Again respondent claims this witness never said he was coached, this is extremely false, petitioner had the attorney ask this of this witness "WAS HE COACHED" after being prodded by the defendant, then. The winesses answer was that he was, the "Friday before testifying." Petitioner cannot control errors in transcript.

RESPONDENT STATES (RA52:6-9) THAT PETITIONER SAID NASH SAID HE WITNESSED COBB LEAVING THE SAME TIME HE DID. "THIS IS WHAT "SULLIVAN SAID," "NOT NASH"

Finally the respondent states that there is no hint of inadequeate assistance. This line of questions fell with the state and federal rule of evidence, and securing the error was within (PHB73:14-21)

PETITIONER ENTERS AN OBJECTION

Again this respondent mistates facts about what petitioner stated in his habeas,brief about Nash saying he saw Rita leave party. Respopndent relies on inaccurate facts in his answer and leaves the court bewildered. The lower courts deferance on an attorney's actions, without some base of [disclosure] of the facts, review, or any other fact revealing method is confusing. To rule in it's view an error there was sufficient evidence, knowing the trial transcripts were withe ld, made it impossible to understand what they meant when saying ("**inconsistant evidence is not synonomous with the meaning of false evidence**.") In light of what evidence were compare d to this claim, other than the **WITHELD EVIDENCE** WHICH IS NOW PROPERLY BEFORE THIS COURT, THE LOWER COURTS RULING WERE NOT COCNSISTANT WITH Supreme Court Authority.Hill v. Lockhart, 28 f2d 832,839(8th.cir.1994)Kinsella v.United States (1960)361 US 234,4 l.ed.2d 268,80 s.ct.297(Due process has to do with denial of fundamental fairness,shocking to universal sense of justice,

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it deals neither with power nor jurisdiction, but with their exercise.)M Curry v.McCanless(1939)3097 US 357.;Kotteakos v.United States,328 US 750(1946)Case and authority in (PHB) incorporated by referwence. (EXHIBIT Q1:12)

12.

Petitioner brings the state witness John Sullivan made false statemenets,and that trial attorney did not challenge them and enter an objection,ineffective assistance of counsel.Respondent relies on inappropriate backgrounds in his answer earlier in his arguement.Respondent then relies on the rules and principle he set out earlier also,and offers no other.In the analysis by the respondent, he claims the error was properly addressed in the state courts, which is incorrect because there was fact finding materials ,information other than the courts refusal to release trial tran scripts and the attorney's failure to release the evidence until the Bar association got involvered(exhibit I18-I 25)The attorney was re peatedly asked numerous questions with regards to the evidence,investigations, everything with regards to this case, and was deliberatley ignored and lied to.(exhibit,J) Respondent opines that petitioner is only concerned with the attorney's failure to impeach "A SINGLE WITNEESS".Respondent then generously presents the fact that this witness said that he did not know where they got that information from, because he was still awake.(RT429)While this witnesses testimony was inconsistant with Bruce Nash,Franceessca Drake, or any other police reports made from 1985 up to 2009 when he spoke the case with detective Alexander and Myler.

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Respondent states that because the dispetity had been presented, that bit was not a challengable matter for the attorney, or the prosecutor for that matter to address the incónsistant statements from 1985 to the 2009 statement.There was no identifications with the witness' testimony that just contradicted Bruce Nash' testimony that just swore that he did not give Rita Cobb a ride home, while this witness was saying that he witnessed Nash give her the ride, and that he drove Rita Home.The evidence was there and whether the attorney was frightened of the courts, or interpreted that the court would deny it any ways, it's his FIDUCIARY OBLGATION TO DIRECTLY SECURE [ANY] FALSE EVIDENCE OR TESTIOMONY THE JURY MAY BE CONFUSED BECAUSE OF IT's contradiction to previous evidence or CONTRADICTING TO THE DIRECT EVIDENCE THAT THE SAME WITNESS HAD ALREADY CREATED A RECORD THAT WAS COLLECTED FROM STATE AUTHORITY IN THE LINE OF OFFICIAL DUTY AND INVESTIGATIONS. The attorney had this information at the table and was being prodded by the petitioner, but would not address this issue, possible because the court had interrupted the line of questions with Bruce Nash just moments before, and the courts distinct command"THE EVIDENCE THAT WILL BE IN THIS TRIAL WILL ,BE THAT RITA COBB WAS NOT SEEN IN A BAR THAT NITE, AND THAT EVEN THOUGH SHE SAID SHE WAS GOING TO A BAR, THE EVIDENCE WAS THAT THEY HAD WITNESS THAT SHE WENT HOME AND NOT THE BAR" As outlined earlier by this respondent, it probably would not have been considered anyway by the court. The claim this is about is that this trial attorney knew the error was there, had the proof at his table, and refused to challenge the witness for appellat e reasons.

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1 Was this attorney's failure consistant with the Supreme court
2 consideration of Ineffective Assistance of Counsel ?
3 Again the lower courts consideration was based on insuffucient
4 showing of **PROOF**.Here the respondent fails as well. He ignores
5 the value of the Sixth Amendment and the protections of the Four-
6 teenth Amendment which are generously slathered across the Govermnets
7 actions to the petitoiners rights.

8 **PETITIONER ENTERS AN OBJECTION**

9 The respondent relies on inappropriate outline of the facts
10 and considers them as light in value in consideration to the
11 petitioners Constitutional Protections from the Government officials
12 in this case where the defendant was convicted by false evidence
13 after the courts were informed that he was innocent.Hill v.Lockhart
14 28 f2d 832,839(8th.cir.1994)United States v.Bagley,473 US 667
15 (1985);Curry v.McCanless (1939) 307 US 502:Kotteakos v.United States
16 328 US 750(1946)

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Petitioiner brings that the attorney failed to object and challenge the statement by Daryll Kramer ,that his relationship with his mom was arguementative and nothing more.As outlined earlier, this witnesses relationship was nothing like he testified to, his testimony was misleading and not correct.Respopndent relies on the background and rule analysis he set before for this error, and claims that no error happened and therefore there is nothing to dispute. This analysis would be determined of how this relationship truely was in comparison to what was testified to. Even the testimony was strikingly different than his statements in (exhibit G2-G5) from one statement to the other.The state court relied on the inconsistancies in statements to testimony were not synonomous to perjury which is distinctly what the textbook definitions of perjury are that they were misleading. The state court laid lack of jurisdiction to consider the misconduct, but commented on the inconsistant testimonied of Nash,Sullivan,Kramer, and even detective Alexander should not be considered because of the length of time from crime to testimony. This analysis is improper because each of these witnesses had been refreshed, and escorted through the testimony phases of prosecution witnesses. The respondent elaborates that Kramers testimony that he had a good relationship with his mother, but that it included "**occaisional dispute and arguement's**."(exhibit G12, U3-4, R5) which are colorably different than the picture Kramer was painting for the jury.Witnesses made statements to police that Kramer was (Cynthia Hooper, that she felt it **strange**, that "Cobb and her son had been **estranged**" "FOR SOME TIME").While Ronald Kobbs told police during investigations, he arrived at the Cobb

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residence on or about August 15,1985 and found that a dark haired bearded man was attacking his customer, and after, he found out it was the son "Daryll Kramer" that was attacking his mother. Another interpretation of what one might call "Disputes" or "argumentative" as accurately describing the relationship. This was an error which should have been challenged, and an objection entered, at least as far as relevance, and certainl;y for impeachments.As respondent would have this error seen ,there was nothing to impeach. When a witness is describing the base of foundation, and paints a different colorable scenery, it is challengable.It was the defense attorney in cross that asked about the relationship, and had the witness staements of Kobb to use as navigation, but when this witness testifies inaccurately, it was this attorney's obligation to secure, challenge the witnesses inaccuracies, and he did not.Respondent states that it was a tactical reason for not choosing to go further, but according to the attorney's overall practices, it fell within the scope of incompetance, Ineffective assistance of counsel, to fail at this point, not just with this witness, but every witness that mistated facts. This error was related to the defenda nts right to an impartial jury as was all the other testimonies, which this witness altered the juries vision of the facts.

Respondent relies on Strickland, but what an attorney finds in trial after he himself nor his investigators investigated possibil-ities before trial, left this attorney nothing to rely on as tactical and therefore incompetance was the base of this forfeiture.Kotteakos v.United States. PETITIONER ENTERS AN OBJECTION

Respondent again relies on an inappropriate application of [LAW]

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Petitioner brings that attorney did not release any reasonable discovery before this case went to trial, after [NUMEROUS] **requests for all the discovery**, admittingly by the attorney during Marsden. Respondent relies on the facts as laid out by petitioner in his dispute. Respondent states that a request for discovery had been made to a first counsel (Attorney Canty) and that the attorney releaesed 300 pages. This statement is incorrect.

PETITIONER ENTERS AN OBJECTION

(Exhibit P2) clearly shows that the attorney logged that discovery was requested, fourteen days after arrest. This request was to base my decisions on what I was to do, borrow money, defend myself, or let the state appoint an attorney. (exhibit P3) shows that Sanders was the attorney for this case, and three months after the request for discovery, this attorney sent his "FIRST INSTALLATION"??

As the respondent states, the day of trial petitioner noticed and was told the four three ringed biunders of evidence was the evidence for this case, and became disturbed. The reason for the disturbance was that when the discovery was sent, there was only 300 pages. Clearly these bi nder held over 4000 pages. Petitioner was only allowed 300 pages of this case discovery to judge his decisions or possible option. Respondent then agree that the trial attorney admits to releasing 1300 more pages of the discovery, AFTER TRIAL while du ring trial marsden the attorney admits there is over 4000 pages of discovery to this case. (RA56:13-28) After review of the 1600 paGES OF DISCOVERY, petitioner that had built homes his wh ile life could see as the ordinary laymenn would, that this case required "serious investigations."

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1 Admittingly the respondent along with the discovery revealed he
2 disclose that the attorney witheld evidence. (THE ATTORNEY IS A
3 GOVERNMENT OFFICER OF THE COURTS)The respondent concedes in his
4 answer that discovery was in fact witheld. Three thousand seven
5 hundeed pages of EXCULPATORY EVIDENCE.AND
6 Respondent relies on his outline on standards for ineffective assista
7 of counsel as his rule applied here. Petitioner does not agree.
8 (exhibit I18) indicates that this discovery was witheld until
9 after the appeal process had been exhausted.The respondent reliance
10 of the courts silence in the state appeal court was justified.
11 The repondent bases his opinion of the claim as one of mistrust.
12 Petitioner relies on this claim that he was lied to when the attorne
13 gave him the evidence and said this is all there is besides the
14 DNA graphs. Petitioner relied on this as being the truth, and "it
15 was not". THE ATTORNEY WAS A GOVERNMENT EMPLOYED OFFICER OF THE
16 COURT,THE SAME POOL OF OFFICER THAT WERE HIRED TO PROSECUTE THIS
17 CASE WITH EARNEST AND VIGOR, "NOT DECEPTION".Respondent relies on
18 United States v.Holloway,259 f.3d 1199,(9th.cir.2001) as a base
19 of relationship being unnecessary under Morris.Or a meaningful
20 relationship to be shared according to Taylor, or that Knowles
21 states that the sixth amendment guarantee a relationship of attorney
22 client to be"Happy".
23 Here the petitioner claims that a "request" for discovery with regards
24 to this case were made fourteen days after arrest, three months
25 afterward he was given 300 of the over 4000 pages to base his decisions
26 of representation. Even the petitioner then told the attorney that
27 the transcripts of the interrogation were altered, which was over
onethird of the discovery released. 113 OF THE 300 PAGES

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1 Then was lied to that verbatim transcripts would be used in trial.
2 (later discussed in this petition) Under Brady v. Maryland, supra,
3 (citation ommitted) the defendant has the right to the discovery.
4 According to the discovery given to the defendant,this
5 attorney was held to fiduciary responsibilities of investigations,
6 especially since the defendant did not know what discovery existed.
7 The attorney must keep the defendant fully informed
8 of all the consequences with regards to the charge, and by witholding
9 this evidence "he did not". The attorney was to inform the defnedant
10 of all the possible exposures of the case. and the failure
11 to reveal the discovery prevented that.Brady v.Maryland,373 US
12 83 (1963)(The fifth Amendment guarantees to government to disclose
13 all exculpatoruy evidence to "defendant"),Bagley,473 US at 676(credib-
14 ility of the witnesses)'U.S v. Duval,496 f.3d 64(third party issues)
15 Disimone v.Phillips,462 f.3d 191,see also Frost,125 f.3d 346.
16 Rules of prof.Cond 's 3-300(adverse interests),3-500(communications)
17 (Marsden H.16:3-5)
18 "after he was "CONVICTED HE MADE ANOTHER REQUEST",A[SEPERATE]REQUEST
19 ,HE DID SAY "COULD I PLEASE HAVE ALL THE DISCOVERY".(exhibit I 18)
20 Respondnets comment that petitioner failed to show in [ANY] fashion
21 that counsel was ineffective is a flat out lie.
22 (for every reason to lie, there is better to tell the truth)
23 PETITIONER ENTERS AN OBJECTION
24 Respondent then states that he was "not surprised" that there was
25 "more documentation at the end of a case", since they were being
26 introduced along the way???That petitioner failed to show how reviewing
27 the discovery would have made a difference in the counsels perform-
ance.

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1 Still there lurks over 1000 pages of discovery, that has not been
2 revealed to the defendant,five years after the first request.
3 The discovery would have shown to me, that the attorney "was not
4 investigating", bu.t most impottantly, it would have sho wn to me
5 the dire need to borrow the money to hire professional attorney's
6 to defend this case, "especially due to the petitioners innocense."
7 Respondent analysis, as well as the court refusal to review are
8 not proper analysis for this error.(as this entire record shows)
9 Hill v.Lockhart,28 f2d 832(8th.cir.1994)Kotteakos v.United States.

15.

10
11 Petitioner claims the atoorney failed to investigate the DNA from
12 the case that was inside the victimd body,(AND NONE WAS FOUND OUTSIDE
13 THE BODY SURFACE, VULVA,LABIA,LEG, BUTTOX, ANYHTING THAT W OULD
14 BE CONSISTANT WITH PROOF OF RECENT SEX)Respondents background relate
15 to the DNA that was located inside the victim by Jones analysis
16 was extracted from the victims inside,"vaginal swab". This witnesses
17 testimony was that the DNA was hardy,["fairly hardy'] indisating
18 it was potentially strong and heatthy, meaning that it could survive
19 longer periods off time before decomposistion and dying. This witness
20 stated that DNA was locatable on hair structures that still had
21 the root bulb attached (discussed later)and that a watchpin was
22 located from this crime scene(discussed later).Respondent states
23 that this witness stated that the ~~PETITIONER +~~ victim might have had
24 sex within "less than days".

25 PETITIONER ENTERS AN OBJECTION

26 (Question by defense,answers ~~by~~ Jones)

27 (RT317:17-25) (THIS WAS DURING CROSS EXAMINATION)

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Q_IN OTHER WORDS,FROM THE INFORMATION THAT YOU HAD,THE SEXUAL EXPERIENCE OF THE VICTIM COULD HAVE BEEN AT THE TIME OF DEATH,HOUR BEFORE DEATHE TIME OF DEATH,OR AFTER DEATH ?

A_ THAT'S PROBABLY TRUE.I WOULD SAY IT PROBABLY WASN'T DAYS BEFORE IN TRERMS OF SHE HAD INTERCOURSE,[SEVERAL DAYS PASSED], AND THEN SHE DIED.

Q_ RIGHT

A_I'M FAIRLY CERTAIN OF THAT.

Q_ OKAY.

A_ AND IF YOU TAKES THOSE DAYS AND SHRINK IT DOWN TO HOURS AND SO FORTH,I CAN'T TELL YOU.

THIS IS DISTURBUINGLY DIFFERENT THAN WHAT THE RESPONDENT SAID, THAT IT ["WAS LEES THAN DAYS"]

I ASK THE COURT TO TAKE JUDICIAL NOTICE OF THE ERROR THAT THIS RESPONDENT IS TRYING TO MISLEAD THE COURT OF THE TRUTH

Again the respondent relates the information of the experts as to the [match] on codis, then comments on the DNA tnat was located on the felt pad(disputed later) and that the DNA located on the felt pad was the result of drainage from the female.Respondent claims that the motion by Hal Smith was [tactically] rejected, when that too, (will be discussed later)

The error in this was that the attorney from the defense table did not investigate the DNA that was extracted from the victims vaginal cavity, and have it tested for, exact match,cont aminations, other DNA's presence,or have the PCR analysis applied to verify that it was not a product that was placed in there when the murder occured, and was in fact deposited from one and half days to several days before the murder occured.

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1 The presence of several years passing, it was extremely important
2 that protocal was verified for this evidence. The trial courts
3 analysis of the motion that contained this attorney's failure
4 to investigate this evidence as ineffective assistance of counsel
5 was based on the court's opinion of the attorney's "court room
6 conduct", and could not comment on the conduct beyond the four
7 corners of the courtroom.
8 Respondents rule on ineffective assistance of counsel
9 is incorrect.Strickland precisely details the importance of invest-
10 igations,Yarborough v.John son,520 f.3d 329(4th.cir.2005);
11 Williams v. Taylor,529 US 362(2000)(counsels failure to investigate
12 and present substancial and mitigating adversarial evidence during
13 trial).Wiggins v.Smith(2003)539 US 510,a capital case, the courts
14 described the significance of thorough investigations.
15 The results of the PCR analysis would have established that
16 the experts testimony Dr.Saukel and Jones were correct in their
17 analysis, that the DNA the state collected from inside the vaginal
18 walls had been there for over one and a half full days before
19 the murder had taken place, sometime before Thursday, before she
20 was killed, or would have detailed how the evidence was not controlled
21 under severe protocals as the state is required, for storage.
22 Becuase there is no investigations, this information must rest
23 on the states experts that testified, the sex was from one and
24 a half days before the murder occured and several days before
25 the murder occured.Because the defendant claimed innocense, this
26 investigations were "[mandatory]".Respondent claims that petitioner
27 admitted to "conveniently having sex" with the victim, when

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the attorney is the one that released that information first. Petitioner was responding to the states respondent in the state habeas, that the sex was not the product of the murder, and had been consensually placed over a day before the murder occured to Rita Cabb. Respondent claims that there was no other evidence presented that another might have been involved, but that statement is based on the erroneous denial of the facts, and the states blind eyes and ears to the man who confessed. Gregory Randolph. Relying that the attorney had no basis for hiring an expert, and that that decision was a tactical decision. "INCORRECT."

Here the respondent does relate the facts that,

WHILE A COURT MAY DIRECT A COUNTY, THROUGH ITS PUBLIC DEFENDERS, TO PAY FOR THE HIRING OF AN EXPERT WITNESS UNDER APPROPRIATE CIRCUMSTANCES, CAL. GOVERNMENT CODE§ § 29602, COUNSEL IS CONSTITUTIONALLY INEFFECTIVE ONLY WHEN A DEFENDANT IS PREJUDICED BY DEFICIENT PERFORMANCE.

Here the defendant was prejudiced, the state presented two seperate exprets that made statements that the DNA was [one and a hlf days older that the murder] and the other said that it was [several] days older than the murder.

They were positive for the defendant, but had the defense hired an expert, it may very well have provided a more exact time line, and as Jones stated there was PCR analysis available for this, but that "he did not provide this analysis". The time the DNA was placed is [CRITICAL], and without the available testing that was forfeited, this brings the prejudice into the governemnt code § 29602. Under no conditions is investigations considered as a tactical option when a case relies on evidence, witnesses, and forensics experts. There is nothing in this incompatant attorney's

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1 list of qualifications, or the entire public defenders office
2 for that matter, tha t could qualify as an exprert in the field
3 of forensics. The p etitioner was prejudiced, and the attorney's
4 failure to investigate was not just ineffective assistance of
5 counsel, his failures were "incompatent". The courts view on this
6 in the state habeas was not properly applied to the Strickland
7 requirements. Hill v. Lockhart,28 f2d 832(8th.cir.1994):Kotteakos
8 v.United States,328 US 750(1946);Curry v.McCanless (1939)307
9 US 357;Kinsella v.United States (1960)361 US 234;Yarboprough
10 v.Johnson,520 f3d 329(2005):Williams v.Taylor,529 US 362(2000)
11 16
12 Petitioner brings that counsel was ineffective for failing to
13 investigate the DNA that was located on a desk blotter.Respondent
14 states that petitioner was told that the DNA that was located
15 on the deskblotter would be tested.Relying on the attorney's
16 failu re to disclose the evidences as reason this discussion
17 did not occur.(exhibit I2-I9)Disclose that the defendant did discuss
18 the evidences with the defense attorney,particularly (J 7) where
19 the defendant is asking about evidences,witnesses, what the attorney
20 has seen.Focusing on the (exhibit I14) w here the petitioner
21 discusses the DNA being in A FEW DIFFERENT places of the house
22 becuase of the ongoing relationship and sexual encounters, that
23 were consensual.Petitioner never had sex with the victim in her
24 bedroom though , and this was discussed with the attorney as
25 well.As laid out in (exhibit D46) the attorney's trial noted
26 disclose the questions of what DNA came from where, or what DNA
27 was missin g.Respondents reliance in his Rule is erroneous.

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An attorney under Strickland does not have the discretion to decide whether to investigate or not. This attorney told me that he did investigate this cloth. Told me that he was going to investigate all the DNA evidence from this case.
Hill v.Lockhart,28 f2d 832(8th.cir.1994):United States v.Bagley,473 US 667(1985)Respondents reliance on the lower courts decision that was erroneously applied to the analysis of Strickland, he forgets that the evidencewas witheld from the petitioner. Therefore it was impossible for the state to make a decision that was erroneous applied to an investigation standard, when the state knew the evidences were witheld. There was at least two other DNA's from this scene. And while the court was entertaining that the petitioner admitted to haveing sex with the victim at least a day before she was murdered, that statement was corroberated by thet states experts in their analysis(RT317:21-25)"was several days passed and then she died""I'm certain of that"(RT490:25-491:5)"It could have been up to a day and a half"before the murder occured". There fore the analysis by the court was erroneously applied to the investigation standards outlined in the Strickland v.Washington (citation ommitted)The desk blotter evidence was damaged, and as the respondent later states that even if there was other DNA at this scene, it does not make show ing of relevance.Here the respopndent admits that"even if that were true"(another man's DNA present)petitio ner was still faced with the fact that he had sex with the victim."AS LITTLE AS 1½ DAY BEFORE RITA WAS KILLED."

FACTS THE RESPONDENT HAS ADMITTED

The victim was seen at a party on Friday nite, a day after petitioner

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had had sex with Rita Cobb or more if you consider the expert testimony of Jones, "That the sex occured several days before she died" and that it is [possible] there was other DNA located at this scene. Strickland v.washington, 466 US 668(1984)
The investigations would have proven effective and meaningful, because this evidence had PCR analysis properties that woul;d have shown that the DNA quite possibly was the result of [numerous] days before the crime ever took place. Indicating that there was a relationship between the victim and petitioner. The victims DNA was collected from this and if the whole desk blotter was available to test, might well have shown that there was other DNA onit as well, but becuse this evidence was damaged and destroyed, it could have been challenged for remoual from the trial all together, through diligent investigations. Yarborough v.Johnson, 520 f3d 329(4th.cir.2005); Williams v.Taylor, 529 US 362(2000) (counsels failure to investigates and present substancial and mitigating adversarial evidence during trial.)
The respondents claim that this is vague and conclusory, that petitioner has failed to point any part of the record regarding information of the desk blotter is egregiously erroneous. This is exactly why the investigations were neccessary, and required to challenge the prosecutors claims that Yablonsky was the only suspect, that there were no other suspects to this case. And certainly not if the attorney does no investigation which would have been "fruitful" and "productive". Here the respondent is again caught lying, because he said he did not receive any of the discovery in his answwer. The (exhibit J) does disclose questions asked of this ,

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attorney after he revealed that there was more evidence in this case, and why did he make the error he did, failing to investigate or lie to his client.This court must accept these questions asked as reliable and admissions since the attorney chose not to answer any of them.Question 6,(Q-6) is related to why he did not investigate) (Q-9) was directly about the desk blotter.(exhibit I25) clearly asks this attorney for the discovery, what DNA possibilities,tainted, (exhibit P3) shows that the attorney mailed discovery.Respondents reliance that petitioner can not make showing of the other DNA's from this case, or how their presence would exculpate the petitioner while the (ENTIRE RECORD SHOWS THAT YABLONSKY WAS NOT THERE WHEN THIS MURDER OCCURED, AND WENT TO CATASTROPHIC LENGHTHS TO HIDE THE EVIDENCES FROM THE DEFENDANT, EVEN THROUGH APPOINTING AN INGENIOUSLY INCOMPETANT ATTORNEY THAT WORKED HAND IN HAND WITH THE ENTIRE STATE TEAM)This entire record makes that showing. If yablonsky's DNA was placed into the victim from one and a half days to several days before she was killed, and she went to a party from one and a half days after she had consensual sex with Yab;lonsky to several days after she had consensual sex with Yablonsky, it is then the states responsibility to investigate why Joseph saunders lied about being at her house before he admitted to being there. And certainly how Gregory Randolphs DNA was found on cigarette butts located in an ashtray that was found on the dining table with eight butts ~~in~~ it and explain how those were the only butts in a home filled with smokers, and his alleged last visit was over a week before Rita Cobb was killed or the fact that this man conf essed to this murder.

