

KILLER INSTINCTS

Did a famous prosecutor put the wrong man on death row?

BY JEFFREY TOOBIN

Many American courthouses have a Kenneth Peasley. For years, he was the most feared prosecutor in Arizona's Pima County, which includes Tucson. He was widely known as the government lawyer who wouldn't plea-bargain, who left his adversaries seething, and who almost always won. When defense lawyers got together, they would talk about how Peasley had stuck his finger in their clients' faces, or how he wouldn't greet them in the hallway. "The defense lawyers hated him," Howard Hantman, a Pima County Superior Court judge, said. "But I always thought that was because he was so good. Watching Ken was like watching great theatre. He had an instinct for the jugular like no prosecutor I ever saw."

Peasley was more than just a local phenomenon. From 1978 until last year, he tried more than two hundred felony cases, including a hundred and forty homicides, and handled about sixty capital cases. He gave lectures around the country about how to try murder cases, and he won national awards. Steve Neely, who, as the county attorney, was Peasley's boss for eighteen years, said, "He was absolutely the most effective prosecutorial performer that I have ever seen or heard of." Peasley, a two-time state prosecutor of the year, is personally responsible for a tenth of the prisoners on Arizona's death row.

Last year, Peasley acquired another distinction: he was disbarred for intentionally presenting false evidence in death-penalty cases—something that had never before happened to an American prosecutor. In a 1992 triple-murder case, Peasley introduced testimony that he knew to be false; three men were convicted and sentenced to die. Peasley was convinced that the three were guilty, but he also believed that the evidence needed a push.

During the years of Peasley's rise and fall, the exoneration of prisoners on

America's death rows has become increasingly common. According to the Death Penalty Information Center, since the mid-nineteen-seventies a hundred and seventeen death-row inmates have been released. Defense lawyers, often relying on DNA testing, have shown repeatedly how shoddy crime-lab work, lying informants, and mistaken eyewitness identifications, among other factors, led to unjust convictions. But DNA tests don't reveal how innocent people come to be prosecuted in the first place. The career of Kenneth Peasley does.

Although new evidence suggests that the co-defendants may have had nothing to do with the crime for which they were convicted, Peasley still believes that he prosecuted the right men. "I have never seen a case where I believed the prosecutors set out to prosecute someone whom they believed to be innocent," says Rob Warden, the director of the Center on Wrongful Convictions at the Northwestern University School of Law, whose staff members were involved in eleven of the eighteen recent exonerations on Illinois's death row. "They just get wedded to a theory and then ignore the evidence that doesn't fit." According to Barry Scheck, who co-founded the Innocence Project, which has won exonerations for more than a hundred and fifty convicted defendants, "After a while, some veteran prosecutors think that they can just trust their gut. Once you get to the point where you believe your instincts must be right, you quickly get to the point where you just deep-six inconvenient evidence."

One of the men Peasley prosecuted in the 1992 case is still on Arizona's death row. Unless a court intervenes, that man, Martin Soto-Fong, who was a seventeen-year-old high-school dropout at the time of the murders, will be executed, although no date has been set. The case already ranks as an extreme example of prosecutorial misconduct, but if Martin Soto-

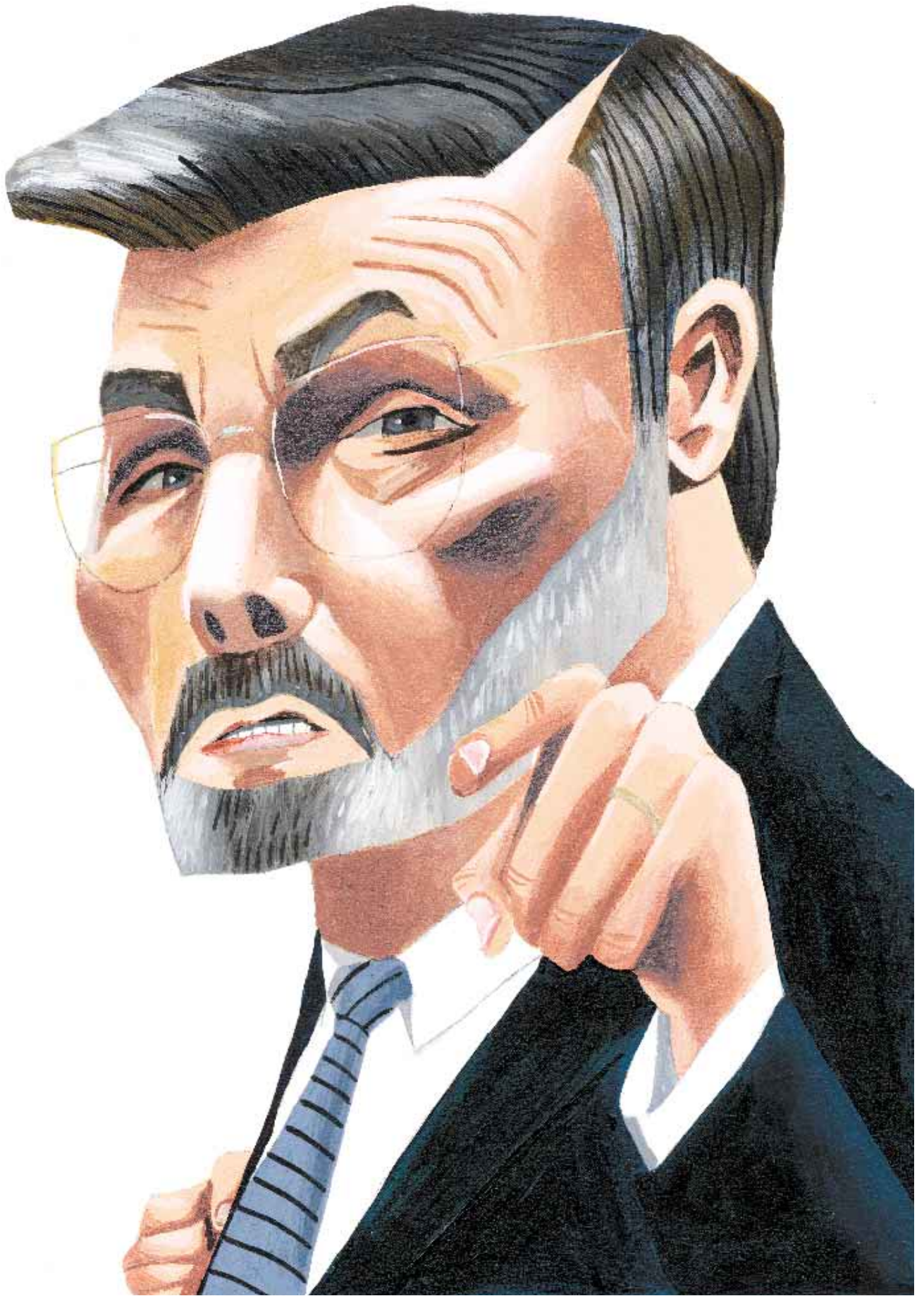
Fong is killed for a crime he didn't commit, it will stand for something far worse.

