

John Henry Yablonsky AL0373
18-147
1 480 Alta rd.
2 Sandiego,ca,92179

3 FACTUAL INNOCENCE CLAIM
4 SECOND AND SUCCESSIVE ALL WRITS ACT

5
6
7
8 CLERK OF THE COURT
9 SUPREME COURT FOR THE STATE
10 OF CALIFORNIA

11 In Re John Henry Yablonsky; § No.# _____
12 On habeas corpus; §
13 § Trial Court #FVI900518
14 § The honorable Judge J. Tomberlin
15 § SanBernardino County
16 §
17 § PURSUANT TO P.C. §§ 141, 1473
18 § SENATE BILLS 261, 1134, 1909
19 §

20 HYBRID ALL WRITS ACT PETITION FOR ERROR CORAM NOBIS/HABEAS CORPUS

21
22 Book ONE of four

23
24
25
26 John Henry Yablonsky
27 in propria persona
28

GLOSSARY
LEGEND FOR THIS MANUSCRIPT

CT = MEANS GOVERNMENT CREATED RECORDS FOR THIS CASE AND ARE MEMORIALIZED AS AUTHENTIC RELATED MATERIALS, CREATED BY SHERIFF/FORENSIC OF SAN BERNARDINO COUNTY

RT = MEANS LOCATIONS IN TRIAL TRANSCRIPT CREATED BY STENOGRAPHER DURING TRIAL TO MEMORIALIZE VERBATIM STATEMENTS FOR ACCURACY

EXHIBITS = MEANS RECORDS/DISCOVERY IN THIS CASE AS A RESULT OF A LAWSUIT AGAINST CALIFORNIA FOR THE ENTIRE FILE FOR CASE FUI 900518. THIS LAWSUIT FILED BY JOHN WAS WON THROUGH THE SUPREME COURT OF CALIFORNIA.

THESE EXHIBITS WERE AUTHENTICATED BY STATE, COUNTY EMPLOYEES IN A BILLION DOLLAR LAWSUIT FILED AND DEFENDED BY JOHN. THESE EXHIBITS ARE NOT PROVIDED HERE, SO AS TO REDUCE RETALIATION FROM CDCR STAFF.

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ACCORDING TO PRISONER MAILBOX RULE

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350 McAllister
Sanfrancisco, ca,

ATTORNEY GENERAL
Box 82566
S.D. CA, 92101

This service contained the following documents;

HABEAS CORPUS WITH EXHIBITS

1 of 4

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CITY

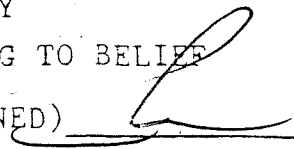
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This service was conducted on (DATE) July 14 2019

UNDER THE PENALTY OF PERJURY

THE FORGOING IS TRUTHFUL AND ACCORDING TO BELIEF

(NAME) john henry yablonsky

(SIGNED) 

My address is 480 alta rd sandiego, ca, 92179

QUESTIONS OF THIS COURT

1
2 1) Is it in the interest of the state of Califoornia to
3 allow state actors who are entrusted by statute, cannons, and rules
4 of ethics regarding the handlings of evidneces to "manipulate"
5 the evidences they handle into providing alternative results in
6 order to secure convictions ?

7 2) Is it in the interest of the state of California to
8 allow practitioners of law to provide less than ethical levels of
9 fiduciary dut~~y~~ in their respective fields regarding truth, accuracy,
10 and full disclosure when it comes to serious issues of law that
11 carry severe punishments to the accused or their clients ?

12 3) Is it in the interests of the state of California to
13 to ignore the fundamentals of the United States Constitution when
14 it comes to seeking convictions, allowing prosecutors, sheriff deputies
15 attorneys to practice their trades to less than the constitutional
16 bar set out by the amendments within the United States Constitution??

17 4) Is it in the interest of the state of california to
18 allow members of the bar to withhold and hide evidences so they can
19 win cases when the punishments carry life sentneces, then hide behind
20 the laws of the Antiterrorism Effective Death Penalty Act so these
21 evidneces will never be seen by the federal Courts ?
22
23
24
25
26
27
28

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EXHIBITS INDEX

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
1	THE
2	1.....REQUEST FROM CANTY FOR DISCOVERY
3	2.....FORMAL LETTER DEMANDING DISCOVERY JUNE 2009
4	3.....LOG OF MAILING 300 PAGES WITH LETTER STATING "TRAXIS
5	4.....MARSDEN ADMISSION WITHOLDING RECIRDS
6	5.....FORMAL DEMAND FOR DISCOVERY SUPERIOR COURT 7/12
7	6.....FORMAL DEMAND APPELLATE COURT 5/14 7/14
8	7.....INTERROGATORY TO TRIAL ATTORNEY CERTIFIED MAILING
9	8.....FORMAL DEMAND DISCOVERY P.C.1054.9
10	9.....STATE BAR ORDER FOR DISCOVERY 6/13/14
11	10.....CDCR LOG OF DELIVERY 1600 PAGES FROM SANDERS
12	11.....RECORD OF FULL DISCLOSURE BY HAL SMITH 1/29/15 (OVER 5000 PAGES)
13	13.....BRUCE NASH TESTIMONY AND STATEMENTS
14	14.....JOHN SULLIVAN STATEMENTS
15	112.....JOSEPH SAUNDERS
16	15.....DAWN DISMORE/RONALD COBBS
17	16.....GREGORE RANDOLPH
18	17.....DNA MATCHING RENDOLPH TO CRIME SCENE /CIGARETTE BUTTS
19	18.....VICAP MATCHING PROFILE
20	19.....FBI PROFILE
21	20.....CYNTHIA HOOPER
22	21.....DORIS JACKSON
23	22.....SHERYLL BRODUS
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26	25.....FRED HALBROOK
27	26.....EVIDENCE FROMTHE CRIME SCENE
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- 1 35.....SUIT AGAINST RAMOS BY YABLONSKY
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- 3 37.....DENIAL OF RECUSAL MOTION
- 4 38.....REQUEST FOR SUBPENAS FOR ALIBI LINDA/HOLLY MITCHELL
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- 9 42.....COPY OF ALTERRED ANSWERS INTO EXHIBIT 49A
- 10 44.....PLEA TO TESTIFY WITH TRIAL COUNSEL
- 11 45.....RECORD OF CLOSING ARGUMENTS STARTING
- 12 46.....RECORD THAT JURORS WERE DEADLOCKED "BOGUS ALLEN"
- 13 47.....MOTION TO TERMINATE TRIAL COUNSEL
- 14 48.....MOTION TO NEW TRIAL PROSECUTORIAL MISCONDUCT
- 15 49.....TRIAL COUNSEL INCOMPETANT MOTION WRONG NAME
- 16 50.....TRIAL COUNSEL PROOF NO INVESTIGATIONS
- 17 51.....DNA EXPERTS TESTIMONY JONES/DR. SAUKEL
- 18 52.....APPELLATE COURT DIRECT APPEAL RULING
- 19 53.....HABEAS CORPUS SUPERIOR INFORMAL ORDER
- 20 54.....HABEAS CORPUS WHY TO STAY UNTIL AFTER APPEAL
- 21 55.....MOTION TO STRIKE STAY AND EXPAND 13 MORE GROUNDS
- 22 56.....COURT DENWISTAY MOTION EXPAND REQUEST
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- 24 58.....STATE SUPREME COURT FILING
- 25 59.....DDA CLOSING ARGUMENTS
- 26 60.....JONES TESTIMONY ABOUT WHAT WAS EXAMINED
- 27 61.....NEW LAWS PASSED SENATE BILL 1909 P.C.141
- 28 61.....NEW LAWS PASSED SENATE BILL 1134 P.C. 1473
- 62.....Copy of appealet Court regarding misconduct
- 63.....Copy o fhte 113 page transcript
- 64.....Copy of the 136 page transcript.
- 65.....Reliable copy of the states exhibit 49(compact disc)
(This is filed seperatley with special motion)
(If the Court refuses this filing it is available
upon request by the Court)
- 66- SANDERS ADMISSION IN ANOTHER COURT
- 67- TRIAL CASE SUMMARY
- 68- APPELLATE COURT RULING

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3 FACTUAL INNOCENCE CLAIM
4 SECOND SUCCESSIVE
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6 HABEAS CORPUS/ WRIT OR ERROR CORAM NOBIS

7
8 CLERK FOR THE COURT
9 SUPREME COURT FOR THE
FOR THE STATE OF CALIFORNIA

10 John Henry Yablonsky;
11 Petitioner;

No.# _____

12 TRIAL COURT # FVI900518
13 The Honorable Judge John Tomberlin

14 vs.