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Gregory Randolphs ~~DNA~~ does directly link ~~him~~ to the murder, and certainly because he confessed to this murder, makes him a more culpable suspect than Yablonsky who had been with RitaCobb over a day before she was killed.Finally this DNA that was found in the bedroom was located under a quilt, and consequently under where the body was locate.

INTERESTING ENOUGH

NOT ONLY WAS YABLONSKY'S DNA NOT LOCATED ON THE QUILT,SHEETS,OUTTER THIGHS,VULVA,LABIA, OR EVEN ON THE BEDDING IS ENOUGH TO RAISE SUSPICIONS AS TO HOW THE 'DNA ON THE BLOTTER WAS PLACED, AND THEN FOUND UNDER THE QUILTS AND NOT LEAVE [ANY] DNA ON THE QUILT.

THE FACT THAT THIS BLOTTER WAS DAMAGED AND THE UNSAVED REMNANTS DISCARDED MAKES THIS INTO A MATTER OF EVIDENCE AND IT's INTEGRITTY WHICH IS OUTLINED IN THE TROMBETTA /YOUNGBLOOD COURTS

For the reasons listed above the respondents analysis and rules fail.Kotteakos v. United States,328 US 750(1946);California.v Trombetta,467 US 479,81 l.ed.2d 413,104 s.ct.2528(1984);Curry v.McCanless,307 US 357(1939);Hill v.Lockhart,28 f2d 832(8th.cir.1994)

17.

Petitioner brings that the trial attroney was ineffective for not investigating the watch-pin that was used in the trial as "proof of the struggle".Respondent relies on the background that criminalist Jones describes the PCR analysis that is done on DNA for verification of time and profiles.Respondent relies on

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1 theexpert testimony of criminalist JOnes, as should this court,
2 that this type of object through PCR analysis could determine
3 the lenghth of time the evidence collected from these types of
4 objects was there, and also for DNA profiling.This expert found
5 the watch-pin located next to the victims head, and the prosecutor
6 presented this evi dence as being the product of the struggle
7 that happened when Rita Cobb was muddered.In the respondents
8 analysis, he suggests that this claim should be denied because
9 of the trial. courts analysis of investigations according
10 to Strickland.This application grossly understates the meaning
11 of Strickland, and when applied to investigations, petitioner
12 also presented three case of the state which distinctly examine
13 the attorney' s obligation in the investigations phase. Presisely,
14 People v.Ledesma,43 Cal.3d 171(1987)and People v. Pope,115 CA
15 4th 229(2004):People v. Williams,44 Cal.3d 883(1988).The court
16 was not willing to consider the applications of the state authority,
17 and followed by misapplying the federal standard of Strickland
18 v. Washington(citation ommitted).The court's reliance admits that
19 there was no other mans DNA presented in this trial, suggesting
20 that "if it were" the trial court may have been influenced, and certain;
21 the jurors would have been.

22 STRIKINGLY ODD FACTS

23 The watch-pin was located on the victims right upper side of her
24 head as she laid on her back, indicating this pin as a product
25 of the murder, the state suggested the person that committed this
26 crime and left the watchpin behind was a right handed person who
27 wore his watch on the left wrist.PETITIONER IS LEFT HANDED

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Jast because the prosecutor did not present the witness that conducte the DNA analysis on this item, does not mean that they did not have this evidence examinad, and possibly witheld that result to bolster his claim,. "That Yablonsky was his only suspect". Respondent suggests that petitioner failed to present the DNA from the watch-pin as proof, "THIS IS EXACTLY WHY THE FAILURE TO INVESTIGATE PRE_JUDI THE PETITIONER". There is no way that anyone wearing a watch in this climated area, on an wrist that sheds skin, and to not have DNA onit. The state expert testified that DNA could be extracted from this kind of object, indicating that he too knew there was no way anyone could wear a watch, where it's componants were held by a PIN, "AND NOT GET DNA on it". In the prosecutors examination of Jones(RT249-252) where the prosecutor disects the PCR properties of DNA analysis, that it is not the content, of fluids that are examined but the cells of the property. It is this experts testimony where he details that DNA analysis could be conducted from the watch-pin, but that "he himself" had not done this examination".

This eviddence was critical and directly relates to the murder itself, and if it was the state assumption that it belonged to the defendant Yablonsky and the attorney knew this, it was his obligation to examine this evidence, certainly since he was told that Yablonsky was innocent.

EXTREMELY IMPORTANT INFORMATION-

Petitioner was not even aware this evidence existed until trial, and "did" address the attorney about it. The attorney said they could "not prove it was mines"!!!!This goes to the core of this attorney's conversation in the very begining, that he was going to examine all the evidences and have them tested for the DNA

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presence. Petitioner only knew of the DNA from inside the victim, on the desk blotter, and that a hair was collected from the body. The facts this attorney witheld this evidence supports the petitioner c! laim that he repeatredly lied to his client.Respopndent repeatedly relies on the facts that there was no other DNA presented in this trial. This trial after the state presented all it's witnesses, all it's experts, and all it's evidence, the jury after hearing not one effort by the petitioaer in defense, returned "deadlocked". This case was more than close, it was based on the perverted juries understanding of the facts, and the influencial instructions of the court, and influence of the County District Attormey. Withoput those matters, as the ev: dence sat, there was no evidence presented that Yablonsky committed any crimes. If the attorney made [some] effort,som ie proofs of investigations, this jury would have not came to a verdict of guilt. The presence of anther persons DNA would have determined the states failure. This attorney failed and so does the attorney General in his answer to this claim./

AS THIS RESPONDENT SUGGESTED, "MAYBE RITA COBB COLLECTS WATCH PINS" IS AN INSULT TO RITA'S FAMILY, AND A PERFECT DEFINITION OF HIS ABILITY TO DEFEND HIS STATES ERRORS, IN CONVICTING AN INNOCENT MAN. THIS IS EXACTLY WHY INVESTIGATIONS ARE SO NECCESSARY.

PETITIONER ENTERS AN OBJECTION

First, this attorney general suggests that another persons DNA being at this crime scene, AND ON AN ITEM IN THE BEDROOM IS SUBJECT to speculation, when this evidence was submitted as a direct result of the struggle that occured while Rita Cobb was being strangled to death could even amount to[CREDIBLE EVIDENCE] is more than DISTRURBING.This line of reasonong is [INSANITY]

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Certainly the evidence that was left behind by the killer is more credible than the evidence that was left inside her for more than 1½ days before she was murdered from a different person than the person who left the evidence in question is surley more credible reliance.

Second, This attorney general that has repeatedly said that Yablonsky DNA was found on the body, different than inside the body is boldly mistating the facts, and suggesting there is more evidence tha n the team of forensics, criminalists,and pathologists had found at this crime scene and is attempting to blurr the courts vision of the truth.

Petitioner asks this court to take judicial notice That this attorney has injected intentional mistatements of the facts for the second time.YABLONSKY'S DNA WAS NOT FOUND ON THE OUTSIDE OF THE BODY, ONLY THE INSIDE, AND ON A DESK BLOTTER. THOSE ARE THE FACTS, THAT IS THE TRUTH,NO OTHER TRUTH EXISTS.

Th e courts reliance in the comparison of investigations requirements of [all] the Supreme courts to their posistion that in this case inves..tigations is an erroneous and tactical option [all] attorney's have in defending their clients.Hill.v.Lockhart,28 f2d 832(8th.cir.199 Kotteakos v. United States,328 US 750(1946);Curry v.McCanlesss(1939) 307 US 357:Kinsella v.United States(1960)361 US 234;Yarborough v.Johnson,520 f3d 329(4th.cir.2005)';Williams v.Taylor,529 US 362(2000)

18

Petitioner brings that the attorney was ineffective for failing to investigate one of the hairs that was found on the victims body or immediate area.

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This hair had the entire root bulb attached, and was red in color, petitioners hair is blonde.Respondent concedes this hair was located on the body, and concedes that the hair color was consistant with that of Gregory Randolph,(The man who confessed to this crime). Respoondent argues that expert Jones states that hairs of this type can be analyzed with this kind of "ROOT STRUCTURE".Respondent states that trial attorney tried to present this evidence in his motion to submit the WE-TIP REPORT.Had the attorney investigated this hair, he would have produced forensics evidence to support his claim, that the "We-Tip '" was reliable. But since the attorney did "NO INVESTIGATIONS, ON THIS ITEM OR ANY OTHER ITEM",THIS MOTION FAILED AS DID ALL OF HIS OTHERS THAT REQUIRED INVESTIGATIONS.) The respopndent then admits that this man Gregory Randolph was under severe suspicions and assigned a pseudonym name of William Backoff.Respondents description that this man presented "Bizzare" behavior at crime scenes, leaves out that this man was "Morbidly" intrigued by femal e murder victims.Respondent then underscores the facts, by saying this person only had distrubing interest in post-mottem photographs, when this person was found to have committed suicide, the officers that processed his suicide scene they located "DOZENS OF PHOTOGRAPHS OF MURDERED WOMEN".Respondent then admits that Grego ry Randolph was a suspect for the Brooks and Cobb murders.Respondent then shows that the prosecutor had indisators of unreliability, that he supposedly confessed to "Mutliating" the body of Rita Cobb after he killed her, suggesting that the woman that was allegedly strangled to the point her Hyoid bone was crushed, and then wrapping a coathanger wire arou nd her neck, twisting and re-wrapping, and re-twisting (EXHIBT Q2-12)

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Could not be considered as "Mutilation"(Exhibit Q2-2)Then that
this person said he picked her up at the Zodiac ,yet the bartender
said that she did not see the victim there that nite she was
killed.When this is "INTRIGUING+INTERESTING" BECAUSE THAT IS EXACTLY
WHERE SHE SAID SHE WAS GOING, AS PROVEN EARLIER IN THIS PETITION.
(Exhibit R)(exhibit G12-15) make showing that Dismore's state ment
was questionable when compared to all the other data collected
in this investi gations.Respondent then suggests the trial court
had considered that this confession was not barred by the ninth
circuits hearsay rule, but that is exactly how the trial court
dislodged this suggestion of third party culpability of Gregory
Randolph, that this was not reliable.Then the respondent states
that there is no way that error on the attorney's behalf for not
investigating the evidences is attributable to the courts denial.
This is exactly why the attorney's movements failed, because he
did NO INVESTIGATIONS, and relied on his movements through arguements
"only",statements of relevance.Respondent then generously provides
that detective Greg Myler had releaesed the "POTENTIAL SOURCES
OF DNA" TO THE ATTORNEY,INCLUDING ITEM B4F,a strand of "STANDARD
RED HAIR,HEAD HAIR" Item B4D,item A5"1-8" and [ONE HAIR WITH ROOT].
Respondnet then relies on his standard for ineffective assistance
of counsel, which is erroneous and does not apply to investigation
practices that would have affected the attorney and the defendant
interests.Respondent then states that this was brought in the
state courts and denied correctly. This too in an erroneous assumption
of the courts ruling, because the motion brought by Hal Smith
was of the investigations, and the court ruled on the "COURT VIEW
OF THE ATTORNEY ACTS IN THE COURT ROOM, AND MENTIONS NOTHING ABOUT
THE ATTORNEY INVESTIGATIONS [AT ALL]"

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1 Again this habeas court in the state determi ned the ground after
2 it was told there were evidence witheld from the petitioner, and
3 as this court sees there has been diligence in securing these
4 evidences, and according to the discovery in this petition, petitioner
5 arguement has meritorious affect.Respondent again relies on the
6 sex that occured over one and a half days before the murder occured
7 as his pinpoint of reliability of who commited this crime, and
8 that petitioner was faced with the fact that he had sex with
9 the victim,indictaing that additional testimony wouldnot have
10 affected the outcome.Here the respondent had conceded that petitioners
11 DNA was the product of a sexual encounter from one and a half
12 days before the murder, to several days before the murder, and
13 that even if there was more DNA at this scene, it would not have
14 moved the courts decisions.
15 Defendant's attorney did no investigations, and every arguement
16 he brought was not fruitful because there was no investigations
17 to support his movements. The trial prosecutor presented witness'
18 testimony that lied, but the consensous was that Rita Cobb was
19 last seen at the Sullivan Party on Friday nite, and that she was
20 seen so drunk they offered her a ride home which she refused.Then
21 the state presented evidence that the DNA that was located inside
22 the victim,had been there from "1½ days to several days" before
23 she was killed and matched Yablonsky.Then played an altered version
24 of the interrogation,after telling the jury it was [accurate]
25 and the judge said in his instruc :uion that it was the original
26 media,where the defendant lied about his sexual involvement with
27 Rita Cobb, and the JURY STILL CAME BACK HOPELESSLY DEADLOCKED

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1 At this point [ANY INVESTIGATIONS WOULD HAVE BEEN FRUITFUL] consideri
2 that the defense team did not enter one objection, one witness,
3 one piece of ewvidence, or one word of testimony by the defendant
4 or any witnesses. This jury returned three seperate time deadlocked
5 and was forced into a verdict by the courts influece/.(LATER DISCUSSED
6 Investigations that there was a struggle, and this struggle produced
7 a hair that was ripped from it's source and did not belong to
8 the defendant, or victim. as the victim was being strangled to death, **WOULD**
9 **NOT ONLY HAVE INFLUENCED THE JURY MINDS,BUT WOULD HAVE GIVEN THEM**
10 **REASONABLE DOUBT ABOUT THE DEFENDBANT GUILT AND ACQUITTED THE**
11 **DEFENDANT.** AND IF THE DNA MATCHED RANDOLPH, AN ACQUITTAL WAS REASONABI
12 That the respopndent rests his arguement on this fa;ilure of investiga
13 is disturbing, and does shock the conscience of who ever reads
14 this as to how he can come to this conclusion. Petitioner does
15 apoliogize for the long petition and arguement, but the respondent
16 addresses these issues according to his own intention, and petitioner
17 is forced to addressin g them accordingly.
18 Kotteakos v.United States,328 US 750(1946);Hill v,Lockhart,28
19 f2d 832(8th.cir.1994)Yarborough .Johnson,520 f3d 329(4th.cir.2005);
20 williams v.Taylor,529 US 363(2000);Curry v.McCanless(1939)307
21 US 357;Kinsella v.United States(1960)361 US 234.
22 Resopndent then brings Knowles v.Mirzayance,556 US 111(The Supreme
23 court had not imposed upon counsel a duty to act on a nothing
24 to lose theory)This "grossly" mistates the courts theory, and
25 if the court meant that an attorney that does no investigations
26 with regards to evidence that dirtectly relates to a crime should
27 be considered as tactical, "it would have said so."

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Petitioner brings that trial attorney was ineffective for failing to investigate Lori Kaye Amaro, one of states witneess that would have been called to testify if defendant testified.Respondent conceded this witness was available to testify,should defendant have testified in trial.Relying that this witness did not testify respondent believes this ground should fail.Respondent admits the trial counsel stated that petitioner would testify that he had lived with a woman(lori Amaro)and due to complications decided to move out.Declining to file charged that amaro had filed, the petitioner was granted a restraining order (exhibit filed as added discovery"that just arrived M) which shows that there was a restraining order submitted .The report was filed on 10/09/96, and was filed falsely, while the (exhibit M4-M6) indicates that Lori Amaro made this allegation.(exhibit M1) does indicate that on 10/30/96 Lori's allegation was dismissed by Investigator Watson. Let the record show that Yablonsky was arrested on 10/24/96 at 2030 hours(exhibit M1), and that Yablonsky was releaesed on 10/25/96 ,while the detective states that Lori signed a waiver on 10/25/96 (exhibit M) of the additional discovery filed evidence also indicates that on 12/5/96 Lori was served a Domestic Violence/Harrassment (restraining order)on this date by John Mathers at 137 Zane,long beach at 3:05 p.m. Let the record show that the Courts orders signed on 12/18/96 by Fredick Chamberlin (pro-tem) that defendant (Lori Amaro) shall permit plaintiff(Yablonsky) his right to claim his property from defendant's home upon a 3 day notice.Case No. #ND026697.The order was for one year from Yablonsky and his kids.

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This discovery makes showing that Lori Amaro's report she filed false, based on the info rmation the p rosecutror was relying on.(RA70:7-15)Respondent states that petitioner claims that the attorney received this information just one day bef ore the attorney announced ready for trial. THIS IS FALSE, PETITIONER STATED THAT THE ATTORNEY RECEIVED CONTACT INFORMATION (ONLY) ONE DAY BEFORE TRIAL, THEN ANNOUNCED TRIAL READINESS WITHOUT [ANY] INVEESTIGATIONS AT ALL.In petitioners habeas brief he details the entire relationship, but not once does he say the attorney had this information just outlined in this reply. This information was the fruits of petitioners diligence, getting this information 2 years after trial through the bar associations instructiions to the a ttorney and through the petitioners filing and paying for this information from the courts himself.Respopndent relies on his erroneous applications of investigations of attorney's. The analysis that the petitioners claim in the Appeal Court, and it's denial requires deferance.Dictating that there is no declaration from the trial counsel as to what he did or did not do in terms of this witness. And that any additional testimony was not critical as to how the petitioner makes this out to be. HERE THE INVESTIGATIONS WOULD NOT HAVE PRODUCED TESTIMONY, INSTEAD THIS INVESTIGATION WOULD HAVE PRODUCED FRUITFUL [MATTER] THAT COULD HAVE BEEN USED TO IMPEACH THIS WITNESSES TESTIMONY TO EVERY DEGREE THAT SHE FILED FALSE CHARGES AGAINST Yablonsky TO GET EVEN FOR HIS MOVING OUT,AND NOTHING MORE.

PETITIONER ENTERS AN OBJECTION)

AGAINST THE FACTS THIS RESPONDENT AGAIN SAYS THERE WAS DNA outside the body of the victim,

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1 and on the body." This is a flat out lie."
2 Then this respondent stat_ that this evidence did bot come into
3 the trial, and therefore there was no need for this evidence
4 to be presented because the defendant did not testify,.
5 First,the attorney knew that the prosecutor was intending on
6 presenting this witness as prior bad acts, and even the court
7 suggested to the prosecutor that it should be brought in. The
8 petitioner repeatedly told this attorney that this allegation
9 was false, and did so after she wwas shown the police report
10 in the attorney's first discovery installment in june of 2009
11 (exhibit I12-I17) which was sent on July 31,2009.
12 Second, this attorney had told me that he had investigated this
13 witness and that he was ready for trial.
14 Third, This attorney asked for the contact information two months
15 before it was obviously given to him, and when questioned about
16 it in the marsden hearing this attorney told the court that he
17 did call "?(but which number?)" if he asked for this contact info,
18 and was given it the day before annou ncing trial readineesss,
19 stating that even if she was contacted that it did not mean she
20 wou ld have spoke to him.
21 Lastly, this attorney told me that there was three days to decide
22 if I were going to testify, and the courts instruction was that
23 if the attorneysaid that "THE DEFENSE WILL RELY ON THE EVIDENCE
24 AS THE STATE HAD PRESENTED" THAT IT MEANT THAT THE DEFENDANT
25 WAS NOT GOING TO TESTIFY " THEN RIGHT AFTER THE COURT RE_CONVEINED,
26 THE ATTORNEY SAID ["DEFENSE RESTS"], not what the court said
27 he would say, and therefore caught the defendant off gaurd.

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1 The proof of the investigations by the defendant from a prison
2 cell have revealed more than the attorney got in hi s demand
3 for contact information. The merits of the Courts orders in the
4 restraining order do reveal that the COMPLAINT then lied about
5 the presence of Yablonsky in the house. Had the attorney done
6 a re asonabl;e investigation, he would have found that this person
7 danced as a stripper for entertainment while she worked as a
8 BRinks armed gaurd, making her claim of innocense, very difficult
9 as to why anyone would be a stripper while she had a job as Brinks
10 armored vehicle operations, making incredible money, unless
11 she was extraordinarily promiscuous.The investigations would
12 have shown that Yablonsky's credit report shown that Yabl onsky
13 had lived in the home for several months up to the allegation.
14 Investigations would have shc wn that this person did not suffer
15 an injury,harm or action by the petitioner, and that the state
16 might have arranged to financially compensate thi s witness in
17 exchange for her testimony.
18 Finally, had this attorney investigated, he would HAVE revealed
19 that this person in fact was not raped by Yablonsky, and therfore
20 undermined the prosecutions (weight of alleged prior bad acts)
21 over the petitioner in an attempt to prevent him from telling
22 the jury the truth about this entire casee, that there was no
23 involvement in the murder of Rita Cobb, and that his relationship
24 was consensual. The weight of this witness was used to influence
25 the defendant from defending himself.
26 As the attorney allegedly said, her testimony, even if false
27

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1 would do more damage than if she had not testified.
2 This error in lack of investigations may have even shown that
3 this was in fact a paid witness, by the state, and had the investigat
4 been done, and presented after this person testified falseley
5 about being raped, could have dramatically undercut the states
6 entire case. The failure of investigations SHOULDN'T be applied
7 to a Strickland standard, there is no comparison to an attorney
8 making decisions after diligent investigations versud an attorney
9 that failed to make investigations and then would like to
10 make arguements on the (possibilities of evidences) had the invest-
11 igations actually been done. Kotteakos v.United States,328 US.750(1946
12 And finally, had this attorney done his investigations with the
13 resopurces the state hads, he would have uncovered the fact that
14 Lori Amaro had undergone several intakes with government ran
15 mental institutions with regards to her mental status and aggress-
16 ive manner. COLLEGE HOSPITAL The hospitals would not have releaased the exact
17 reason she was detained, but it would have surely supported
18 Yablonsky's version of what had occurdd in their home that forced
19 him to move out with his children.The initial mental evaluation
20 was due to a police influencial matter, with regards to Lori
21 Amaro acting extremely disruptive, and disassosciated with senses
22 and uncomtrollable behavior. This investigation would have proven
23 sufficient, that this alleged victim was extremely unreliable
24 according to all the matters that were relevant.Yarborough v.John-
25 son,520 f3d 329(4th cir.2005);Williams v.Taylor,529 US 362(2000);
26 Curry v.McCanless(1939)307 US 357;Hill v.Lockhart,28 f2d 832
27 (8th.cir.1994);Kinsella v. United States,361 US 234 (1960)

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Petitioner bring that attorney was ineffective for failing to investigate Sun Kye/Kye Sun Delgado.Respondent states this ground should fail for the same reaspns as ground nineteen.The background was presented as this matter was "dropped" when the (exhibit M7) indicates that the case was declined by the district attorney's office Lane Reeedman of ther DA'd office on November 3,1982 and final disposistion was noted by Sgt.Apodaca, and appoved by Detective Placencia #17 of the ElPaso police department.Respondent alleges that the prodecutor was intending on bringing this witness as prior bad acts to testify that Yablonsky pulled a knife onnher and raped her in a local bar.Resppondent does declare that this prosecution witness was [UNCOOPERATIVE] **and he surmised that was a reason why it 1981 case was not prosecuted.** This is in line with exactly what the petitioner told the attorney and had made comments throughout virtually every letter, that that rape was no **RAPE,** BUT THAT IT WAS A DISGRUNTLED PIMP THAT WAS DEMANDING MORE THAN THE $20 dollars that was paid to thios person in the first place. Petitiioener told the attorney there was some kind of deposition made when this crime was filed, and this witneess had told the truth to the attorney of defendant then, and the localk prosecutor that was assigned to, thie case, which is supported **THAT THE PROSECUTOR DECLINED TO PROSECUTE.**Petitioner had filed motion notices to the ElPaso police department to release the arrest history of this witness, afgter he was denied [any] reasonable access to evidence for this witneess, two years after the appeal had run it's course.