Shortly after ten o'clock on the night of June 24, 1992, in Tucson, an anonymous caller dialled 911 and said, "Yeah, I just walked into the El Grande. It's on Thirty-sixth, and, uh, there are two, uh, guys that work. . . . They laying down on the floor, and one's laying in a pool of blood, and there's no one in the store."

The operator apparently recognized the reference to the El Grande Market; the battered, one-story painted-brick store was a landmark of sorts on the desolate streets of South Tucson—a desert ghetto of vacant lots, trailer parks, and auto-repair shops. When the police arrived at the scene, they found that the caller had understated things. There were three, not two, people on the floor, two dead and one dying from gunshot wounds. They were Fred Gee, forty-five years old, the store manager; Zewan Huang, seventy-five, Gee's uncle, who also worked there; and Raymond Ariola, thirty-one, who had started at the market as a clerk the previous month. Peasley soon arrived on the scene, as did Joseph Godoy, a detective with the Tucson Police Department.

This was familiar duty for Peasley. Shortly after he joined the Pima County prosecutor's office, in 1978, he agreed to be the first lawyer called to most murder scenes, and he held on to that demanding assignment, often working with Godoy, for almost two decades. For several months after the murders in the El Grande Market, there were no viable suspects, and pressure built in the local press for a break in the case. One headline in the *Arizona Daily Star* read, "TRIPLE MURDER HAS POLICE PUZZLED."

With a population of about half a million people, Tucson is one-third the size of Phoenix. The contrast between the two cities extends to politics



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and is exemplified by the difference between their two most famous sons, Morris Udall and Barry Goldwater. "Tucson is as far away from Phoenix as San Francisco is from Los Angeles," Bruce Babbitt, a former governor of the state, told me. "Phoenix was built on the pursuit of monetary gain, and Tucson was built around the university, which has given a kind of intellectual and idealistic strand to its politics." Tucson, however, never turned into a desert version of Berkeley or Cambridge. "There's always been a dark side to Tucson, too," Babbitt said. "The mob was a significant presence for years, with the Bonnano family living there. The drug trade, with the proximity to the Mexican border, has always been a problem."

Government, including law enforcement, dominates Tucson in the way that business, notably real-estate development, controls Phoenix. Dingy municipal buildings, not gleaming office towers, predominate in downtown Tucson. A couple of forlorn palm trees, and a

cactus here and there, offer the only reminders of its desert setting. The county attorney's office long ago outgrew its quarters in the courthouse and now occupies nine floors in a dreary building a few blocks away. There, from a corner office on the tenth floor, Ken Peasley could watch storms roll in over the Santa Catalina Mountains.

Peasley would sometimes arrive at his desk before dawn to prepare for trials, which he often scheduled back to back. His appetite for trial work was matched by a compulsive streak outside the courtroom. He arranged the papers on his desk in rigidly precise piles. He chain-smoked. He drank a case of Pepsi a day. (Later, he lost thirty pounds just by switching to diet soda.) "For me, it wasn't a job," Peasley told me. "It was who I was and what I did."

Peasley was early for our first meeting, which was at my hotel's restaurant. He doesn't look like someone who could dominate a courtroom. He's on the short side, more shrunken than fit at fifty-

seven, with thinning gray hair and a wispy beard, and he dresses in the civil-service uniform of white shirt, striped tie, and oversized aviator glasses. His voice, though, is a low growl that demands attention, and he talks in emphatic declarative sentences, like a man unaccustomed to interruption. The ordeal of his disbarment may have taught him a little humility, but just a little. He's more angry than sorry.

Peasley's father, a sign painter, and his mother, a legal secretary, moved from Michigan to Mississippi to Texas; they settled in Tucson when Ken was in junior high school. He attended the University of Arizona for college and law school, and served as an intern in the public defender's office. Stanton Bloom, who is still a prominent defense lawyer in Tucson, recalled, "I was supervising Ken, and we were raising an insanity defense in a case where my guy blew someone's head off with a shotgun. And we interviewed a witness who said my client was acting 'like the wild man of Borneo.' Later, I needed Ken to testify about that conversation, and he said he didn't remember and didn't have it in his notes. I could tell Ken just didn't like defending people. I told him he ought to get a job as a prosecutor, and he did."

As a deputy county attorney, Peasley thrived, finding satisfactions that had eluded him in his personal life. An early marriage ended in divorce, and Peasley does not see the two children from that union. His second wife, Elizabeth Peasley-Fimbres, was also a prosecutor, but that marriage ended after Peasley had an office romance with a college-student intern. (Peasley-Fimbres is now a juvenile-court judge in Tucson.) A third marriage also failed. Peasley and his fourth wife, a nurse, have been married for twenty years, and have teenage twin boys. "What he did for his job was his first love—more than women, more than his children," Lea Petersen, the former intern, told me. "It was his identity."