PURSUANT TO P.C. §§ 141, 1473
SENATE BILLS 261, 1134, 1909

15 Patrick Covello ;
16 (WARDEN):
17 Respondent:

18
19 Attention; District attorney for
20 County of Sanbernardino

21
22 This factual innocence claim find this Courts jurisdic-
23 tion based on newly discovered evidneces that were not made available
24 to petitioner until five years after the trial, three years after
25 this Court made a determination. The facts and evidneces supporting
26 this claim were deliberatley withheld by trial counsel who repeatedly
27 lied to client and Court that "HE HAD ALREADY RELEASED THESE RECORDS"

28 "PETITIONER IS FACTUALLY INNOCENT"

DELAY IN BRINGING THESE ARGUMENTS

1
2 Petitioner demanded these records required to defend
3 this movement from trial counsel who piecemealed the release
4 of these records from March 26, 2009, until the full release
5 made by post trial counsel on January 2016, five years after
6 trial and three years after direct appeal and habeas review
7 had expire. Explained herein

8 When the full file had finally been release they were
9 delivered to petition while he was recovering inside the medical
10 unit of the prison froma stroke he suffered on October 15, 2015
11 making immediate review and writings virtually impossible due
12 to the voluminous pages and petitioners ability to access his
13 complete files, or to read as a result of the visual impairment
14 suffered as a result of the stroke.

15 Once petitioner was able to see straight, and walk, he
16 was transfered to another prison from Calipatria state prison
17 to Centinela state prison and three months later to yet another
18 state prison in Sandiego, at R.J. Donovan where the law library
19 and other valuable resources was available to verify and validate
20 the pages that contradicted previous releases by trial counsel
21 who repeatedly stated he had delievered the entire states
22 file, just before he released others.

- 23 1) First release of 300 pages out of the 5300 pages of the states
24 records on June 2009 , with a note stating this was the states
25 entire file

26 AFTER THE DECEPTION HAD BEEN DISCOVERED
27 AND TRIAL COUNSEL ADMITTING HE WITHELD

- 28 2) Second release by trial counsel after the trial had already
ocured and injury sustained, released another 1300 pages
that were different than the first three hundred pages

MARCH 2011 AFTER PETITIONER BEGGED FOR FILES
AFTER P.C. § 1054,9 motions and case filing

- 3) Third release after the state bar got involved in 2014 ordering
the release, trial counsel released another 1600 pages differ-
ent than the first 300 of the second 1300 pages. Trial counsel
vehemently argued this was finrally the complete release
to the state bar, knowing that critical papers had been with-
eld, from the states files that held 5300 pages along qwith
two compact discs of states exhibit 49 (the interrogation)

RELEASE JULY 23 2014

AFTER FURTHER PLEAS TO THE COURT AND STATE BAR
PURSUANT TO P.C. § 1054,9

- 4) The final release of the states entire file was released
by post trial counsel Hal Smith, releasing 5300 pages and
the compact discs on January 2016 along with letter stating
this was the entire case file (he had).

1 DELAY IN BRING ARGUMENTS CONT.

2 4) That petitioner is housed at a facility who practices
3 restrictions from the law library, limiting access to less than
4 one day a week unless there are court designated deadlines,
5 restricting access to as little as two hours one week, no access
6 some weeks,.

7 5) That petitioner is handicapped with a visual impairment
8 that impedes into regular reading skills because of his double
9 vision, due to a stroke he suffered while in custody. This impair-
ment is continual and currently active

10 6) That this Case involves voluminous amounts of discovery
11 as well as research, into the amount of well over 5400 pages that
12 had not been released until January 2016 while petitioner was
13 in the medical unit of Calipatria state prison. Petitionere at this
14 time was receiving threapy and trying to learn to walk again as
15 well as having to be made to re-evaluate the records he had been
16 givin prior tto that date by trial counsel who in 2009 gave 300
17 page, telling petitioner that was all the discovery. Then again
18 in 2011 g9iving petitioner another set of 1300 pages diffeerent
19 than the first 300 pages and again telling petitioner that was
20 all the discoveryt. Then again in 2014 giving petitioner another
21 1600 pages, different than the 300, or 1300 and once aghain telling
22 petitioner that was all the discovery, and then finally in 2016
23 by post trial counsel who released 5400 pages along with compact
24 discs containing more information which petitioner could not expose
due to the maliable material not being allowed in the prison. This
disc was sent to family who arranged experts to review and confirmt
information supporting this petition regardiunf fraud by state
actors

25 JOHNSON V. MAMMOTH RECREATION INC 975 F.2d 604 (9th Cir. 1992)
26 IN RE CLARK 5 CAL. 4TH 750 (1993)
27 PEPPER V. SUPERIOR COURT (JOHNSON) 61 CAL. 4TH 696 (2015)
28 1 CAL. 5TH 21 (2016)

THIS COURT RETAINS JURISDICTION
OF THIS MATTER UNDER HABEAS/CORAM GREAT WRIT ACT

PETITION FOR WRIT OF ERROR CORAM NOBIS

The traditional grounds for common law petition for writ of error Coram Nobis are that (1) Some facts existed, that without any fault or negligence by the defendant, was not presented to the Court at or before the trial and if presented would have prevented the rendition of judgement; (2) This newly discovered facts must not go to the merits of the issue tried; and (3) These facts must be one that could not have in the exercise of due diligence have been discovered earlier.*People v Shipman 62 C2d 226(1965); See also People v Vasilyan 174 CA4tn 443(2009); People v Cortez 13 Ca3d 317(1970)

PETITION FOR HEABES CORPUS

P.C. § 1473(a)(b)(1)(2) Every person unlawfully imprisoned or restrained of his liberty, under [any] pretense what ever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment. A writ may be prosecuted for, but not limited to (1) False evidence that is substancially material to guilt or sentence.

SENATE BILL 1909

Senate bill passed in 2017 and affected the language of P.C. § 141 as well as CRPC rules regarding the use of and presentations of false, altered evidences by the state practitioners (LOPEZ)(This affects P.C. 132, 134 and 118)

SENATE BILL 1134

Senate bill passed in 2017 affecting the manerism which newly discovered evidences [must] be reviewed by the Courts in California AFFECTING P.C. 1473

SENATE BILL 261

This bill passed within the same time frame affecting the sentencing courts discretuon to sentence juvenile offenders to death or life without parole sentences for first degree murder

NEW LAW SURROUNDING THE MANNER WHICH
PETITIONERS MAY MOVE THE COURT WITH NEW EVIDENCES
PURSUANT TO SENATE BILL § 1134

A states Court cannot refuse to consider "federal questions" of law regarding collateral attack in state courts on federal issues. In Re Panchot(1968) 70 Cal.2d 105. And an independent action as habeas corpus to secure discharge from imprisonment. France v. Suoperior Court(1927) 201 Cal.122;In Re Application of Jacinto(1935 CalApp.)8 Cal. app.2d 275; In Re Application of Connor(1940)16 Cal.,.2d 701, cert den.,Connor v California (1941) 313 US 542.

Habeas corpus is the correct vehicle to collaterally attack a judgment of conviction which had been obtained in violation to fundamental constitutional rights. People v Soreneson(1952 CAL APP) 111 Cal. 2d 404; In Re Winchester(1960) 53 Cal.2d 528, cert. den., (1960) 363 US 852. Habeas corpus is not the correct vehicle to correct prosedural errors, if committed. In Re Oxidean (1961 CAL.app.2d dist) 195 Cal.app.2d 814. Habeas corpus is also available to advance contentions of denial of counsel, at least where no other remedy is available.People v Adamnson(1949)34 Cal.2d 320;In Re Levi,39 Cal.2d 41(1952). Likewise under In Re Clark,5 Cal.4th 750(1993) when newly discovered evidnece is the basis for relief or if it undermines the states case it is not enough to weaken the case or more difficult questions. Criminal judgments may be collaterally attacked onthe basis of newly discovered evidnece only if the new evidneces cast [fundamental] doubt onthe accuracy and relaibility of the proceeding. In Re Hall1981)30 Cal.3d 408; In Re Webber(1974)11 Cal.3d 703; In Re Branch(1969) 70 Cal.2d 200 (A criminal judgment may be collaterally attacked based on newly discovered evidnece only if the new evidnece casts doubt on the

1 accuracy and reliability of the proceeding at guilt phase. Such
2 evidence, if credited, must undermine the entire case and point unerr-
3 ingly to the innocence or reduces the culpability of the defendant
4 People v Gonzales 51 Cal.3d 1179(1990) Defense counsels incompetance
5 resulting in failures to discover and present evidence is a basis
6 for habeas corpus if it would have undermine the prosecutions case,
7 The presumption that the essential elements of an accurate and
8 fair proceeding were presented would not be applicable. None the
9 least petitioners must establish prejudice as a demonstratable
10 reality that counsel knew or should have known that further invest-
11 igation was [necessary] and must also establish that counsel failed
12 to present and discover, then prejudice is established if there
13 is a reasonable probability that a more favorable outcome would
14 have been the result of this evidence had it been presented.
15 Strickland v Washington 466 US 668(1984); People v Gonzales, supra,
16 51 Cal.3d 1179; People v Williams, supra 44 Cal. 3d 883. The incompet-
17 ance must have resulted in the unfairness of the proceeding or an
18 unreliable verdict. Lockhart v Fretwell (1993) 506 US [122, 113, s.ct. 838

- 19 Newly discovered evidence is outlined by People v Malley
20 62 Cal.4th 944(2016);
- 21 1) That the evidence, and not merely its materiality be discovered
 - 22 2) That the evidence not be merely cumulative
 - 23 3) That it be of such as to render a different result probably on
a retrial of the cause using the new evidence
 - 24 4) That the party could not have within reason and due diligence
have discovered and produced it an an earlier time or at trial.
 - 25 5) That these facts be shown by the best evidence rule of which the
case admits

