lincoln County Sheriff's Department Case No. 2003-274. Those requests were made on April 24, 2007, May 9, 2007, June 8, 2007, and June 14, 2007.

Following refusals of the Records Custodian Sheriff Rick Virden to produce a single forensic record, plaintiff Gale Cooper, joined by co-plaintiff the De Baca County News, filed through the Barnett law firm, on October 15, 2007, in Sandoval District Court, "Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information" against the current defendants. On November 1, 2007, that Complaint was re-filed as "Verified First Amended Complaint for Declaratory Judgment Ordering Production of Certain Records and Information" against the current defendants.

The requested forensic records were, and remain, as follows.

1. Dr. Henry Lee's February 5, 2005 forensic report, sent to the Lincoln County Sheriff's Department, on his forensic investigation of the carpenter's bench for the purpose of obtaining samples from alleged blood of Billy the Kid for DNA extraction by Orchid Cellmark Lab.

2. Orchid Cellmark Lab's report(s) of results of DNA extraction from alleged blood of Billy the Kid from Dr. Henry Lee's samples.

3. Orchid Cellmark's report(s) of results from DNA extraction from remains of a John Miller, obtained by exhumation on May 19, 2005, from a grave in the Prescott, Arizona, Pioneers' Home Cemetery.

4. Orchid Cellmark's report(s) of results from DNA extraction from remains of a William Hudspeth, obtained by exhumation on May 19, 2005, from a grave in the Prescott, Arizona, Pioneers' Home Cemetery.

5. Orchid Cellmark's report(s) of results from DNA matching of carpenter's bench DNA to DNA from remains of said John Miller.

6. Orchid Cellmark's report(s) of results from DNA matching of carpenter's bench DNA to DNA from remains of said William Hudspeth.

**D. CURRENT CASE FOR VIOLATION OF
INSPECTION OF PUBLIC RECORDS ACT**

The above evidence of the entirely public nature of Lincoln County Sheriff's Department Case No. 2003-274 notwithstanding, and without prior denial of the public nature of that case, the plaintiffs refused to turn over any of the requested the forensic records to the plaintiffs. They presented to the plaintiffs four reasons for their denials.

1. In part, the defendants' records refusal was based on their new claim that Lincoln County Sheriff's Department Case No. 2004-274 was their "amateur historical hobby," and, as such, was a private endeavor immune to IPRA law. To that effect, then Deputies, Tom Sullivan and Steven Sederwall claimed proprietary ownership of the documents (in a June 21, 2007 document titled "Memorandum," addressed to Sheriff Rick Virden, and provided by the plaintiffs as "EXHIBIT A" in their October 15, 2007 "Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information," and in its November 1, 2007 amended version. They stated: "We have been told the letter from Gail [sic] Cooper's attorney is her attempt to gain information we have spent years gathering to add to a book she is attempting to sell. We will continue

our investigation. Later we shall make the decision if and when we will release the information.”

2. In part, the defendants’ records refusal was based on their claim of receiving contributions of private donors to Lincoln County Sheriff Tom Sullivan and to Lincoln County Sheriff’s Department Case No. 2003-274. This claim, as well as copies of donor checks presented as an Attachment, were provided in the above-cited June 21, 2007 “Memorandum.” The apparent allegation by the defendants was that the donations turned that sheriff’s department case into a private endeavor immune to IPRA law.

3. In addition, defendant Lincoln County Sheriff Rick Virden, under whom all the forensic records for Case No. 2003-274 were generated, claimed, through Lincoln County Attorney Alan Morel, records refusal by alleging that his commissioned Deputies, Tom Sullivan and Steven Sederwall, had taken possession of all the forensic records of Lincoln County Sheriff’s Department Case No. 2003, and would not return them to him following his request on behalf of the records request of current plaintiff, Gale Cooper. (EXHIBIT J) Attorney Morel stated: “A quick review of Messrs. Sullivan and Sederwall’s June 21, 2007 correspondence clearly indicates that they believe that the records they have in their possession are, in fact, private, rather than public records.” In response, Sheriff Virden took no known legal action against those deputies for seizing all the forensic documents of his murder case; nor did Sheriff Virden take any known action to recover those lost forensic records from their forensic sources: Dr. Henry Lee and Orchid Cellmark Lab.

4. In addition, records refusals were based on Sheriff Virden’s commissioned Deputies, Tom Sullivan and Steven Sederwall, claiming that the requested records did not

exist in their possession, and, thus, could not be turned over. Their attorney, Kevin Brown, responded by letter in refusal of each document (EXHIBIT K): “Defendant states he has no such document.” This claim is belied by those deputy defendants’ also having claimed proprietary ownership of the same documents.

Furthermore, the implication that neither Sheriff Virden nor his commissioned Deputies, Sullivan and Sederwall, possessed no forensic documents is belied by their a) performing exhumations based on the existence of forensic documents, and b) publicly declaring the attainment both of DNA extractions and of matchings through Orchid Cellmark Lab, which would have produced documents for those results.

Furthermore, on June 21, 2007, during plaintiff Gale Cooper’s IPRA record requests leading to this IPRA violation case, Messrs. Tom Sullivan and Steven Sederwall tendered their resignations as Lincoln County Deputy Sheriffs to Lincoln County Sheriff Rick Virden (in the June 21, 2007 “Memorandum” cited above). Though private citizens following that date, their act did not abrogate the fact of their being Sheriff Virden’s commissioned deputies during the period the requested forensic documents were generated for Lincoln County Sheriff’s Department Case No. 2003-274.