Peasley never tried to make friends in the courtroom. "I didn't believe in playing grab-ass or glad-handing during trial," he said. "If I went to trial on somebody, frankly, I was convinced that they had done something really bad and I didn't think that it was funny. So during



the trials, no, I didn't kid around a lot. There was nothing to kid around about, from my point of view." Defense lawyers regularly asked judges to make Peasley stop glaring at their clients. "I was something of an asshole," Peasley said.

The burden of the El Grande investigation fell to Peasley and Joe Godoy. Peasley and Godoy made an odd pair. Godoy is genial and outgoing, where Peasley is taciturn and severe. Godoy is thickly built, with a big thatch of black hair and a drooping mustache that curls down to his chin. When he talked about the El Grande murders, the case that led to his departure from the force, he never appeared defensive or unsure. "Joe is just totally likable, and juries loved him," Judge Hantman said. "He was very soft-spoken, very credible, very sympathetic." First thrown together at crime scenes, Peasley and Godoy started working cases as a team, and then became friends.

The courthouse crowd in Tucson flees from downtown at every chance, and at lunchtime judges, cops, and politicians line up for Mexican food at Rigo's, in South Tucson, about fifteen minutes away. Godoy doesn't so much patronize Rigo's as preside there, in both English and Spanish. "I tried to think about El Grande the way a bad guy would," he explained, as we sat in a booth at Rigo's. "You had all these people killed, so maybe it was a stranger or maybe it was someone who knew them. So I decided to find all the people who had worked at the El Grande. It took weeks, but I found everyone except this one guy, this guy named Martin. I knew he was just a kid, and I kept just missing him. He was moving apartments, staying in different places. At first, I thought it was two different people, one named Soto and the other named Fong. Then I realized it was only one guy, Martin Soto-Fong, and he had never been prosecuted, never even photographed or fingerprinted. I was looking for him, but I was always one step behind him. I needed to make him or clear him."

The situation became even more pressing for Godoy and Peasley when a similar crime took place on August 26th: in the course of a robbery, masked gunmen shot the owner of Mariano's Pizza, though he survived. "Mariano's Pizza

was something similar to El Grande because they shot someone when they didn't have to," Godoy said. "I learned from these other detectives that they were going to arrest these two guys, Chris McCrimmon and Andre Minnitt, and I wanted to be part of the arrest teams. I said, 'After you're finished with them about the robberies, I want to talk to them about the homicides at the El Grande.'" McCrimmon and Minnitt, both in their early twenties, were arrested, with Godoy's help, on September 2, 1992.

By that point, Godoy and Peasley regarded Soto-Fong, McCrimmon, and Minnitt as suspects in the El Grande murders, although there was little evidence against them. Then they discovered Keith Woods, who became the key witness in the case.

Woods, who was friends with Christopher McCrimmon, had been in prison on a drug charge. Although Woods was only twenty-one years old, he was already a three-time felon. When he was released, on August 21, 1992, McCrimmon picked him up to drive him home. A few days later, Woods was arrested for possessing cocaine, a parole violation that subjected him to a sentence of twenty-five years to life. Faced with this prospect, Woods told the detective who arrested him that he knew something about several recent crimes in Tucson, and detectives eventually steered him to Joe Godoy.

On September 8, 1992, Godoy sat down with Woods at Tucson police headquarters for an interview, which was tape-recorded. According to the transcript, Woods said that after McCrimmon picked him up from prison they met with their mutual friend Minnitt, and the two men revealed that they, along with a third man, committed the El Grande murders. In that interview, Woods said he knew the third person only as "Cha-chi," but he later said that it was Martin Soto-Fong. Woods also said that McCrimmon and Minnitt played a role in the Mariano's Pizza case. Peasley and Godoy decided not to pursue the parole-violation charges against Woods.

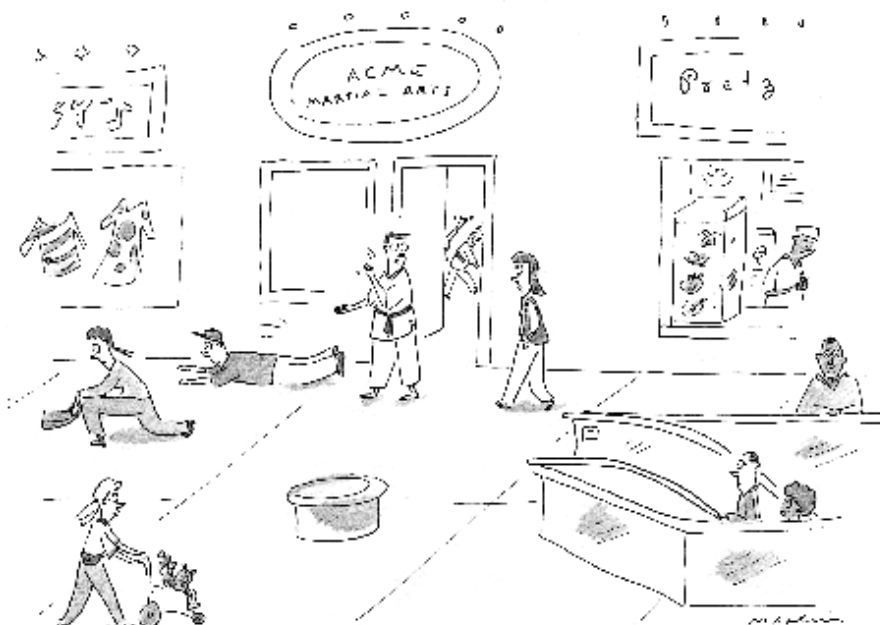
The use of criminal informants poses difficulties for prosecutors, because such witnesses can be extremely manipula-

tive. Some informants lie, telling prosecutors what they want to hear, because they think they can get themselves a better deal. "You have to be tremendously careful that you don't give them ideas," says Stephen Trott, a federal appeals-court judge and former prosecutor, who lectures widely on the ethics of using informants. "They know that the best way to stay out of jail is not to hire Johnnie Cochran but, rather, to turn on someone else. At a moment's notice, they will make stuff up and give it to you. With an interested witness, you do not lay information on the table and let him snatch it and say he knew it already."