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(exhibit M) written by the Attorney General of Texas stated that there was possible [other] evidences of records with regards to this person Delgado/Kye, and that because she had been an alleged [victim] in that case, that this information would not be available to the petitioner.This information would have been a vailable to the public defender had he notified the Texas authority he was investigating, and his investing inquiry would have produced that this SunKyer?Delgado was a whore that worked in the Texas town of ElPaso, and when this crime was reported, that was her profession, and that this same person had a rap sheet with that vice squad for arrests as a whore, which is in line with the petitioners statementrs al;l along. That she approached the petitioner, offered to have hime but her a $60 dollar bottle of wine, in exchange for he rh to have sex with hoim.Not as she alleged in her original police report, that the petitioner approached her .

Respondnets analysis states this was raised in the California Court of appeal, and denied in the State Supreme court.Again the respondnet relies on the [declaration] by the trial attorney that he did or did not investigated this alleged witness, which was one of the states leading witness that was on the prosecutions roster of trial witnesses.

PETITIONER ENTERS AN OBJECTION)

THE RESPONDENT RELIES ON HIS COMMENTS THAT THERE WAS DNA LOCATED ON THE OUTSIDE OF THE VICTIMS BODY WHICH IS FALSE.THE STATES WITNESSES SAUKEL AND JONES DECLARED THERE WAS NO DNA LOCATED ON THE OUTSIDE OF THE VICTIMS BODY AS WEELL AS THE CORONER THAT PROCESSED THE CRIME VICTOIM. WHERIS RESPONDENT RELIES ON MISTATEMENTS,THIS COURT SHOULD VIEW THE EVIDENCE BEFORE THEM.

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While the respondnet relies that this witness was never presented, he fails to see that this was in fact one of the states witnesses that was on the roster and was expected to testify. Possibly she chose not to lie like the other witnesse and decided that she was not willing to perjur herself for this state prosecutor.

The trial attorney was informed of these details in the letters released to the petitioiner after the state bar had interveined, of the discovery witheld from the defendant by the attorney. (Exhibit I [all])(exhibit J[all]) Where the trial attorney was given an oppertunity to respopnd to hios actions or failure nbyt h this petitioner by certified mail, that was received on January 21,2014.The court should take notice that all the questions with in this evidence (exhibit J) that the attorney refused to answer these questions ,as was the attorney general,and was the door to the Bar associations help in retrieving the evidences. The trial attorney aks ed about the contact information, and when he was given it, he instead of investigations, announced trial readiness.Kotteakos.vUnited States,328 US 750(1946);Hill v.Lockhart,28 f2d 832(8th cir.1994);Yarborough v.John Son,520 f3d 329(4th.cir 2005);Williams v.Taylor,529 US 362(2000)Curry v.McCanless,(1939)307 US 357;Kinsella v.United States,360 US 234(1960).

21

Petitioner brings that the attorney was ineffective for failing to perfect a motion that was critical, with regards to recusing the County District Attorney's office.The californi a rules of court make the service of the attorney general in a recusal motion one of the [requirements] before the hearing.Respondent

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lays the sequence of movements with this motion, and the dated THEY WERE ACCOMPLISHED.Respondent then suggests the court ignored the Penal Code requirememt P.C.§1424(a)(1) and held this hearing, which the Attorney General was not served or notified.This is blatantly false, the attempt to have this hearing,was conducted in the Judges Chambers and off the record.There is an Augment record which claims this hearing transcripts were lost, which "too is false." I sat in the courtroom when the attorney's,prosecutor and Judge went into the chambers, and the court reporter was in the courtroom with the rest od the courts personnel.Respondent then su ggests the court rules on the motion, denying it(Aug.CT15-16)

Respondnets analysis was laid out before in his interests and comparison.Respondents analysis bases his arguement with other matter that was discussed in another ground, or will be discussed later, but ignores that this ground was cumulative, and regards the error on behalf of the attorney to forget to serve the attorney general.Failing to perfect a moti on.Relying on the basis as the County District Attorney used the case in his re-election campaign as a [political matter] is grossly understating the purpose of this motion that was being brought, and the attorney's failure to comply with ordinary practices of lawyers and rules of court with regards to critical motions.Here the error is cumulative, and goes to the foundsation that this attorney made [numerous] errors and could not comply with the rules of the court or the state.FAILING TO SERVE THE ATTORNEY GENERAL WAS PREJUDICIAL, BECAUSE THE ONLY OPPOSITION FILED TO THIS MOTION WAS THE DISTRICT ATTORNEY THAT WAS BEING RECUSED.

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(WHICH WILL BE DISCUSSED LATER IN THIS PETITION)Respondent then suggests that it was a matter of whethter the attorney general could decide whether he would take the case or not as a tool of voluntarily options, when the penal code is clear, that this attorney general [must] be served at least 10 days before the hearing was to be heard.Then suggests this error relies on speculation or not.

Attorney's are not at liberty to choose which rules to follow or not when it comes to the law or rules of court. It is within them rules that protect the interests of the parties involved, and this attorney's failure was prejudicial.Hill. Lockhart,28 f2d 832(8th.cir.1994()Kotteakos v.United States,328 US 750(1946); Kinsella v.United States(1960)361 US 234;Californi Rules of Prof. Cond.Rule 3-110(a)A member shall not intentionally,recklessly,or repeatedly fail to perform legal services with competance.Waysman v.State Bar(1986)41 cal.3d 452.(exhibit T)

22.

Petitioner brings that the attorney failed to perfect a motion that was critical with regards to the attorney's oppertunity to investigate witnesses that were states leading witnesses.That the attorney had written this motion under the penalty of perjury and writes it about this case but then applies another persons name on it, and case number, and expected the court to reasonable hear that motion.(exhibnit N)(exhibit N1&2,N3&4)Then instead of having an in camera hearing on PC 1050, this attorney announced trial readiness instead.Possibly to cover up the incompetant act in his motion writing.

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1 This attorney's error is cumulative and supports the core of this
2 persons actions outside the courtroom .Respondent suggests this
3 was a pre-trial discovery phase," which it was not".It was a trial
4 readiness hearing,where the attorney's were to decide on trial
5 dates. The discovery m otions phase had long passed.Respondent STATES
6 there is no citation to the record regarding whether trial counsel
7 made a motion for continuance which was denied.Where in (exhibit
8 N3) in the motions first lines 17-21, where the attorney distinctly
9 states that this was an attmempt to continue the [Jury Trial]
10 until the 31st of January, and was filed on January 12,2011 for
11 a court date of January 14,2011.(exhibit N4) where the attorney
12 declares his fiduciary obligation to George Yablonsky case
13 no .FVI021929.This sworn affidavit of obligation declares conflict.
14 Respondent then states thi s was possible a motion for another
15 person(RA75:12-13)Then suggests this trial attorney was ready
16 for trial since he announced readiness for trial.
17 IF THIS ATTORNEY WAS APPOINTED TO DEFEND GEORGE YABLOLNSKY WHILE
18 APPOINTED TO DEFEND JOHN YABLONSKY, THIS IS A CONFLICT OF INTEREST,WHI
19 THIS RESPONDENT IS SUGGESTING AS HIS [EXCUSE] FOR THIS ATTORNEY's
20 FAILURE. **This entire petition and discovery are about the attorney**
21 **was not only not ready for trial, but the attorney was not competant**
22 **to defend this petitioner in a reasonable manner, to any degree.**
23 Next the respondnet suggests this is Vague and conclusory.Petitioner
24 suggests this error is cumu lative, and the error is prejudicial.
25 Announcing readine ss for trial before the investigation had not
26 been completed is ineffective assistance of counsel. Writing a
27 motion in another persons name about a case that belongs to another
person is INCOMPETANT

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Cal.Rules of Prof.Cond.Rule 3-110(A), A memeber shall no t intentiona recklessl y,or repeatedly fail to perform legal services with competance. Had the attorney written the motion in the appropriate name, it would have been grant ed. It would have given him the time to at least call Lori Amaro, or Sun Kye/Delgado ,and certainly it would have gi)ven him the time to investigate their story. The error was prejudicial, and incompetant.Kotteakos v.United States,328 US 750(1946)';Hill v.Lockhart,28 f2d 832(1994)Kinsella v.United States,361 US 234 (1960);McCanless,307 US 357(1939)/.

23.

Petitioner brings that the attorney failed to call and subpena crucial witnesses at the trial , which could have possible given alibi testimony.Respondent relied there is no evidence of these persons testimony ordeclarations. That the petitioner did not present them in his habeas.Here this respondent again suggests that he did not receive discovery, when earlie r he commented on the discovery.Reppondents reliance of his outline of ineffective assistance of counsel is erroneously applied here.Respondent stated that trial counsel has a "duty to make reaonable decisions and investigations" that make particular decisions unnecessary.Here these witnesses were directly related to the petitioner, and were available to testify th at it is quite possible that when this crime was commited, that the petitioner was either with one of them, down in Downey.This crime allegedly happened around the time petitioners second child was being born, and this family was close when it conserned this birth.

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1 Respondent then suggests it is only the attorney's decision as
2 to what witnesses are to be called, or questions asked. This is
3 a gross mistatement when it comes to an attorney that was appointed
4 from the state, that hid every critical piece of evidence, and
5 then messes up everything in this case because he refused to actually
6 investigate this case to any reaosnable degree. Here the respondent
7 then gives the court the authority of an attorney's obligation,
8 which includes investigations to the defendant's "most important
9 defense" Sanders v. Ratelle, 21 f3d 1446(9th.cir.1994)and a duty
10 to adequatley investigate and introduce evidence records that
11 demonstrate actual.innocense,or that raise reasonable doubt sufficien
12 to undermine the the confidence of the verdict. Hart v. Gomez, 174
13 f3d 1067(9th cir.1999)(exhibit O [all]).
14 The timeline when this occured, was when Holly was pregnant with
15 our dughter Jasmine, and the crime happened allegedly Friday nite
16 on September 24,1985,. Jasmine was born on September 30,1985. The
17 facts are : Rita was killed that Friday nite after she left the
18 Sullivan Party . This was a time when Holly was taken to her parents
19 in Downey california, and it is the belief that this was when
20 the petitioner was in Downey, and had been since at least the
21 thursday befor e Rita was killed. These witness could have corroberated
22 that. There was no way petitioner was away form his family that
23 late at nite, in this point of our lives. The witnesses were credible,
24 and certainly would have testified that petitioner frequently
25 visi ted the family for week ends , and could have been there on
26 the week end in question. Respondent relies on petitioners movement
27 that these witnesses were not presented in trial.

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1 This grossly understates the error brought. This attorney did
2 not even subpena these witnesses after he was told they co uld
3 alibi his client.This attorney did not investige these witnesses,
4 and therfore it was critical for him to have these witnesses in
5 the trial. The attorney opined that the prosecutor had them on
6 his witness l ist, and therefore he did not need to subpena them.
7 This is false too. This attorney did subpena other state witnesses/.
8 and these two witnesses were critical to the defendants case.
9 These witnesses would have testified truthfully,United States
10 v. Harden,846 f2d at 1231-32.These witnesses would have provided
11 sufficient reasonable doubt, especially since this case was so
12 close, and had returned hoplessly deadlocked at one point. These
13 witnesses testimony would have influenced the entire panel.
14 United States v.Berry,814 f2d 1406(9th cir.1987);Tinsley v.Borg,
15 895 520(9th.cir.1990)Respondnet suggests there is a rule that
16 there shou ld be an affidavit from the alleged witnesses. This
17 error is that the attorney did not investigates or subpena crucial
18 witnesses, of which one was a retired law enforcement, and could
19 have priovided credible alibi testimony.The prosecutor did say
20 that Holly Brown would not testify, during the trial. That she
21 was not reliable to his interest.Respondent relies on his incorrct
22 read of the evidence, **THE TRUTH I'S THAT YABLONSKY WAS WITH RIT A**
23 **COBB FROM ONE AND A HALF DAYS BEFORE SHE WAS KILLED TO SEVERAL**
24 **DAYS BEFORE SHE WAS KILLED**(RA78:5-7).As outline earlier by petitioner,
25 his wife Holly was pregnant, and the baby was due. She was taken
26 to her families for the week before the baby was born, to get
27 one last vi sit in before the birth. John worked with his father
,out of town quite a bit.

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Petitioner had gotten off work early in that week to go get Holly from Downey. Possbly Thu rsday, and quite possibly Wednsday before Rita was killed.Rita went to a party the nite after petitioner had already left for the drive to Downey. She was seen at the S ullivan Party on Friday 23,1986, then seen at a bar on Friday after she left the Sullivan drinking party.

STRIKINGLY ODD

WITHOUT BEING PRODDED OR SUGGESTIVELY INFLUENCED OF WHERE RIT A SAID SHE WAS GOING, GREGORY HAPPENED TO CONFESS TO PICKING RITA UP AT THE SAME BAR SHE SAID SHE WAS GOING.There WAS NO WAY THIS INFORMATION WAS RELEASED FOR HIM TO FALSELY CONFESS TO WHERE SHE WAS PICKED UP. THAT HE CONFESSED TO PICKING HER UP AT THE SAME NITE SHE WAS LEFT LEAVING FORM THE SULLIVANS, HEADED TO A BAR. The evidence was that she was killed after 2330 hours on friday 23,1985.THIS IS EXACTLY WHEN GREGORY DID SAY HE PICKED HER UP,TOOK HER HOME AND KILLED HER BECAUSE SHE WAS SEXUALLY TURNED OFF BY HIM(GREGORY RANDOLPH)

Reasonable doubt is suggestive, and when there is reasonable doubt, it can in fact be supported by testimony of alibi witness testimony.

Since the evidence is that the DNA that belonged to Yablonsky was found to have been collected, examined by [numerous] experts and two of the states leading experts testified, that Yablonsky's DNA was placed into the vagina from "one and half days to several days before Rita Cobb was killed," and there was no other DNA collected from the body, that would support recent sex, does expertl y suggest the sex was condi cted over o ne full day before Ritawas killed. T his brings into queestion WHERE WAS YABLONSKY ?

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It is quite possible that he was with his pregnant wife around midnite wha n Rita was being killed,or he was with his wife's family when Rita was killed, but this is exactly why these witnesses were to be called. Since there was no investigations, and these witnesses were not called into the court,even thou..gh they were on the prosecutors calendar for testimony, it does suggest that the prosecutor too knew they would provide alibi testimony, sufficient to produce reasonable doubt. Since Yablonsky's DNA was not the facto r in the murder, and these witnesses were direcrtly acassociated and connected to Yablonsky, it is possible they would have testified truthfully that Yablonsky w as not a nite owl, that lurked about after midnite, or that he was family oriented and spent toime with his inlaws 180 miles away[frequently].At this poi nt we e will never know. But this error is prejudicial and interfered with the petitioners right to confront his witnesses, and to present a defense.Kotteakos v.United States,328 US 750(1946) Hill v. Lockhart ,v28 f2d 832 (1994)Yarborough v.Johnson,520 f3d 329(2005);Raygoza v.Hulick,474 f3d 958(7th.cir.2007)(counsels failure to investigate alibi witness was IAC because additional witnesses existed and judge was influenced by lack of evidnce supporting the defendant alibi)Stricklland v.Washington(1984)466 US 668'Kinsella v.United States (1960)361 US 234;Curry v.McCanless, (1939)307 US 357.

24

Petitioner brings that his attorney during a Marsden hearing had intentionally mistated facts.Respondent sets his background that

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petitioner stated that the attorney "did not" want to talk to petitioner which is incorrect.The petitioiner stated that the attorney "would not" discuss the case with petitioner.(Marsden Hearing from 4/15/11) (MH1,2:13-16)"From the very beginning my attorney conversations with Mr.Sanders have always been cut very short.He never wanted to discuss [any] of the context of any of this case,whatsoever." Then the respopndent states that the case was taken off calendar because of the re-election race, when this is directly ti ed to another ground that will be discussed later, petitioner addresses it shortly.This trial date that was on calendar (Exhibit A1) does in fact support this claim, since the record does show it was cancelle around that date June 11,2010.It was discussed that the attorney because of the re-elecrtion campaign flyers that were mailed to the entire county populatuion, was going to file a motion for change of venue.This was agreed to be both parties. AT SOME POINT IN AN APPOINTED RELATIONSHIP, WHAT GIVES THE ATTORNEY "RIGHT" TO IGNORE [EVERY] PLAN OF DISCUSSED DEFENSE".Respondent then states that this discussion occured after trial, which is blatantly ignorant, since his claim that the change of venue could occur after trial is insanity to determine what he is speaking of.(MH1,4:11-17)

" He was suppose to file a motion to change venue because of the re-election flyer.'And during voir dire we still had four peopple out of the 30 that were selected that stated--they were honest enough to say they had received this election flyer and stating that they were able to make fair decisions.That would mean that there were 26 people that had received it, to the understanding that mMichael Ramos did flood the entire SanBernardino County of registered voters when he wasa tryimg to get his re-election"

"THIS MEANS THAT 26 OF THE JURORS CALLED WERE PREJUDICIAL ENOUGH TO LIE SAYING THEY DID NOT GET THE FLYER'S", "KNOWING THEY DID"

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SAID

Respopndent then states the attorney - he met with petitioner 4-5 visits at the detention center,(I think he meant[at] the detention center.(exhibit P1) does state that jail suspended jail legal visits(which will be discussed later in this petition)

As the petitioner reminds this court, that this ground brings that the attorney mistated facts during the marsden hearing, with regards to what occured inthe hearing before Judge Nakata, in Dept V-3 during pretrial motions.(PHB134:9-13) and then(PHB134:20-135:14) Where this attorney denied this was what happened to dispute the marsden hearing being heard.As outlined inthe addresses above with regardss to this claim, tnat Judge Nakata gave indications there was ["ABSENT THAT RECORD,I DON"T SEE A LINK BETWEEN MR.YABLONSKY AND THE CASE"].

Here Mr.Sanders states (MH1,17:16-19)"I have no idea what Mr.Yablonsky is talking about,about the 995 motion.I never heard--I think it's proposteropus that Judge Nakata said ,oh,I'm going to grant the motion.That just did't happen".

(MH1,3:27-4:3)[YABLONSKY]"THEN MR.NAKATA MADE A DECISION STATING THAT THERE WAS NOTHING IN THE FILE THATHE [HAD],AS FAR AS HE HAD REVIEWED, THAT TIES ME TO THE CRIMES, AND HE WAS WILLING TO DISMISS THE CASE AT THAT TIME."

(THIS IS WHAT YABLONSKY SAID IN THE MARSDEN HEARING, AND SANDERS)

Court

"I have read and considered the preliminary hearing transcripts dated July 28,2009 consisting of 37 pages.I have read and considered the motion to dismiss special circumstances pursuant to PC§995 filed by Sanders consisting of 5 pages,an opposition filed by MRThomas of four pages.["IS THERE ANYTHING ELSE I NEED TO READ OR CONSIDER ?"]

Sanders

["I don't think so'[]

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Court

1 The contents of that record were [not, admitted into evidence.
2 I don't know what it is."[ABSENT THAT RECORD,I HAVE DON'T SEE A LINK BETWEEN BETWEEN MR.YABLONSKY AND THE CASE"]
3

4 The arguement came ab out because the attorney said that it did
5 not occur like it was just laid out, then festered when the atorney
6 made an attempt to submit the evidence existed, without at least
7 challenging the states flaws or error is submitting the appropriate
8 evednce at the appropriate time or manner. This distinctly shows
9 the attorney did not have his clients interest, and therefore he
10 lied during the marsden hearing.Under that authority brought by
11 the petitioner, it was the courts responsibility to investigate
12 the truth and did not.Mickens v.Taylor(2002)535 US 162(defendant's
13 conflict with defense counsel of interests had burden of proof
14 of establishing that a conflict adversely affected the attorney's
15 performance even where the trial judge failed to inquire into potent-
16 ial conflict about ,or knew or reasonably should know),122 s.ct.
17 1241,152 lled.2d 292.
18 Respondent then suggests that just because the attorney comments
19 that his client said while being inquired in font of the prosecutor
20 in the courtroom,"no, we're good" is pure insanity.First when this
21 attorney would not discuss the case, only came to the jail twice,once
22 for 45 minutes where we discussed he [was] going to have the DNA's
23 trested, and once when he was there for 10 minutes to have me sign
24 a affidavit, that this should be considered as [reasonable] to
25 discussthe case. The majority of our discussion were in front of
26 jail house snitched, the entire prosecution team, and expect the
27 defendant to discuss [any] content of the case is worst than insanity
it goes to this attorney' entire character.

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(MH1,14)I,I wrote down that we didn't meet often"."And I have to say that I met with Yablonsky more often than any other client I had"

The respondent then goes on and on about issues that are not directly related to this arguement, and are either discussed earlier or later in this same petition. This claimwas not whether the courts proper ly denied the marsden hearing and it's focal point is on the attorney's intentional and deliberate mistatement of facts, that are directly related to a hearing that was conducted. The reason for this claim was that the court denied the marsden saying" " the court will have to take to the attorney's word over the defendan This is directly contradictory to the authority bro ught. It was this attorney's word that as taken over the defendant's in a hearing regards to conflict.

PETITIONER WOULD LIKE TO PUT ON THE RECORD

ABA Model rules of Professional conduct;

Rule 1.4 "A lwayers shall explain to the client to the extent neccessary to permit a client informed decisions regarding the [representation]".

Rule 45.2 Some of the related decisions that defense attorney should make[only] after consulting with the client;

A) What witneesses to call
B) When and how to cross-examine witnesses
C) What jurors to accept or strike
D) What trial motions to make
E) [WHAT EVIDENCES TO INTRODUEE]

THE STRICKLAND TEST PROVIDES A TWO PRONG TEST:

1) That counsels performance fell below objective standard of [reasonableness]
2) That prejudice occured, with a demonstratable reality had the error not occured a different result could have occured.

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THE SECOND PRONG OF THE TEST STATES THAT:

"The defense--counsel's performance prejudiced the defendant resultin in an unreliable,fundamentally [unfair] outcome in the proceedings"

While the respondent admits there was evidence withheld he also comments on the [redacted]statements from the interrogation and that the attorney attempted to present the fingerprint evidence. Petitioner addresses both of these issued in ano ther ground from this petitione.

First; (MH1,18:22-28)(Sanders rebuttal)

"" I DID TAKES PAGES OUT OF HIS STATEMENT WITH [MR--] WE REDACTED HIS STATEMENTS BEFORE IT WENT TO THE JURY BECAUSE THERE WERE REFERENCE TO OTHER CRIMINAL ACTIVITY,ALLEGED CRIMINAL ACTIVITY,USE OF DRUGS,[["THINGS LI KE THAT" AND WE DID REDACT A NUMBER OF PAGES BEFORE IT WENT TO THE JURY."I FELT LIKE THAT WAS IN THE HIS BEST INTEREST." (RT454-456)(PHB14618 -22)

Prosecutor-As far as Mr.Sanders has provided,i don;t have any problems with redacting stuff.The only question I did have for Mr.sanders is theres reference to at the end of the interview where Mr.Yablonsky is invoking [MIRANDA].I was planning on taking that out unless you want to keep it in.

Sanders--- I did this very late last nite,and I did forget when he invoked [MIRANDA[], to take that out.

PETITIONER WOULDLIKE TO RECALL THE RECORD FROM PAGE 86 OF THE REPLY, AND SPECIFICALLY ABA MODEL RULES OF PROFESSIONAL CONDUCT RULE 1.4 WHERE A LAWYER SHALL EXPLAIN TO THE CLIENT WHAT EXTENT WAS NECESSARY TO PERMIT A CLIENT INFORMED DECISIONS REGARDING REPRESENT REPRESENTATION.

RULE 45.2 RELATED DECISIONS TO MAKE [ONLY] AFTER CONSULTING WITH THE CLIENT E) WHAT EVIDENCES TO INTRODUCE.

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This attorney just swore what he had removed out of the interrogation recording, and intentionally and deliberately witheld the facts that he had removed out his client invoking MIRANDA.There was also a moment when the judge also said that there was only drug and criminal activity removed, but this is not reflected in the transcrip Miller v.Blackletter,525 f3d 890(9th.cir.2008)stating that there is of no view of violation to sixth Amendment when an attorney was refused compliance by client cooperation due to conflict of dislike or distrust.Plumlee v.Masto,512 f3d 1204,1211(9th.cir.2008) and there is no right to substitute new counsel simply because the defendant is dissatisfied.