II. STANDARD OF REVIEW

“Summary judgment is proper where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law” *Hanson v. Turney*, 2004-NMCA-069, 136 N.M. 1, 94 P.3rd 1, 3 (NM App. 2004), citing *Self v. United Parcel Service, Inc.*, 1998-NMSC-046, 970 P.2d 582, 126 N.M. 396, 399. The New Mexico Supreme Court has held that “[w]here reasonable minds will not differ as to an issue of material fact, the court may properly grant summary judgment.” *Montgomery v. N.M. State Engineer*, 2007-NMSC-002, 150 P.3d 971, citing *Martinez v. Metzgar*, 97 N.M. 173, 174, 637 P.2d 1228, 1229 (1981).

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. As to the public nature of Lincoln County Sheriff's Department Case No. 2003-274, the following pertains:

1. In 2003, then Lincoln County Sheriff Tom Sullivan filed a cold-case murder investigation as Lincoln County Sheriff's Department Case No. 2003-274.

2. Lincoln County Sheriff's Department Case No. 2003-274 Probable Cause Statement alleged probable cause to accuse past Lincoln County Sheriff Pat Garrett of committing a criminal murder of an innocent victim, instead of performing the justified killing of William Bonney aka Billy the Kid, and for the conspiratorial purpose of enabling the Kid's escape.

3. A sub-investigation of Lincoln County Sheriff's Department Case No. 2003-274 was the investigation of Billy the Kid's murders of his two deputy guards (James Bell and Robert Olinger) during his jail break. The sub-investigation was directed to Pat Garrett's murder motivation, in that it implied that he had assisted the Kid in the deputy murders and escape, thus allegedly making plausible his repeat assist of the Kid's escape, a few months later, by himself criminally murdering an innocent victim.

4. The chief method of investigation for Lincoln County Sheriff's Department Case No. 2003-274 was to be through DNA forensics, first comparing the DNA from remains of Billy the Kid and his mother; then comparing alleged Billy the Kid blood DNA from a carpenter's bench to old-timer claimants' remains to determine if they, as Billy the Kid, had "survived" the Garrett killing. Both of these DNA investigative thrusts were to prove that Garrett was a murderer, had not killed William Bonney on July 14, 1881, and had killed an innocent victim instead.

5. In 2003, then Lincoln County Sheriff Tom Sullivan commissioned Steven Sederwall as his deputy to participate in Lincoln County Sheriff's Department Case No. 2003-274 .

6. Exhumation petitions in 2003 and 2004 for Catherine Antrim and William Bonney to district courts of Grant and DeBaca Counties respectively, demonstrated that Lincoln

County Sheriff's Department Case No. 2003-274 was treated as a real murder investigation against Pat Garrett.

7. Those exhumation petitions for Catherine Antrim and William Bonney to district courts of Grant and DeBaca Counties respectively, also demonstrated that Lincoln County Sheriff's Department Case No. 2003-274 utilized Tom Sullivan and Steven Sederwall as petitioners in their official capacities of Sheriff and Deputy Sheriff of Lincoln County respectively.

8. Those exhumation petitions for Catherine Antrim and William Bonney to district courts of Grant and DeBaca Counties respectively, also demonstrated that Tom Sullivan and Steven Sederwall claimed court standing for said petitions solely on the basis of being law enforcement officers conducting the case.

9. In 2005, current Lincoln County Sheriff Rick Virden officially continued Lincoln County Sheriff's Department Case No. 2003-274 under his authority. (EXHIBIT I)

10. In 2005, current Lincoln County Sheriff Rick Virden commissioned as Deputies, Tom Sullivan and Steven Sederwall, to participate in Lincoln County Sheriff's Department Case No. 2003-274 as investigators in his department and under his authority. (EXHIBIT I)

11. The exhumation of John Miller in Prescott, Arizona, was done under a Lincoln County Supplemental Form for Case No. 2003-274 (EXHIBIT C), and during the tenure of Rick Virden as Sheriff, and during his commissioned deputyships of Tom Sullivan and Steve Sederwall.

B. As to the forensic documents of Lincoln County Sheriff's Department Case No. 2003-274, the following pertains:

1. In the service of the murder investigation of Pat Garrett in Lincoln County Sheriff's Department Case No. 2003-274, all the forensic documents requested in this IPRA case were generated during Sheriff Virden's tenure. They constituted reports generated by Dr. Henry Lee and by Orchid Cellmark Lab concerning DNA specimen isolations, DNA extractions, and DNA matchings.

2. Dr. Henry Lee confirmed in writing that he sent his report on his DNA investigation of the carpenter's bench to the Lincoln County Sheriff's Department.

3. The Prescott, Arizona, exhumations of John Miller and William Hudspeth at the Arizona Pioneers' Home, relied solely on the defendants' claim of possessing records establishing their possession of the DNA of Billy the Kid to justify DNA matching to remains for determination of their identity as Billy the Kid.

4. The defendants' claim of obtaining matching results from the John Miller exhumation, relied on possession of documents from Orchid Cellmark Lab demonstrating 1) said lab's successful DNA extractions from Arizona remains, and 2) said lab's matching of extracted DNA with the carpenter's bench DNA.

5. The plaintiffs contend that it begs credibility for Sheriff Virden to have conducted Case No. 2003-274, a multi-year murder investigation in his department, and to have "lost" every one of its forensic records, including his spectacular record documenting the acquisition, for the first time in history, of the DNA of William Bonney aka Billy the Kid.

C. As to the public nature of the forensic documents of Lincoln County Sheriff's Department Case No. 2003-274, the following pertains:

1. The requested forensic documents of Lincoln County Sheriff's Department Case No. 2003-274 meet the IPRA definition of "public records" under NMSA 14-2-6 (E) which states: "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained."

2. Lincoln County Sheriff Rick Virden meets the IPRA definition of "custodian" under NMSA 14-2-6 (A) which states: "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the

records are in that person's actual physical custody or control." Furthermore, Sheriff Virden, as the law enforcement official conducting a murder investigation, is the obvious custodian of the forensic records of that murder investigation.