As far as Peasley was concerned, Woods solved two high-profile crimes: the El Grande murders and the Mariano's Pizza shooting. Peasley told me that he understood the risks of dealing with Woods. "He had priors. He was a drug user at the time. He had one of just about everything a witness could be impeached with," he said. "So he wouldn't have been my first choice. But he was who I had. And I was satisfied from the information he was giving that it was accurate."

Armed with Woods as a witness, Peasley brought charges against McCrimmon, Minnitt, and Soto-Fong. The first El Grande trial, in 1993, was against Soto-Fong, who had worked at the store a few months before the murders. After the tip from Woods, Tucson police investigators determined that Soto-Fong's prints matched those that had been found on plastic bags and a food stamp found at the scene. In light of this, Peasley said, "probably a third-year law student could have convicted Fong." The court appointed James Stuehringer, a respected Tucson lawyer and a friend of Peasley's, to defend Soto-Fong.

During the Soto-Fong trial, Stuehringer criticized the way Godoy had handled the evidence, especially the items with the fingerprints. Peasley defended Godoy with characteristic zeal, and, in the end, won a conviction and a death sentence against Soto-Fong. The trial deepened the bond between Peasley and Godoy. "I thought that Ken did a really good job putting everything back together and saying I'm not a bad cop," Godoy told me. Godoy was so moved by Peasley's defense of him that when he



"Free sample?"

married for the third time he asked Peasley to perform the civil ceremony. (Tucson law enforcement is a small world, and Godoy's wife is also a Pima County prosecutor.)

In 1993, Peasley also won convictions in joint trials against McCrimmon and Minnitt—first in the Mariano's Pizza case and then in the El Grande murders, with Keith Woods as the key witness. Apart from Woods's testimony, there wasn't much evidence against McCrimmon and Minnitt in the El Grande case. Eyewitnesses described a gold Cadillac as the getaway car, and McCrimmon's fingerprints were found on a car that was parked a few blocks away from the El Grande; but that car was neither gold nor a Cadillac.

It was in these trials, in 1993, that Peasley started bending the truth about the evidence. He knew that a jury would have suspicions about a dubious character like Keith Woods, so he tried to enhance Woods's credibility, urging jurors to believe Woods because what he'd told Godoy was "something that Woods could get only from those people who were directly involved in causing the deaths" of the three victims. Peasley said that investigators knew nothing about the three defendants until Woods volunteered the information during his interview, on September 8, 1992. McCrim-

mon and Minnitt were sentenced to thirty-six years in the Mariano's Pizza case and to death in the El Grande murders. With the convictions of the three men now complete, the case vanished from the front pages of the Tucson papers and the defendants began their wait on death row.

Only a moment's hesitation by a single juror kept the case alive. Immediately after the verdicts were announced in the 1993 murder trial of McCrimmon and Minnitt, the judge did the customary polling of the jury. In answering whether he agreed with the verdict, one juror wavered, saying, "God, I can't say 'yes' and I can't say 'no.'" After further questioning by the judge, the juror went along with the verdict, but three years later, in 1996, the Arizona Supreme Court ruled that the juror had been coerced, and ordered a new trial for the two defendants. (The appeals court, however, separately upheld Soto-Fong's conviction and death sentence.) For their second trial, which did not take place until 1997, McCrimmon and Minnitt were assigned new lawyers. McCrimmon drew Richard Lougee.

Rick Lougee and Ken Peasley could pass for fraternal twins. Both men are fifty-seven, of medium height and weight, with gray hair and a gray beard.

Peasley has a slicked-back pompadour, Lougee the tousled look of an aging hippie. Though made from similar raw material, the two men come out of different worlds. Like Peasley, Lougee took a circuitous route to Tucson. He was born into a middle-class family in Connecticut, educated at Franklin and Marshall College, and started law school at Duke in 1969. At that point, he was drafted into the Army, where he served as a stateside chaplain's assistant; after he was discharged, in 1971, he went to Tucson to study Romantic poetry at the University of Arizona. But he didn't have the patience for academic life, so he returned to law school, graduated in 1977, and began a career as a defense attorney. He lived in Connecticut, New Mexico, and Key West until he remembered how much he had liked Tucson as a graduate student and returned there, with his second wife, in 1988. He spent six years with the public defender's office and opened a private practice with a friend the following year. "Because we were just starting out and didn't have any clients of our own, we applied to the county for what were called 'contract' murder cases," Lougee told me. "The first one I got was Chris McCrimmon."

Lougee and I were talking in the small adobe house, across the street from the university, where he lives with his wife, who works for him as a paralegal, and their twelve-year-old son. By the late nineties, Lougee had been a defense lawyer for more than two decades, and he had few illusions about the system, or about his own clients. "I normally don't ask my clients whether they're guilty," he told me. "Personally, I don't care. But the first thing Chris said to me was 'Dawg, I didn't do it.' Frankly, it didn't make much of an impression. I've tried hundreds of cases. I've heard it all from clients before."

Late one night, shortly before McCrimmon's retrial in 1997, Lougee started reading the transcript of Woods's first tape-recorded interview with the police, the one on September 8, 1992. Lougee noticed that, during the course of that long, rambling conversation, Woods made a brief reference to an earlier discussion with Godoy. "I said to myself, 'Holy shit, Joe had talked to him before,'" Lougee said. "I see how Peasley

has been finessing this issue. He's been arguing to the juries that Woods must be telling the truth because there is no other way that Woods could have known this information. Now I see that's not true. It becomes clear to me that Woods didn't come up with those names—Godoy did."