This reflection by the respondent is simply rediculous, when in comparison through this entire record.The defendant repeatedly tried to help the attorney, but wanted the attorney's actions and decisions to reflect the defendants interests, and to allow the defendant to enjoy his right to a fair trial, and to be represented by effective and meaningful counsel, who made decisions according to law, actions according to law, and rules of court. This is not the case with regards to Mr.Sanders. His failures corrupted the entire defendants trial in so many ways this case produced a conviction of an innocent man because of careless trial tactics and LACK of professional behavior. This case cannot and should not be compared to a representation where the defendant was not cooperative, or dissatisfied customer, as in Miller or Plumlee.

THIS ATTORNEY LIED DURING A MARSDEN HEARING IN DEFENSE OF HIS REPRESENTATION.The fact he had invokation of MIRANDA removed, but refused to admit it does raise [CONSTITUTIONAL FLAGS]

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Respondents habit of addressing different issues than what is in the record of dispute is how this arguement had blossomed here. The error is that the attorney lied during Marsden hearing.The facts before this court prove the attorney did in fact lie to the trial court to salvage his errors.Mickens v.Taylor(2005)535 US 162:Kotteakos v.United Sates ,328 US 750(1946)Hill v.Lockhart 28 f2d 832(1994)Omnia Commercial Co.v.United States(1923)261 US 502;Curry v.McCanless(1939)307US 357;Kinsella v.United States(1960) 361 US 234;Strickland v.Washingtom(1984)466 US 688[104 s.ct.2052].

25

Petitioner brings that trial counsel committed ineffective assistance of counsel by cumulative errors from grounds nine through twenty-four.Respondent rests oh his arguenments abvove as reflection [no] errors had occured.Respondent then states there is no reason to dispute the error, based on his principles outlined earlier.Claoiming that the petitioner has failed to show any error,much less cumulative error.

Respondednt does not address any of this arguement and therefore forfeits his obtion to dispute.

Petitioner relies on the record according to proof outlined inthe Exhibits called, and petitioners habeas ,Petitioner habeas brief and all records, authority are incorporated by referance herein. Kotteakos v.United States,328 US 750(1946);Lockhart v. Hill v.Lockhart,28 f2d 832(1994)

The very basics of the Sixth Amendment require that a defendants rights are defended and represented by an attorney that is qualified

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1 not only in the ruels and applications of laws of the state and
2 of the United States, but in the intelligable ability to realistically
3 review a [matter] be it evidence,witness or even a trial tactic
4 and to communicate with his client as often as it is neccessaary
5 to keep them "fully" informed. To discuss the case to every possible
6 reason ,sufficient to make reason able and justifiable decisisons
7 that are inthe interest of his client. Then to investigate the
8 [entire] case before he mak es any competant and reliable decisions
9 that will affect his client's rights to a fair trial, considering
10 all the laws of the state and of the United States, but to
11 make decisions witho ut [any] investigations other than
12 calling some of the witnesses and relying on the governments evidence
13 without any considerable effort through investigations is worst
14 than ineffective assistance of counsel.It descriminates the very
15 reason the constitution is in existance.Just becuse the defendant
16 does not have the immediate funds to hire professional attorney's
17 to prote ct his interests and rights, does not give the state the
18 authority to ch eat an accused of his god given rights to protections
19 of life,liberty, through a hired hand to speak the language of
20 the law, to make decisions without considering his clients interests,
21 thoughts, then to lie to his client repeatedly, hide the evidence
22 of those lies until his right of appeals had exhausted is INHUMANE.
23
24 26

25 Petitioner brings that trial counsel,district attorney,detective
26 Alexander ,and the Judge conspired to alter evidence.Petitioner
27 was informed of the transcripts that he was given in June of
2009 that were incorrect would be used in trial in verba tim
form.(Exhibit P3)Outlined in the letter to the attorney August
2010.

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1 (exhibit I1- I25)Where petitioner repeatedly told the attorney
2 there were errors inthis transcript.The trial transcripts were
3 witheld from the petitiioner until the appellate procedures had
4 exhaus ted the state courts.(PHB145-150) Petitioner brings the
5 actual statements from the records of the judge,attorney,prosecutor
6 altering the transcripts for trial purposes.(exhibit B1,B2)are
7 the two seperate front cover pages of this alleged [original]
8 and [accurate] transcript from the interrogation.Notice on
9 the very bottom of the page date November 23,2010, was an indisator
10 that was shown to the jury as well, to suggest this transcript
11 was conducted on that date 11/23/10, and reviewed by Det.Rob
12 Alexander .(exhibit Z ,49A[477]that was entered into evidence on
13 1/27/11) Then pages 1-113 and then pages 1-136 are to indisate
14 the same transcription.The exhibit 49 which is a disc of the interogati
15 was placed onto the record evidence and sent to the appeal attorney
16 for review of evidence. Exhibit 49 [the disc] is different than
17 the 136 page version of the interrogat ion.Making this three seperate
18 and different versions of the interrogation recording transcript.
19 Petitioner does maintain that there is still anther another set
20 of transcripts shown to the jury, where the facts that petitioner
21 owned a blue pinto was removed., and the petitioers wife was present
22 when the interrogation was conducted.(Petitioner does make fair
23 showing)of the altered evidence that was presented to the jury.
24 Respondent relies that this claim might be a [species] of ineffective
25 assistance of counsel that derived from some sort od [antagonistic]
26 relationship. Petitioner relies on his outline in habeas brief
27 pages 145 through 150 as his claim of error.

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1 Petitioner outlines the crime this act holds of the state penal
2 codes 132,134,135 and 182(a)(1)(2)(5)That reads if two or more
3 persons conspire(1) to commit any crime,(2)falsely and maliciously
4 to indict another to be charged or arrested for any crime,(5)to
5 commit any act injurious to the public health,to the public morals,
6 or to pervert or obstruct justice, or the **UNDUE ADMINISTRATION**
7 **OF LAWS ARE GUILTY OF CONSPIRACY TO COMMIT A FELONY AND IS PROSECUTABI**
8 **IN THE SUPERIOR COURTS.**
9 Petitioner precisely outlined the elements of an altered transcript
10 that w ould be shown to a jury through Ca.Ev./Codes 1401(a),1402 (b)
11 while this section does indicate that ,Authentication of a writing
12 is [required] before secondary evidence of it's content may be
13 received in evidance,requires that a writing be authenticated even
14 when it is not offered in evidence but is sought to be proved
15 by a copy or by testimony as to it's content under the circum,stances
16 permitted by section 1500-1510.Ca.Ev.Code section §1402,That a
17 party producing a writing as genuine which has been altered,or
18 appears to have been altered after it's execution,in a part material
19 to the question in dispute,must account for the alteration or appear-
20 aace therefoof.**He may show that the alteration was made by another,with**
21 **his concurance,or was made with the consent of the parties affected**
22 **by it (DefendantYablonsky),or otherwise properly or innocently**
23 **made or that the alteration did not change the meaning of the**
24 **writing in evidence,BUT NOT OTHERWISE.**
25 (RT508:22-509:4) Prosecutor -P, Detective -D
26 P- As far as the digital audio portion,have you had an oppertunity
27 to review the transcript,along with the recording,to ensure
that it was accurate ?

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D- Yes.

P- As far as exhibit 49A,which is the recording do you believe that that's [accurate] to the best of your ability ?

D- Yes.

The prosecutor then played the transcript and recording audio to the jury with the same date posted onto the screen as the both transcripts, that this was transcribed on November 23,2010. The state knew these transcripts were altered and that they had removed that defendant had invoked miranda, among other things, but still had his lead investigator tell the jury this transcript was accurate.This is false and certainly incorrect to all degrees. The prosecutor then after playing the recording to the jury had the courts give an instructuions with regards to this recording trandcript.(RT550:18-23)

Court-I HAVENT BEEN IN THE 21ST CENTURTY FOR LONG YET,I"M KINDA LO W TECHGENERALLY.REMENBER WHEN YOU SAW THE TRANSCRIP T?? SEE IT HELPS YOU UNDERSTAND WHAT"S ON THE TAPE, BUT THE RECORDIN MEDIA IS THE [ORIGINAL]

The problem with that instruction has several factors of error. First, the court knew the recording was altered before the jury listened to it, and after he heard the prosecutor give testimony by his expert investigator detective Alexander that it was an accurtate cop y of the interrogation recording, the court bolstered this altereed transcript telling the jury it was an [original media],,. This left the jury to believe that what they seen and heard was not altered. The court tried to disaasociate hi s actions by telling the jury [I'm sort low tech generally].

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The court knew the transcript was altered and that the defendants invokation of MIRANDA was erased from the trial version. After the jury heard the recording, and the jury instructions, they sent one request from the deliberations asking "when the recording ended, the defendant was placed under arrest, was his miranda rights read?? (RT548:12-549:1) The court instructed the jury that Miranda was a matter of speculation.This claim would be considered as false evidence presented to the jury, ineffective assistance of counsel (to say the least),Prosecutorial misconduct(subornation of perjury) Perjury of the detective Alexander, and Courts abuse of discretion in applying erroneous jury instructions on two counts,

1) The recording being an [original media] knowing it was not.

2) That Miranda was a matter of speculation up to the courts'.

Respondent then relies there is no proof of this altered transcript or that it was presented to the jury in a prejudicial manner.

FIRST The transcript was not altered in as much as the date it was played to the jury with. November 23,2010,which was shown to the jury on the screen. This does to the aware eye as the court had instructed for the jury to more rely onthe screen rather than the sound for their guidence as to what was said, and what was said can be used against the defendant.

SECOND The courts instruction"But you can only take that statement of the policeman,interviewer,as true tothe extent that it helps you to understand the response the defendant gives." This distinctly prejudiced the defendant becsause the recording was altered in numerous places. As the defendant told the attorney on page 50 lines 26,27 through page 51 lines 1 through four are where this recording was altered. Erasing that the petitioenr offered a non-custoidial place to discuss this case.

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1 This was told to the attorney in June of 2009 when he gave me the
2 "first" copy of this transcrip t. It obviously did not have the November
3 23.,2010 date on it. Through all the cell destructions and destruction
4 of property, petitioner no longer has that copy.
5 **Third**,It was not the petitioners duty to remined the courts of the
6 rules of evidence, not was it expected for the jury to know the
7 rules ei ther. Ca.R.Evid.§1402 is crystal clear. That if this party
8 inten ded to alter the tr anscript and PLAY it to the jury, they
9 first had to present the first copy after authentication, and present
10 both copies, account for the alterations and make the alteratiuon
11 by the party it affected [consent] or that the alterd version did
12 not alter the meaning of the recording instrument,AND NOT OTHERWISE.
13 Federal rules of Evidence 901(a),901(b)(1)Where the parties were
14 required to authenticate these recordings evidence,the proponant
15 must produce evidence sufficient to support a fi nding that the
16 item is what the proponant claims it is.
17 (b1)Testimony of a witness with knowledge.Testimony that an item
18 is what it is claimed to be.
19 This does not include false testimony as an available to authentication
20 option. Where here the detective under direct examination by the
21 prosecutor"are the transcripts accurately transcribed from the
22 recording /"? "Yes they are" Does not qualify as authentications.
23 Even if the court gives a jury instruction as a remedy that too
24 is false, That this "is an [original media]" when he knows it is
25 not.
26 Since the respopndent does not dispute this matter he then concedes
27 this error should be decided by the present courts according to
proof.

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The respondents claim (RA85:24-86) where he states that there was no objection by the petitioner. This error of authentication would be objectionable, excep t under that line of reasoning, "there would not be jails enough if every criminal confessed to their crimes and accepted sentencing, how would there"?

STRIKINGLY ODD THOUGH

AS THE RESPONDENT CLAIMS THE REDACTIONS HE FAILS TO ACKNOWLEDGE THE INVOKATION OF MIRANDA, OR TH AT THE DETECTIVES REPEATEDLY SAID THEY KNEW YABLONSKY WAS A SUSPECT.

The respondent then states there was a formal stipulation of what would be removed. (DIFFERENT) PETITIONER DOES NOW HAVE A 3RD COPY OF THIS INTERR. TRANSCRIPT OF (STATES EXHIBIT 49)

DISTURBINGLY INTERESTING

Respondent tells this court that the attorney allowed the removal of these redactions of statements by the police and some statements by the petitioner.HE FAILED TO TELL TELL THIS COURT THAT IT WAS THE PROSECUTOR THATWANTED THE INVOKATION REMOVED, AND THAT THE ATTORNEY OPINED TO AGGREE. PETITIONER KNEW NOTHING OF REMOVAL NOR AGREED

Then this respondent leads this court to think that this is the ordinary practice of the courts ORDINARY NORMAL COURT PROCEDURES, TO RELIEVE THE COURT"S RE PORTER.

Petitioner has brought forth sufficient showing these errors by the attorney, prosecutor, and the judge were meant to defraud the petitioners rights to fair impartial jurors.Respondent then suggests there is no proof of this error"There is nothing in the record to show there were any missing pages of material in the transcript, or that both sides colluded against petitioner."

EXCEPT THERE ARE 240 PAGES OF PROOF IN EXHIBIT Z (Petitioner is mailing certified mail a copy of the exhibit 49 (DISC)

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1 1)The entire resording lasted 3hours and 48 minutes
2)At page 131:18 it had been 3hrs.and 26½ min. 21.5 minutes from
2 page 131To136 [?],where pages 113 to 119(6 pages) was 8Min.
secondes (indicating an 11 minute difference of av.time)
3 3) The drive from 1700 e.Silva to the police stating was (11minutes)
4 4)P.1:5 (9:15) to P.56:16 (10:35) indicates 1 hr.20min. according
5 to timer, which shows a one and half minute portion of the
conversation is missing.(1½ minute missing)
6 5)This conversation in the driveway at P.52:3 right after the word
7 (wife.) about the destination.Petitioner offered to go to the
8 cafe spires, and was told ,no, that it would have to be more
cofortable than that, petitioner asked what did they have in mind
9 and was told the police station,petitioner asked,more comfortable
10 for whom.The officer said we have to go to the police station,
11 and then asked (52:3)"Do you mind going with us ?".
6)P.20:15 the word(too) was left out after word (military).
12 7)P.21:20 J.Y. answer was(Greece tour) not (inaudible)
13 8)P.29:5 The words (she had a garage)left out,not (inaudible)
***** 14 9)P.45:21-22, the officers asked whethter Yablonsky had a key to
Rita house, and was told [NO[ ] but the transcript says yes,
15 when the recording [cvlearly] says [no].
******16 10)P.46:1-2, the officers asked whether [she] had a pass key to
17 defendants apartment,Yablonsky asnwered [Yes she did] the trecoddin
shows this,but the answer was changed top [No].
18 11)P.51:16, The recording shows an answer (but I spooke to), not
19 (inaudible).
20 12)P.52:16 to52:26 The counter moves backwards (hidden time)
***** 13)P.70:8 (Yeah,all day) changed to (yeah,(inaudible)
21 14)P.71:6 the word (liduid) was changed to (inaudible)
22 15)P.91:9 Answer changed from (No) to (inaudible)
23 16)P.91:15 the answer (I don't know) changed to (inaudible)
17)P.97:10 the words (She said) were changed to (so)
24 18)P.107:9 The word (NO) was changed to (inaudible)
25 19)P.110:29 the word (noice) was left out after (lady)
******26 20)P.119:17 the word (No) was changed to (you were gonna...)
****** 21)P.119:23 the word (do) was left out before (you).
*****27 22)P.120:10 The words (You guys are) wasa changed to ((inaudible)

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(STATES EXHIBIT 49)

1 The disc 49 exhibit actually shows answers altered from nc to
2 yes, in areas of incriminations(second set of 136 page int.)
3 The f. act that these state actors altered this recording, is
4 because without the altering, they would have revealed the MIRANDA
5 requirement/s and that the defendant was not sick as they had
6 implied (appeared to have an upset stomache) when presented this
7 to the jury as if Yablonsky was displaying a guilty conscience,
8 and nerveus responee, when in fact, this was not the case. Th e
9 d isc does also show that the attorney did not attempt through
10 investigatin=ve practices, to authenticate the recording devices
11 before he (allegedly) erroneously agreed to redact the recording.
12 The was no formal authentications, becauseif it
13 had, it would have shown that this recordings were altered, tech-
14 nically, and mechanically to make the recording to appear as
15 if it were not altered. A forensics audio technician could develop
16 the altered areas with computer programs, showing discrepecies
17 in the sequencial sound of the background.Being that the area
18 of offer of non custodial area was outside, and the background
19 distortion noises would make the showing. This was hidden, to
20 prevent the state showing the intentional violation of the Fourth
21 Amendment, and this being an interrogation,not interviesw. The
22 altered answers were shown to the jury to make the defendant
23 look and appear guilty and deceptive, one area in for example.
24 The defendant was asked whether he had a key to the houde of
25 Rita Cobb, and told the detectives [NO]. But the trascript shows
26 an answer of yes. The exhibit 49 that was placed onto the record
27 and into evidence makes this showing. There are numerpous alterations
28 and answers just left out or rearranged to look deceptive.

(exhibitZ)
(2ND 136 PAGE SET)

As you can see on page 96¼ that there are errors in the time of
recordings, and that answers were altered to incrimate the defendant
and bolster the states suspicions.The naswers were changed or left
out intentionally, and there was no way to know this without listening
to the recordings, which was not done by the attorney, or was,
but still allowed the alterations to be conduct4ed. This recording
disc had been sent to the attorney's Smith and Levy in reference
to Yablonsky's defense, and interfered with his ability to defend
his rtightd.The errors were not misleadiong, they were intentional
and deliberate. The result was an altered meaning of the anssers
that was to be assessed by the jury.The answers were not just the
words printed in the transcript, it took great effort, because
audio had been taken from other areas of the interrogation to be
synthesized into the 113 pages version which was played to the
jury. Specifically one place for instance, where the defendant
was asked if he had a key to the victims house. The 113 transcript
and audio shows the answer was[yes], when the disc clearly shows
the answer was[no].It was not a matter of mistaken transcription
or clerical error. A technician in audio electronics or sensitive
computer program was used to exchange the answer from no to yes
without it making a differece sound of it. As the prosecutor said,
"he had to do it, to make sure [everything was takemn out that
needs to be takenm out] and for it to sound right.The court knew
this was altered and gave an instruction the ()**[he wasn't in the
21st cetury for long,that he was kinda low tech, but the recording
they (jury) listened to was the original media.**Thjis cannot be
so, because the media was altered to change the answers.

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Mickens v.Taylor(2005)535 US 162;Kotteakos v.United States,328 US 750(1946)'Hill v. Lockhart,28 f2d 832(1994)'Curry v.McCandless(1939 307 US 357;Kinsella v.United Satets (1960)361 US 234;Strickland v.Washington(1984)466 US 688.

27

Petitioiner brings that he was interoogated in two seperate locations without MIRANA warnings.Reppondent argues that there was no motion made by the attorney, and that there are n o facts as to the particular motion or how the trial court woiuld have ruled. Here the petitioner told the attorney this, and that the alteredd recording would prove it if they will provide the unaltered recording for verifiacation, that petitioner repeatedly tried to end interrogation and was not allowed to. Offered a non custodial place for the interrogations and was refused and forced to the police station.That the petitioner was gaurded, by two sheriff's detecctives in his home, while another detective gaurded the front home access, and several officer were around the neighborhood,waiting to search the home. The petitioer was forced to the police station, under severe escort by [numerous] officers from several agencies and would not have been allowed to deviate from the escort that would lead [anyone] to feel they were free to leave or deviate. from the escort.That when he was at the [locked] police station, he was not allowed to leave, and was under direct visual observation while he was there. That when he did try to exit the police astatuion, the officer that monitored the door would not let him leave ,and motioned for him to return to the interrogastion area of the department.

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Petitioner even invoked Miranda and was not allowed to end the interrogation. The Prosecutor had the invokation removed from the interrogation recording, and while the attorney opined to forget to have it removed, the court and prosecutor coersed him to agrree to erasing it, **WITHOUT THE PETITIONERS KNOWLEDGE, CONSENT, OR AUTHORIZATION.** The court had asked the attorney if he was bringing the Mirandas issue, and the attorney without discussing this possibility or it's consequence, said he would not. At this point the petitioner was under the impression that the verbatim format of the interrogation was going to be played to the jury.

While respondent outlines the elements of [custody] holding the circumstances of the Miranda violation under Dickerson cannot be considered here. The elemenets of this custodial interrogation exceed the element of consideration in Dickerson. Under Rhode Island v. Innis, 466 US 291(1980); Schneckloth v. Bustamonte, 412 US 218(1973) detail the "custody" and "interrogation" factors of Miranda.

"custody" for Miranda purposes means (1) actual arrest or (2) the "functional equivalent of a formal arrest". Berkemer v. McCarthy 468 US 420(1984).

Here the petitioner was apporoached by two seperate agencies at his house, while one sat gaurd of the front access, the others approached the petitiioner. Petitioner was not allowed to end the interro gation thatwas conducted in his home by two detectives that were on duty and questioned about the crime, his assosiation with the victim, and was not allowed to leave the house without escort. (Exhibit Q1-2) are the arrest warrant that was filed and ordered because of the probable cause sworn affidavit by Detective Alexander.

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That was signed on same day as warrant issued March 4,2009(Exhibit Q1,3)Then the search warrant,probable cause (exhibit Q1,4θ7)and the list of officer when this action occurdd on March 9,2009 that were present (exhibit Q1,8-11) Does indicte there was sufficient force to reasonably convince anyone there was an arrest factor. The arrest warrant alone states this person is to be arrested, not detained, questioned, or even evaluated for possible arrest. Malloy v.Hogan,387 US 1(1964);U.S. v Craighead,539 f3d 1073)(In custody despite being told he could leave because defendnat was escorted to a storage building for interview.(see the petitioner was escorted to a locked police station and was escorted by [numerous] officers from different agencies ,of different counties) Sprotsy v.Buchler,79 f3d 635 (7th.cir.1996);Weeks v. United States ,232 US 383;Map v.Ohio,367 US 643.(Page 55 of the 136 page version of the interrogation transcripot)(136INT)

(136INT55:16-56:4)

RA-Uh,this is detective Alexander,it's approximately uh,10:30 hours,Melody and John are gonna drive continueover to gsignal hil P.D.uh,we're gonna continue our interview with John over there.

GM-They'll be i a white Ford Expedition,four,yellow,queen,victor,one two,six(4YQV126)

RA-Melody is driving

Radio- Looks like his girlfriend,wqife id driving and uh,apparr-ently he's a passenger they're gonna follow behind(inaudible) copy.

RA-(inaudible)

GM-Yeah, whty don't you call them it sounds like they are watching us but...

RA- Call who ?

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1 GM- Call Scott let him know what's going on[I''ll get him] Hey
2 guys uh, we're following him to signal hioll P.D. his fgirl fi friend's driving so have yopu guys hold off on the searchwarrant
3 he's going a willingly talk to us at the statinn
4 RA-uh have them contact...
Radio_ copy
5 RA- okay,hety scott coulkd you do me a favor contact signal hill P
6 D and let them know that we're on our way.
7 Here the officer have already arranged the interrogation place inside
8 the police station, have the arrest warrant in their possession,
9 and have sequested the assistance of the LongBeach police department,
10 Signal hill police department, and brought officers from their own
11 jurisdiction.California v. Beheler,463 US 1121(1983)(for example
12 a police station, being detained(i.e.not being free to leave) normally
13 will constitute "CUSTODY')"exists.Id at 1123-25.
14 Respondent relies on the petitioners ability of showing when,where,
15 miranda warnings should have been, but were not, made during the
16 time the officers were talking to the petitioiner.
17 HERE THE ALTERED TRANSCRIPT DOES MAKE SHOWING OF IT"S EXISTANCE,
18 AND SINCE THERE WAS NO RELIABLE SHOWING THIS TRANSCRIPOT WAS AUTHENTICA
19 IT IS THE BURDEN OF THE RESPONDENT TO SHOW THE INTERROGATION RECORDING
20 WAS NOT ALTERED "[AND HE CANNOT]"There was a presence sufficient,
21 with the petitioners history of arrests to know that he was being
22 arrested, which is one of the reasons a non custodial place to discuss
23 this matter was erased from the interrogation.This altered version
24 would have shown that the defendant had to argue to drive his own
25 vehic le, so he could make the neccessary calls,attroney,bailbonds.
26 How is petitioner to leave his home, to avoid the intrusion. He asked
27 the cops for a card to call them if he could think of anything but
the cops would not leave.

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When the petitioner tried to leave the station and was returned to the interrogation location in the police station does make showing that he was not free to leave.(136INT124:10-11)

JY_CAN I COME AND TALK TO MY WIFE ? CAN I PLEASE SMOKE A CIGARRETTE?? I DIDN"T DO THIS GUY"S ,I"M NOT SAYING I WASN"T AROUN 'D THIS LADY.