3. IPRA statute NMSA 14-2-6 (A) also distinguishes between responsibility and possession, making clear the existence of responsibility even if records are not in direct possession, thus removing Sheriff Virden's excuse that his deputies' taking possession of his records removed his responsibility for obtaining them for an IPRA request.

4. As commissioned deputies of Sheriff Rick Virden, Tom Sullivan's and Steven Sederwall's documents, generated for Lincoln County Sheriff's Department Case No. 2003-274, become public documents, thus subject to IPRA law.

5. The defendants have, until this current records refusal where they allege the sheriff's department case was a private hobby, consistently used the IPRA law exception for a criminal investigation to deny IPRA records requests, thus establishing, by that act, their own definition of their Case No. 2003-274 as a public matter. That law enforcement exception is under NMSA 14-2-1 "Right to Inspect Public Records; A. Exceptions (4)", and states "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency."

6. Since there is no IPRA exception against a flawed investigation by public officials, the accusation and pursuit of dead suspect Garrett for murder, though questionable, nevertheless leaves Case No. 2003-274 subject to IPRA records requests as a public case.

7. Nevertheless, should the defendants now attempt to alter their tactic for records refusal, and again claim law enforcement exception NMSA 14-2-1 (A)(4), it would be incumbent on them to show how their murder case against a dead suspect, and without an existing crime scene, qualifies for that IPRA immunity.

8. The defendants have also attempted to use the IPRA exception under NMSA 14-2-1 "Right to Inspect Public Records; Exceptions (6)" in connection to their "private hobby claim." It lists "trade secrets." However, the plaintiffs contend that the forensic records of a sheriff's department murder investigation do not constitute trade secrets; and furthermore, to call them such would imply using public office for private gain.

9. The defendants have also attempted to deny records based on implying that by virtue of acceptance of private donations to the Lincoln County Sheriff and to departmental Case No. 2003-274, said case became a private matter. Rather, the plaintiffs contend, private money entering public coffers becomes public; and it does not change the public nature of a public case. In fact, the reverse, as pertaining to this sheriff's department case at hand, would imply vigilante-like private purchase of murder investigations in New Mexico sheriffs' departments.

10. Plaintiffs contend that an intent of IPRA law is precisely to permit citizens to gain access to records of a case like Lincoln County Sheriff's Department Case No. 2003-274, in which public officials, for possibly irregular purposes, have used public money, official titles, law enforcement exhumation powers, the services of district courts and their sheriff's department; and have been involved in exhuming two bodies, as well as in making extreme and unusual forensic claims; and have retained the case's crucial public documents as alleged private possessions.

11. If the plaintiffs' IPRA records request is not granted, one could surmise that IPRA law could be rendered useless by that precedent. For records concealment, any public official could declare any public activity a private hobby immune to IPRA law; or any Records Custodian could pass documents to an accomplice to deny possession for denial of IPRA records requests.

12. If the plaintiffs' IPRA records request is not granted, one could surmise also that tacit permission is granted for New Mexico law enforcement officials to conduct murder

investigations in sheriffs' departments and courts of law as their private hobby and/or with their acceptance of private payments to do so.

13. In addition, plaintiffs emphasize that, though the case at hand is a matter of IPRA law as to public documents, at stake also is the iconic Old West history of Pat Garrett and Billy the Kid, which has important ramifications for New Mexico. By claiming, against all historical evidence to the contrary, that world-famous Pat Garrett did not kill Billy the Kid, but was a heinous accomplice to the murder of his own deputies and was the murderer of an innocent victim, the defendants have attacked both years of academic research by expert historians, as well as devalued the attendant historic sites and their tourist base. The requested records address the credibility and veracity of the defendants' claims.

14. In addition, plaintiffs emphasize that, though the case at hand is a matter of IPRA law as to public documents, at stake also is state, national, and international public opinion with regard to the extreme and unusual forensic claims made by the defendants, to wit, that they possess the actual DNA of Billy the Kid valid for DNA matchings; that long-debunked Billy the Kid claimants should be taken seriously and matched with that DNA; and that matching results, of some sort, have already been achieved with claimant John Miller and/or his random grave-neighbor William Hudspeth.

The fact that the defendants are using the untenable arguments that the forensic records of Lincoln County Sheriff's Department Case No. 2003-274 are their proprietary property, generated for a private hobby, and immune to IPRA requests; or that Sheriff Rick Virden, as the Records Custodian of said case's forensic records, is helpless to hand them over because his deputies took possession and refuse to return them; or that all the forensic records of said case have simply disappeared, are all controverted by the facts that said forensic records are unquestionably public documents, that said forensic documents are easily available to their Records Custodian, Sheriff Virden, via the route of direct request to their sources, Dr. Henry Lee and Orchid Cellmark Lab; and, thus, that

any claim that the forensic documents have “disappeared” from the possession of all the involved defendants is unsupported.

In short, there exists no tenable justification for the defendants’ refusal to turn over the forensic records of Case No. 2003-274 to the plaintiffs.

And without those requested forensic records being exposed to public scrutiny, the defendants continue to represent a possibly unnecessary risk to important New Mexico history and its attendant sites.

WHEREFORE, Plaintiffs pray that the Hearing Officer grant this Motion for Summary Judgment and upon the proofs proffered here find that the Defendants should turn over to the Plaintiffs all the forensic documents of Lincoln County Sheriff’s Department Case No. 2003-274 in their possession, or that the Records Custodian, Lincoln County Sheriff Rick Virden, should obtain replacements of said documents for the Plaintiffs from their sources, which are Dr. Henry Lee and Orchid Cellmark Lab.

Respectfully submitted,

A. Blair Dunn, Esq.

Attorneys for
610 Gold St. SW – Suite 111
Albuquerque, NM 87102
(505) 843-7643; fax (505) 246-2232

CERTIFICATE OF DELIVERY

I, A. Blair Dunn, hereby certify that I have mailed a copy this Motion to the following parties on this the _____ day of July, 2009.