26 In Re Miles (2017) 7 Cal.5th 821 Effective January 1, 2017
27 the burden of proof in a "new evidence" habeas corpus claim is signifi-
28 cantly lower. [New evidence] is "evidence" that had been dis-

1 covered after the trial that was not discovered by the petitioner
2 and could not have been discovered as a result of omission, decept-
3 ion to provide access to through the exercise of due diligence by
4 petitioner prior to or during the trial. That these [evidences]
5 were not discoverable until after appellate procedures and would
6 have been admissible, not merely cumulative, corroborative, and
7 collateral impeaching standards in motion for new trial under Calif-
8 ornia law (MILES)(Holding that third party confessions qualifies
9 as new evidence justifying relief. What qualifies a s [new] evidence
10 new facts made available after trial that are credible. Testimony
11 tending to prove facts are evidences if they are admitted at trial.
12 Bermudez v. Cioek237 CA4th 1311(2015). Fraudulent checks and false
13 statements used in court met statutory definition of [evidence]
14 they were writings created for the purpose and could be used to
15 disprove factrs.People v Gallardo, 239 CA4th 333(2015) A document
16 does not lose its status as [evidence] because a party does not
17 comply with proceduzal processes required for submission, and a
18 Court may consider evidence that was not submitted in compliance
19 with procedural rules if no objection is made or upon showing a
20 good cause [239 CA4th 1346] The term of [due diligence] and reasonable
21 diligence are essentially interchangeable. (CITATION)

22 As described earlier and discussed in full later, petitioner
23 had been diligent in making formal efforts to gain access to the
24 states discovery from the very first time he met trial counsel
25 Geoffery Canty and when he was replaced David Sanders. (see
26 exhibits 1-4) That petitionere was made to beg for the state records
27 before the trial ever ocured, asking for specific files related
28 to the charged offense that included police reports, witness state-

1 ments , and the entire investigations throughout the life of this
2 crime, being it had been 25 years old before petitioner was ever
3 charged. (see exhibit 2) Trial counsel pilfered through the volum-
4 ous pages of over 5300 pages and [chose] to release only 300 of
5 the pages on June 2009 two years before the trial telling petitioner
6 this was the states entire records. Once discovered there were
7 "BUNDLES" that outnumbered the 300 pages by 15 times petitioner
8 made "FORMAL DEMANDS". Not until after the trial were any of the
9 remaining 97% of the states files release, and then again after
10 petitioner was made to beg for them. (see exhibit 4) Trial counsel
11 David Sanders (SANDERS) then released another 1300 pages that were
12 differtent than the first 300 , while still withholding almost 4000
13 pages from a client that pplead innocent and not guilty from the
14 very first plea. After the trial counsel made a second release
15 on March 2011. After sentencing petitioner motioned the Courts
16 and plead to state bar for this discovery, while litigating his
17 case that was on a time clock. After state bar got involved (see
18 exhibit 9) Sanders then released another 1600 pages and continued
19 to wityhold these facts that had been related to the states case
20 and made this release on July 2014. (see exhibit 10)

21 This third release was made after direct appeal had been
22 made and denied, after state habeas corpuses had been made and
23 denied, locking these facts out of the records becuae of the trial
24 counsels absolute incompetance. Post trial counsel was contacted
25 about the language and filing under P.C. § 1054.9 and on January
26 29, 2016 Hal Smith (SMITH) provided petitioner with the states entire
27 file along with a compact disc that was created from the interrogat-
28 ion held on 3/8/09 and filed as states exhibit 49 (FVI900518)

1 These voluminous pages were directly related to the charged
2 offense and were very different than the first 300 or second 1300
3 and needed to be evaluated and verified and researched. Petitioner
4 was in the medical unit of CDCR recovering from a stroke when
5 this release came, and even though petitioner had been litigating
6 this matter, was complicated because of the medical inconvenience
7 and impairments that a stroke renders upon people. Petitioner was
8 immobile without assistance, and was visually impaired with double
9 vision. (see exhibit 69) During these inconveniences and inter-
10 ferences that were out of petitioners control, he was then moved
11 to another prison after the stroke on 10/8/15 to Calipatria on
12 or about 11-10-15 for therapy and treatment as well as hospice
13 housing. On or about this time the law library resources had been
14 out of direct access and with medical complication afforded very
15 little progress after the release of these facts on January 2016
16 to be verified . Petitioner was then again moved back to Centinela
17 on or about March 2016 so that he could be transferred to another
18 prison for high risk permanent medical housing in June 2016. These
19 repeated transfers include separation from legal files for lengths
20 that ranged from two weeks to three because of the transfers. Finally
21 petitioner arrived at his current housing which would allow him
22 unfrustrated review, research and other fact verifying procedures
23 which included motions to the Court under P.C. § 1405 regarding
24 the DNA that were at the scene, different than petitioners DNA
25 and carried material values about who actually committed the crime.

26 Petitioner was finally capable of preparing a valid and
27 intelligible habeas petition into the Superior Court on September
28⁹, 2018 which was denied against standing rules, laws and constitut-

1 ionally protected rights that occurred before, during and after
2 trial, resulting in an absolute miscarriage of justice, reducing
3 this case to a farce and sham. Petitioner so moves this Court under
4 the statutes and laws surrounding these constitutional violations
5 caused upon him under the blanket of actual innocence, and gross
6 misconducts by government bodies.

7
8 VERIFICATION

9 I John Henry Yablonsky an adult over the age of 18
10 and a party to this action and narrator of this
11 allegation said forth regarding withholding evidences
12 and according to belief know this statement as
13 the truth and if called to testify will submit
14 the same in a court of law under oath.

15 ~~November 4, 2008~~

John Henry Yablonsky

16 July 12, 2019

17 DUE DILIGENCE IN DEVELOPING
18 THE FACTS SURROUNDING THIS MATTER

19 Upon arrest for a serious charge petitioner was inter-
20 duced to his trial counsel from the public defenders pool named
21 Geoffery Canty (CANTY). Petitioner requested the states entire
22 file and this request was recorded by Canty. (see exhibit 1)
23 In the discussion with Canty several strategies were discussed
24 to protect petitioners innocence, while Canty revealed there was
25 serious issues with the case, and the facts surrounding the crime.
26 Canty revealed;

- 27 1) There was a confession to the crime
28 2) There was other culpable parties who had committed
suicide.
3) The interrogation would be transcribed for the 3/8/09
interrogations

- 1 4) There were hundreds of police reports since 9/23/85
- 2 5) There were issues regarding petitioners DNA found at
- 3 the scene but they had been cleared from the time
- 4 the crime had been committed
- 5 6) There were witnesses who seen Mrs Cobb at a bar the
- 6 night she had been killed
- 7 7) That there was absolutley no evidnce showing petitioner
- 8 had committed the crime

9 On or about May 2009 Canty had been replaced with Sanders
10 from the same public defenders pool. Upon first discussion inside
11 the courtroom petitioner made demands for the states entire
12 case files so he could make relaiable choices and decisions from
13 regarding his defenses in this matter. By June 2009 Sanders
14 had not released one piece of paper, after beoing told Canty
15 did not release the case files either forcing petitioner to write
16 a formal demand letter for evidences he believed would be useful
17 asking cetrian questions about the case, defenses, and possible
18 trial strategies. (see exhibit 2) The list of requests are as
19 follows;

- 18 1) Howa re investigations doing
- 19 2) Was the 25 year old DNA tainted
- 20 3) Who gathered evidneces, were they trained, certified
- 21 4) Possible conviction catagory
- 22 5) Weaknesses in the case
- 23 6) Who was the judge
- 24 7) Sentence alternatives
- 25 8) What experts spoecialist were going to be available to us
- 26 9) Can we disprove the states case
- 27 10) Can I get the states entire file
- 28 11) Do you have all the discovery
- 12) Does the prosecutor have trial experience
- 13) Can he get a court order to allow me to collect these records

1 Sanders released 300 pages of the states files on June
2 2009 and include that this was everything petitioner had asked
3 for and that he only held back DNA records related to petitioner
4 because they would only confuse petition. (see exhibit 3) These
5 files held one 113 page transcript to the 3/8/09 interrogation as
6 well as other police reports that were created in 1985./ Once reading
7 these records petitioner contacted Sanders from the county jail phone
8 under booking #0903341068 to phone number (760-241-0413 asking why
9 the interrogations transcripts were inaccurate. Sanders responded
10 that they were only interpretations and if the case went to trial
11 they would use verbatim., After trial and the degree of deception
12 had been discovered petitioner demanded the entire states case
13 files . After the trial and during a marssden hearing regarding
14 counsel incompetance Sanders admitted that he withheld these records
15 until his client had to beg for them. (see exhibit 4) After
16 the begging Sanders released another 1300 pages different than the
17 first 300 on or about March 2011. Post trial filings were made to
18 gain access to these evidences that at this point showed there
19 was serious reliabilites issues with the states case that had
20 convicted an innocent man;

- 21 a) Habeas corpus was filed requesting records #WHCSS1200311
22 (see exhibit 5) This request was denied by superior court
23 b) Habeas corpus was filed demanding states records with the
24 Court of appeal. This was denied twice (May 19, 2014)(July 7,
2014 (see exhibit 6)
25 c) Petitioner moved the state bar under P.C. § 1054.9 on January
26 21, 2014 asking several parties for these records (see exhibit
27 See exhibit 7) Case #14-17946 was appointed (see exhibit 8)
28 d) On July 2014 petitioner received another 1600 pages that were
different than the first and second releases while in state prison.
(see exhibit 9/10)