At the last minute, in 1997, the judge severed McCrimmon and Minnitt's joint trial into separate cases. Minnitt went first, and Lougee walked into the courtroom to listen to some of the testimony, because the same witnesses would also be testifying in the McCrimmon retrial. Peasley asked Godoy about his initial interview with Woods: "When you first sat down and talked with Mr. Woods on September 8 of 1992 . . . had you come up with the name Chris McCrimmon?"

"No, sir," Godoy said.

"Had you come up with the name Andre Minnitt?"

"No, sir."

Godoy further testified that he had never heard of Martin Soto-Fong before the September 8th interview.

Peasley drove the point home: "The first time you heard any of those three names would have been in the conversation with Keith Woods on September 8, 1992?"

"Yes," Godoy replied.

"I knew that Godoy had committed perjury in that trial," Lougee said.

Minnitt's second trial ended in a hung jury, and he remained incarcerated on his conviction in the Mariano's Pizza case. McCrimmon's retrial—Lougee's case—began within a few days of Minnitt's. When Lougee prepared, in August of 1997, he made a chart laying out evidence that Godoy had lied in the previous trial. During the retrial, faced with proof that he had elicited false testimony from Godoy, Peasley responded by attacking Lougee for raising the issue.

"Peasley was leaning on the counsel table, hissing at me. His saliva was on me," Lougee recalled. "His finger was six inches away from my face." Repeatedly, in a series of heated conferences with the judge, Peasley expressed shock that Lougee could question his integrity, and dared the defense lawyer to lodge a formal complaint against him.

"He is accusing me of suborning perjury, and if he is going to make those ac-

cusations," Peasley said to the judge outside the hearing of the jury, "he should have filed a—"

"Hold it," the judge interjected.

Peasley later challenged Lougee directly in the courtroom: "If Mr. Lougee thought this was perjury, he should have filed a complaint. He hasn't done that."

Nevertheless, Lougee proceeded to demonstrate to the jury that, in fact, Keith Woods had not spontaneously volunteered the names of the suspects in the El Grande case. After just forty-two minutes of deliberation, the jury acquitted McCrimmon of the murders. "When the jury came back, Chris picks me up in his arms and says, 'See, dawg, I told you! I told you!'" Lougee recalled. Later that day, Lougee began drafting his complaint about Peasley to the Arizona state bar. "I didn't celebrate," he told me. "I went and filed a bar complaint"—on September 5, 1997. Lougee added, "It has cost me dearly."

But Peasley remained a power in the county attorney's office. In April of 1998, Barbara LaWall, who succeeded Steve Neely as county attorney, appointed Peasley as head of the criminal division, making him the top prosecutor in her office. (In April of 1999, Minnitt went on trial for a third time for the El Grande Market murders, without Peasley as the prosecutor, and was again convicted and sentenced to death.) Even with his new administrative duties, Peasley continued trying and winning cases, and in 1999 he received a national

honor—the Association of Government Attorneys in Capital Litigation's Trial Advocacy Award. Lougee, on the other hand, found that his professional life was getting harder. "From the day I brought the complaint, I basically stopped getting plea offers for my clients from that office," Lougee said. (Pima County officials deny that they retaliated against Lougee's clients. "I think Rick Lougee suffers from considerable paranoia from time to time," LaWall told me.) Judges, prosecutors, and even defense lawyers rallied to testify for Peasley. Lougee had few supporters; among them was Richard Parrish, a Tucson lawyer and friend, who says, "This guy discovered extreme wrongdoing in a capital case by the most respected prosecutor in Tucson and brought it before judges and before the bar, and was excoriated at every instance for doing such a thing to such a great man."

Still, the bar complaint did move forward, and Peasley had to get a lawyer: he chose his old friend James Stuehringer, who had unsuccessfully represented Martin Soto-Fong in the first El Grande trial, in 1993, and who had his own reasons to be grateful to Peasley. In early 1998, Stuehringer's son Craig was arrested in Cincinnati for possessing a hidden gun while dealing drugs, a crime that carried a mandatory three-year prison term, and Peasley intervened on the young man's behalf. Peasley urged the Ohio judge to allow Craig to do community service rather than serve a prison sentence. (In



"I actually prefer same sex—as long as it doesn't involve sex."

the end, the judge reduced the charges so that Craig Stuehringer could receive a sentence of probation.)

James Stuehringer, a gregarious Midwesterner with a head full of carefully barbered salt-and-pepper hair, practices civil and criminal law at one of the larger firms in Tucson. The obvious question is whether Stuehringer had a conflict of interest. How could he defend the prosecutor against charges of misconduct in the very case that had put one of his clients on death row?

"I was done representing Fong," Stuehringer told me over lunch at Rigo's. "I had taken his case all the way to the United States Supreme Court, which declined to take his case. I had written him a letter saying, 'I worked my ass off for you, and I wish you well,'" Stuehringer said. "The accusations against Ken just had to do with McCrimmon and Minnitt. So was there a conflict in representing Peasley? I sat down with my partners to talk about it, and they said, 'There's no conflict, but be prepared for some shit.'"

Karen Clark, the lawyer who conducted the bar association's investigation of Peasley, tried repeatedly to get Stuehringer thrown off the case but failed. Lougee saw Stuehringer's role as symptomatic of the cozy nature of law practice in a small city like Tucson, not to mention a betrayal of a client who faced execution. "You don't take on the representation of the guy who is charged with misconduct in a case when you were the attorney for the other side unless you are basically saying, 'No harm, no foul,'" Lougee said. "By representing Peasley, Stuehringer was basically admitting that Soto-Fong was guilty. It's appalling."