A. Blair Dunn, Esq.
610 Gold St. SW- Suite 111
Albuquerque, N.M. 87102
505-843-7643

BARNETT LAW FIRM, P.A.

AMY B. BAILEY
MICKEY D. BARNETT
PHILLIP W. CHEVES
DAVID A. GARCIA, OF COUNSEL

1905 WYOMING BLVD NE
ALBUQUERQUE, NM 87112
FAX (505) 275-3837
PHONE (505) 275-3200
WWW.THEBARNETTLAWFIRM.COM

COPY

April 24, 2007

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL**

Sheriff Rick Virden
Lincoln County Sheriff's Office
PO Box 278
Carrizozo, NM 88301-0278

Re: Request for Inspection of Public Records

Dear Sheriff Virden:

This office represents Gale Cooper, M.D.. Pursuant to the Inspection of Public Records Act, Section 14-2-8 *et seq.* NMSA 1978, this letter is our written request to inspect the public records identified as follows:

1. Please provide any and all records and reports of raw data and or conclusions provided in any form at all to the Lincoln County Sheriff's Department by Dr. Henry Lee as the stated "forensic expert" utilized by the Lincoln County Sheriff's Department for promulgation of Lincoln County Sheriff's Department Case # 2003-274 with regard to any and all DNA findings. Furthermore, all tests and procedures are to be considered "findings" hereafter. Said findings are to include any and all DNA results from Dr. Henry Lee's scrapings and swabbings of the carpenter's bench on which the Billy the Kid Case promulgators contend that the shot William Bonney was laid out. Said findings are to also include DNA results from the remains removed respectively from the graves of John Miller and William Hudspeth done solely for the purpose of advancing the Billy the Kid Case investigation. Said findings are to also include DNA results from DNA matching of the remains removed from the graves of John Miller and William Hudspeth and the DNA sample(s) taken from the above-mentioned carpenter's bench. Such documentation is to include papers, notes, letters, print-outs, graphs, tapes, e-mails, recordings and/or other materials, regardless of physical

Sheriff Rick Virden
Lincoln County Sheriff's Office
April 24, 2007
Page 2

form or characteristics, that are maintained or held by or on the behalf of you in your capacity as Lincoln County Sheriff or by and/or for the Lincoln Country Sheriff's Department.

2. Please provide any and all records and reports of raw data and or conclusions provided in any form to the Lincoln County Sheriff's Department by Orchid Cellmark as the stated forensic lab utilized by Dr Henry Lee and by the Lincoln County Sheriff's Department for promulgation of Lincoln County Sheriff's Department Case # 2003-274 with regard to any and all DNA analysis. Said findings are to include any and all DNA results derived by Orchid Cellmark from Dr. Henry Lee's scrapings and swabbings of the carpenter's bench on which the Billy the Kid Case promulgators contend that the shot William Bonney was laid out. Said findings are to also include DNA results from the remains removed respectively from the graves of John Miller and William Hudspeth done solely for the purpose of advancing the Billy the Kid Case investigation. Said findings are to also include DNA results from DNA matching of the remains removed respectively from the graves of John Miller and William Hudspeth and the DNA sample(s) taken from the above-mentioned carpenter's bench. Such documentation is to include papers, notes, letters, print-outs, graphs, tapes, emails, recordings and/or other materials, regardless of physical form or characteristics, that are maintained or held by or on the behalf of you in your capacity as Lincoln County Sheriff or by and/or for the Lincoln Country Sheriff's Department.

In this letter, the term "public records" has the same meaning as defined at Section 14-2-6(E) NMSA 1987, and shall include, without limitation, all documents, papers letters, books, maps, tapes, photographs, recordings, e-mails, telephone messages, voice mail messages, daily agendas, calendars, schedules and transcripts or notes.

Each category of documents requested above in numbered paragraphs one through eleven is to be deemed a separate request to inspect the records identified in the category, to the same extent as if eleven separate requests had been delivered instead of this single letter. Accordingly, should the custodian of the records sought purport to determine that any

Sheriff Rick Virden
Lincoln County Sheriff's Office
April 24, 2007
Page 3

category of documents requested above is excessively burdensome or broad pursuant to Section 14-2-10 NMSA 1978, such determination shall apply only to the particular category named and shall not serve to delay inspection of the other categories.

Pursuant to Section 14-2-8(C), we seek access to the records both for ourselves and for Gale Cooper, M.D. Our address and telephone number is set forth above.

In the event you are not the custodian having possession of or responsibility for the records, please forward this request to the custodian pursuant to Section 14-2-8(E).

We appreciate your consideration. Please call me if you wish to discuss this letter.

Sincerely,

BARNETT LAW FIRM, P.A.

BY: 
PHILLIP W. CHEVES

PWC:yca

COPY

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

CAUSE NO. D 1329 CV 2007-01364

GALE COOPER and DE BACA COUNTY NEWS, a New Mexico corporation,

Plaintiffs,

-vs-

RICK VIRDEN, LINCOLN COUNTY SHERIFF and CUSTODIAN OF RECORDS OF
THE LINCOLN COUNTY SHERIFF; and STEVEN M. SEDERWALL, FORMER
LINCOLN COUNTY DEPUTY SHERIFF; and THOMAS T. SULLIVAN, FORMER
LINCOLN COUNTY SHERIFF AND FORMER LINCOLN COUNTY DEPUTY
SHERIFF,

Defendants.

**REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT THOMAS T. SULLIVAN**

TO: Thomas T. Sullivan
c/o Kevin M. Brown, his attorney
2901 Juan Tabo NE, Suite 208
Albuquerque, NM 87112

YOU ARE HEREBY REQUESTED to produce your response and the originals or
copies of the following documents as defined below in your possession, custody and control
within thirty (30) days of service hereof, pursuant to Rule 1-034 of the New Mexico Rule of
Civil Procedures, at the offices of Barnett Law Firm, P.A., 1905 Wyoming Blvd. NE,
Albuquerque, New Mexico 87112, or such other place as stipulated and agreed to by
counsel.