1 e) After several motions, letters, and cases without full disclosure
2 of the states file petitioner contacted post trial counsel
Hal Smith who released the states entire file of 5300 and
a compact disc on January 29, 2016 (see exhibit 11)

3 f) After the files had been released, there were validation
4 practices to be made and authentications of the voluminous
5 pages that contradicted the first(300) second (1300) Third
6 (1600) Petitioner filed over 400 letters and motions to Courts
and legal representing parties to challenge the authenticity
and validity of the states records (see exhibit 11A)

7 g) Petitioner filed two separate habeas petitions under P.C.1405
8 to validate and have examined expertly the states DNA that
were on relevant locations;

9 a) Murder weapon

10 b) The victims bedroom door jamb inthe victims blood

11 c) The red hairs withthe entire roots attached while ppetitioner
was a blonde suspect

12 d) The watchband pin located underneath the victims head

13 e) The cigarette butts located ina common area of the scene

14 f) In the fingerprint locate on the counter of the kitchen
15 that did not match petitoioners print

16
17 After these examinations by a man locked away fro legal
18 research materials and allowed absolute minimal access to legal
19 resopurces, petitioner filed a secind habeas petition to the superior
20 Court on September 13, 2018 arguing facts, that if true would
21 avail petitioner relief according to habeas laws outline by state
22 and federal statutes, laws, rules and consitutuional sdafegaurds.

DIRECT APPEAL ARGUMENTS

(see exhibit 52)

- 1 I.....The trial court committed prejudicial error by not instructing
2 jurors regarding murder and special circumstance
- 3
- 4 II.....The trial court abused discretion regarding similar third
5 party culpability issues regarding a similar case.
- 6 III....Trial court improperly excluded evidence of victims promiscuity
- 7
- 8 IV....Trial court improperly excluded hearsay evidence of Cobb inviting
9 other men to her home
- 10 V.....Trial court abused its discretion regarding third party hearsay
11 regarding last words of victim which she told another party
12 about her destination
- 13 VI....Erroneous admission of evidence regarding prior accusations
14 that were never charged were prejudicial error
- 15 VII...The Court gave an erroneous instruction regarding deadlock
16 after they declared they were solid in their votes
- 17 VIII..The Court erroneously interrogated the jury foreman out of
18 the presence of trial counsel, and in front of standing counsel
- 19
- 20 IX... Trial court committed prejudicial error by denying new trial
21 motion regarding IAC ,applying incorrect standard
- 22 X.....Trial court erroneously denied recusal motion where county
23 district attorney used petitioners case in campaign smear
- 24 XI....In effective assistance of counsel while counsel failed to
25 file for a change of venue motion in light of the media coverage

26 THIS APPEAL WAS DENIED ON ALL PARTS REGARDING THE STATE RECORDS
27 WHICH THIS SET OF FACTS AND RECORDS CONTRADICTS
28

SUPERIOR COURT HABEAS CORPUS
DENIED FOR LACK OF JURISDICTION OR FAILURE TO PROVIDE PROOF
(see exhibits 53-57)

- I.....County prosecutor prejudice entire venire by using petitioners case in re-election campaign smear
- II.....That opetitioner was interrogated and that recording was altered before showing it to the jury
- III...Ineffective assistance of counsel for failure to investigate evidences
- IV....Prosecutor committted misconduct by submitting false testimony with three witnesses(Nash)(Sullivan)(Alexander)
- V....The officers committed violations under fourth amendment interrogating outside MIRANDA
- VI...There was insufficient evidnece to support the verdict
- VII...Trial counsel conspired to alter evidences before they presented them to the jury
- VIII..Trial counsel was ineffective foir failing to investigate two of states key witnesses
- IX....Trial counsel was ineffective for failing to object to perjured testimony of states witnesses
- X.....Trial court expressed prejudicial error denying motion for new trial and refusing petitioner right to represent himself
- XI....Trial court committed prejudicial error for failure to grant marsden hearing motion after trial had already occured
- XII...Trial court committed prejudicial error for not allowing trial counsel to not be present at all tuime of critical stages of trial.

Petitioner moved the court twice for release of discovery which were necessary to defend the prima facie arguments, which were ignored and refused. After breifing in habeas and direct appeal petitioner moved the superior court to expand the records by adding thirteen more grounds. *THAT REQUEST WAS DENIED AS WELL*

THIS HABEAS WAS DENIED FOR LACK OF JURISDICTION OR FAILURE TO PROVE THESE RECORDS HEREIN WOULD HAVE SUPPORTED THAT PETITION!!

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IS INNOCENCE RELEVANT ??

There are two historically unassailable answers to the question presented by Judge Henry Friendly used in [key] points regarding habeas corpus. "Is innocence irrelevant?" As Justice Powell stated "Yes" innocence is irrelevant. History reveals no exact tie to the writ of habeas corpus with a constitutional claim relating to innocence or guilt.

Habeas corpus is not a means for curing factually innocent claims or erroneous convictions. What we have to deal with is not the petitioners innocence or guilt, but [solely] on the question whether their constitutional rights have been "PRESERVED".

The Supreme Court accordingly has not hesitated to grant habeas corpus relief when there was little question that the constitutionally wronged petitioner was guilty or to deny such relief when there was reason to believe the petitioner was innocent but when no constitutional error was found in the process, then yes, innocence is irrelevant. In fact the arguable ground that habeas petitioner apparent guilt should heighten, not cut off or diminish the scrutiny of the procedures by which he was convicted and sentenced. As used in this country, habeas corpus has been an important means by which the availability of federal court review of the state court imposed incarcerations check "THE RELEVANCY OF A LOCAL SPIRIT" and the dangers of federal laws and rights inherent granting jurisdiction of the national causes.

The second historically correct answer to Judge Friendly's question is that [NO] innocence is not irrelevant. The fear that an innocent man's liberty, or worse, his death be forfeited because of unfair proceedings has long been recognized as one, among other circumstances that makes issuance of the writ most [felicitous]. Indeed it would not be surprising to learn someone could learn, that the subject of habeas cases in which relief was actually granted included more than a proportionate share of cases in which innocent have been convicted..

Nor can this second answer be passed off entirely as reflective of lawless willingness to find constitutional violations in cases involving the apparent innocent petitioner, when no violations would be found were the petitioners more obviously [guilt].

The Courts have properly sought to take the effect that innocent persons may have been convicted (or the blatantly blame-worthy person has been convicted of an offense other than the one for which he was blamed) as one, among others, have indicators that an unconstitutional breakdown in the process occurred. Accordingly as a matter of [fact and law] the petitioners [possible] innocence is clearly [RELEVANT] and counsel for petitioner with colorable claims of innocence, or in which cases the state may have violated a right tied to the accurate ascertainment of guilt is obliged to make that fact plain to the habeas court.

THE LONG AND SHORT OF THIS IS INNOCENCE IS RELEVANT IN THIS CASE

STATEMENT OF THE CASE

1
2
3 On March 8, 2009 states prosecutor Michale Ramos(Ramos)
4 filed charges against petitioner alleging that he committed murder
5 upon Mrs Rita Mabel Cobb on or about September 21, 1985 after
6 she left a drinking party . Prosecutor filed P.C. § 187 charges
7 of murder in the first degree, which petitioner entered a [NOT
8 GUILTY[plea at arraignment on or about March 11, 2009. The state
9 then filed amended papers after the preliominary hearing alleging
10 enhancments to include P.C.§ 190.2 alleging that petitioner committee
11 this murder while inthe progreess of rape or attempted rape.

12 Petitioner entered anothere plea of not guilty at the
13 arraignment in Superior Court. The trial occured almost two full
14 years later after arrest, finding petitioner guilty of the charges
15 filed inthe amended complaint. Timely appeals had bene filed and
16 this Court denied that appeal excpet for the parole revocation
17 restitution pursuant to P.C. § 1202.45 of \$10, 000 and affirmed
18 the conviction on all other matters according to the records before
19 the court.

20 THESE RECORDS HEREIN ARE COUNTER PRODUCTIVE TO THAT DECISION
21 AND SHOULD BE CONSIDERED HEREIN ACCORDING TO PROOF

22 UNDISPUTABLE
23 FACTS SURROUNDING THIS CASE THAT ARE
24 STATE CREATED RECORDS SUPPORTING PETITIONERS CLAIMS HEREIN.

25 In the months prior to Mr. Yablonsky and his family moving
26 to the high desert, Petitioner had been releived of his duty
27 as a soldier in the United St ates Army and was discharged from
28 service with honorable mentions.

1 Petitioner started a construction company with his father
2 George Yablonsky and stayed at the family home until they could
3 locate a place of their own. In about May 1985 petitioner moved
4 into Mrs Cobbs rental with his wife and son. Prior to moving into
5 the cottage Cobb had placed an intercom system between the house
6 and cottage for conveniences, as well as Cobbs pique interests to
7 listen in on conversations in the back cottage without them knowing.