The officers would not allow the petitioner to leave, call his wife, or exit the police station. This is classic **CUSTODIAL INTERROGATION TACTICS, NOT ALLOWING THE DEFENDANT"S TO LEAVE THE LOCK.ED FACILITY** (136INT127:18-20)

Well,i'm gonna have to tell her. She got a search warrant over there going through the house she already knows right now.She's gonna end up calling uh, this attorney

As the respondnet relies on insufficient data for this court to consider, petitioner has met the burden of ARREST ,and custodial interrogation, which is **HALLMARK FOR THE NEED FOR MIRANDA**

Miranda v.Arizona,384 US 436(1966)Kotteakos v.United States,328 US 750(1946);Kinsella v.United States(1960)361 US 234;Hurd v. Terhune (9th.cir.2010)619 f3d 1080.

The core of the prosecutions case was centered around the content of this interrogation. That petitioner denied having sex with the victim.That was the prosecutions case as outlined in this petitioner habeas. His forensice experts did not even place petitioner at the scene when this crime occured, and even the court judge aggreed to this.(RT527:12-15)" THIS IS THE TRIAL JUDGE AFTER THE CASE"

"I AGREE THAT THE EVIDENCE OF THE STRUGGLE COULD BE THAT SOMETHING OCCURED AT THE TIME THAT SHE WAS KILLED AND HAS [NOTHING] TO DO WITH HAVING SEX", BUT HER BODY WAS NAKED.

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This leaves this court to wonder what was it that influenced the jury, if the evidence of DNA did not.The primary reason is the denial of sex.The prosecutor was maticulous to make certain that any hallmark of custodial matter was washed from the transcript.

"(THE PROSECUTOR)NO,I HAVE TO DO IT BECAUSE I HAVE TO ENSURE THAT EVERYTHINGS TAKEN OUT THAT [NEEDS] TO BETAKEN OUT.I DON'T WANT TO LEAVE THAT UP TO SOMEBODY ELSE(RT402:25-403:13)

'the only question I did have for Mr.Sanders is theres reference at the end of the interview where Mr.Yablonsky ids invoking MIRANDA.

"I WAS PLANNING ON TAKING THAT OUT UNLESS YOU WANT TO KEEP IT IN" (RT 458:3-456:2)

FROM THE 136 TRANSCRIPT

GM(WE KNOW YOU DID THIS),GM(JOHN WE KNOW THAT YOU DID THIS), RA(WE WOULDN"T JUST PICK YOU OUT OF A NEEDLE IN A HAYSTACK TO TALK TO),GM(WE KNOW ONEHUNDRED PERCENT FACT THAT YOU KILLED RITA.WE HAVE UNDISPUTABLE EVIDENCE THAT YOU KILLED RITA.), JY(SHE"S GONNA CALL THE ATTORNEY),JY(I"LL JUST GET AN ATTORNEY.I GOT AN ATTORNEY ALREADY)

As the respondnet states that the petitioner was allowed to leave the station as well, the request to make a call was denied, to smoke was denied, and when I went to the restroom then tried to leave outside, I was not allowed to leave, and sent back into the examination area.This was not an interview, it was an interrogation and the recording was doctored to hide custodial matter which would have supported mandatory MIRANDA, and miranda was not respected. Strickland v.Washingtomn(1984()466 US 688.Investigations into the recording would have shown altered, and therefore,unusable. Arnold v.Runnels,421 f3d 859(9 cir.2005);Inthavong v.Lamarque, (9 cir.2005)420 f3d 1055

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1 Petitioner brings that trial court committed prejudicial error
2 allowing prosecutoon of petitioner on less than proof-beyond-reason
3 able -doubt evidence, based on [ACTUAL INNOCENSE].Respondnet admits
4 the authority in his outline (RA89:13-20)and this court should
5 as weel.Respondnet then opines that in considering a sufficiency-
6 of the -eviodence claim, a court must determine whether,"after
7 viewing the evidence in light most favorable to the prosecution,
8 any rational trier of facts could have fo und the essential elements
9 of the crime beyond reasonable doubt"Jackson v.Virginia,443 US
10 307,319,99 s.ct.2781,61 l.ed.2d 560(1979)(emphasis in original).
11 While respondent claimd that Californoia standards are are identical
12 to the federal stamndard.Responmdent admits that unless the state
13 court is in the light of Jackson, denial if fundamentally unfair.
14 Suggesting the Court must respect the "province of the jury, credibilit
15 of witnesses, and resolve **evidentiary** issues, and draw reasonable
16 inferences from proven facts by assuming that the jury resolved
17 all conflicts in a manner to supoport the verdict."Jones v.Wood,114
18 f3d 1002,1008(9 cir.1997)(internal quotatuions ommitted)This court
19 cannot reweigh the evidence and draw inferences on habeas review
20 from what the jury reasonably found at trial.(see.Bruce v.Terhune,376
21 f3d 950(9 cir.2004)Without re stating every fact proven in petitionere
22 habeas above so far, ot what is to follow, this court should consider
23 these matters when applying the deference applied by the respondent.
24 Respondent relies that NO ITEMB WERE ALTERED,AND ADMITS THAT PETITIONER
25 DNA WAS PLACED AT THE SCENE FROM ONE AND A HALF DAYS BEFORE THE
26 MURDER OCCURED TO RITA COOBB AND AS MANY AS SEVERAL DAYS BEFORE
27 RITA COBB WAS MURDERED AS TESTIFIED TO BY NOT ONE BUT TWO EXPERTS

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AND THE COURTS ACKNOWLEDGEMENT THAT HE TOO KNOWS THAT THE SEX AND THE MURDER WERE NOT CONNECTED.

(RT527:12-15) THE TRIAL JUDGE AFTER VIEWING THE ENTIRE CASE "I AGREE THAT THE EVIDENCE OF THE STRUGGLE COULD BE THAT SOMETHING OCCURED AT THE TOIME SHE WAS KILLED AND HAS NOTHING TO DO WITH HAVING SEX,BUT HER BODY WAS FOUND NAKED".

Here the respondent fails to reasonably dispute the claim brought in the Habeas Brief filed , and its adjoining affect by all the matter that oscured in this trial.There is sufficient showing, that the courts erroneously ommitted the admissions of the party who confessed, which the appeal court does state was erroneously rejected. The appeal court also admits that the questiong of Bruce Nash where the victim was stating where she was headed after the Sullivan drinking party, which is more than INTERESTING BECAUSE that is exactly where she said she was gioing, and Gregory Randolph admitted to picking her up. Cynthia Hopper admitted she saw Ritsa that nite at the Moose Lodege, and the bartender from the Moose also said she remember seein g her there too , that nite she was killed.The information was crucial to the defendant and his defense because these are people that were directly associated to the last minutes of the life of Rita. Respondent claims that there was no items altered, but [WILL NOT PRODUCE THE TRANSCRIPOT THAT WAS PLAYED TO THE JURY, WHILE RELYING THERE IS NO PROOF THERE WAS AN ALTERATION (EXHIBIT Z) SHOWS AT LEAST TWO SEPERATE COPIES OF THIS [ALLEGED] RECORDING.Bruce Nash lied, John Sullibvan lied, and the court made lightas their inability to recall correctly as an option to the truth, while the records and discovery that was released two years

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1 after the trial show these witnesses either made identical statements
2 over a period of 25 years, and then testified differently, or
3 changed their story to][intentionally] be different that the
4 other,as influenced by the state officer.Detective Robert Alexander
5 though cannot be held under any light of the otheres because he
6 is an officer of the state,of the court, while his deception produced
7 several lies,1) That he wasn't sure there had been any fingerprint
8 report developed, but that he knew Yablonsky's printe were not located
9 at the house.,2)That he don't recall all the names from the fingerprint
10 report, but that he don't know if the treport had been developed.,
11 3)That he wasn't dsure if any fingerprints were developed, but
12 that he remember a fingerprint on a cup in the kitchen.,
13 (THE PROSECUTION ENTERED AN OBJECTION ON HEARSAY, WHEN THIS IS
14 NOT AN OBJECTABLE HEARSAY MATER,FEDERAL RULES OF EVIDENCE 803(6)(A-
15 B-C),California rule of evidence§ 1450-1454,California rule of
16 evidence §1280,Makes these statements admissible.(a)the writing
17 was made within the scope of duty of a public officer(b) The source
18 of infomation and method and time of preperation were such as to
19 indicatwe it's trudtworthiness.(This was a report from a murder
20 scene),4) That this officer, the prosecutions lead investigatior
21 was aasked to authenticate a transcript, and was asked to authenticate
22 it's content with a disc copy of the interrogation(P-prosecutor
23 and D-Detective.(RT508:22-509:4)
24 P- AS AFR AS EXHIBIT 49,WHICH IS THE RECORDING AND EXHIBIT 49A,
25 WHICH IS THE TRANSCRIPT OF THAT RECORDING, DO YOU BELIEVE THAT
THAT'S [ACCURATE] TO THE BEST OF YOUR ABILITY ?
26
D- YES
27 (WHEREUPON EXHIBITS 49 AND 49A WERE MARKED FOR INDETIFICATION)

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The petitioner has sent a copy of the (exhibit 49) that was released
to the petitioner, which is a copy of what the courts placed onto
the record as evidence.Under the courts view of the state application
of Jackson, the jury was influenced by whethter Rita Cobb said she
was going to a bar, versus home as the witness Nash said **FALSELY.**
This information was witheld against admissible hearsay standards
of the state and of the federal rules of evidence. This information
was the direct circumstancial link that brought third-party culpabili
elements of Gregory Randolph, being that he ,1) Confessed to this
crime and gave motive, and detail descriptions of the murder,,
2)Gavâ an exact identical place he allegedly picked her up from
THE ZODIAC LONGE, WHEN THERE NO WAY OF KNOWING WHERE SHE WENT UNLESS
THAT"S WHERE SHE ACTUALLY WENT.,3) Described the identical method
she was kiled, right up to the definition of mutilation, **by**
wrapping a wire around her neck until she turned black,4) That his
DNA was located from this crime scene, as he surmised, that he
had been there at her house two weeks prior to her death, when his
DNA was located on cigarette butts from an ashtray, that had only
8 butts in it in a smokers house filled with " everyone smoked, indica
indicating those butts were from the day of the murder, **and no longer**
(exhibit Q2-3)Last paragraph)5) That he was arrested for this murder
and interrogated(exhibit Q2-16 through 28)That he was a suspect
to both Cobb and Brooks case(Q2-5)Then this person that commited
suicide was found with **several photographs of murdered women in**
his home(exhibit Q2-12).

The courts dismissed the confession as hearsay, but the appeal courts
rules that it was not hearsay, and should have been admitted
These facts alone are incriminating and exculpatory in nature.

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1 In light of the false evidence, along with the evidence that was
2 erroneously withel[k]d from the jury, COULD NOT HAVE VOTED GUILTY.
3 AFTER THE DELIBERATIONS, THIS JURY ANNOUNCED HOPELESSLY DEADLOCKED.
4 Certainly the truth would have influenced[]some], and definately
5 i[d]f the courts are to refer to the confidence of the jurors according
6 to the facts they were presented, this court must consider the factor
7 of the possibility of the statrments of Nash, and Sullivan as comprom
8 according to the truth and discovery. When this court looks into
9 the testimony of Detective Alexander, as an influencial presence
10 before the jury, they relied on his honesty, his authority to know
11 the truth, and definately did not expect this man to lie, but that
12 is what they heard. And based their decisions from his sworn
13 testimony, when it trugh it was false. This had a crippling affect
14 on the matter the jury was deliberations on the jury members as
15 a whole. When considering the confidence of the jury's. Because the
16 evidences were witheld from the petitioner, this arguement was not
17 presented in the Superior court, but when the proofs flourished,
18 petitioner did try to move the court to expand the recore=d which
19 was denoied(RT :13-22)
20 DDA Thomas-The peoples position is that Mr.Yablonsky's interview, he
was given at least four oppertunities to say he had sex with the
21
22 victim,and that detectives were very clear,WE DON'T CARE IF YOU
23 HAD SEX WITH THE VICTIM.If you had sex with the victim,we need
to know,and he repeatedly denied having sex.
24 (RT34:12-22)
25 DDA T - From the lie the jury can infer that the sex that he had with
26 the victim in this case was non-consensual.
27 Court -How

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DDAt T - Because
Court - Tell me how that is.
DDA T -The arguement that i'm bringing forth is basically,if it was consensual sex,he wouyld have admitted there was comnnsensual sex.
Court - No.Because that would have tied him to the murder.
DDA T - That's something for the defense can argue,but my arguement isif it was going to be ,basically,he denied having sex
(RT35:28-36:6)
Court - So,if he admitted that "I had consensual sex,'he would have been admitting that he killed her ?
DDA T - That's up for him.
Court - I don't think you can do that. I don't think that you can say theat's up to him.
(RT36:16-19)
DDA T - So why would he say he hasn't had sex with the victim
Court _ Because that would put his neck in the noose for murder

At page 15 of the 123 page transcript does show that the petitioenrs wife had just entewred into the Kitchen where the interrogation was being conducted, and before the first questions of sexual involvement were ever asked.This was about 10 minutes into the discuission, and the entire family was sitting in the livingroom just a few feet away. (Exhibit Z)

AS THE SUPREME COURT OBSERVED MORE THAN ON HUNDRED YEARS AGO,EVEN AN INNOCENT MAN MAY LIE, IN SUCH CIRMUMSTANCESD,Hickory v.United States,)(1886)160 U.S. 408,417(An innocent man placed by circumstances in a condition of [suspicion] and [danger] may resport to deception in the hopes of avoiding such proofs")(intrernal quotations ommitted) United States v.Johnson(2nd cir.1975513 f2d 819,824(Falsehoods told by defendant inthe hopes of extricating himself from the suspicion od circum-stancees are sufficient proof on which to cionduct where court is as hospitable to an interpretation consistant to the defendants innocense as it is to the governments theory of guilt.

(RT 490:25-491:5) Under direct examination this expert Doctor of forensics stated that the DNA that was collected from inside Rita had been there up to 1½ days before the murder.

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(RT490317:17-25) The second expert analysis by forensics specialists was that the DNA had been inside the Vagina for several days before the murder, and that he was certain of that.-

This information directly contradicts the respondents theory, that the jury was not influenced by anything eslse other than the truth.Bradyway v.Cate(9th.cir.2009)588 f3d 990;Clark v. Arizona, 548 US 735(2006)(Restating that "presumptions of innocense until the government proves beyond reasonabl;e doubt each and every element of the offence.";Winship,397 US 538,364(1970)Jackson v. Virginia,443 US 307(1979)Kotteakos v.United States,328 US 750(1946)Curry vMcCanles (1939)307 US 357.

29.

Petitioner brings that trial court commited prejudicial error in violation of Confrontation Clause with regards to witneess Bruce Nash.Respondent does not address this claim and discusses another ground later discussed in this petition.Respondent background discuss the interruption of cross examination of the states witness as upholding an objection of hearsay by the prosecutor.

The appeal court addresses that issue, and states that this line of questions did not meet the inadmissibility threshold of hearsay and was in fact admissible exception to the state hearsay standard. This will be discussed later.This arguement on point is that the court took great interest in interrupting this witness from being reaonably questioned by the defendant. This was a state witness, and had been qualified as reliable by the state and accepted by the court before crosss.

(THIS ARGUEMENT WAS PLACED INTO THE #NO.30 SPOT INSTEAD OF #No.29)(PHB)

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1
2 (PHB179:12-180:9) Outlined the arguement that occured, while the
3 court was sustaining an erroneous objection(discussed later) that
4 attorney was trying to present sufficient matter that would have
5 allowed that attorney to resume this line of questions. **IT IS NOT
6 THE ATTORNEY RESPONSIBILITY TO RERMIND THE COURT OF THE HOLDING
7 EVIDENCE CODE, OR CONSTITUTIONAL RIGHT TO CONFRONT HIS ACCUSERS,
8 OR THEIR WITNESSES.** As the respondent argues other errors, he fails
9 to directly addresss this arguements controlling authority of
10 the petitioners right to confront witnesses that are testifying
11 against him. There was no **evidentiry decisions** with regards to this
12 matter as respondent argues. The error comes from the interruption
13 of addresssing the facts as outlined in SuChia v.Cambra(9th.cir2004)
14 Ortiz v.Yates(9th.cir.2012)704 f3d 1026';Su Chia v.Cambra (9th.cir.
15 2004)360 f3d 997.Under Pointer v.Tex.,380 US 400,403(1965) a petitione
16 while in trial has the right to cross examine adverse witnesses,
17 and the right to be present at any stage of the trial that would
18 enable the defendant to effectively cross examine adverse witnesses.
19 Since Bruce Nash was testifying that he knew the victim was headed
20 home when all his other police reports say that she told him she
21 was gioing to a bar called the Zodiac. This makes the witness
22 adverse, because there were witnesses to undermine his testimony,
23 and his previous police reports contradict his testimony.
24 (RT415-417) that the court takes great interests in this line
25 of questioning"'**Just because she said she was gioing to a bar does
26 not mean that she's going to a bar ?We don't know"**
27 This is exacly why the questions were a right for the defendant.

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1 As the attorney tried to argue that hearsay did not rely on 100%
2 re;liability to discuss possible hearsay, then supports his arguement
3 that he had witnesses, that were available to testify that she
4 was in fact seen in the bar.(Exhibit Q1-12,13)(exhibit R:R1-R5)
5 The court then stated that the attorneyDON"T HAVE ANY OTHER BASIS
6 FOR DETERMINING THAT SHE WENT TO A BAR.IN FACT, THE EVIDENCE WOULD
7 BE THAT SHE WAS NOT SEEN IN A BAR THAT NITE,AND THERE WERE PEOPLE
8 THAT WOULD TESTIFY THAT-THAT WHAT SHE SAID WAS NOT WHAT HAPPENED"
9 While the attorney followed saying that there were a COUPLE OF
10 PEOPLE THAT SAID THAT THEY THOUGHT THEY REMEMBER HER INTHE BAR.
11 Petitioner relies on his outline in his habeas brief(ground 30
12 not 29)(incorrectly placed into the wrong numerical place)
13 While the hearsay objection that was sustained contradictory to
14 the federal and state ;laws, the right to confront this witness
15 was interrupted by the court.Craig,497 US at 845;see also KY v.
16 Stincer,482 US 730(1987)(confrontation right designed to promote
17 truth finding functions of trial)(there was possibilities this
18 witness could have been questioned further and revealed more factual
19 matter that would have be usefule to the jury, and produced a differ
20 light into the jurors opinions of the [facts]..U.S. v.Watson,76
21 f3d 4,9(1st cir.1996)(confrontation claused riught protected by
22 giving the defendant "full and fair oppertunity to probe"_)EVIDENCE Penal
23 code section 1250; Evidence code section 1201;Holly v.Yarborough,
24 568 f3d 1001(9th.cir.2009)(limits on cross examination of alleged
25 victim unreasoinable)U.S. v.Sumeru,499 fed.appex.617(trial courts
26 excessive biased intervention in criminal trial prejudiced defendant
27 warranting new trial)California v.Green,399 US 149(1976);Kotteakos
v.United States,328 US 750(1946)

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Respondent relies that a court does not abuse it's discretion in limiting evidence so long as the jury has sufficient information to asses the credibiltuiy of a witness.Quoting Evans v.Lewis,855 f2d 631(9th.cir.1988)This analysis drastically undermines the Supreme courts podaition in questioning an advers witness, especially when the information being souhgt is directly related to QUESTIONABLE FACTS THAT DIRECTLY LIONK THIS LINE OF QUESTIONS TO HOW OR WHO COMMITED THAT CRIME BEING QUESTIONED ABOUT WHICH KY WAS SPEAKING OF IN IT"S DECISIONS ON CONFRONTATIONS OF WITNESSES.
Su Chia v. Cambra(9th.cir.360 f3d 997;Kotteakos v.United States ,328 US 750(1946)

30.

Petitioner bring that the court abused it's discretion in denying right to self representatuion, to present a motion for writ of Mandate regarding an erroneous decisions that was cotrary to state holding and federal law.(Groiund 29 of petitioners habeas brief) Respondent states the trial court denied the self appointment becaus of unreasonable delay. This analysis is stated incorrect and is contrary to state and federal holding. (RT713:12-14)" **I am not going to argue with you.I just ruled that I find it's entered on yopuir motion just too unreaosonably and unnecessaryily--.**
When the court was deciding whether the invokation of faretta was sufficient, he surmised to consider a competancty issue(RT710-713) Outlined in the(PHB1766178) petitioner brings the proper authority in this matter. Where U.S.v.Davis,285 f3d 378(5th.cir.2002)(a judge may reject a defendants request to procedd pro-se if the request is untimely;People v.Hamilton(1988)45 C3d 351(however a trial court must granbt post verdict request for aself representation as a matter

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of right when the request is[not] subject to thee discretion of the court because it was before sentencing, and not made during trial.The court had surmized to consider the self representation under U.S. v. Davis,285 f3d 378(5th.cir.2002)Where the competancy of a self represented person should be consideded, here the court relied on the appointed attorney for guidence, who said there was no reason to deny, that his client had no competanct issues, that this court then opined to consider the proobation report, which also shows no competancy issued.The denies the right relying an anunressonable delay as his controlling authroity, which is not considered in the supreme court holding, since the appointmetnt was after trial verdict, and before sentencing/.John Charles v.California (9th.cir.2011)646 f3d 1026; Hirchfield v.Payne(9th.cir.2010) 420 f3d 922."[T]he constitution guarantess criminal defendants a meaningful oppertunity to present a COMPLETE defense"Crane v. Kentucky,476 US 683,690,106 s.ct. 2142,90 l.ed.2d 636(quotations ommitted)Kotteakos v.United States,328 US 750(1946)

(SEE EXHIBIT T2-5) WHERE COURT HAD ALREADY RECOGNIZE COMPETANCE.