This request is intended to cover all documents in the possession of Sterling Development, Inc. or their agents, or subject to their custody and control, regardless of location.

As used in this request, the term "document" means every writing or record of every type and description that is in the possession, control or custody of Sterling Development, Inc. or their agents, including correspondence, memoranda, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, films, voice recordings, surveys; or statistical compilations, data processing cards or computer records or tapes or print-outs; agreements, communications, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records or personal conversations or interviews, diaries, graphs, reports, notebooks, note charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture film, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document, and all other writings.

REQUESTS FOR PRODUCTION

1. Please provide any and all records and reports of raw data and or conclusions provided in any form by Dr. Henry Lee with regard to any and all DNA findings pertaining to the Lincoln County Sheriff's Department Case # 2003-274.

RESPONSE:

2. Please provide any and all DNA results from Dr. Henry Lee's scrapings and swabbings of the carpenter's bench pertaining to the Lincoln County Sheriff's Department Case # 2003-274.

RESPONSE:

3. Please provide any and all DNA results from the remains removed respectively from the graves of John Miller and William Hudspeth.

RESPONSE:

4. Please provide any and all DNA results from DNA matching of the remains removed from the graves of John Miller and William Hudspeth.

RESPONSE:

5. Please provide any and all DNA sample(s) taken from the above-mentioned carpenter's bench.

RESPONSE:

6. Please provide any and all records and reports of raw data and or conclusions provided in any form by Orchid Cellmark as the stated forensic lab utilized by Dr Henry Lee with regarding to any and all DNA analysis pertaining to the Lincoln County Sheriff's Department Case # 2003-274.

RESPONSE:

7. Please provide any and all DNA results derived by Orohid Cellmark from Dr. Henry Lee's scrapings and swabbings of the carpenter's bench pertaining to the Lincoln County Sheriff's Department Case # 2003-274.

RESPONSE:

8. Please provide any and all invoices, statements, financial expenditures and receipts, reports, provided in any form at all to you, by Dr. Henry Lee regarding Lincoln County Sheriff's Department Case # 2003-274.

RESPONSE:

9. Please provide any and all payments made or payments provided in any form, at all including but not limited to receipts, invoices, and any expenditures by you to Dr. Henry Lee pertaining to Lincoln County Sheriff's Department Case # 2003-274.

RESPONSE:

10. Please provide any and all reimbursement request(s) by you to the Lincoln County Sheriff's Department for any services performed by Dr. Henry Lee.

RESPONSE:

11. Copies of all documents, including correspondence, photographs, computer logs and e-mail, between yourself and Defendants Sheriff Rick Virden and/or Steven M. Sederwall and/or Dr. Henry Lee and/or any personnel from Orchid Cellmark, concerning the subject of this lawsuit.

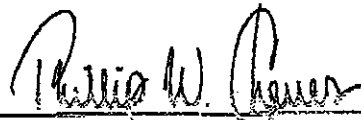
RESPONSE:

12. Copies of all internal memoranda, correspondence, notes or documents by you concerning the subject of this lawsuit.

RESPONSE:

Respectfully submitted,

BARNETT LAW FIRM, P.A.

By: 

Mickey D. Barnett

Phillip W. Cheves

David Garcia

Plaintiffs

1905 Wyoming NE

Albuquerque, NM 87112

(505) 275-3200

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

FILED IN MY OFFICE
DISTRICT COURT CLERK

07 NOV -1 PM 4:52

CAUSE NO. D 1329 CV 2007-01364

BY TERESA R. ENCINA DEPUTY
SANDOVAL COUNTY

GALE COOPER and DE BACA COUNTY NEWS, a New Mexico corporation,

Plaintiffs,

SUMMONS ISSUED

-vs-

RICK VIRDEN, LINCOLN COUNTY SHERIFF and CUSTODIAN OF RECORDS OF THE LINCOLN COUNTY SHERIFF; and STEVEN M. SEDERWALL, FORMER LINCOLN COUNTY DEPUTY SHERIFF; and THOMAS T. SULLIVAN, FORMER LINCOLN COUNTY SHERIFF AND FORMER LINCOLN COUNTY DEPUTY SHERIFF,

Defendants.

VERIFIED FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT ORDERING PRODUCTION OF CERTAIN RECORDS AND INFORMATION

Plaintiffs' state:

GENERAL ALLEGATIONS

1. Plaintiff, Gale Cooper, is a resident of Sandoval County, New Mexico.
2. Plaintiff, *De Baca County News*, is a New Mexico corporation doing business in De Baca County, New Mexico.
3. Defendant Rick Virden is a resident of Lincoln County. Defendant Virden is the current Sheriff and Custodian of Records for the Lincoln County Sheriff's Department. Upon information and belief, as part of his official duties as Sheriff and Custodian, Defendant Virden possesses, maintains or controls pertinent public records of the Lincoln County Sheriff's Department.

4. Based upon information and belief, Defendant Sederwall is a resident of Lincoln County. Defendant Sederwall was the prior Special Deputy Sheriff of Lincoln County. As part of his official duties as Deputy Sheriff, Defendant Sederwall possessed, maintained or had information regarding Lincoln County Sheriff's Department public records and upon information and belief still possess, maintains and has information regarding Lincoln County Sheriff's Department public records. Upon information and belief, Defendant Steven M. Sederwall resigned his position as Lincoln County Special Deputy on or about June 21, 2007.