Godoy and Peasley, not surprisingly, felt wronged by the investigation. "I was just really upset that I had to go through all this," Godoy said. "I was upset with the system, how far they had gone, and the lack of support from my own command staff." Because of Peasley's and Godoy's prominence in Tucson, a prosecutor from outside Pima County investigated the two men for obstruction of justice, and ultimately obtained an indictment of Godoy for perjury. The indictment meant that Godoy had to retire from the police force, though because he had twenty years' tenure he received a full pension. Godoy's lawyer, Michael

Piccarreta, told him that prosecutors had offered him a plea. "They said, 'We'll give you a deal'—guaranteed probation if I turn on Ken and say that he was obstructing justice," Godoy recalled. "Now, I don't cuss that much and it takes me a while to get upset, but I told Mike, 'Fuck no.' I didn't want to lie to get an indictment on Ken." The criminal case against Godoy was finally assigned to a Pima County judge, Lina Rodriguez, who promptly dismissed the indictment on the unusual ground of an "overzealous" presentation to the grand jury. (The same judge later wrote a letter to the bar association as a character witness on Peasley's behalf.) In all, Godoy felt only modestly repentant about the experience: "Did I make a mistake or mistakes? Sure, I did. I'm not going to say I didn't, 'cause it's pretty obvious I did. Were they intentional? Did I need to do it to get somebody in prison? Of course not."

For a long time, Peasley's case stayed within the Tucson legal community. After more than a year of intermittent hearings, the bar association offered to drop the matter if Peasley would accept censure—a punishment well short of disbarment. Peasley turned it down.

He miscalculated. By rejecting the censure, he let the process continue, and as lawyers outside Tucson began to see the facts of his case the potential consequences grew. "In hindsight, of course, you're going to second-guess yourself for not taking the censure," Peasley told me. "I didn't do anything 'intentionally' or 'knowingly' wrong. I was not willing to take a censure for something I didn't think I did."

But, as the case moved forward, Peasley's defense evolved from a complete denial of wrongdoing to something more nuanced. First, he pointed out that the case against him had been built using documents that he himself had turned over to the defense in the El Grande cases. Eventually, Peasley's defense turned into a request for pity—something he rarely dispensed as a prosecutor. During the Minnitt trial in 1997, Stuehringer wrote in a brief, Peasley had "vision problems, periodic vertigo, mini-strokes, difficulties in focusing and concentration," so his "physical problems and workload were affecting his ability to function as a lawyer in the courtroom." But his health problems in 1997 didn't ex-

plain why he had put forward the false evidence in 1993. Today, Peasley doesn't exactly defend his conduct, though he insists that any mistakes he made were unintentional. "I'm the one who screwed up," he told me. "I gave them the opportunity to claim what they claimed and to say what they've said. And I don't miss that. And I'm responsible for that."

In 2002, the Arizona Supreme Court overturned Minnitt's conviction and death sentence and ruled that double jeopardy barred another trial, which would have been his fourth. "The record is replete with evidence of Peasley's full awareness that [Godoy's] testimony was utterly false," the justices wrote. "Peasley's misdeeds were not isolated events but became a consistent pattern of prosecutorial misconduct that began in 1993 and continued through retrial in 1997." Like McCrimmon, Minnitt was now left to serve out the remainder of his thirty-six-year sentence for the Mariano's Pizza shooting.

Finally, on May 28, 2004, the court, following up on its criticism of Peasley in the Minnitt opinion, ordered him disbarred, noting that his behavior "could not have been more harmful to the justice system." On behalf of a unanimous court, Justice Michael D. Ryan wrote, "A prosecutor who deliberately presents false testimony, especially in a capital case, has caused incalculable injury to the integrity of the legal profession and the justice system."

Even with Peasley's disbarment, the story of the El Grande murders was not over. Just a few weeks before that decision, the Arizona court had issued another unanimous order: a warrant of execution for Martin Soto-Fong. The defendant, the court wrote, "shall be executed by administering to MARTIN RAUL SOTO-FONG an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, except that MARTIN RAUL SOTO-FONG shall have the choice of either lethal injection or lethal gas."

The Arizona state-prison complex, in Florence, sits on a barren stretch of desert about fifty miles off the main highway between Phoenix and Tucson. Inside the old prison yard is a small, one-story blue stucco structure that is identified on the outside as "Housing Unit 9."

It's better known as the death house. The arrangement inside the building reflects the choice now available to Martin Soto-Fong. A carpeted room for spectators has one window facing the gas chamber and another facing the room holding the gurney used for administering lethal injections. (The only sign inside the building is an Air Quality Control Permit, issued by the Arizona Department of Environmental Quality to "the Florence Prison Gas Chamber.") Meg Savage, a genial middle-aged woman who is a warden at one of the units in Florence, took me behind the window to the gas chamber itself, where the swinging metal door was open. "You can sit in it if you like," she said.

Death row in Arizona has a dramatic history. In 1982, a condemned prisoner known as "Banzai Bob" Vickers killed another death-row inmate by setting him on fire; he soaked toilet paper with Vitalis, set it aflame, and threw it between the bars of the man's cell. (Vickers was executed in 1999.) In 1997, another condemned prisoner, Floyd Thornton, was weeding the prison vegetable garden when his wife drove up to the fence and tried to help him escape. She started shooting an AK-47 assault rifle and a .41-calibre revolver, but both Thornton and his wife were killed after guards returned the fire. These incidents, coupled with the general trend toward ever-greater prison security, have led Arizona to establish one of the most restrictive death rows in the country.

The condemned are now housed in a new prison building, known as Special Management Unit II, about two miles from the death house. They stay in their eight-by-twelve-foot cells all day, every day. They may take three showers a week and have up to ninety minutes of recreation, also three times a week. They may not take prison jobs. The recreation facility is a cement-walled twenty-three-by-eleven-foot pen with a rubber ball and a surveillance camera. For days at a time, many death-row inmates may not see another human being. "We are right up there with any super-max in the country," Meg Savage says.