31

Petitioner brings that the county jail terminated the official visit priveledge of the petitionmer, before the trial from [any] confidential communications with his attorney.Respondent claims there is nothing on the record supporting the county jail terminated the communications, which dramatically undedrstates the arguement. (exhibit R1,1-12) makes showing there was requests to lift this termination, and decided by the courton December 16,1010,filed December 10,2010

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1 These requests were made to seperate judges, and began about
2 September 20,2010 after the petitioner had filed suit against the
3 County District Atttorney, and had a process server serve the
4 Summons to the County DA.The witneess that will be available to
5 testify to the termination is Processing services,3262 n.E st.
6 Suite #B ,sanBernardino ca.92405(909)881-5799.Here the attorney's
7 trial note that was sent (exhibit P1) indicates that the attorney
8 knew this suspension was in effect.Respondent admits the right
9 is ineffect, and provides People v.Torres,218 Cal.App.3d 700(1990)
10 While the respondent states there is sufficient facts to support
11 this claim,quoting InRe Qualls,58 Cal.App.2d 330(1943)
12 Here the respondnet then denies the trial attorney knew this was
13 in effect in his analysis, therefore with the documentation here
14 respondent then concedes this claim as error. The motions werefiled
15 in both the civil court in Rancho Cucvamunga, and Superior trial
16 court in Victorville.Penal code section 2601(b),Kotteakos v.Unitde
17 States,328 US 750(1946);Curry v.McCanless(1939)307 US 357.
18 This is what made the attorney's statement that he had seen me
19 in the jail 4-5 times.I had told the judge, the attorney and
20 nobody would adress the violation. I was forced to writing the
21 motions myself, and when they were mailed from the county jail
22 to the courts, they would not be filed. When I sent them home
23 to my family, and they certified the mailings, then they were
24 filed, and as the court sees, they were denied, twice.
25
32.
26
27 Petitioner brings that the courts instruction sua sponte with
the intent to kill was prejudicial.Respondnet relied in his answer
to the affect that

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1 the controlling authority in the state courts had no weight on
2 the courts obligation to instruct the jury accordingly, according
3 to Carlos v.Superior court(1983)35 Cal.3d 131,overuled in People
4 v. Anderson(1987)43 Cal.3d 1104,1147.The people concured four
5 the appellate on error, is evaluated under Chapman reasonable
6 doubt standard applicable to federal conststutiion violations
7 (Resp.B.at 17)The people also apparently concur that the error
8 could not be deemed harmless on the supposition that the jury
9 made the required finding under other, correctly given instruction.
10 The people did not argue that ground.(see AOB at 12-13)Where
11 the charged crime was committed in 1985,within the Carlos-Anderson
12 window, the court must instructy sua sponte that an essential
13 element of the felony murder special circumstance is the intent
14 to kill.Petitioner argued that the court commited prejudicial
15 error in ommitting this instruction.(AOB issue 1)The court of
16 appeal opinion acknowledged that the trial court erred,but
17 concluyded that the error was harmless beyond reasonable doubt
18 because"[t] he evidence overwhelmingly supports a finding of
19 intent to kill"in that defendant"not only used his hands to strangl
20 [the victim] but he also used a wire coathanger,and **possibly**
21 also used a gag.The opinions use (unluckily) of the word "possibly"
22 exposes the fallacy of it's analysis.An error is not harmless
23 beyond reasonable doubt merely because the jury could "possibly"
24 find certain facts to be true. Rather, the people's burden in
25 such a case is to demonstrate that no reasonable juror could
26 neverconclude otherwise.As the State Supreme court recently admoni
27 "Although we agree that this evidence would be sufficient to

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to sustain a finding of reckless indifference on appellate review..
our task in analyzing the prejudice from the instructional error
is whether any rational factfinder could overcome the opposite
conclusion".People v.Mil(2012)53 Cal,4th 400,italics in original)
The court's opinion's very use of the word POSSIBLY)thus defeated
its analysis as to whether a gag was used to facilitate an intentional
killing rather than to silende the victim without the intent
to kill.The prosecutor himself argued for the jury of the use
for the gag.The gap inthe prosecutors case, that there was an
intent to kill, that was allegedly connected to the sexual contact
was not only missing, the states own experts handcuffed that
opinion for the state by trestifying that the sex was from one
and ahalf days before the murder to several days before the
murder.(RT317:21-25) Criminalist Jones.RT490:25-491:5) Dr.Saukel
"it could have been up to a day and a half before the murder
occured"as tne prosecutor conceded "within a day and a half".
Both of these experts were not challenged after testimony by
either team. (RT595:11-16)(prosecutor)("[w[]hy else would you
use and stuff shorts in someboidies mouth ? To silence them.You
don't want them screaming")Seperatley, the opinions invokation
of"overwhelming" evidence(Opn.at p.25) betrays that it used the
an erroneous standard. The very case that established the Chapman
standard found prejudice error notwithstanding the fact (found
by the California court and undisputed by the U.S.Supreme court)
that the evidence against the defendant was overwhelming.(Chapman
v. California(1967)386 US 18,23-24 and fn.7: See Peoople v.Johnson
(1993)6 Cal.4th 1,57(Mosk,J.Concurring and dissenting)(" By it's
very terms,of course<u>Chapman</u> precludes a court from finding
harmlessneess

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based on other grounds simply upon it';s own view of overwhelming evidence.The review was warrented be cause the error violated Yablonsky's federal right to a trial by jury and to due process under the VI and XIV Amendments(see generally United States v. Gaudin(1995)515 US 506,509-510.Respondent relies on the courts finding that the instruction was erroneous,it found the error harmless beyond reasonable doubt.Respopndent then argues that the applications of other instructions included inteent to kill should suffice. Respoondednt then admits an improper instruction which relieves a jury of finding an element of the offense or alters the burden of proof is a federal question. The California courts as well as the respondent in the direcrt appeal agree there was error, but surmises the error due to the "overwhelming" evidence, which is an incorrect application of the harmless error standard that was erroneously applied in the denial,Chapman v. California(1967)386 US 18,23-24 and fn.7.The lower court cannot apply the incorrect standard they themselves had set the precedence in the Supreme court with.When you consider the testimony of the experts alone, the DNA being at the crime scene for longer than a day even, considering she was killed Friday late nite after she left the Sullivan drinking party, or even the early next mornoing. This does not comply with the experts analysis, that the DNA that was collected from inside the victim had been there at the very least one and a half days. When you consider the testimony of Jones, that the DNA ghad been there for"several days and then she died,""he's certain of that"incorporates the reaosnable doubt when the court relied on the overwhelmeing evidenc

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This is exactly what the importance of the investigations was determined on, and because of the attorney's incpompatence, there was nothing to add.Respondent then arguesd that the petitioner used a strangulation and litigature. If the forensice analysis places petitioner at the scene from 36 hours to over one hundered hours before the murder occured, is percisely why the appropriate instruction was required.The arguement was whether the court improperly instructed the jury.This case belongs in the Carlos/a Andersom Window and the instruction was to sua sponte acoordingly.

33.

Petitioner brings court committed prejudicial error in excluding evidence of third party that commited rape and strangulation to another person in the same area just two months earlier. Respondeat suggests in midtrial thedefense trial and prosecutor veewed the files of the Brooks murder.Opining that the trial attorney spent an entire day reading the file. The prosecutor concluded the DNA analysis of Cobb and Brooks was differnt, and there was no such evidence that linked the Brooks case and Cobb case. This assumption is erroneous(exhibit S1-S12) are provided by experts in crime analysis profiling, Thenopined that the cases had been connected for 2-3 years, which is understating the meaning of thirdpa culpability elements required to connecting crimes for that reason. The attorney attempted to bring this information in while the court suggested to "find the authority and we'll address this later" Respondent then suggests the court properly addressed the matter the following day(RT277)The court denied this arguement under 352 issues, when third party arguements are not reviewed in that light.

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The courts use of 352 is misleading.The premise of the courts ruling was the evidednce was irrelevant entirely,just as the prosecutor had argued(RT275:14-15)("The people would be objecting on relevance") The court did not give any weight to relevance(RT278:21-23)("it doesn't in my opinion,tend to exonerate him by any means with possible exception of leading to confusion")(RT278:23-25)(I don;t see the what the advantage would be to the defense to have this information in).The people's analysis is notable primarily for it's apparent agreement that if the crimes had been similar, the Brooks case would indeed have relevant for purposes of third-party culkpability;at least the people do not attempt to argue otherwise. Nor does the respondent here.The prosecutor accepted the crimes as almost identical "almost identical" without challenge.The connection was provided by the FBI VICAP office, and their link to several murders commited by the same profile, which constitutes direct circumstancial evidence linking them. Here the more cuplable party is Robert Mark Edwards since he was free to have commited this/these crimes, and was convicted of one of the five profiled to being linked through circumstancial matters.The correspondence from Mr.Edwards to Mr.Yablonsky, revealed that the murder he was convicted of had DNA located on the scene, and that it was not Mr.Edwards. Leading one to believe this was far more relevant that just the VICAP connection. Since his murder he was convicted of was a matter not to include his own DNA, and for some reason the jury found him guilty, does in fact indis-cate his motive was not DNA related.Here the trial attorney's failure to investigate led the appeal courts to conclude"While the trial counsel did make that statement,he did not support that claim

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1 with any factual details about the Brooks case.The appeal court
2 failed in theior application, when suggesting there was no link
3 to the murders of Cobb and Brooks. This is not the meaning of Third
4 party ciuglpability circumatancial matter directly linking the
5 [party] to the crime.Respondent then suggests the evidence petitoiner
6 "would have cited" did not make thea connection.While the ope
7 appeal@ was brought with reverse other crimes evidence, that less
8 than three months before Cobb was kileld, Brokks was killed.
9 While the court of appeal disagreed(Opn.at pp7-10)The opinion acknowle
10 that the exclusion of this and other evidence presented "a close
11 issue".(Opn.at p.6) The opinion reasoned,however, that it was "not
12 necessarily true" that the person who raped Brooks(in the other
13 crime_) was also the one who killed her.(Opn.at 8)Here agian,as
14 earlier discussed, the opinion displaced the jury,reasoning that
15 because an inference was not necessarily true, the jury must have
16 rejected it.
17 The opinion also reasoned that factual similarities were
18 not sufficient)(Opn.at p.8)There are three flaws in the analysis.
19 First, under the offer of proof, as the opinion itself recognized,
20 the two cases were in manyon respect almost identical, and trial
21 court did not dispute this.
22 Second,The offer of proof mudst be accepted as true for purposess
23 of evaluating prejudice. TWhe opinion resisted thea settled principle,a
24 ofp tthe fact that the one of the two cases cited in the opening
25 briefOpn.at p.10,fn.4)without explaing why that made a difference
26 undr Ev.Code. The second citred case was on point,in which the
27 court went so far as to complain that it required to comply with
the settled principle.(AOB at 28)citing

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1 People v.Kieth(1981)118 cal.app.3d,973,981-982.

2 Third, common scheme or plan doed not require near identity of
3 all aspects of the two crimes("To establish the existance of a
4 common design or plan) the common features must indicate the exxistan
5 of a plan rather that a series of similar spontaneous acts.
6 Becuase third party culpability went to the heart of petitioners
7 defense, the court's ruling violated his right to present a defense
8 and his right to due process.Holmes v.South Carolina,supra,547
9 US 319;Chambers v Mississippi(1973)410 US 284;Kotteakos v. United
10 states,328 US 750(1946) ;Christian v. Frank(9th.cir.2010)585 f3d.1067)

11 **WIGMORE SUCCINCTLY EXPLAINS THE THEORY**

12 **It should be noted that [other crime] evidence may be**
also available to negative the accused's guilt.E.G.,if
13 **(A) is charged with forgery and denis it,and if (B) can be**
14 **shown to have done a series of similar forgeries connected**
15 **by plan (A),this plan of (B) is some evidence that (B)**
not (A) committed the forgery charged.This mode of
16 **reasoning may become the most important when (A)**
17 **challenges that he is a victim of mistaken indetification.**
18 United States v.Stevens(3rd.cir.1991)935 f2d 1380,1402,Bracketsa
and italics in original,quoting Wigmore,Wigmore on evidence
19 (1979 ed.§304)

20

21 34.

22 **Petitioner brings that trial court commited prejudicial** error in
23 excluding evidence of victims extraordinary promiscuity.Respondent
24 agrees that this could be a federal question, as he suggests it
25 "generally is not",or that there was error.As respondent admits
26 for the petitioner that the trial attorney's offer of proof when
27 he brought this matter, the court considered it as a maatter of
relevance.

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Based on this trial attorney's remarkable practices of NOT INVESTIGATI
THE EVIDENCES,OR WITNESSES FOR THAT MATTER, the respondent has insight
Thee people state that the defense "Made no offer of proof that
the victim's practice of entertainment of men at her hoime in fact
occured between friday noite,when she was last seen alive, and the
following Monday,when she was found"(RESP.B at 31;see also Pers.B.
at 33-34) The reason was that the relevance did not depend on that
at all.The point of the evidence was to cast doubt on the facile
assumption that just because Yablonsky was the last man that had
sex with Cobb,he must have been the murderer. The more sexual partners
and sexual activity at the house that Cobb was shown that she
had, the weakewr the link,for it was more likely that someone who
frequently had sex would have another partner at the house,or at
least sexually inclined visitors.The window between the time of
her activity with Yablonsky and the time of death.The appeal attorney
outlined his analysis correctly, (AOB11-13) and that this analysis
distinctly provides, the peoples reliance on the absence of direct
evidence was not well considered.The jury would have been entitled
to harbor reasonable doubt.There are two ways to weaken the inferential
link of Yablonsky was the murderrer because he was the last iden
][IDENTIFIED] person to have engaged in intercourse with cobb,
First,the defendant could present evidednce tending to show a longer
time frame.The longer time frame elapsed, the weaker the inference.
Second,The defendant could present evidence that even if the time
frame were short, there was ample oppertunity for other people to
engage in sex with the victim that periiod.(exhibit E2) shows that
Nash made statements of Rita's [New boyfriend] 1985.(exhibit E9)
Nash then tells the detectives that Rita would [GO HOME WITH (A)
MAN AFTER HAVING DRINKS IN A BAR IN TOWN[

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(exhibit F3) Francesca Drake stated she left the Sullivan drinking party feeling good [BUT LONELY LIKE ALWAYS].(exhibit F11) John Sullivan stated that [he knew cobb was known to to like the company of men and that was her (REPUTATION) as faf as he knew] and added that she was a single and fairly attractive lady.Cynthia Hooper was Nash's girlfriend who was close freiends as these other witnesses and (exhibit U3) she comments [[HER OPINION of COBB WAS THAT SHE SEEMED " LOOSE" AND SEEMED TO BE THE TYPE THAT WOULD GO HOME WITH MEN SHE DRANK AT THE BARS WITH SHE JUST MET"]. There was no campaign to smear the victim, when the courts dissallowed the attempt by defendants attorney, the prosecutor injected that this was just to "Dirty the victims reputation".(RT280) Courts saying he don't see the re;levance either, after the prosecutor argued it's improper character evidence.What's the relevance of that ?It's just to dirty the victim up.The the courts injection "I think that you established enough for whatever you need to.It wasn't like she had no one ever at her home.I haven't allowed Mr.Thomas(prosecutor) ,nor has Mr.Thomas attempted to establish as you just put it that she is someone who doesn;'t engage with any kind of social intercourse was what you called it.(courts view).

The court injected interferance of cross examinations again, which was fact finding , and had the questioning been allowed, would have possibly addressed the jurors view of the entire case.This line of interfrance influenced the defendant defense and of producing the facts of the case, since the experts analysis was that Yablonsky's DNA was in fact from one abd a half days to several days older than the murder, testified by experts od the state, and were not challenged any further.

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As the Appeal court rules that the petitioner failed to make the necessary offer of proof. Making the opinion just after saying that it was [evidence of third party culpability].
. That the error of influencial interruptions of presenting the evidence would have produced the evidence in question the courts were speaking of.
Second;The courts opinion of mere motive or oppertunity to commit the crime in another person,without more, was insufficient to raise reasonable doubt. While this is specifically what the probe was alluding to produce. The questiond would have proven fruitful, and possibly revealed that Joseph saunders had been sexually interested, and was there that last nite she was seen alive, and was offered by Rita to returne to her home after the party. This line of question might have produced further information that Hull,(a mann invoved) was with her that nite, and according to every friend she had O][ANY MAN SHE MIGHT HAVE MET AT THE BAR THAT NITE] which is exactly where Gregory Randolph said he picked her up from, and several persons made statements that she was seen at a bar that nite was well.
Third;The courts analysis of third party of motive or oppertunity being a condition of thirdparty culpability evidence .
As detailed in the (ARB17) that any evidence offered, the evidence code explicitly incorporates this common-sense principle;an offer of proof is not required at all where "[t]he rulings of the court made compliance with subdivision(A) futlie"(Ev.C.§354)

UNDER CIRCUMSTANCES WHERE ANY EVIDENCE OFFERED IS TO BE EXCLUDED IT WOULD MAKE LITTLE SENSE TO REQUIRE A SHOWING BY DEFENSE AS TO THE SUBSTANCE OF THE EVIDENCE IT INTENDED TO INTRODUCE.IN SHORT, THE RULING OF THE COURT IN COMPLIANCE WITH 354(a) futile.

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The analysis of the court view this was third party evidence and was insufficient under that standard(Opn.at pp.11-12) This is wrong. The purpose was not to show that an indentifiable thirdparty commited the crime., but rather to negate(or rather,raise reasonable doubt) the critical inference that the man who had sexual relations with Cobb(shown by the DNA evidnece) was also the murderer.Third party evidnece is attempts to exculpate the defendant by inculpating a specific,identifieable party.Here Yablonsky sought to exculpate himself by casting doubt on the essesntial inference necesasary to convict him;that he must have been the murderer because he engaged in sexual relations with Cobb up to a day and a half (or longer) before hand.Respondent then seeks the court view by indicating that Cobb was last seen Friday nite between 11 p.m. and midnite, when she was last seen alive, to SunDay afternoon when she was found murdered. This is disturbing, because this is specifically what the inferential interest are inclined to have produced had the attorney not been stopped from probing.The facts that she [was] seen in a bar after she left the party, and everyone knew her to go home with [anyone] after she had justy met them[**THIS WAS NOT JUST HER HABIT IT AWAS HER CHARACTER[ ]**and the information was more than relevant, being **that these people that testified said she left the partyand was** NOT **headed to a bar.**The appeal courts aggreed that the line of querstion of Nash about where Rita said she was going was error on the courts beghalfP.C.§1250, and [**WOULD HAVE LED THE ATTORNEY TO PROBE FURTHER] allowing the direct link of Randolphs DNA at the scene, and his confession on record.**Respondent then relies on what the appeal court said should be allowed(discussed later) as a rerason to of pertinance [tying that event to the time period in which she was killed] as irrelevant is more than errorneous. He ignores the facts.

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Thye error violated federal rights,in ligfht of the importance
of the evidnece,which would have weakened the inferential link,
or possibly severed the link of inference that provideed the sole
evidence tying Yablonsky to the crime. The error interfered with
petitioners right to peresent a defense, and due process rights
under VI and XIV Amendments .Crane v.Kentucky (1986)476 US 683.

35.

Petitioner brings that the court committed peejudicial error under
federal constitution, excluding hearsay evidence of third-party
culpability and Cobbs promiscuity.Respondent argues that the we-
tip call was not reliable,and admits that Gregory Randolphs DNA
was located at this crime scene on some cigarette butts.Respondent
then suggests while couched in terms of the right to present a
defense, the claim is generally not federal in question, and in
his view there was no error. First, that the appeal court did sugge
this ebvidence was not considered as hearsay, and should have been
allowed. Respoondent then argues that the trail counsel did not
establish to the court that the ananamous report was **admissible**
under a recognized exception to the hearsay standard. In light
of the court's repeated interferance with the attorney's attempte
to produce evidenece, knowing that the court knew what codes are
in existance, and after the courts demand "[THE EVIDENCE THAT
WILL BE IN THIS TRIAL WILL BE THAT RITA COBB WAS NOT SEEN IN A
BAR THAT NITE, AND THAT EVEN-THOUGH SHE SAID SHE WAS GOING TO A
BAR, T'THE EVIDENCE WAS THAT THEY HAD WITNESSED THAT SHE WENT
HOME AND NOT THE BAR]".This was two seperate decisions by the cour

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1 That were directly contraty to federal and state law, there was
2 no preasonable interpretation thisattorney could have swayed the
3 courts posistion with a sledge hammer.The disticnt interferance
4 of Nash's testimony that the appeal court too deemed error, would
5 have directly tied this confession to the crime scene, being that
6 1) This is exactly where Rita said she was going
7 2) This is exactly where gregory Randolph confessed to poicking
8 he hger up. before he killed her.
9 While the Cobbs family made comments that were in light of their
10 MOTHER, their suggestuioins that their mommy was sexually promiscuou
11 with everyone in town would not have dribbled from their lips.
12 The close friends that knew Rita, her character, and habits charact
13 erized her behavior around liquor as (propetually lonely)and said
14 so freely and openly, even under the conditions of their friends
15 murder, would suggest their statements as the more truthful under
16 these conditions. Here the investigations of the many turned that
17 Rita has a reputation of becoming sexually involved with every
18 man in her path,three men from her work, both bartenders at the
19 Y-Cafe,Fred berdard,John Sullivan,Bruce lee, and anyone that approa
20 her in a bar or bought her a drink.The probative value was that
21 frequency with which she brought her dates and boyfriends home
22 this breaks the prosecutor's chain of inference.Chambers v.Mississ
23 ippi,supra,410 US 284;Holmes v. South Carolina,supra,547 US 319;
24 Green v.Gerogia(1979)442 US 95.While the respondent here admits
25 that the exclusion of the We-tip was against the state laws.
26 Then debates the meaning mutilation, while conceding there was
27 an item wrapped around this persons neck, twice, and then twisted
tight is alarming.

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1 (RT24:15-16)There 's no proofIndication that Ms.Cobb was ever mutilate
2 and again the prosecutor commented onthe admissible hearsay of
3 where Rita told Nash she was going,which was the Zodiac Lounge.
4 Which was admissible, and not allowed in against state and federal.law
5 The respondent then suggests the probative value of the We-tip
6 alone was not sufficient establish relevance,notsufficient to establish
7 third party culpability for a crime. This too is erroneous, because
8 the DNA was collected from the crime scene.,.Even if the confessor
9 admitted to leaving the cigarette butts, which he did not. Brings
10 one to wonder what is an acceptable amount of butts in an ashtray
11 in a home filled with smokers and friends that smoke that was
12 found to have only eight butts in it when the home crime scene
13 was procedd, and whethter 8 butts over a period of time was a reasona
14 inference to the reaosnble factfinder. Here the confessor said
15 he was there 2 weeks befroe she was killed, when he was first
16 interviewed, uninfluenced as he walked into the police statoion
17 saying that he heard they were looking for his help to solve this
18 case, and told the sheriff's that it had been at least two weeks
19 since his last visit with Cobb(exhibit Q2,4).Resopndent then suggests
20 petitioners right to present a defense under Crane v.Kentucky,476
21 US 106(1986)does not set forth an absolute entitlement to introduce
22 crucial,relevant evidence.Indicating he too knew they were crucial
23 and extremely relevant.While this respondnet would have this court
24 confused of the facts, he states Gregory Randolphs DNA was located
25 on this crime scene in the beginning of this arguement, then for
26 his holdoing facts he says that"There was no physical evidnece
27 at the scene of the Cobb murder to link this person.**THERE** WAS NO
OTHER DNA." HE SAYS,NOW.

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Suggesting to this court that this court should not consider this arguement because there was other DNA on the crime scene.The appeal court did suggest that because the attorney did not produce that this person was arrested for this crime(exhibit Q2,14-28) or that his DNA was infact located at this scene(exhibitQ2,9-10) as **NO WAY TO DETERMINE THE ACCURACY OF THE REPORT.THEN A REPORT FROM DETECTIVE ! BRADFORD, WHO STATES THERE WAS PHOTOGRAPHS OF MURDERED WO MEN FOUND IN HIS POSSEESSSION WHEN THEY PROCESSED THIS MANS HOMICIDE SCENE.** These factors alone raise reasonable suspocions that would influence the reaaosnable factfinder.When the courts interveined with the evidence, it suggestively also interveined with the attorney need to probe, or for that matter, could have had, but because of the courts line of reasoning, prevented him.Here the defendant had the right to present a defense under Chamber v. Mississippi,supra.The respondnet then relies on United States v.Schaffer,523 US 303(1998)(These rules do not abridge the right to present a defense so long as they are noit attributable arbitrary to or disproportionate to the purposes they are designed top serve. Then respondent compares the confession of a killer, who;s DNA is at the crime scene, had been arrested and released for the same crime he confessed, and commited suicide when the DNA's of the county were being processed, and when his home searched (dozens of photographs) of murdered women were recovered, to someone attmeptinfg to pollute the defense mechanism with insanity defenses or psychiatric disputes versus scientific efidence.

The error was prejudicial, the confession was extremely accurate irregardless how disturbing.(exhibit Q2,2)

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1 Kotteakos v.United sates,328 US 750(1946);Hill v.Lockhart,28 f2d
2 832,839(19 8th.cir.1994)Su Chia v.Cambea(9th.cir.2004)360 f3d 997;Chri
3 v.Framk (9th.cir.2010)595 f3d 1067.

PETITIONER ENTERS AN OBJECTION

4 [**Pettiotioners DNA was not located on the outside of the body**]
5 36.
6 Petitioner brings that trial court commited prejudicial error in
7 excludiong evidence that on the nite Rita Cobb left the Sullivan
8 party she intended to go to a bar, not straight home.Testimony of
9 Bruce Nash. Respondent states that Rita left the party at 11p.m.
10 which is incorrect,Francessca drake stated that she left at 11:30
11 p.m..The question came from defense during cross examination, of
12 what Rita told Nash as she denied his ride offer at 2145 hours,
13 two full hours before she actually left the party(exhibit E2) and
14 prosecution objected on hearsay. The court sustained, in direct
15 violation to state and federal exceptions to the hearsay standard,
16 Ca.Ev.Code §1250 and Fed.R.of Evid.Rule 803(1),803(5)(B)(C).That
17 Rita cobb had told Nash that she was intending to go to a bar,possi
18 the Zodiac lounge./(exhibit E7)Prosecutors objection was contrary
19 to and not in accordances with any state or federal laws or rules
20 on hearsay standards.The court questioned into the relevance, as
21 described earlrier inthis petition on [relevance].The interruptio
22 by the courts into the attortney's explanation on how this matter
23 applied, the court interrupted that there needed to be an indica
24 reliability.(RT416:10-15).Which is directly how the rules of ev
25 are described as last known recollection, was fresh on the witness
26 mind,and directly reflects the knowledge as the persons intent as
27 they stated..(RT416:22-24)Courts still looking for relevance.