5. Based upon information and belief, Defendant Thomas T. Sullivan is a resident of Lincoln County. Defendant Sullivan has served several terms as the Sheriff of Lincoln County. Until recently he was a Lincoln County Special Deputy of the Lincoln County Sheriff's Department. As part of his official duties as Lincoln County Sheriff and Special Deputy, Defendant Sullivan possessed, maintained or had information regarding Lincoln County Sheriff's Department public records and upon information and belief still possess, maintains and has information regarding Lincoln County Sheriff's Department public records. Upon information and belief, Defendant Thomas T. Sullivan resigned his position as Lincoln County Special Deputy on or about June 21, 2007.

6. Based upon information and belief, Defendant Thomas T. Sullivan is a resident of Lincoln County. Based upon information and belief, Defendant Thomas T. Sullivan resigned his position as Lincoln County Special Deputy on or about June 21, 2007. Defendant Sullivan was previously the Sheriff of Lincoln County from

approximately, January 1, 1996 to December, 2004, and, until resigning his position as Lincoln County Special Deputy on or about June 21, 2007, held the latter title from about January of 2005 to that date of resignation. Both as past Sheriff of Lincoln County and as part of his official duties as Special Deputy, Defendant Sullivan possessed, maintained or had information regarding Lincoln County Sheriff's Department public records and upon information and belief still possess, maintains and has information regarding public records of the Lincoln County Sheriff's Department. Defendant Sullivan specifically refused to turn over these public records to their Records Custodian, Sheriff Virden, or to Plaintiff Cooper. See Exhibit A, June 21, 2007 Memorandum, attached to the original Complaint filed herein on October 15, 2007.

7. Jurisdiction and venue are proper pursuant to the Inspection of Public Records Act, Section 44-6-1 through 15, and Section 38-3-1 NMSA 1978.

COUNT I

9. By letter dated April 24, 2007, undersigned counsel on behalf of Plaintiff Cooper, requested the opportunity to inspect, examine and copies of the following documents:

"1. Please provide any and all records and reports of raw data and or conclusions provided in any form at all to the Lincoln County Sheriff's Department by Dr. Henry Lee as the stated "forensic expert" utilized by the Lincoln County Sheriff's Department for promulgation of Lincoln County Sheriff's Department Case # 2003-274 with regard to any and all DNA findings. Furthermore, all tests and procedures are to be considered "findings" hereafter. Said findings are to include any and all DNA results from Dr. Henry Lee's scrapings and swabbings of the carpenter's bench on which the Billy the Kid Case promulgators contend that the shot William Bonney was laid out. Said findings are to also include DNA results from the remains removed respectively from the graves of John Miller and William Hudspeth done solely for the purpose

of advancing the Billy the Kid Case investigation. Said findings are to also include DNA results from DNA matching of the remains removed from the graves of John Miller and William Hudspeth and the DNA sample(s) taken from the above-mentioned carpenter's bench. Such documentation is to include papers, notes, letters, print-outs, graphs, tapes, e-mails, recordings and/or other materials, regardless of physical form or characteristics, that are maintained or held by or on the behalf of you in your capacity as Lincoln County Sheriff or by and/or for the Lincoln County Sheriff's Department.

2. Please provide any and all records and reports of raw data and or conclusions provided in any form to the Lincoln County Sheriff's Department by Orchid Cellmark as the stated forensic lab utilized by Dr Henry Lee and by the Lincoln County Sheriff's Department for promulgation of Lincoln County Sheriff's Department Case # 2003-274 with regard to any and all DNA analysis. Said findings are to include any and all DNA results derived by Orchid Cellmark from Dr. Henry Lee's scrapings and swabbings of the carpenter's bench on which the Billy the Kid Case promulgators contend that the shot William Bonney was laid out. Said findings are to also include DNA results from the remains removed respectively from the graves of John Miller and William Hudspeth done solely for the purpose of advancing the Billy the Kid Case investigation. Said findings are to also include DNA results from DNA matching of the remains removed respectively from the graves of John Miller and William Hudspeth and the DNA sample(s) taken from the above-mentioned carpenter's bench. Such documentation is to include papers, notes, letters, print-outs, graphs, tapes, emails, recordings and/or other materials, regardless of physical form or characteristics, that are maintained or held by or on the behalf of you in your capacity as Lincoln County Sheriff or by and/or for the Lincoln County Sheriff's Department."

See **Exhibit B**, attached to the original Complaint filed herein on October 15, 2007.

10. By letter dated April 27, 2007, on behalf of the Custodian and Sheriff Rick Virden, the response was that no public records were maintained as set forth in these requests. See **Exhibit C**, attached to the original Complaint filed herein on October 15, 2007.

11. By letter dated May 9, 2007, the undersigned counsel on behalf of Plaintiff Cooper submitted a written request, a true and correct copy is attached as

Exhibit D to the original Complaint filed herein on October 15, 2007, to Defendant Sheriff Rick Virden of the Lincoln County Sheriff's Department for the following documents:

- "1. Please provide any and all invoices, statements, financial expenditures and receipts, reports, provided in any form at all to the Lincoln County Sheriff's Department, including its public officials Virden, Sullivan and Sederwall, by Dr. Henry Lee regarding Lincoln County Sheriff's Department Case # 2003-274.
2. Please provide any and all payments made or payments provided in any form, at all including but not limited to receipts, invoices, and any expenditures by the Lincoln County Sheriff's Department to Dr. Henry Lee pertaining to Lincoln County Sheriff's Department Case # 2003-274
3. Please provide any and all reimbursement information by the Lincoln County Sheriff's Department to any employee, if that employee personally paid for any services performed by Dr. Henry Lee."

12. By letter dated May 11, 2007, Defendants alleged they had no documents responsive to these requests. See **Exhibit E**, attached to the original Complaint filed herein on October 15, 2007.