Martin (pronounced Mar-TEEN) Soto-Fong is now thirty and has been on death row for eleven years. He's about five feet six, with a slight build. His ancestry is Chinese and Mexican; he's



"He built his own airplane from a kit."

starting to lose the straight black hair that he had when he was arrested. His voice is soft, and his English has improved during his years in prison. "He's one of the quieter guys we have on death row," Lieutenant Glenn Pacheco, a corrections officer who helps to supervise death row, said. "We never get any trouble from him." Soto-Fong was eight when his family moved from Mexico to Tucson, where his father supported the family as a construction worker. Five years ago, Soto-Fong's mother, who was of Chinese descent, committed suicide, which he attributes to her sorrow over his situation. "I can see her depression, just seeing me going through this," he told me. "I can see that it was putting her through a real difficult time. So, yeah, this had everything to do with it, I believe." As for himself, Soto-Fong said, "I just try to stay as busy as possible. Read. Work out. Write my family. I stay involved in my case a lot. I read a lot of transcripts and whatever my attorneys send me. . . . Just try to do whatever I can to keep myself busy."

He shows some bitterness toward his former attorney Jim Stuehringer, who now represents Ken Peasley. "To this day, I hold some, you know, a bit of anger towards him, and I just feel very betrayed," he said. But he also says he's confident that he, like McCrimmon and Minnitt, will one day be vindicated in the El Grande case. "I have no doubt," he said. "And I believe with all my heart that Peasley and Godoy know that I'm innocent."

Several years ago, during the bar proceedings against Peasley, Rick Lougee turned his attention to Soto-Fong. Working on his own time, along with a paralegal, Linda Lavis, Lougee became convinced of Soto-Fong's innocence and was just as obsessive on the subject as he was in pursuit of Peasley's disbarment. "My wife said this case would make me crazy," Lougee said, with a half smile. "She was right." Progress was as slow on Soto-Fong's case as it was on Peasley's, and Lougee has at times been despondent about that one, too. Two years ago, Lougee sent an e-mail to some lawyer

friends that concluded, “Martin told Joe [Godoy] when he was arrested, ‘You’re framing me.’ Martin was right. Godoy, Peasley and that prick, the ultimate prick Stuehringer, are trying to kill an innocent kid. Someone needs to stop this, but I can’t do it alone. I’m tired, broke and nearly suicidal. Please help.”

One day in Tucson, I asked Ken Peasley to take me to the El Grande Market. Reopened under new management and renamed Jim’s, the market still looks much as it did in 1992, with long aisles full of inexpensive merchandise and a cash register near the front. Standing by the entrance, Peasley narrated his version of how the murders took place, largely on the basis of the fingerprint evidence and the testimony of Keith Woods. “Soto-Fong went to the produce counter, which used to be in the back, and picked up some cucumbers and lemons,” Peasley said. “He put them down on the counter, and something happened between him and Mr. Gee, the owner. Something happened between the two of them, and then it became a fucking shooting gallery. They got about three hundred dollars, a hundred dollars a body. Strange thing was, there was all kinds of money in cigarette cartons in the back, but they didn’t see it or something, because it was still there after the murders.

“Fong had worked there, so he knew they would recognize him,” Peasley went on. “So if he was going to allow some-

body to recognize him, they were going in there with the idea of taking the money and killing the people who were there. To this day, that’s what I believe happened.” Fingerprints identified as Soto-Fong’s were found on plastic bags (which had contained the lemons and cucumbers), as well as on a food stamp, and that helped to convict him.

Lougee has tried mightily to discredit the fingerprint evidence. At the murder scene, he says, Godoy collected and processed the plastic bags in a haphazard way, and delayed forwarding them to the crime lab. It isn’t clear whether the food stamp with Soto-Fong’s fingerprints is the one that appears in photographs of the scene, and there was conflicting testimony about whether it came from the cash register or had been found on the floor near Gee’s body. (Since Soto-Fong had worked at the El Grande a few months earlier, it would be possible for his prints to turn up there.) At the time of the investigation, the fingerprint examiner, Timothy O’Sullivan, who had made significant errors in earlier cases, was suffering from terminal cancer and was heavily medicated, raising questions about his focus and attention. It is peculiar that O’Sullivan, who died before the trial in 1993, identified only Soto-Fong’s prints on the evidence, and not those of anyone else who worked at the store. It is also odd that other produce bags at the store had a red line across the top but the one with Soto-Fong’s prints, did not.

Nonetheless, by the time Peasley was disbarred, Lougee despaired of finding conclusive proof that Soto-Fong was innocent. Lougee could not look to Keith Woods, the dubious informant, for help. After testifying against the El Grande defendants, Woods moved to Nevada, where he was convicted on federal cocaine charges and sentenced to thirteen years in prison. In 2001, Woods pleaded guilty to possessing marijuana and heroin in prison and received a sentence of an additional twenty-seven months. (In response to a letter from me, Woods asked that he not be mentioned in this article.)

By now, Soto-Fong had been assigned new lawyers for a final appeal in federal court, so Lougee was ready to turn the files over to them. “I was so obsessed that my wife was getting ready to leave me,” he told me. “I thought to myself, I don’t need this anymore. I decided to take another murder case from the county, a woman named Carole Grijalva-Figueroa. Simple case. Shooting at a Circle K. And then one day Carole says to me, out of the blue, ‘Do you remember El Grande?’”

To Lougee, the government’s theory of the El Grande murders—that it was a botched robbery—never made much sense. The perpetrators allegedly stole just a few hundred dollars, and they left thousands more in cash lying around the store. Photographs from the night of the murders show several cigarette cartons full of cash that had been left in plain view. Peasley said that he thought the killers panicked and forgot to take the cash—or that they never saw the money in the first place—but the motivation for the murders had never been entirely clear.

The South Tucson neighborhood was full of drug dealing and, in the early nineties, a great deal of drug violence. In the days following the murders, Peasley and Godoy seem to have investigated the possibility that the murders had a drug connection. Godoy received a tip that a man named Ernest King, who had ties to the Tucson drug world, might have been involved in the murders at the El Grande. Godoy interviewed King, checked his prints, and gave him a lie-detector test, which he passed.