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"You don't have any other basis for determining that she went to a bar. In fact, the evidnece would be that she was not seen in a bar that nite, and there was people that would testify that- - that she said was not what happened." (JOHN SULLIVAN. MUST SEE GR.# 6)

At this point there was no evidence presented, nor was there any proof the attorney did not in fact have the two witnesses he said saw her in the bar. Respondant relies on limitations set for cross-examinations as he stated inhis claims earlier. Here the petitioner severely disagrees, that the standard set by the respondant as erroneous while the constitution directly addresses this matter under the right to confront witnesses. Outlines in (PHB) petitioner directs this line pof questioning under SU Chia(9th.cir.2004)360 f3d 997;Ort v.Yates(9th.cir.2012)704 f3d 1026.Ky v. Stincer,482 US 730(1987) (confrontation designed to promote truth finding function of trial) The reliance on relevance, and hearsay was a prejudicial application to this constitutional right. The fact that this attorney brought some of these elements into an earlier motion, that was dismissed, it was not dismissed on the erroneous value of this information. ()pn.at pp.15-17) The appeal court agreed it was error to exclude this information, that the error was harmless, because the attorney argued that someone other than the defendant could have killed the victim. The flaw in this reasoning is the arguement of counsel without support of evidence has no value. States v.Spires(9th.cir.1993)3 f3d 1234,1239. The fact that there was evidence implicating Saunders (Opn.at p.17)does not cure the error for as noted in (ARB[illegible]) . The eror violated Yablonsky's right to due process unde the XIV Amendmmnet in light of the precarious balance in this near deadlock

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1 circumstancial evidence case(se generally Estelle v.McGuire(1991)
2 502 US 62)The jury at one point announced **Hopelessly deadlocked,eight**
3 **to four**(CT205-210)
4 Slovik v.Yates(9th.cir.2009)566 f3d 747,756(ATTORNEY GENERAL"S
5 CUMULATIVENESS ARGUEMENT " MERELY SERVES TO EMPHASIZED THAT THE
6 STATES CASE RESTED ON THE TESTIMONY OF SHAKEY WITNESSES AND
7 REMINDES US THAT IF THESE WITNESSES WERE FURTHER CONTRADICTED, THE
8 JURY MIGHT NOT HAVE RETURNED CONVICTION")
9 CUMULATIVE PREJUDICE IS DISCUSSED LATER
10 The courts interruption and allowance of hearsay was prejudicial.
11 According to the appellate courts opinion regarding this evidence
12 that was withheld, it's presence and fruitation would have told
13 the jury that Rita Cobb was not headed home, and was in fact heading
14 to the Bar,possibly the zodiac. The jury had inquired as to who
15 was at the party)(Joseph Saunders)and "who mentioned him last".They
16 certainly would have been informed when John Sullivan got on the
17 stand next and testified that he saw Nash take her home, knowing
18 it was a lie, the jury would have not perceived his testimony as
19 credible. Therefore leading them to inquire what happened at the
20 bar, 1) did she meet someone,2)was she in a confrontation,And certain
21 had the jury been allowed this information that was errpneously
22 not allowed, the attorney could have invoked his clients right
23 to [probe] for the truth.Producing the witnesses that saw her there,
24 and ultimately the other evidence that was "now reliable" the confess-
25 ion of gregory Rabdolph, and the facts that his DNA was at the
26 scene, thereby third-party culpability.While the jury hung on what
27 was allowed, this erroneously disallowed evidence would acquit.

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Petitioner brings that the court erred in allowing two (seperate)
prior arrests of rape allegations that were never charged.Respondent
argues that the court erred by rūloing,[if petitioner testified]
,the court would allow two women to testify as impeachment evidence]
[that they were raped by petitioner.(ALLEGATIONS, NO CHARGES FILED)

The respondent restated the arguement to suit his dispute
but the error was not the fruit of the error as it is the error
in the admissions of these witnesses.

PETITIONER ENTERS AN OBJECTION

Respondent states there were two prior rapes offenses, when this
is incorrect analysis of the fact.These were allegations, and
nothing more, the petitioner was arrested for both, at seperate
times, but never charged.Both cases were dismissed by the state
after preliminary investigations, waivers were either signed stating
so, or a depesitionwas conducted and then dismissal of charges.
(Exhibit M, and M1-M21) Petitioner relies on his outline in grounds
nineteen and twenty of this petitioners application reply, and
does not agree with the respondnets background.As the court can
see of the evidences presented the complaints were improper and
disassociated of the facts in true.

Here the people relied on People v.Collins(1986)42 Cal.3d
378(Resp.B.at 54) This erroneous, for the collins rule applies
only to impeachment evidence, and the Supreme Court itself has
refused to extend its holding beyond that restriction limitation,as
explaining in opening brief*(AOB at 82-83).As outlined in petitioners
habeas brief (PHB)(PHB220:19-12) where the petitioner lays out
how the evidence the state intended to bring as reliable before
abuse of 352 issues, that there had to be

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1 "In evaluating admissibility of a prior crime under 352 componant
2 of section 1108, the court [SHOULD] consider the "degree of certaint
3 that the defendant commited the crime, the risk of distracting
4 the jurors, the risk of unfair prejudice, and similar factors."
5 Here the court knew that Yablonsky intended to testify,
6 " that the sex was consensual", but that he was not the one who killed
7 her .(RT26:5-7).Respondent states that this was not a case where
8 the attorney prohibits them from testifying, but this is pretty
9 much what happened. In the trickery of play on words, as outlined,
10 (RT498:22-28) Court addressingg Yablonsky
11 SO , THEREFORE,I"LL SAY IT AGAIN,IF MR.SANDERS SAYS["I"M GOING
12 TO RELY ON THE STATE OF THE EVIDENCE]'"that means that you are
13 going to be having him speak for you and the statement that he's
14 going to be making is going to include implicitly that you waive
15 your right to give testimony in thic case,and you understand that
16 it's your right and not his ?
17 (TWO MINUTEB LATER THE COURT RECONVEINED FOR THE DAY AND DEFENDANT
18 WROTEW THE ATTORNEY A NOTE, ABOUT THE NEED TO TESTIFY)(exhibit P7)
19 [The attorney writes they "we" aggre not testify](1/27/11)
20 (exbit I10) Is a copy of one of the lettere written of the
21 lettere the defendant wrote, the other went to defendant's father.
22 Asking him if he would help me decide with regards to the evidences,
23 but it was directed to my father and not the attorney.The letter
24 addresses the questions surrounding the need to testify, and this
25 was given to the attorney that Thursday morning, before they played
26 the recording of the interrogation.After they opened, the attorney's
27 and the judge went into the chambers.

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1 The note sent to my father dipicted that the attorney came from
2 the judges chambers and according to the judges view,there was
3 no evidence to support a need to testify, and that I had three
4 days to decide. This was after the attorney took me away from the
5 prosecutor into the jury box, we discussed the need to testify,
6 and the attorney told me that the judge told him it would be as
7 useful to me as it would be harmful to testify.That I was going
8 to decide on that following Monday, because the courts agreed to
9 giver the jury Friday's off during testimony. This was Thursday.
10 Right after the prosecutor rested, the attorney asked one question
11 about an "1118 motion, or would the court wish to do this later".The
12 courts response was "another time".(RT52344-5)
13 Instead of saying as the court "instructed" me "he would say"
14 "[I"M GOING TO RELY ON THE STATES OF THE EVIDENCE]" as the court
15 said.
16 The attorney said "[AT THIS POINT DEFENSE RESTS]"
17 This was done on that same Thursday, I was told I had three days
18 to decide. This was caught off gaurd and was [not] defendants interest
19 Respondent reliance on Rock v.Arkansaa,483 US at 49;Gill v.Ayers,34
20 f3d 911,919(9th.cir.2003)Suggesting the attorney can waive the
21 right and defendant is "presumed to assent to his attorney's tactica
22 decision to not have him testify....waiver of the right can be
23 inferred from the defendants conduct and is presumed to assent."
24 United States v.Edwards,897 f2d 445(9th.cir.1090)(to hold that
25 defendant may abide his lawyers' advice and not take stand and
26 then invalidate the trial because he so acted is not fair to the
27 Government)"THIS IS EXACTLY WHY THE RIGHT IS INVOKED, BECAUSE THE
ATTORNEY LIED TO ME".

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1 FIRST I"M TOLD THAT WE HAVE SEVEN WITNESSES, AND THAT AALL THE
2 DNA HAD BEEN INVESTIGATED AND THAT THERE WAS REASON TO BVELIEVE
3 THIS ATTORNEY WOULD PRESENT IT,WHEN THE COURT ASKED WHAT THE ATTORNME
4 WAS GOING TO DO, THE DEFENDANT EXPECTED HIM TO CALL WITNESSES,
5 PRESENT EVIDENCE HE HAD INVESTIGATED. EVEN THE ATTORNEY'S QUESTION
6 PRESEEDING THE REST WAS BASED ON "1118" INSUFFICIENT EVIDENCE.THIS
7 ATTORNEY DID NOT QUOTE AS THE COURT SAID HE WOULD,INSTEAD HE BLURTS
8 OUT [AFTER I WAS TOLD I HAD THREE DAYS TO DECIDE] '"[defense rests]"
9 not what the judge said he would say, first.

10 THIS ARGUEMENT IS ABOUT THE ADMISSIONS OF WITNESSES

11 The People rely on People v.Story(2009)45 Cal4th 1282,arg
12 that "a defendant accused of such a [murder] involving Rape is
13 excused of a sexual offense within the meaning of evidence 352
14 and 1108"(Resp.B at 57-58)Petitioner had made the identical point,
15 and cited the identical case.People v..Story, as authority.(AOBat
16 70)He has never calimed that section 1108 is inapplicable, but
17 only that the trial court abused it's discretion on the facts of
18 the particular case.

19 No case, however, has applied this principle to evidence
20 received for a different,or additional,purpose, not for impeachment.
21 To the contrary, this court has declined to extent the Luce rule
22 beyond impeachment.People v.Gonzales,(2006)38 Cal.4th 461 932,959-
23 960;see also People v. Brown(1996)42 Cal.App.4th 461,468(where
24 prior statement violated the fifth amendmant,defendsant did not
25 need to testify at trial in order to preserve the issue of the
26 court's erroneous ruling allowing the prosecutor to introduce it
27 if defendant did chose to testify.People v. Falsetta

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(1999(21 Cal.4th 903).AS Falsetta recogniozed, the erroneous admissions of setion 1108 exidnce in violation of safegaurds of evidnece code section 352 may violate the right to due process in violation of the Fourteenth Amendment .(21 Cal.4th at p.917)That this case here. The allegations within.Neither complaining witness sought to press charges(Rt31:15-18;45:4-9)In each case Yablonsky had a [powerful] defense.People v.Lopez(1948)32 Cal,2d 673,686(Peters,J.Dissenting) (Refering to the "well known tendency to assume that merely because someone has been charged, that where there is smoke there is fire") The error violated due process under the Fourteenth Amendmnet, is insofar as the error prevented Yablonsky from testifying, the eror violated his fifth,sixth,and fourtteenth Amendment right to testify in his own behalf and to present a defense.

The appellant requested transfer reconsideration under rule 8.500 (b)(4) in light of People v.Gonzales,supra;People v.Rodriguez,supra; and People v.Falsetta,supra.The transfer was too denied in the courts dednial.Hill v. Lockhart,28 f2d 832(8th.cir.1994(Kotteakos v.United States,328 US 750(1946).

38.

Petitioner brings that the court committed prejudicial error, unforfeited error when after the jurors announced they were hoplessly deadlocked , they were instructed to resume deliberations after the foremen revealed the numerical split and that majority of the split was in favor of guilt.Respondent describes the error of a deadlocked jury.[Incorrect]Respondent claim that the jury foremen's [characterization] the division of the jury voted changed [each day]

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1 (RT670:6-11) The jury forman was aked if the jury was deadlocked,
2 and the jury formen said"that's correct".(RT671:18-20)The court
3 asked at this point no progreess can be made on e way or the other,
4 and the jury forman said "[**EACH JUROR HAS INDICATED THEY WERE**
5 **SOLID IN THEIR POSITION**]".The foreman has said he had been on several
6 juries before, and the court asked were the beliefs of the foremen
7 that the jury was ["**HOPELESSLY DEADLOCKED ?**]"**The jury formenan**
8 **Said that the only thing that would change would be the**
9 **count through further discussion"**
10 Here that characterization could not be correct, when the foreman
11 just told the court that each person said they were "[**SOLID IN**
12 **THEIR POSITION**]"Here the formann was being coached to [cooperate].
13 The court then asked the foreman [**ONLY**] and not the panel.
14 Let me tell you what my [thinking] is,and I am not going
15 to hold people [hostage] Your time is very [valuable].I.ve
16 tried to make it clear that I [appreciate] your service.We're
17 well within our [time frame] for this trial.It's 3:00 today.
18 I'm going to propose that you go home tonight,come back
19 tomorrow morning.Let everything sit as it is,[get off early],come
20 on in tomorrow morning and talk to each other.I won't keep
21 you here unless you feel like your making progress.I think
22 that might be something worth while.Do you [think] that's
23 possible ?
24 Foremenan said [he thinks] that's possible.(RT 672:1-12)
25 The counsel that was assigned to this case "Sanders" was absent,and
26 standin was appointed.Resppondent then suggests that standin counsel
27 did not enter an objection,nor did defendant.

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1 As detailed earlier, the court had instructerd the defendant that
2 if he addressed or interrupted this trial,[he would have me taken
3 oudt of the courtroom]and placed into a room at the end of the
4 hall, where I could listen to the trial through a speaker
5 system. **AT NO POINT INTHIS ENTIRE CASE HAD I INTERRUPTED, MISSPOKE,**
6 **OR WASS DISRESPECTFULTO ANYONE IN THIS COURTROOM OR THE JAILS OR**
7 **ANYWHERE,, TO MAKE THIS INSTRUCTION JUSTIFIED, AND DEFENDABNT DID**
8 **NOT CHANCE BEING STRICKEN FROM THE COURTROOM.**Smith v.Curry(9th.cir.
9 2009)580 f3d 1071:Powell v.Galaza(9th.cir.);United States v.Ajiboye
10 (9th.cir.1992)961 f2d 892,894("even when the judge does not inquire
11 but is inadvertantly told the jury's division, reversal is neccessary
12 if the hold out jurors could be interpret the charge as directed
13 specifically at them-that it,if the judge knew which jurors were
14 the holdouts")("Italic ommitted"original).
15 The fact the court stated that it would ignore the numerical split(
16 (RT671:3-4)makes no difference to jurors,who would leave their
17 common sense at the threshold of the deliberations room.(forgetting
18 the elephant inthe room) PER SE.
19 **First,**they had already declared that each person was SOLID in their
20 vote.
21 **Second,**there was "no" indication a decision could be met(progress)
22 **Third,**The court wanted the jury to know what he was thinking,
23 **[AND THAT HE WAS NOOT GOING TO HOLD "HOSTAGES"[]**
24 **Fourth,**The court wanted the jury to know time was valuable [He's
25 tried to make that clear] that he appreciated their service.
26 **Fifth,**that he wanted them to know there was plenty of time,["we're
27 weel within their time frame for thies trial."]

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The jury was asked to return for just (30 more minutes) the next day and all agreed.[to the thirty minutes].(exhibit V1) indicates this instruction, jury deadlock was not suggested in front of competant counsel, to object, and the attorney that was there knew nothing of this case to [any] degree to make rational and relibke decisions. There was a waiver to continuous trial signed and on reecord dated january 14,2011(right to continuous trial waived)

The following occured the next day
9:10 jury resumed deliberations
10:47 Jury returned still hoplessly deadlocked, and the court sent them to recess
11:09 The jury was instructed to resume deliberations
12:00 The jury returned still hopelessly deadlocked, and the court sent them to lunch, where they ate together (and talked)
13:30 The jury was instructed to resume deliberations
15:30 The jury returned hopelessly deadlocked, the court granted recess
15:50 The jury was returned to deliberations, after being asked to come in voluntarily for just thirty moire minuted, and returning to the courtroom [HOPELESSLY DEADLOCKED] and returne to deliberate on what they had returned three seperaste time hopelessly deadlocked, after they had already told the court they were [SOLID IN THEIR VOTES] and were hoplessly deadlocked
16:37 The jurors had gotten the message.they reacha verdict
Message one- The court did not care of their [solid] vote
Message two- The court mentioned [hostages]
Message three- The court had plenty of time to exercise his discreti
Message four-The court wanted the jurors to,know his time was more valuable than theirs, being he acknowledged their value, but still demanded them to return to the deliberations room, and even if they returned deadlock he would not release them, and they should know what he was [Thinking] [VERDICT] (exhibit V2-V3)

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The state courts opinion reasoned that the issue was forfeited for failure to object(Opn at pp.25-26) This is erroneous. An instructi to resume deliberations is instructional error and hence is preserve without the need for an objection where,as in this case,it affects defendant's ability and substancial rights.Maxwell v.Powers(1994)22 Cal.App.4th 1596,1601("On May 3, the jury sent a note to the court stating it was deadlocked seven to five.The court instructed the jury to resume deliberations")(emphasis added);People v.Miller (2008)164 Cal.App.4th 653,661 and fn.4(Response to jury questions not duriong deliberations is an instructional; and hence not subject to forfeiture)Pen.Code §1259;Pen code §1469. Further Yablonsky did not object because he was told that he would be removed fromthe courtroom if he outspoke.The attorney, who knew the case, was ill and was represented by stand-in counsel who knew nothing about the case or circumstances. Here the error is further not subject to forfeiture due to lack of objection, since there was the standing right forfeiture to continue the trial accoirding to (exhibitV1) where the right to a continuous trial was pre-arranged in case of emegencies, as was this day.Next an objection would have been fultile because of the record showing the court would have followed that same course even if an objection had been made.(RT670:12-673:7) Finally,counsels failure to object in such coersive circumstances such as, or at least to request a mitigating instruction such as CALCRIM no,3551.constituted ineffective assistance of counsel under the sixth Amendment(see Strickland v.Washington(1984)466 US 668) While the respondent relies on the authority for failure to object as the court of appeals had, then suggesting the Supreme court authority holding on State court decisions was"[AT LEAST NOT UN-REASONABLE AND RESTED ON A CALIFORNIA STANDARD]. EARLY V.PACKARD

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1 Here the respondent holds that under Brown v.Bradshaw,531 f3d 433,
2 437-39(6th.cir.2008)(That polling the jurors to see if there were
3 further deliberations could be helpful was being proper.)The responden
4 cannot provide such polling, because none exist. The court does
5 have the repeated influence by the court, and the applications
6 of that influence when they were returned to deliberation three
7 seperate times after they had already been told that if they did
8 not reach a decision, they would be released.They were not/.
9 Finally, according to thre opinion,holdout jurors could not possibly
10 weaken their resolve if the court orders a resumption of deliberation
11 in the knowledge that the great majority favors guilt.This cannot
12 be squarely with real life,as illustrated by specifically by
13 Crowley and Walker and more generally Bollenbach v.Unitd States
14 (1946)326 US 607,612("The influence of the judge on the jury is
15 necessarily and properly of great weight,and jurors are every
16 watchful of the words that fall from him")(internal quotations
17 amendations ommitted),and Dorshkind v.Harry No.Koff Agency (1976()
18 64 Cal app.3d 302,307(sefferson,J.;"Juries tend to attach inflated
19 importance to any such communications,even where the judge has
20 no intention whatsoever of influencing a jury's determination").")
21 BECAUSE THE ERROR AT ISSUE IS COERSIVE OF THE JURY,IT VIOLATED
22 Yablonsky" right to fair trial by an impartial jury and due process
23 under the sixth Amendment and fourteenth Amendment.Insofar as
24 the error is preserved only under the doctirine of IAC, counsels
25 failure violated Yablonsky's right to effective assistance of counsel
26 under the Sixth Amendment.
27 As the respondent admits there was no objection.

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1 The respondent understates the error as an instructional to return
2 to deliberate. The error was influencial on behalf the judge, and
3 when the judge addresses the jury before returning them with ,
4 what he was thinking, possibilities of being held hostage to delibera
5 that he the court had plenty of time allotted to this trial, and
6 that he knew their time was valuable. Indicating the trial tookapresed
7 over their livelihoods, and after returning stilldeadlocked and
8 forced back into deliberations, there was no other meaning of what
9 the COURT WAS THINKING, KNOWING THEIR LIVES WERE IMPORTANT, AND
10 THAT HE HAD PLENTY OF TIME.The error was more than coersive.
11 Lowenfield v.Phelps,supra,484 US at p.241(recognizing that under
12 some circumstances intrusive polling and instructions might rise
13 to a federal constitution violation)Sanders v.Lamarque(9th.cir.
14 2004)357 f3d 943,944 andfn.1;United States v.Evanston(9th.cir.2011)
15 651 f3d 1080,1093,fn.15 .Hill v.Lockhart,28 f2d 832,839(8th.cir.
16 1994);Kottewakos,328 US 750(1946); STRICKLAND V. WASHINGTON, 466 US 668(1
17
39)
18
19 Petitioenr brings that trial court committed reversible error in
20 questioning forrmen and ordering the resumption of deliberations
21 in the absence of trial counsel.Respondent suggests conversations
22 with the jury foreman, while the jury"purportedly' deadlocked while
23 trial counsel that was assigned throughout this entire case was
24 ill and not in court, the claim should be denied.
25 FIRST, THERE WAS A WAIVER TO A CONTINUOUS TRIAL FILED IN THE COURT
26 ON JANUARY 14,2011, in case of this kind of emergency
27 (exhibit V1)The court appointed stand-in was prepared to do no
more that

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1 mover the court for a continuance based on the trial attorney's
2 absence, and had [never] discussed this case, not once represented
3 the defendant inthe 2½ years the defendant was waiting for trial,
4 had not read one page of the evidence, interviewed one witness,
5 read one page of discovery, listened to one experts testimony,
6 heard one word of the courts instreuctions up to this point, not
7 one chambers meeting, and certainly not one word of the states
8 witnesses testimony, or had conducted one second of investigations
9 that would allow him to make reasonable ,competant and reliable
10 decisions based on the interests of his newly appointment.The fact
11 this person said anyhting to the courts supports his reckless interes
(EXHIBIT V-1) AS WELL.
12 The court had suggested reopening the closing arguements after
13 that announcements of deadlock, and this attorney surmized to enterta
14 this idea, it was the defendant that yeslled at this attorney that
15 he knew nothing of the case, and should keep his mouth shut. The
16 attorney saoid that he would be making that decision. Fortunately
17 the court decided to not reopen.As outlined in the PHB, he details
18 the critica;l necessity of the attorney's knowledge of this case,
19 and the applications of law.Smith v.Curry (6th.cir.2009)580 f3d
20 1071.Quoting United States v.Cronic,466 US 648,659(1984);French
21 v.Jones,332 f3d 430,438(6th.cir.2003)A federal district court rercent
22 held that the critical phase of jury deliberations constitutes
23 a deprivation of the right to counsel under the Sixth Amendment.
24 Respondent then suggests this is a species of IAC anbd rests his
25 principles as his earlier arguemnents.Rleying on the courts analysis,
26 that the defendnat did not dispute thatshe was represented by an
27 attorney appearing on behalf of his of his trisal attorney.

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1 THIS ADMISSION BY THE APPEAL COURT CRIPPLES IT"S DENIAL
2 That the trial counsel was absent.Thge court then suggests that
3 petitioner did not object,
4 First, the defendant was told to keep his motuth shut and to not
5 discrupt the court,or ellese he would be removed from the courtroom
6 and forced to listen to the case on a speaker from a cell.
7 Second, defendante was innocent and is laymen oin the law, and
8 was under the impression that if an emergency as this occured,
9 the court would continue, as was discussed when he was asked to
10 wawive that right to continuous trial (exhibit V1)(EMPHASIS ADDED)
11 Thrid, defendant did bolster to this attorney who was tryiong to
12 entertain in the reopened closing arguements.
13 Lastly, it was not the defendants responsibilityy to remoinde the
14 courts and attorney's of their obligations to protect the right
15 of the defendant, and accoarding to the momentum of the court,
16 and objection would have been ignored andcertaimly the defendant
17 would have been removed from the courtroom for trying to defende
18 his right. **ABA MODEL RULES OF PROFESSIONAL CONDUCT**
19 **RULE 1.4" A lawyers shall explain to client to the extent neccessary**
20 **to permit a client of informed decisions regarding the [representatio**
21 **Rule 45.2 which include several areas of knowledge this attorney**
22 **was not capable or prespared to uphold to.((EXHIBI V1)**
23 Under the Sixth Amemndment and fourteenth Amendment and
24 state ;law, a defendant is entitled to the effed=ctive assistance
25 of counsel at all critical stages of the proceedings,includinBg
26 the courts response to jury's announcement of a deadlock.United
27 States v.Cronic(1984)466 US 648;French v.Jones (6th.cir.2003)332
f3d 430 438.As a federal district court has held, the all-6too
common practices of using stand-in counsel diuring a critical phase

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of jury deliberations constitutes deprivation of right to counsel under the Sixth Amemndment.Mortiz v.Woods(E.D.Mich.2012)844 f.supp.2d 831,842,reversed (6th cir.12013)525 fed.appx.277)

The opinions referaence to the post briefing reversal in Mortiz(opn.at p.28,fn.6) failed to recognize that that reversal was based upon a provision of the AEDPA standard applicable to federal habeas corpus that precludes reliedf unless the principble of law at issue has been specifically recognized by the Supreme court(habeas relief barred unless the state court decision "resulted in a decision that was contrary to, or involved an unreasonable aapplication odf,clearly established [federal] law,as determined by the Supreme Court of the United States")There is no such requirement in a direct appeal ,noer any requirement odf extreme deference to thew state appeal court, which AEDPA mandates.