13. By letter dated June 14, 2007, the undersigned counsel on behalf of Plaintiff Cooper submitted a written request, a true and correct copy of which is attached as **Exhibit F** to the original Complaint filed herein on October 15, 2007, to Defendant Special Deputy Tom Sullivan of the Lincoln County Sheriff's Department; however no response whatsoever was received to this request.

14. By letter dated June 14, 2007, the undersigned counsel on behalf of Plaintiff Cooper submitted a written request, a true and correct copy of which is attached

as **Exhibit G** to the original Complaint filed herein on October 15, 2007, to Defendant **Stevon Sederwall** of the **Lincoln County Sheriff's Department**; however no response whatsoever was received to this request.

15. The documents sought are important because of the public's interest in the validation and accuracy of the investigation surrounding the death of **Billy the Kid** who is an important historical figure in **New Mexico**.

16. Though this Complaint concerns solely the unlawful withholding by public officials of their requested public records, this Complaint has broader implications. The records sought concern world famous **New Mexicans**, the **Old West** history of which of **Sheriff Pat Garrett**, **Billy the Kid** and various historic sites are a part, and the impact these individuals and locations have on **New Mexico** tourism. The contention of the **Lincoln County Sheriff's Department Case #2003-274**, is that the investigation is being conducted solely by public officials and public entities. The subject of this Complaint, is that **Sheriff Garrett** did not kill **William Bonney a/k/a Billy the Kid** on **July 14, 1881**, but instead murdered an innocent victim to protect **Bonney**. The forensic records requested go to the heart of the validity both of that claim and subsequent investigation. There appears no good faith reason on the part of the Defendant Records Custodians to withhold or secrete the documents.

17. Section 2, Chapter 258, Laws of **New Mexico, 1993**, broadly defines the records to which the public is entitled to access: "all documents, papers, letters, books, and other materials, . . . that are used, created, received, maintained or held by or on behalf of any public body and relate to public business."

18. It is the "public policy" of the State that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is further the intent of the Legislature, and it is declared to be public policy of the State, that to provide persons with such information is an essential function of the representative government and integral part of the routine duties of public officers and employees." Section 2, Chapter 258, Laws of New Mexico, 1993.

19. The right to inspect public documents is limited by only a few exceptions. See Chapter 260, Laws of New Mexico, 1993. Nowhere in this statute is there any provision exempting the documents requested. Pursuant to the provisions of Chapter 258, Laws of New Mexico, 1993, including Section 14-2-4 NMSA 1978, Defendants should and must comply with Plaintiffs' request for these records.

20. Lincoln County Sheriff's Department Case #2003-274 is solely an investigation conducted by law enforcement officers as to whether Pat Garrett killed William Bonney a/k/a Billy the Kid on July 14, 1881. Upon information and belief, it has three (3) contributory sub-investigations as follows: (1) the proposed exhumations of Billy the Kid and his mother for forensic DNA. No forensic DNA is believed to have been obtained from that sub-investigation. (2) the investigation surrounding the murders of Garrett's Deputies, James Bell and Robert Olinger, on April 28, 1881, by William Bonney in his jail escape. (3) The investigation related to deceased individuals who claimed to be Billy the Kid. DNA was utilized in two areas in regard to this investigation: a) a DNA sample of Billy the Kid was alleged to have been obtained from blood on an old carpenter's bench; and b) that sample was used as justification for

exhuming the bodies of a John Miller and William Hudspeth for DNA identity matching.

21. On October 10, 2003, Defendants Sullivan and Defendant Sederwall, among others filed a Petition to Exhume Remains in the Sixth Judicial District Court in the County of Grant, State of New Mexico in Cause No. MS 2003-11.

22. On February 26, 2004 Defendants Sullivan and Sederwall, among others, filed a Petition for the Exhumation of William H. Bonney, a/k/a "Billy the Kid" in the District Court of DeBaca County in Cause No. CV 2004-00005. Sullivan and Sederwall were acting in their official capacity as officers of Lincoln County, New Mexico.

23. Upon information and belief, Defendant Thomas T. Sullivan requested that Dr. Henry Lee perform a DNA analysis on a carpenter's bench which purportedly contained blood from "Billy the Kid". Said request was specifically made by Sullivan in his official capacity as Sheriff of Lincoln County, New Mexico. Dr. Lee has specifically stated "I have completed my examination of evidence and submitted my report to the Lincoln County Sheriff's Department" (emphasis added). See Exhibit H, attached to the original Complaint filed herein on October 15, 2007. Thus, Dr. Lee's report is, known to exist, is a public record and was not disclosed by the Defendant. Further, Dr. Lee's specimens from the carpenter's bench were turned over to Orchid Cellmark Lab for DNA analysis as part of Lincoln County Sheriff's Department Case #2003-274.

a. A claim has been made that the DNA recovered by Dr. Lee and processed by Orchid Cellmark Lab was the DNA of William Bonney a/k/a Billy the Kid, and that all applicable forensic documents to that effect were refused to Plaintiffs.

b. Based on the claim of having the DNA of Billy the Kid extracted by

Dr. Lee and Orchid Cellmark Lab from the carpenter's bench, two (2) exhumations under Lincoln County Sheriff's Department and for its Case #2003-274 were done on May 19, 2005 in the Prescott, Arizona Pioneers' Home Cemetery for identity matching. The remains disinterred were alleged to be those of a John Miller and a William Hudspeth, and were used for matching with the carpenter's bench DNA. It is known that report(s) were generated by Orchid Cellmark Lab, and reported to Arizona Governor Janet Napolitano's Office as well as the press. These reports, documenting the results of the DNA matchings, are known to exist and were withheld to the Plaintiffs in violation of New Mexico law.