“We can tell when somebody’s lying. We can smell these things,” Godoy told me. “King was clean.” Once Keith



“It’s my resignation in the form of a graphic novel.”

Woods appeared on the scene, the investigation of a drug connection was dropped.

Carole Grijalva-Figueroa, who is thirty-four, was arrested in January, 2004, for her role in a fatal shooting outside a Circle K convenience store in Tucson. As part of a religious awakening, Lougee says, Grijalva-Figueroa has told him of her association with the city's drug underworld, and that included a connection to the El Grande murders. According to a transcript of a statement that Grijalva-Figueroa made to a private investigator, which she acknowledges in a brief telephone interview, the murders were a revenge killing over drugs. Grijalva-Figueroa said that, in June, 1992, a friend learned that about sixty-five pounds of cocaine that he partly owned had been stolen—and that “the El Grande guy” had tipped off the people who took it. As a result, her friend and two other men went to the store on the night of June 24th to exact retribution. “I was supposed to be the lookout,” she said, adding that she waited in a gold Cadillac while three men went inside.

“I sat and I waited. Heard a bunch of yelling. And I heard shots,” she said, according to the transcript. She drove the three men from the scene, and heard one of them say, “Did you see I got that motherfucker point-blank?” As for Martin Soto-Fong, Chris McCrimmon, and Andre Minnitt, Grijalva-Figueroa said that she didn't know them.

Grijalva-Figueroa's version of events raises many questions, as Lougee acknowledges. It is, for example, hard to square Grijalva-Figueroa's version with Soto-Fong's fingerprints on the plastic bags—if those bags were really the ones found by the register and those prints are really his. “I know it seems impossible that, out of all the cases in the world, I happen to get this woman out of the blue who solves the one case I've been obsessed with for years,” Lougee said. “I know there will be people who think that I fed it to her, or she didn't say it, or that it's just too pat. I can't help it. But I believe her story is true.” Grijalva-Figueroa, who is in protective custody, fears for her safety, and, according to Lougee, has said that she may deny any knowledge of the El Grande case if she feels that testifying will jeopardize her further. “How do you present a case like

this to a jury?” Lougee said. “You're better off as a defense attorney if you can just point to a single lie or a couple of them. No one will ever believe you if you say the whole thing is a lie.”

Kenneth Peasley isn't the only prosecutor who has got into trouble in Pima County lately. David White, who preceded Peasley as the head of the criminal division, failed to disclose more than eight hundred pages of potentially exculpatory documents to defense lawyers in a first-degree-murder case; the county was compelled to dismiss the charges. (White died in 2003.) In July, the Arizona Supreme Court suspended the law license of a third veteran prosecutor, Thomas Zawada, for six months and a day, because he made false accusations against defense lawyers in yet another first-degree-murder case.

In October, a prominent local doctor, Brad Schwartz, was charged with hiring a hit man to kill a former colleague, who was stabbed to death. Schwartz had been romantically involved with a onetime Pima County prosecutor, and had social ties with her former office; last month, LaWall fired a deputy county attorney and suspended three others who had apparently delayed sharing relevant information about the case with the police. In recent months, at least eight other prosecutors have retired or resigned—extraordinary turmoil in an office of only about sixty prosecutors. Still, in LaWall's opinion nothing is amiss. “I don't think any of the conduct of any of these men reflects on the office,” she told me. “This is a good office.”

The three men convicted in the El Grande case remain in prison. In 2004, the International Court of Justice, in The Hague, ordered the United States to grant new hearings to several condemned Mexican nationals, including Martin Soto-Fong, but it's not clear how that ruling will be applied. Through his new attorney, Gregory Kuykendall, Soto-Fong is seeking a writ of habeas corpus in federal court in Tucson, a case that would appear to be his final hope of avoiding execution. McCrimmon and Minnitt, incarcerated on Keith Woods's testimony in the Mariano's Pizza case, will not be eligible for release until about 2023. Lougee

hopes to challenge McCrimmon's conviction in that case as well, but no appeal is yet pending.

Joe Godoy and Ken Peasley, still close friends, have joined forces in the private sector, working out of the historic downtown house that serves as the law offices of Brick Storts, a prominent Tucson defense attorney. Godoy is now an investigator, and Peasley is a consultant and a paralegal. (They are collaborating on Schwartz's defense.) Godoy is characteristically effervescent about his new role. “I have to work nights sometimes, just to keep up with my work. And I have a couple of guys working for me, and, gosh, I just got too much work,” he said. “The people that know me know that I'm not a bad cop and that I'm not a bad person.”

The lawyers in Storts's building have spacious offices in the front, but Peasley is wedged into a small room in the back, next to the parking lot. The papers on his desk are still arranged in orderly piles, and his prosecutor-of-the-year plaques hang on the stucco walls. While we were talking, a secretary came in to say that one of the lawyers was heading back from court, and Peasley almost sprinted out to the parking lot, to make sure that my car wasn't blocking the lawyer's way. “He hates when someone gets in his space,” Peasley said.

For now, Peasley is collecting his pension and marking time. He had a heart attack and quadruple-bypass surgery in 2003, but he has kept some of his old habits. “Cigars is what I do. And I shouldn't even do that,” he said. “I shouldn't have done a lot of things. And, unfortunately, the reason I had the heart attack is I probably did everything that was bad for you for so many years it was inevitable that something was going to happen.” He is not ready for the El Grande case to stand as his legacy. “It's disappointing,” he said. “And the reason is, I worked real hard and, frankly, every case I handled was prosecuted with integrity. And for twenty-seven years I did it, and one case, basically, is the definition of what I've done. I mean, the best that I can hope to be remembered as is the guy who screwed up the triple-murder case.” Peasley plans to apply for re-admission to the bar as soon as he is eligible, in about four years. ♦