8 Cobb could operate the intercom system from the main house
9 without the assistance of the back, or them knowing it had been
10 activated. It was over this system that Cobb had listened into the
11 couples arguments. Petitioner had been married to his wife for three
12 years at this time, and she had already been having extramarital
13 affairs by this time, which instigated the marital arguments. When
14 these arguments would occur petitioner would take his then wife
15 to her grandparents for a weekend to chill the tempo of relation-
16 ship where things would cool down. Petitioner's wife Holly's grandparent
17 lived in Downey California, over 160 miles away. ^{WHILE} Petitioner returned
18 home.

19 Petitioner's job enlisted a series of trades in the constru-
20 ction field that took the company to several counties around the
21 southern California region, which at times took as much as 15 hours
22 per day, and others the entire week, to save on communte time. It
23 was during these stays out of town that the couple argued more
24 when petitioner had returned, causing him to deliver Holly to her
25 grandparents for "another week end". It was later determined that
26 this trip to Downey was when Holly would exercise her infidelity.

27 As the time moved on Cobb and petitioner became friendlier
28 possibly due to the arguments Cobb listened to over the intercom,
and became friends. Some time around June another argument occurred

1 and as usual Holly was taken to Downey another time. It should be
2 noted that the arguments began by Holly's allegations that just
3 because petitioner was gone from the home for such long period during
4 the day that he was cheating on her, which was "untrue". Holly would
5 accuse petitiouer of cheating with virtually every woman the couple
6 encountered. The grocery store chashier, fast food attendants, gas
7 station cashier and even her ~~own~~ cousin who visited regularly. This
8 list of accusatiuons included women petitioner did not even know
9 as well as their landlord Mrs Rita Cobb. The affair between Cobb
10 and petitiouer began upon the return from ^{TAKING HIS} wife Holly to Downey
11 one more time. The affair started around June or July 1985.

12 Shortly after the affair started between petitioner
13 and Cobb, petitioner located another home that was larger because
14 Holly had been pregnant, and the rental they shared behind the Cobb
15 residence was only a single cottage, not large enough for a family
16 of four. Another home was located about a mile up the street from
17 the Cobb residence on Highway 18, between Big Bear city and Lucerne
18 Valley. At the time of the move Holly had been about 6-7 month
19 pregnant with their daughter who was to be born around September
20 of 1985. After the move the affair between petitioner and Cobb ,
21 although irregular, continued.

22 By the month of September petitioner and his father
23 started another job that took the company far out of town which
24 required all week stays and returns home for the week ends. It
25 should also be noted that petitioner had purchased a small sedan
26 for the wife so that she could get around town while petitioner
27 was out of town on work. It was a Ford pinto and was dark blue two
28 door, but in excellent condition, which holly had available.

1 Holly had been due almost any day the doctors said, by
2 mid month of September, and the couple decided that it would be best
3 to take Holly to Downey to stay with her family in case of emergencies
4 with the delivery. It should also be known that petitioners new
5 home was located on a rural street outside of town that equaled
6 a wash because of the terrain and weather conditions in that area
7 which would have posed emergency team arrivals if she went into
8 labor while petitioner was out of town. So the week of September
9 13, 1985 the couple drive Holly and their son to Downey where
10 petitioner was to pick her up after petitioner had completed the
11 job that following week.

12 The job had ended by mid-week and petitioner was excused
13 from the final stages of the work, installations of door knobs
14 and other hardware, so that he could pick his wife up. It was on
15 or about September 18, 1985 that petitioner drove back to his house
16 to clean up and make ready for their trip to Downey to collect
17 the family and return to Lucrene. It had been around ^{1-2 PM.} ~~noon~~ when
18 petitioner got home. After packing a bag with clothes for the rest
19 of the week for himself, petitionenr stopped at the market on his
20 way out of town to buy drinks and snacks for the 160 mile drive
21 that lay ahead. While in the Lucrene Valley Market petitioner bumped
22 into Cobb who was already at the cashiers, who aksed if petitioner
23 could stop by her place, elluding she needed something fixed.

24 Petitioner balked stating he was going to Downey
25 to pick up Holly and Cobb pled it was an emergency, stating she
26 was going to have a party that night and her bathroom was not working
27 properly. Petitioner agreed to take a moment after he was done at
28 the market, but reminded Cobb he was in a hurry.

1 When petitioner drove into the Cobb horseshoe driveway
2 he seen Cobb had a visitor who drove another small truck, similar
3 to a ford pickup(small) parked in front of the cobb residence. Cobbs
4 cadillac was parked in her garage with the door opened. When petitioner
5 got to the front door which stood wide open he entered the home,
6 but did not notice Cobb in the front rooms, and walked to the bathroom
7 area at the far ^{RIGHT} side of the house. Petitioner looked into the
8 issues explained vaguely by Cobb, and checked the sink and toilet
9 to see what needed fixing. All plumbing issues were working correctly
10 and when petitioner returned to the front area of the house he noticed
11 two women engaged in a kissing session by the couch in the living room
12 area. One of the women was Cobb and the other petitioner did not
13 know. Petitioner was summoned over, and without a single thought
14 about priorities entertained the invitations.

15 The three adults engaged into sexual congress that
16 started in the living room area and moved to the dining area where
17 there was a dining table and desk saddled near by. The other woman
18 was a blonde with endowed chest and may have said her name but I
19 am, not able to recall. The three rotated sexual activities with
20 both women trading from desk top to table seating and in this time
21 that could have last more than fifteen minutes, seemed like
22 an hours long session of sex. It was at this point the blonde bomb
23 shell stated she wanted me to meet her husband, while Cobb added
24 he would like me. Petitioner was not in the same idea and felt
25 that a man walking in on another man ^{HAVING INTERCOURSE} digging into his wife would
26 be disturbing. This thought came when the blonde stated her husband
27 was on his way there now, and almost immediately petitioner withdrew
28 and explained he had to leave and would not stay. Petitioner went

1 to the bathroom and washed himself and then returned to dress. As
2 he dressed the women were still engaged in the sex acts and as
3 petitioner walked out of the front door, noticed that both women
4 were still having sex at the desk area and were alive.

5 Petitioner drove to downey and worried that Holly would
6 smell the sex on him when he arrived, but after the long drawn
7 out affairs by Holly did not give that worry much attention. Petition-
8 ioner noticed that it had been after four in the evening while
9 he was on the freeway as he made the 160 mile drive. Almost happy
10 because he had more than equaled the score between Holly's infidelity
11 with someone she went to school., with and petitioners experience
12 with two women. (RT317)(Criminalist Jones)(That the sex occurred
13 several days before Cobb had been killed)(RT490)(Dr. Saukel the
14 pathologist)(That the sex occurred as much as one and a half days
15 before Cobb had been killed) It was noted that Cobb had a party
16 that night at her house and then attended another party that Friday
17 just up the street where four other friends of hers witnessed her
18 there alive. Mrs Cobb was located in her home on September 23,
19 1985 by her son who stated he had been called Friday September
20 20, 1985 asking him for help, because someone had scared the hell
21 out of her.

22 Investigations ensued as a result of this crime, to
23 include the following. On September 23, 1985 Joseph Saunders stated
24 he had been to the Cobb residence looking for Mrs Cobb. He told
25 officers that he had learned from friends where she lived, and
26 drove the town looking for her Cadillac. He stated that when he
27 seen he car parked in front of her house, he parked his car on
28 the highway, over 100 yards down hill and walked up to the Cobb
house.

1 He stated that he arrived uninvited and without asking, which
2 interested the officers. First Cobb had a home without any fences
3 and the driveway was a horseshoe shaped that started at two locations
4 off the highway leading to the house, yet this man parked his vehicle
5 on a highway that had burms and were not designed for parking, and
6 then walked uphill for over 100 yards to see a woman he barely
7 knew, did not know where she lived, and was uninvited. (CT78)
8 (exhibit 12) Joseph Saunder (Saunders) stated he spoke to Cobb
9 while he stood on the front porch, after she offered him a glass
10 of water to drink. He stated that she had made a call for about
11 a minute and then received another call that last longer during
12 this encounter.

13 Saunders then told officers that she had mentioned how
14 nice it was to live near friends, and then identified a car driving
15 by, telling Saunders it was her friend Pinkie (Francesca Drake/
16 Sullivan) He stated that Cobb offered to attend a party later
17 and invited him to come. Saunders stated when he arrived at the
18 party they picked pistachios and he only stayed a short while,
19 but when he left, that Cobb had invited him to a platonic relationship
20 and asked if he wanted to come by her place after the party. Saunders
21 stated he did not go. He added that in his opinion Cobb had not
22 been drinking(?????) (Everyone said she was more drunk than usual)
23 (CT110,111) It was later determined that Saunders had committed
24 suicide about three months after the Cobb murder. Officer located
25 a journal about Saunders feeling for Cobb and also took notice
26 that a change had been made to his will. They also located a journal
27 created by Saunders. (CT140) Officers believe Saunders to have
28 something to do with the Cobb murder.