Here there was a waiver of the defendant to continuous trial, based on sitiuations where an interruption could in fact postpone the trial until a reasonable time. The triasl atoorney had been in the hall. way jusy moments before the jury announsed deadlocked, and certainly had his cell phone on him should the courts inquire his interest or knowledge. There is no showing the court attempted to contact the attorney, not recognize the waiver signed before the trial started, therefore this court would not have entertained an objection, even comnsidereng this was a murder trial that the stakes were life of imprisionment [forever], should the jury verdic The court did suggest reopening the closing.(RT67419-

(RT673:13-14)Court- Maybe Mr.Sanders will be back ytomorrow...

(RT673:176741 (RT673:17-674:1)

> Im not a betting man. I never know what a jury'es going to do. I've had people go home and come back, that half hour has turned into an all-day deliberation ending in verdicts.

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and i've also had then come back and say, this is done. We're not going anywhere.I think it's impoprtant that [SOMEONE BE HERE ON BEHALF OF EACH SIDE [TO TALK TO THE JURORS], SO THAT I"LL BEW ENLIGHTENED, IF THIS CASE DOES RESULT IN A MISTRIAL, AS TO WHAT SHOULD HAPPEN NEXT.

(standin counsel Zywiciel)I was curious, wheam he mentioned the progress was made each day, i'm not sure how you would define progress,.Was it 11,1 guilty and,that and,progreess is now 8,4? (STANDIN DID NOT KNOW!)

HERE THE COURT JUST INSTRUCTED THE STANDIN ATTORNEY HE WANTED THIS PERSON OR SOMEONE TO ADDRESS THE JURY "each side to talk to the jury"

(RT674:11-18)Court-I should say that I failed to explain it.[There's no question I fgailed to explain it] because he didn't understand it."If I would have explained myself properly,"I guess he wouldn't have said that. I seemed like people were trying to stop hoim omn each side. Anyhting anybody want to add ?

(Standin) No.(HIS JOB WAS TO CONTINUE, WITHOUT BEING INEFFECTIVE) (EXHIBIT VI)

(RT 674"25-675:7)Court -When I made my proposal, and he said yees, themn I did that. Remind me tomorrow if that';s what you want me to do.That's going to be important to know whether or not Mr Samders is going to be here before I even try that.

Mr.Zwiciel can arguew anything."I.ve knowwn him long enough."[We went to the same law school].I just don't know.I'd have to talk to you and Mr.Sanders,and you have to tell me why [REOPENING ARGUEMENT BE OF SOMNE BENEFIT].You'd have to help me understand it.We don't do that[UNTIL MR. SANDERS IS HERE]. (EXHIBIT VI)

Here not only was the judge chums with the standin, but he asked his opinion of how or why more closing should or not be useful .

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1 The prosecutor then suggested that it would be up to the jury
2 too if they had "specific issue that is holding them up" versus
3 across the board. While the court provided one of the critical
4 componants of possbile reopening the closing, that they might wonder
5 of the voluntariliness of the DNA being collect. This does make
6 showing that the court (too knew) that seriousneess of this attorney'
7 presence in the stage of the appointment. This should also bring
8 into light, how was the relationship with the judge and Mr. Zwiciel
9 and whether they went to school together, or did their relationship
10 allow the judge to believe [MR. ZWICIEL COULD ARGUE ANYTHING. I"VE
11 KNOWN HIM LONG ENOUGH] blurr the courts view on the severity of
12 the defendants right to effective and meaningful representation.
13 Not just someone that could argue the peeplings off of an orange
14 without any hands, or confuse the facts of the jurors without
15 even opening a file, reading one piece of evidence, or even guessi
16 what what witness said what. [THE COURTS AUTHORITY WAS INFLUENCED
17 BY HIS RELATIONSHIP WITH HIS OLE SCHOOL BUDDY]. As the respondent
18 stated there was no merit of showing stand-in counsel was ignorant
19 of the facts of petitioners case. Here the court even said that
20 the court should wait for the attorney Sanders. But don't worry
21 good ole school buddy Zwiciel could argue anyhting, even when
22 he knew nothing about it. This does indicat that the court could
23 not recognize the right of the defendant over his relationship
24 with his school buddy. Or did the judge believe the school they
25 went to, produced [mindreaders]. Becasue if this attorney knew nothi
26 of the casse, how could he instruct the court of "WHY REOPENING MIGHT
27 BE SOME BENEFIT."

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1 AEDPA standard applicable to federal relief of Habeas corpus that
2 precludes relief [unless] the principle of law at issue has been
3 specifically recognized by the Supreme Court(Habeas relief is
4 then not barred if showing of violation of clearly establidhed
5 state court decision"resulterd in the decision that was contrary
6 to or involved an unreasinable application of clearly estblasished
7 federal law, as determined by the Suptreme court of the United
8 States.Strickland v. Washingtom(citation ommitted)The jury instructed
9 inthe absence of trial counsel was contrary the meaning of effectiv
10 and reliable counsels ability to represent the defendsant.This
11 was a critical stage of the proceedings, and therefore not subject
12 to forfeiture because the defendant would not chance beeing tossed
13 form the courtroom into a cell to listen to his trial over speaker
14 system/.Hill. v.Lockhart,28 f2d 832(1994)Kotteakos v.United States,32 STRICKLAND V. WASHINGTON, 466 US 668 (1984)
15 US 750(1946).
16
17 40.

18 Petitioner brings that trial court committed prejudicial; error
19 in denial of motion for new trail base on an incorrect application
20 standard of federal and state law.Rewspondent suggests this as an
21 arguement based on the courts denial of the motion, where the court
22 applied the attorney's performance in the court room [only] and
23 it's analysis of "ommissions and prejudice" which was in the Motion
24 based on this attorney's failure to properly and reasonably invest-
25 igate before making critical trial decisions, as a reasonable excuse
26 to deny a motion for new trial that focused on the attorney's error
27 in not investigating critical evidences or crucial witnesses before

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announcing trial readiness. Strickland v.Washington,supra; People v.Ledesma,supra.Respondent states that the court had read and considered both pleadings filed on this matter, by defense and opposition of the state before making his ruling.The people's opposition stated,People v.Foseelman(1983)33 Cal.3d 572,1150(The the trial court should entertain the motion if the court was able to determine effectiveness);People v,Cornwell(2005)37 Cal.4th 50,101 (Which id better suited)That the view of the courts during review on matters that were "other than what the trial court could have observed during trial".The court determined the error to be addressed in Habeas.(prosecutor)(CT299:8-10)(" IN THE DEFENDANTS MOTION,HE CITES SEVERAL INSTANCES WHERE HE CLAIMS THAT HIS COUNSEL WAS INEFFECTIVE. SOME OF THESE CLAIMS[MAY] BE READILY APPARENT TO THE TRIAL COURT,BUT IT APPEARS THAT SOME OF THESE CLAIMS "[ARE NOT]"The opposition claims that defense counsel' failure to have DNA analysis done, could be the root of the courts entertainment of the Brooks case, but the attorney could not pursue that [avenue](CT299;13-18)However,other DNA issues brought up by the defendnat such as "[THE FAILURE TO TEST 'CERTAIN ITEMS'] MAY NOT BE READILY APPARENT AS THE COURT WOULD HAVE TO CONDUCT A FULL HEARING EVIDENCE AS TO WHAT ITEMS EXISTED COULD HAVE BEEN TESTED, ETC" (DNA located inside body)(Red hair with the entire root-bulb) (Watch-pin located next to victims body)(THE MURDER WEAPON)That this would consume time according to California Supreme court in Cornwell(supra)being suited for the appellate process.Here Strickland v.Washington,466 US 668(1984);People v.Ledesma,supra, (1987)The same standard applied to appointed counsel as retained, Cuyler v.Sullivan(1980)446 US 335,344-345.

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1 (RTCT299:24-300:2) It appears that the defendant is also claiming that Mr.Sanders
2 failed to investigate the case properly,more specifically [failed] to interview
3 several witnesses.Like the DNA issue above, the failure to investigate the case
4 is not readily an issue the court readily had the ability to deal with.In order
5 to properly deal with such issues, the court would have to conduct a full hearing
6 and take evidence as to [**WHY CERTAIN MATTERS WERE NOT INVESTIGATED OR LOOKED**
7 **INTO AS THE DEFENDANT CLAIMS**].2254(d)(1-8) burden rests on petitioner to establish
8 convincing evidence that factual determinations of state courts was erroneous
9 "We now hold that habeas corpus court shoauld include in it;s opinion
10 granting the writ the response reasonong which presently lead that
11 any of the eight factors was present.Purkett v.Elm,514 US 765(1995)
12 Under Townsend v.Sian,372 US 293(1963) ,3) The fact finding process
13 employed by the state court was not adequate to afford full and
14 fair hearing.Tamayo-Reyes,3)Petitioner shows that denial of a hearin
15 will result in a fundamental miscarriage of justice, because there
16 is probability petitioner is innoicent.Under the Peoples oppositio
17 he brought case on point (CT300:12-13)People v.Valencia(2006)146
18 Cal.App.4th 92[counsel incompetant to fail to make objections to
19 inadmissible testimony].The states oppositions state that defendant
20 had to make showing,under Strickland, there was ineffectiveness,
21 but also must show prejudice by those actions.Here not only the
22 errors of the counsel present prejudice, but the courts reliance
23 on the attorney's performance present errors.The state presented
24 evidence that was proof of the struggle, the [**Watch-pin**] and withe
25 the RED haie woth the root bulb fully intact form the trial, but
26 that does not mean they did not exist.(BRADY V. MARYLAND)
27 **PREJUDICE ONE**_The red hair would have proven someone elses besides
defendants, and was pulled form the killer in the struggle.

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That prejudice alone would have undercut the entire states case,That
1 Yablonsky was the killer, and only suspect.(The DNA from the hair)
2 **Perjudice two**-The watch-pin that was shown to the jury as results
3 of the struggle that occured, had DNA that only belonged to one
4 person, and that person was not [Yablonsky].
5 **Perejudice three**-The murder weapopn thaет was uded to kille the
6 victim and was found on the body, DNA from that iten would not have
7 belonged to the defendant Yablonsky, and belonged to someone else.
8 **Perjudice four**- The DNAS that was located from the cigarette butts
9 found at the crime scene, DNA woiuld have connected Gragory Randolph
10 along with his confession and arrest, were enough to raise reasonable
11 doubt beyond mere surmise.Respondnets applications of the counsel'
12 pleadings arre erroneous as well, while the opposition did present
13 the Strickland standard, the moving party Mr.Hal smith did as well.
14 While the state prosecutor agreed there were failures inthe invest-
15 igations, the court still relied on the attorney's courtroom behavio
16 **"The court will make clear that it did observe the trial, and at**
17 **no time[in the trial] did I think that Mr.Sanders did anything which**
18 **appeared to be ineffective or incompetant."**"[HAD SOMETHING OF THAT
19 NATURE OCCURED IN MY PRESENCE PERHAPS--I SHOULDN"T SAY PERHAPS_
20 "HAD THAT OCCURED IN SUCH A WAY THAT I WAS ABLE TO COME TO A CONCLUS
21 THAT WHAT HE [DID] WAS FACTUALLTY INCOMPETANT OR INEFFECTIVE, THEN
22 IT WOULD BE APPROPRIATE FOR ME--FOR ME TO CONSIDER YOUR MOTION
23 IN ANOTHERLRLIGHT" Here both tha moving motion and the states oppos
24 made clear and sufficient showing there were failures inthe invest
25 of this case, which presented the attorney's inablility to effecti
26 make meaningful and reliable trial tactical decisisoions, and anyt
27 less than meaningful investigations is ineffective.STRICKLAND.

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1 Respondents rule on this matter does not consider the meaning of
2 Strickland v.Washingtom,466 US 688(1984)Brecht/Kotteakos.Here the
3 trial court relied on his observations of the trial attorney, and
4 at virt =uallty ever movement the court asked for authoriy, or any
5 facts to support the atborney's movement, and [every] one of the
6 attorney's actions were produced on paper, with][**NO FACTUAA BASE**
7 **OR MERIT IN SUPPORT**]. The appeal courts analysis was too erroneoue
8 because that same court had ruled on the merits of claim "That the
9 view of the court other than what the trial court could observe
10 during trial"which too is incorrect to an analysis of an attorney's
11 investigations before trial, and making critical decisions before
12 such investigations/. As outline earlier in (PHB)Strickland v.Washingt
13 466 US 668 (1984)The supreme Court began it's decision that
14 the idea incorporated in VI Amendment right to counsel,"exists and
15 is needed in order to protect the fundamental faiurness and right
16 to a fair trial:"'Yarborough v.Johnson,520 f3d 329(4th.cir.2005)'
17 (presumption applicable when counsle did not seek funds to hire
18 DNA expert)'Williams v.Yaylor,529 US 362(2000)(counselors failure
19 to investigate and present mitigating evidence,substancial mitigating
20 evidence during trial)Here that DNA which woiuld have been recovered
21 from the **1)Watch-pin 2) The red hait=r with the entire root bulb**
22 **attached and 3) The murder weapon [ALL THREE WOULD HAVE PRODUCED**
23 **SEPERATE DANDNA THAN THE DEFENDANTS] 4) The cigarette butts from**
24 **the ashtray [ALL THESE ITEMS DID NOT HAVE THE DEFENDANTS DNA ON**
25 **THEM AND WOULD HAVE PLACED SOMEONE ELSE AT THIS SCENE, AND CERTAINLY**
26 **WOULD HAVE PRODUCED GREGORY RANDOLPHS]**.Here the motion was determined
27 on the trial courts applications of the correct standard,and did
not

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The question before this court, would be, did the court correctly apply the correct Supreme court standard in his ruling on the motion for new trial, based on ineffective assistance."[HAD something of that occurdd in my presence perhaps....Had that occured in such a way that I was able to come to a conclusion that what he did was "factually'" incompetant or ineffective..]

The trial courts opinion was based on the attorney's performance inside the courtroom, and nothing more.Hill v.Lockhart ,28 f2d 832(8th cir. 1994)United States v.Bagley,473 US 667(1985)Kotteakos v.United States,328 US 750(1946) STRICKLAND V. WASHINGTON, 466 US 668(1984)

41.

Petitioner bring that the trial committed ineffective assistance of counsel for failing to move for change of venue.Respondent does suggest this surrounds the courtroom practices or news paper articles, when this in fact covers the news paper articles ONLY (Exhibit W) Where numerous papers circulated prejudicial matter as "[justice after 25 years]" [Justice after 24 years;Cold case solved]"(3-11-09_) [Team finds justice after crimes(10-24-09),"Murder case finally in court",along with the flyers mailed to every door,every mail box, and every prospective jurors home, declaring the prosecutors opinion of the defendants guilt as he promises the victims family closure inthe trial coming soon.This mentions nothing of the sensationa media coverage when the arrests occured, and throughout the pretrial phase of this case,ALL DECLARING THE GUILT OF THE DEFENDANT, AND THAT THE PROSECUTOR HAD FINALLY SOLVED THE CASE THAT HAD GONE 24 YEARS UNSOLVED..FOR MONTHS.(exhibt A)Bible v.Ryan(9th.cir.2009)571 f3d 860;Cambell v Rice (9th.cir.2005)408 f3d 1155.

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Respondent agrees that trial counsel did not bring change of venue (RA143:9-10)The bases the attorney's voir dire of the jury and their response.Admitting there were influenced jurors, the respondent then admits that these flyer questions did not pertain to the majority of the panel of jurists, or were properly addressed according to the news paper coverages.As outlined in the(ARB) The petitioner attorney details the many aspects of the 74 jurors had seen the flyer that was shown them by the attorney, and of the 74 that were in the courtroom,only four or five admitted to receiving this mailer, indication that the other 70 were dishonest in admitting, not only that they had been mailed one to their homes,or mailboxes (where these were mailed to every address of registered voter, and county addresses)As the appeallate attorney outlines the courts address to the court with regards to news paper artiucles, but not one question with regards to the flyer itself or the opinion of the,prosecutor, even after one of the jurors had said where theres that much smoke there must be fire, while another said that Yablonsky had been shafted, and the most incriminating of all, was the comment by one of the first panelist, that the county would certainly have proof of guilt before they sent out mailers like that. The seed had been planted and fruitation of opinion hadwhispers throughout the entire room circulating.Respondent generously bring that it is the Fourteenth Amendment that protects the defendants under these conditions.Irvin v.Dowd,366 US 717,722(1961)(Perejudicial pretrial publicity may prevent an impartial jury for which change of venue is a remedy)Murphy v.Florida,421 US 794(1975)(Perjudice presumed applies when setting of the trial's is inherently prejudicial while actual prejudice occurs where review of the jury voir dire and

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1 and [actual publicity] indicates that a fair trial is impossible.
2 Here there were only four or five questioned, that said they could
3 be impartial, indiscating that the rest [could not] because they did
4 not say they could or would be impartial, therefore the presence
5 of prejudice [Must] be presumed. **A presumed prejudice standard**
6 **applies "when the record demonstrates that the community where the**
7 **trial was held was saturated with prejudicial and inflamatory media**
8 **coverage...."Harris** v.Pulley,885 f2d 1354(9th.cir.1988);Skilling
9 v.United States,561 US 358(2010)HERE FOR THE PURPOSES OF THE COMMUNITY
10 THE COUNTY ITSELF WAS MAILED THESE FLYERS, THAT WERE PREJUDICIAL
11 AND INFLAMATORY WITH THE PROSECUTORS OPINION OF THE DEFENDANTS GUILT.
12 Without more, there is little for consideration, but when you wonder
13 who got them and admitted to it, versus the ones who don't remember
14 or the ones who did admit, but said they could be impartial. **This**
15 **is not the case here. For the sake of arguement, lets say everyone**
16 **in the courtrroom did see the flyer they were shown, certainly when**
17 **the attorney read the contents of the prosecutors opinion that the**
18 **defendant was guilty inhis opinion, but only four admitted to possibly**
19 **being impartial,** thAT MEANS THAT OVER **95% percent of the 100% percent**
20 **of the influenced jurors could be prejudiced because they did not**
21 **admit they could be impartial.** THIS ANALYSIS DOES NOT INCLUDE THOSE
22 THAT SAID THEY COULD BE IMPARTIAL JUST TO SIT ON THIS SENSATIONALLY
23 NOTORIOUS TRIAL AS A JUROR. **The prejudice was apparrent according**
24 **to the facts and the analysis of prejudicial matter directly in**
25 **the spot light of** Irvin,v.Dowd,3566 US 717(1961),Harris v.Pulley,
26 f2d 1354(9th cir.,1988); andNebraska Press Assn v.
27 Stuart,427 US 539 (1976).

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1 The courts of Austad v.Risley,761 f2d 1348(9th.cir1985)(en banc)
2 (a state court had no duty to poll a jury about publicity [absent]
3 any showing of actual exposure to publicity).Here every jury was
4 exposed and the court made not one comment of inquiry.The respondent
5 freely provides the authority just stated, and rests his arguement
6 on whether (exhibitA2-A9) or(Exhibit W4) don't meet the thresholds
7 in his answer.United States v.Bagley,473 US 667(1985)';Kotteakos
8 v.United States,328 US 750(1946);Sheppard v.Maxwell(1966)384 US
9 333,363;

10

11 42

12 Petitioner bring that trial court commited prejudicial reversible
13 error in denying Yablonsky's motions to recuse the district attorney's
14 .office in,li.ght of the use of Yablonsky's case and photograph
15 inhis campaign flyers.Respondent rests his arguement on the opposition
16 filed by DDA Grover Merrit, that no conflict exists. This hearing
17 was hel d. on October 8,2010.(exhibit A14) does indicate that the
18 County District Attorney's counsel stated there was a hearing being
19 held on October 5,2010. The DDA Merrit motion was filed before this
20 article came out, and on October 5, 2010 the case had not been dismissed
21 as the counsel for Ramos had projected. The standing arguement inthe
22 court was for $5,000,000.00 dollars, change of venue, prosecutorial
23 misconduct among numerous claims. The conflict was there when the
24 arguement was filed by Merrit, and was in existance on October 8,
25 2010 when the hearing was [heard), and held off the record, in the
26 chambers meeting (allegedly) .Because the Attorney General was not
27 served, this court [could not] hear or rule on this motion without
prejudicing the defendants right to due precess.

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-A prosecutor must refrain from improper methods under Berger v. United States,295 US 78(1935);Gentile v.State Bar(1991)501 US 1030 Here the DDA Merrit brought that there was no conflict, where CONFLICT did exist, and reputation staked on this conviction, but i f the defendant lawsuit in the same county's courts for millions of dollars, which certainly the county and state would assumne some liablility should the County District lose, was more than catastrophic and considered in every human understanding as [CONFLICT].

Respondent analysis and authority taken in the light of the facts, not only in this petition, but the cases he relies, brings,1) was the motion really heard off record without the service of the attorney general.2) what was the analysis of the courts when determining that conflict did exist, and according to what authority and proof. 3) If the court did rely on the election, which was the birth of this specific error, motion and denial.The election being over as it's focus on whethther conflict exists, does the court direction of focus eliminate the existnce of [existance] that was in another direction.4)Could this court actually hold a hearing that was not conducted according to, the rules of court. 5)Can this kind of courtroom tactics be comparad to historical myths of kangaroos.

The records were not lost, because they were never created, while the courtroom reporter sat in the courtroom, as the attorney's and the judge went into another room,(the judges chambers with the door closed).The courts augmented record was conducted over one year after the alleged hearing, and was erroneously appli ed to a standard that did not consider the facts, because Merrit opposition was in-correct, the case was still pending in the SanBernardino Superior court Yablonsky v.Ramos CIVDS1010254 (exhibit A12)

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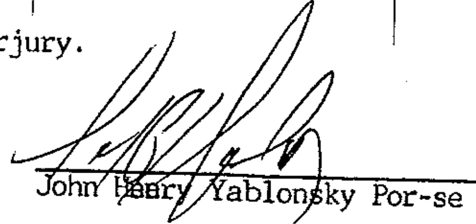
1 CONCLUSION

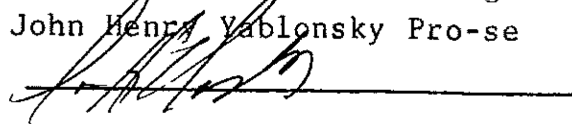
2 Petitioner has disputed every facet of the states Attorney General
3 answer, has applied the correct authority of the United State
4 Supreme courts and or Federal authority which support the petitioners
5 claim. Respondent does not dispute this matter to any degree, by
6 his example of mistatements, incorrect applications of state or
7 federal authority.Petitioner suffers irreperable harm due to these
8 injuries by the state conviction, for which he is innocent of.
(ALL ARGUEMENTS, POINT AND AUTHORITY IN(PHB) INCOPORATED BY REFEREN
9 The matters set forth above in this petition reply are the truth to the best
10 knowledge and ability of the petitioner, and this sworn statement above in this
11 reply is the truth made under the penalty of perjury.
12
13 Date 12/9/14



14 John Henry Yablonsky Por-se
15
16
17 PRAYER
18
19 1)That this petition be granted on every ground set forth therein granting a new trial.
20 2) That this petition be granted, reversal of the verdict and
21 petitioner be exonerated of all charges,**WITH PREJUDICE**
22 3) That this court grant an evidentiary hearing on the matters set
23 forth in this petitioners habeas,brief, and reply.
24 4) That this court grant a certificate of appealability should the
25 court deny this petition.
26 5) That this court grant this petitioner an order to show cause
27 as to why the petition should not be granted.

6) Any other relief this court finds appropriate according to LAW

Date 12/9/14 John Henry Yablonsky Pro-se



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