24. Upon information and belief, the Lincoln County Sheriff's Department during the tenure of Defendant Sheriff Rick Virden, or through the auspices of Defendants Steven Sederwall and Thomas Sullivan, Virden's commissioned Deputies, requested that Orchid Cellmark Labs perform DNA analyses on their disinterred remains of John Miller and William Hudspeth. Said request was specifically made under the authority of the Lincoln County Sheriff's Department and its Sheriff and Deputy Sheriffs acting solely in their official capacities. The Lincoln County Sheriff's Department through Virden, Sederwall and Sullivan have all specifically refused to turn over the Orchid Cellmark Lab report or reports.

25. Upon information and belief, Defendants Sullivan and Sederwall retained some or all of these records obtained in their official capacities as Deputy Sheriffs of Lincoln County, New Mexico as "personal records"; thereby attempting to circumvent the public records inspection act.

a. All information available to Plaintiffs indicates that the records are or should be in the possession of the Lincoln County Sheriff's Department. Case #2003-274, under which the documents were generated began under the tenure of then Sheriff Sullivan and was continued by his successor, Sheriff Virden. Dr. Lee reported on February 5, 2005 to the Sheriff's Department and John Miller and William Hudspeth exhumations were performed on May 19, 2005 during Sheriff Virden's tenure.

b. From 2003-2004 Sullivan conducted Case #2003-274 employed as Sheriff.

26. At all times pertinent to this matter all actions taken by Defendants Sullivan and Sederwall were taken in their official capacities and on behalf of the Lincoln County Sheriff's Department as commissioned Deputy Sheriffs.

27. The Lincoln County Sheriff has a duty to obtain any County records improperly removed from the records of the Sheriff of Lincoln County.

WHEREFORE, Plaintiffs pray for a declaratory judgment ordering:

A. The public records sought by Plaintiffs are public documents and subject to disclosure;

B. Defendants must produce the records and information requested; and

C. For such other relief as the Court may deem just and proper including, but not limited to, damages, costs and reasonable attorneys' fees pursuant to the New Mexico Inspection of Public Records Act.

COUNT II
INJUNCTIVE RELIEF/CONSTRUCTIVE TRUST AGAINST
DEFENDANTS SEDERWALL AND SULLIVAN

28. Plaintiffs repeat and reallege the facts set forth in numbered paragraphs 1 through 27 above as if fully set forth herein.

29. Upon information and belief, Defendants Sederwall and Sullivan have in their personal possession, custody and control, some or all public documents belonging to the Sheriff of Lincoln County. Upon information and belief these documents are responsive to Plaintiff Cooper's public records requests.

30. To the extent that Sederwall and/or Sullivan have possession of Lincoln County Sheriff's public documents, those documents remain subject to public records requests.

31. In the alternative, the Court should find that a constructive trust exists with any public records as the res of the trust, and that the records should be forthwith returned to the Sheriff of Lincoln County.

32. In the alternative, this Court should declare that a constructive trust exists and has existed for the benefit of the Sheriff of Lincoln County and of citizens lawfully entitled to inspect the records of the Sheriff Department of Lincoln County. The res of the constructive trust is any and all records in the possession, custody or control of any person not lawfully affiliated with the Sheriff of Lincoln County.

33. The Court should direct that any records subject to the constructive trust be accounted for in writing and forthwith returned to the Sheriff of Lincoln County. If it is claimed that any documents in the constructive trust have been destroyed, the Court

should order a detailed written accounting of the disposition of such documents.

COUNT III
MANDAMUS

34. Plaintiffs repeat and reallege the facts set forth in numbered paragraphs 1 through 33 above as if fully set forth herein.

35. To the extent, if any, that Sederwall and/or Sullivan are in possession of public documents, such possession is wrongful and in violation of the duty of the Lincoln County Sheriff's Department to maintain its books and records and to allow inspection.

36. The duty to maintain public records is non-discretionary.

37. The Custodian of Records of the Lincoln County Sheriff's Department has violated the law and its duties in allowing its records to be maintained at this time by individuals not under the direct supervision and control of the Sheriff of Lincoln County and not affiliated with any governmental agencies.

38. This Court should issue a Writ of Mandamus directing the Custodian of Records of the Sheriff of Lincoln County to recover its records from Sederwall and/or Sullivan by any lawful means necessary and to properly maintain its records as required by law.

39. This Court should issue its order requiring Defendants Virden and/or and/or Sederwall and/or Sullivan to deliver all said records to Plaintiffs.

COUNT IV
COMMON LAW ACCESS TO RECORDS

40. Plaintiffs repeat and reallege the facts set forth in numbered paragraphs 1

through 39 above as if fully set forth herein.

41. The common law right of access to information concerning DNA results and any reports or conclusions provided to the Sheriff's Department by Dr. Henry Lee and by Orchid Cellmark Lab substantially outweighs any possible claim of governmental interest in confidentiality that may exist.

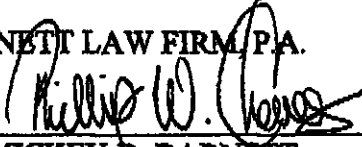
WHEREFORE, Plaintiffs pray for:

- A. A finding that a constructive trust exists with any public records as the res of the trust and that the records should be returned to the Sheriff of Lincoln County;
- B. The Court issue a Writ of Mandamus directing the Custodian of Records of the Sheriff of Lincoln County to recover its records from Defendants Sederwall and/or Sullivan by any lawful means necessary;
- C. Order the Custodian of Records of the Sheriff of Lincoln County to properly maintain its records as required by law;
- D. Order the production of DNA results and any reports or conclusions provided to the Lincoln County Sheriff's Department by Dr. Henry Lee and by Orchid Cellmark Lab; and
- F. For such other relief as the Court may deem just and proper including, but not limited to, damages and costs.

Respectfully submitted, .

BARNETT LAW FIRM P.A.

BY:



MICKEY D. BARNETT
PHILLIP W. CHEVES
DAVID A. GARCIA

Attorneys for Plaintiffs
1905 Wyoming Blvd. NE
Albuquerque, NM 87112
(505) 275-3200