1 It was noted that Mrs Cobb had been found by her son
2 Darylll Kramer and his wife Marta who was at one point his sister
3 through marriage. Kramer stated he arrived around 11;30 a.m.
4 after ~~etc~~ trying to contact her and finding her unavailablity odd.
5 He offered that she ~~had~~ called that Friday prior asking for his
6 help. (CT4). The officers that arrived determined Cobb to be wearing
7 her jewelry which included a watch. Laying next to her head was
8 a watch band pin that was yellow colored. (CT13) They locatred
9 smears of blood on the bedroom door jamb (CT9-20). They also took
10 notice to tire prints in the Cobb driveway. Detective Tuttle inter-
11 ciewed Kramer who stated his only reason for the visit ~~was~~ the
12 distress call, and that he had driven 25 mile from his home to
13 check up on her. Kramer offered the officer that his mother liked
14 to drink and had a Jeckel and Hyde personality when she drank,
15 adding that the last time he seen her was about si x weeks prior
16 to this incident.(CT61) Mr Kramer was reinterviewed by Detective
17 Knapp and added that his mother (COBB) liked to drink alot and
18 that she would frequent the local bars and as far away as 20 miles
19 to Apple Valley. He also added the last boyfriend Cobb had was
20 named Berdard. (CT77) Years later Kramer was reinterviewed by detect-
21 ive Myler, and told the officers his mother drank alot and would
22 frequent the bars and flirt with men younger than she. Adding
23 her Jeckel and Hyde personality. (CT77.) Kramer than offered that
24 he knew his mother to be sexually involved with a man up the streret
25 name John Sullivan, and could not think of anyone else at this
26 time about his mothers sexual appetites.(CT60-82) Kramer also offered
27 that he had married his step sister Marta. (CT138) Marta Kramer
28 was interviewed and offeered that Cobb drank alot and frequented

1 alot of bars, and that the last time the couple seen Cobb was about
2 six weeks prior to the murder.(CT74-76) Detectives interviewed
3 another man from ~~town~~ known as the local propane serviceman who
4 offered that the last time he seen Cobb was about six weeks prior
5 to her death. That when he arrived at the residence, he interrupted
6 Cobb being beaten by someone that had a beard. He stated that
7 when he interrupted the attack on Cobb , he ~~learned~~ that the attacker
8 was her own son Daryll Kramer. (exhibit 15)

9 Officers also spoke to a man named Don Stow, who lived
10 across the highway from the Cobb house and offered his belief
11 Cobb was a "ball buster" drunkard. He stated he remembers hearing
12 a fight between Cobb and Frank Strump late one night while Cobb's
13 screams could be heard through the night. (CT63) Mr. Stow later
14 offered to another detective that he remembers seeing a flat
15 bed truck in the driveway on or about September 19th or 20th. Telling
16 officers he can remember seeing Cobb so drunk that he seen her fall
17 from her car door as she fell into her dirt driveway. (CT114)

18 The neighbor John Sullivan offered that the last time
19 he seen Cobb was at his party that he held on Friday September 20,
20 1985. He stated she arrived drinking a bottle of burboun and when
21 she finished with that he gave her some white lightening. He stated
22 he fell asleep around 10;30 p.m that night which had been corroborated
23 by his wife Francesca . (CT65,266) The same detective interviewed
24 Francesca who offered that she recalled Cobb leaving the party
25 around 11;30 p.m. that Friday September 20, 1985 night, telling
26 her that she liked to visit the local bars. Francesca offered
27 that Cobb always seemed to be lonely, and like to date men, and
28 that she drak alot. Offering that Cobb was not particular about

1 the age of the men she dated, and added that she would become caustic
2 when she was drunk. (CT66) (exhibit 14) There were two other people
3 at the Sullivan drinking party that September night. Bruce Nash
4 and Cynthia Hooper. Bruce Nash (Nash) offered that he arrived
5 at the party around 7:00 p.m. and left around 9:45 p.m. that same
6 night. He stated he recalled Cobb being drunker than usual and
7 decided to offer to drive her home while his wife Cynthia followed.
8 He states that Cobb refused the offer to drive her home, and that
9 she returned that she was not going home and was going to a bar
10 called the Zodiac lounge instead.. (CT117) Nash was reinterviewed
11 ~~25 year later~~ where he offered that Cobb had been drinking white
12 lightning and that he and Cynthia hung out at the party till around
13 9 or 10 p.m. that Friday night. He restated that he believed Cobb
14 to be more drunk than usual and offering her a ride home while
15 his wife Cynthia followed in her car. Nash restated that Cobb refused
16 the offer and stated she was not going home and was going to a
17 bar called the Zodiac lounge instead. (CT271)(exhibit 13) Nash
18 recalled the boyfriends Cobb had had, naming Bruce Lee, Berdard,
19 Art Bishop, and John Sullivan to name a few. (CT272) (exhibit 13)

20 Officers spoke to a bartender named Dawn Dismore who stated
21 she recalled Cobb, and that she last seen her drunk but it was
22 not on Friday or Saturday night. (CT107) This bartender also added
23 that the night Cobb had been killed she was working behind the bar.
24 (exhibit 15) While at the same bar, officers ^{SPOKE} to several patrons
25 to include Ronald Kobbs, which was explained ~~aplied~~ in this petition.

26 Interestingly enough the sheriffs got a call from a man
27 named Gregory Randolph who stated he had been told the sheriffs
28 were looking for him, to get his help solving this crime.

1 The officers invited him to come on in and talk about
2 it. When Gregory Randolph (Randolph) arrived he explained that
3 he had been told by his friends that they needed his help to solve
4 the murder. He told officers that it had been two weeks since he
5 last seen Cobb, which was when he visited her at her home on
6 his way down from the mountain. (CT66)(exhibit 16) What makes this
7 contact so interesting is that none of the officers ever asked for
8 this mans help, which ~~struck~~^{struck} the officers ~~and~~^{as} suspicious. When this
9 man arrived they spoke for some time and after Mr Randolph left
10 they collected his cigarette butts to have them processed some time
11 later.

12 After some time later, a report was made to the We-Tip
13 organization that offered police information about a man who had
14 allegedly confessed to the murder of Rita Cobb. The report gave some
15 details about the crime that had not been made known to the public
16 which made this report strikingly odd, but not because someone reported
17 it. It was that the person who allegedly confessed was this man
18 Gregory Randolph himself. He told party goers that he met Cobb at
19 the Zodiac Lounge on Friday night and took her home. He then told
20 them that they got into an argument about her ~~sexual~~^{lack of} appetite for
21 Randolph who then strangled her to death and then performed sex
22 acts on her. (see exhibit 16) (CT326) The report came three years
23 after the murder. Because of the nature of Randolphs employment
24 with the county coroners office for Sanbernardino, sheriffs assigned
25 a code name for him as (William Fackhoff) and placed this onto all
26 investigations relating to Cobbs death and Fackhoffs related reports.
27 (CT110) With the confession report coming on August 6, 1988 the
28 special investigations began on August 10, 1988. (CT978)

1 Officer Baird from scientific division placed a "RUSH"
2 order in for the processing of the forensics from the Cobb crime
3 scene, which to date, then, had not been processed at all!!!! This
4 request came asking for evidences related to two specific murders
5 that had been typed as serial, including Rita Cobb and Helen Erooks.

6 The request was related to Backhoffs involvement in both
7 cases asking for comparison with the DNA that had been collected
8 from, the 9/26/85 interview at the Lucrene Valley sheriffs station.
9 (cigarette butts left at the sheriffs station) That same day officer
10 McPhail processed these cigarette butts with the crime lab requesting
11 physical examinations so they can be typed with both Cobb and Erooks
12 murders. (CT 751) They were processed through the regional laboratory
13 for forensics (CT753) where examinations ensued (CT 910, 895, 922,
14 893, 894, 896, 895,) The three butts from the station interview
15 were matched to cigarette butts located at the crime scene on Sep-
16 tember 23, 1985. Matching Gregory Ransdolph, William Backhoff to the
17 crime.

18 On 8/9/88 officer Palacios visited Mr Backhoff at his
19 trailer and did a field interview for suspicious behavior and possible
20 evidences confirming the confession report. While talking to Backhoff
21 at the trailer the behavior and activity of Backhoff led officers
22 to believe they had enough to get an arrest warrant for the murder
23 of Cobb. (CT 219) Officers got the arrest warrant and arrested
24 Backhoff for the murder of Cobb on August 10, 1988, and interviewed
25 him. (CT 219 221 -235) (see page 5 of the transcripts)

26 Q) aside from this arrest, have you ever been arrested before ?
27 A) Well yes, but I dont think it really counts.

28 This confirms that Backhoff had been arrested as a result

1 not only because of his suspicious nature, but the evidences that
2 had been collected from the sheriffs station (Cigarette butts) and
3 evidences collected from the crime scene matching Backhoff (cigarette
4 butts)(CT 378-79)(exhibit 17) What piqued officers attention was
5 that Backhoff has stated the last time he seen Cobb before the murder
6 was about two weeks. Only the ash tray located at the scene in a
7 common area had only eight butts in it, with butts matching a
8 man who stated he was at the scene the day before the murder occurred.

9 Because officers needed more evidence than cigarette
10 butts located at one scene which were not located at another, officers
11 felt they should release him until they could lock in better evidence
12 to secure the conviction. Unfortunately Backhoff had committed suicide
13 before his DNA had been scientifically verified. Killing himself
14 on June 1, 1999. (CT 357)(exhibit 16) It was later determined by
15 officer Bradford that when they processed the Backhoff suicide scene
16 the officers collected several trophies Backhoff had matching
17 numerous murdered women. It would have been noted that Backhoff
18 held the coroners position with the county to protect his bizzare
19 appetite for killing single women around the state. The officer
20 found that backhoff had acted very suspicious around dead females
21 during certain investigations as being the county deputy coroner.
22 (CT 447) (see exhibit 16-17) It may have been noted that even with
23 the change of suspects name from Randolph to Backhoff would not
24 have prevented the reports created from the investigations of Cobb
25 to be any different. Or that the case number had change. This may
26 have led to Gregory backhoffs suicide, along with science advancing
27 making his ticket to come up. But this is ^{pure} ~~note~~ speculation..

28 The idea along with facts related to this crime creates suspicions.
Especially since one of those trophies belonged to Cobbs case!!

1 Officers then spoke to another bartender from the Y-
2 Cafe in Lucrene Valley who admitted to having sex with Cobb who
3 was his "drinking buddy". (CT106) This Same bartender admitted that
4 Cobb had also been sexually involved with at least three other
5 barteneders who worked there.. Sheriff then spoke to Cobbs previous
6 employer at the Spring Valley Lake country club. Her employer admitted
7 Cobb liked to Golf, and was friendly. She admitted that she knew
8 Cobb to have been sexually involved with at least three of her co-
9 workers at the country club. (CT124)

10 ~~Later~~ officers spoke to Bud Turner who stated he thought
11 he last seen Cobb at the market on Saturday September 21, 1985.
12 Recalling that she had dated several ~~w~~men. Officers also spoke
13 to Cobb previous boyfriend Fred Berdard, and during the interview
14 officers noticed that Berdard was wearing a gold colored watch.
15 (CT108) Taking notice of this because Cobb had been located with
16 a yellow colored watchband pin underneath her head. Officers did
17 not take notice whether Berdard was right or left handed.

18 In the address book located on the dining room table
19 officers located the names of about nineteen other men from the
20 area that had not been interviewed by any of the other officers,
21 and assumed they too had been sexually involved with Cobb as well.
22 (CT165,217) On December 2, 2002 detective espinoza prepared a compiled
23 list of cases that had been typed as serial and included on this
24 list (Helen Brooks, DR#1331490)(Rita Cobb, DR#1311036)(Debbie Majorie
25 DR#860764)(Rhonda Belcher, DR#08086074941617)(Malinda Gibbs ,DR#
26 88-59459) and (Brigita Kreismanis, DR#89- 1123392)(see exhibit 18)

27 All of these women were typed as serial by criminalist
28 from the FBI crime lab on 11/27/02 by analyst Ken Witlow. (CT327)

1 It was later determined that one of the women of this
2 list had been killed by Robert mark Edwards who was convicted
3 and sentenced to death. (CCII #A06751443) Because of the long string
4 of murders in the Southern California area, and the ones in the
5 Sanbernardino area sheriffs contacted the U.S. Department of Justice
6 for help to have the cases profiled. (exhibit 19) On April 30,
7 1987 a collective profiled had been generated by several criminalist.

8 They found that there were more than just similarities
9 with the Brooks and Cobb murders and had determined there to be
10 committed by the same person for several reasons beyond the DNA
11 of the cases. (PP1) The victimology of the two cases determined
12 both women had been vulnerable in their life styles, both strikingly
13 similar backgrounds. Both white women, and around five feet tall.
14 Both found between 120 and 135 pounds and also between the ages
15 of 55 and 63. Each had children who lived elsewhere, and both killed
16 by strangulation, a few months apart. They lived a few miles
17 apart and both dated men from the ages of 20 and up. Both had
18 habits of picking men up at the bars and taking them home and
19 both had sexual appetites that were aggressive. Both were argument-
20 ative and had temporary room mates and kicking them out for some
21 reasons. (PP2) These womens reputations and life styles as well
22 as behaviors increased their potential for vulnerability and both
23 characterized as having moderate to high risks of becoming victims
24 to violence.

25 The examinaers report indicates the Behavioral Science
26 Investigations reports determined these type of persons who would
27 have committed this type of crimes. Each victim was the cause
28 of ligature strangulation, one on the neck, with a wire the
other with her pantyhose.

1 Semen was located at both scenes, while one was inside
2 the body, the other was on the bed sheets under the body. Even
3 though DNA samples were not matched there was considerable evidence
4 linking these two murders to the same person. (PP3) The crime scene
5 analysis did indicate that both scenes were attacked in the evening
6 hours, and in their homes. No signs of forced entry to either
7 house, indicating the attackers were invited in. There were no weapons
8 brought to the scenes and were committed by things already at the
9 scenes. Both victims were left nude while articles covered their
10 faces. It was determined that this was a message about [his] opinion
11 of both the victims themselves as women. (PP4)

12 The FBI report gave dozens of reasons these murders
13 had been committed by the same person, making these two murders
14 serial typed. On January 13, 2010 another interview was conducted
15 on Cynthia Hopper by public defender investigator. In the interview
16 she recalled her knowledge from 25 years earlier. (exhibit 20)
17 She told the investigator that she seen Cobb at the party of John
18 Sullivan, but wasn't sure if someone took Cobb home or that someone
19 had checked on her. (1)(PP2) She did offer that it was odd that
20 Daryl Kramer was the one who found Cobb, because Cobbs son had
21 been estranged for some time. (possibly due to the last fight he
22 had). Adding that it was odd that he was the one who showed up and
23 found his mother. Cynthia offered her opinion about Cobb's life-
24 style, that she was "loose" and seemed to be the type who would
25 go home with men she had just barely met at a bar. Lastly she offered
26 that she did not see anything strange outside the Cobb residence
27 that she could recall.

28

1 Doris Jackson was interviewed on April 9, 2009 and
2 offered that she had recalled seeing Cobb before she had been killed
3 and was to drive to Canada with her. Doris believed Cobb to be
4 a private person, but admitted she (Doris) did not drink either.
5 Suggesting that she did not follow Cobb into the many bars she
6 attended around the county which she displayed a very [different]
7 lifestyle once she drank. (emphasis added) (exhibit 21)

8 Sheryll Brodus was interviewed ~~in 1985~~ and offered, that
9 she worked in a bar the night Cobb had been killed, and believes
10 that Cobb may have stopped by that night she had been killed
11 before she went home. (exhibit 22)(PP2) She added that it was
12 possibly Saturday night that she was there. (September 21, 1985)
13 Brodus stated that Cobb usually arrived alone, and had never seen
14 her with a boyfriend. Brodus then offered that she knew Ron Campbell
15 had suspected a neighbor of Cobbs for the crime and to have committed
16 suicide. Another person re-interviewed Brodus about a man named
17 Hull that had come up in the interviews, telling investigators
18 that Hull had dated Mrs Cobb at one time and could also be a suspect.

19 On January 13, 2010 Ron Campbell had been interviewed.
20 (exhibit 23) He offered that Hall had a bad temper when they
21 entered the bar. (Glen Hall) Suggesting that hall had found out
22 about Yablonskyn having sex with Cobb, and that Hall would have
23 wanted to harm Cobb over this matter. Campbell remembered seeing
24 Cobb at the Moose Lodge a few days before she had been found on
25 September 23, 1985(Back a few days-Sunday-Saturday_FRIDAY!)
26 Campbell offered that he knew Cobb to like alot of different men
27 and told the investigator that Cobb was a happy drunk.

1 On September 26, 1985 Rene Smith had been interviewed
2 offering that she remembers meeting a man at the Zodiac Lounge
3 who stated he was waiting for a date with an older lady. Offering
4 that his name was (Gaylord) and was a music entertainer at the
5 Moose Lodge. (exhibit 24) On September 26, 1985 Fred Halbrook
6 was interviewed and told officers that he recalls hearing that
7 Cobb had been seen at the Zodiac Lounge in a argument on Friday
8 night, adding that the fight was a pretty good one. (exhibit 25)
9 Doris Jackson was reinterviewed by detective Alexander in 2009
10 and offered she heard rumors that the night Cobb had been killed
11 she was seen at the Moose Lodge as well as the "Y" Cafe. (exhibit
12 21)

13 August 16, 1986 Detectives interviewed the son Kramer
14 once more regarding a Mel Gibbs that had killed his wife in the
15 same manner that Cobb had been killed and then committed suicide.
16 There was nothing confirming that Gibbs killed Cobb, but the fact
17 he killed his wife in the same manner Cobb had been killed and
18 that he committed suicide thereafter raised suspicious flags about
19 culpability with the Cobb case. (exhibit 27) Later officers
20 spoke to Dianne Flagg who lived around the country corner from the
21 Cobb residence. Offering that she recalled seeing on Friday night
22 cars parked in the driveway at the Cobb residence, and that one
23 of them was a silver pinto. (exhibit 28)

24 Fingerprints were collected from the scene that had come
25 back in 1988 matching Joseph Saunders after the (1988) confession
26 had been made. (exhibit 29) The report was generated on ~~18/28~~
27 August 9, 1988. This report clearly shows that petitioners prints
28 were not located at the scene, where Joseph Saunders and Cobbs had.

1 There were hairs lifted off the victims torso that had
2 laid nude on top of a bed sheet. (Items A5 #'s 1-8 while one had
3 the entire roots attached) Another hair with the roots attached
4 had also been found on the nude torso .(Item A1, which had 8 slides)
5 (see exhibit 26) These hairs were red in color and were DNA quality
6 where the DNA located in these hairs was not matched to petitioner,
7 a blonde defendant. (exhibit 26-9) The victim was located with a
8 pair of shorts in her mouth that was used as a gag. (Item A17) where
9 this item was tangible and DNA would have been transferable through
10 touch DNA. These shorts were DNA capable and the DNA on these shorts
11 was not matched to petitioner.

12 The victims blood had been located on the bedroom door jambs
13 as well as the short pony wall across the hall from her bedroom
14 that had prints which would indicate gloves were not worn in this
15 attack. (See photos 59, 60, 61, 62)(Items A23 and A24)(exhibit
16 26) This quality of evidence was DNA capable and because the assail-
17 ant did not wear gloves would have left their DNA smeared into
18 the victims blood as they fled from the direct murder site(bedding
19 area). This DNA would have been left by the assailant who grabbed
20 the jambs with his bare hands ~~XXXX~~ leaving unreadable prints,
21 but their DNA. This DNA was not matched to petitioner.

22 There was a murder weapon located wrapped around the
23 victims neck that was made of wire. (see item B3) (photos 71, 72,
24 and 73) This material was DNA quality and verified as DNA capable
25 by experts, and the DNA located on this item that had to be handled
26 by the assailant (Killer) who did not wear gloves, verified by the
27 smudges into the victims blood on the door jamb. The DNA on this weapon
28 does not match petitioners DNA. (EXHIBIT 26)

1 There was watchband pin located underneath the victims
2 head between her head and sheet where she laid. (Item A15) (Photo,
3 52, and 53)(exhibit 26) This item had been pulled from the attacker
4 while inthe commission of the crime,where Cobb fought for her life
5 and was located on an area that was baren except for direct eviden-
6 ces related tothis crime. The victims had eb been found with her
7 watch, and this pin was yellow in color. The evidence was solid
8 surface and qualified as DNA capable by experts, where the DNA located
9 on this item was not matched to petitioner. .

10 There was tissue located onthe victims chin which would
11 have been handeld by hands and would have been DNA capable by a
12 person not wearing gloves as explained earlier. The DNA on this
13 item was not matched to petition. (Item B2)(exhibit 26)

14 There was a felt pad that had been determined as aa desk
15 blotter thatw as located underneat the comforter of the bed that
16 had petitioners DNA located on this, which was matched by CODIS.
17 This material evidnece was destroyed by officers who cut a 3 inch
18 by five inch piece from a 18 inch by thirty inch desk cover used
19 to protect surfaces o f a desk top. (Item A18)(exhibit 26) It was
20 petitioners allegation that his last sexual encounter occured inthe
21 office area and onthe desk top and dining area seating area and
22 that [if] this desk cover had petitioners DNA on it and would have
23 had at least two other female DNA's on this as well. The experts
24 testified that this would have been the "possible" reasons for the
25 DNA being there. (That petitioners DNA was on top of Cobbs DNA
26 or Cobb DNA was on top of petitioners DNA). But because the evidences
27 had been destroyed and the majority of this desk cover was discarded
28 and unavailable for examination by petitioner, prejudices him greatly.

1 This evidence was also located underneath a comforter
2 and had not transferred DNA to the comforter or the bed sheets, where
3 if the DNA was current would have done. Indicating it had been placed
4 there some time after the sex between Cobb and petitioner, and
5 may not have been from that last encounter and may have been from
6 one of petitioners visits to the Cobb home the month prior. These
7 speculations were not verified to any degree.....because the evidence
8 was destroyed. But make no mistake that if petitioners DNA is there
9 then there will be at least two other female DNA's as well, but
10 becuasee the evidnece is not available for verification it would
11 be up to the prosecutor who destroyed the evidnce to show it had
12 been done harmlessly and not mal^oiciously. (DESTROYING EVIDNECE)

13 There were cigarette butts lovcated on the dining room
14 table in an ashtrya of a smokers home. This ashtray had eight buitts
15 located in it. (exhibit 17)(item A21) It should be known that
16 the DNA from Saunders who had been at the house the day before Cobb
17 had been killed was located on one of these butts. Kramer who arrived
18 at the house after his mother ~~(XXXXXXXXXX)~~ had be killed.(Allegedly)
19 was determined to be on at least two of the butts. (see photo 23)
20 It should also be known that Randolph/Backhoff had also been found
21 to have left his DNA on at least three of thoise eight butts,while
22 his last exclamationwas that it had been two weeks since his last
23 visit tothe Cobb house before she had been killed. (allegedly)
24 Pettioners DNA will not be on any of these butts and was not matched
25 to any of these DNA's located onthe butts.

26 There were tire tracks located and photographed inthe
27 Cobb drive way, indicating a 44 inch wheel base. (see photo 3-7)
28 It was the prosecutors opinionthat these tire tracks came froma

1 Ford pinto, and then opined that because Dianne Flagg had seen a
2 silver pinto, that these tracks came from the suspects vehicle. Pet-
3 itioner owned a dark blue pinto. (exhibit 28).

4 The victim had been located laying on her back, yet
5 the photos of the unaltered crime scene indicated Cobb had died
6 while on her roight side, where lavidity had been located and photo=
7 graphed. (see photo 57) This phot shows that Cobb had been killed
8 while on her right side where lavidity had been located on her
9 upper shoulder and ribcage area. Lavidity is where blood settle
10 after death and settles to the lower area of the body. It occur~~es~~
11 after several minutes in the same position the body had been laid
12 for several minutesa after death. This induicates the body had
13 been moved, and the scene tampered..

14 Petitioners DNA was not located on the outside of the
15 body other than a felt pad as discussed a earlier, which had not
16 m been transfered to sheets, spreads, comforters, or any of the
17 bedding to any degree, indicating length of time related to the
18 time the crime had been committed. Petitioners DNA was not located
19 on the outer labia area, vulva area, of the vagina. It was not located
20 on the inner thighs, lower buttox area, nor on the body at all outside
21 the vagina. It was not located on the bedding underneath the body,
22 or any of the bedding at all indicating petitioner had been in that
23 room outside the felt pad being carried in there some time after
24 the sex in the dining room/office area, other than the DNA carried
25 in there by the victim more than one and a half days after she
26 had sex with petitioner and as many as several days after she had
27 sex with petitioner. There is virtually no possible way to get sperm
28 into the vagina without leaving traces on the above indicated body

1 parts identified above which would occur if the sex was current.
2 In fact because the sex had occurred more than one full day before
3 Cobb had been killed, there may have been traces inside her panties
4 located in the laundry hamper in the other room, but that area of
5 the house was not processed. Officers had suspected dozens of people
6 over the years that followed the murder, which included as many
7 as 26 different men, without any success outside the arrest of Gregory
8 Randolph. (discussed earlier and later in this petition)

9
10 TWENTY FIVE YEARS LATER

11 Petitioner had been arrested for a failure to pay fine
12 warrant, where his DNA was collected because he had been a convicted
13 felon from a few years before, for possession of stolen merchandise.
14 It was then that CODIS matched petitioner to the scene as a suspect
15 to the murder. (see exhibit 30) On March 4, 2009 officers filed
16 and received a warrant for the arrest of petitioner at his Long Beach
17 residence. Petitioner was interrogated in two locations without
18 MIRANDA. (see exhibits 63 and 64) (see exhibit 65 Filed as a mall-
19 iable compact disc)

20
21 PRIOR TO TRIAL

22
23 Petitioner's case had been used as a campaign slogan by
24 the district attorney re-elect Michael Ramos after scheduling the
25 trial to start. The slogan was a promise to convict for votes of
26 a case that was 25 years old as the prosecutor enjoined he had
27 filed nineteen murder charges, and petitioner's trial was to start
28 later that year, when in fact it was to begin in less than 30 days.

1 Petitioners right to a speedy trial were violated forcing
2 the trial to be postponed because of this misconduct. (discussed
3 later in this petition). Petitioner sued the prosecutor because
4 of this, while the prosecutor retaliated by altering the inter-
5 rogation transcripts. (Discussed later) (see exhibits 63-65)
6 (see exhibit 32, 33)

7 Petitioner moved the trial counsel to subpoena certain
8 alibi witnesses which would have corroborated his being in another
9 county around the time this crime had occurred. Trial counsel ignored
10 that plea, while petitioner provided the subpoenas that were ignored.
11 (see exhibit 31) While these misconducts by trial counsel forced
12 petitioner to defend himself, making petitioner file pro se motions
13 to the court. (see exhibit 36, 37, 67) Trial counsels solution to the
14 campaign smear was to recuse the prosecutors office , only he
15 filed a faulty motion without perfecting it and following court
16 rules about service of the P.C. § 1424 motion to serve the attorney
17 general, therefore the only party defending the motion was a pre-
18 judicial party. (The prosecutors office being recused)(The prosecutors
19 office argued there was no conflict between petitioner who at that
20 time had a \$5,000,000 million dollar suit that was current about
21 the conduct of the prosecutor tampering with the panel of jurists.)

22 Because of the trial counsels appearance to have no
23 interests in defending petitioners interests, and after discussions
24 about an alibi for the time of the murder, petitioner was forced
25 into writing his own subpoenas for this case. (exhibit 38) and giving
26 them to the trial counsel. It was not discovered until after trial
27 that trial counsel had not subpoenaed anyone, much less the alibi
28 witnesses. Petitioner after suing several parties for violations
to protected rights experienced an absolute cut off from legal

1 and spiritual confidentiality while the county jail commander term-
2 inated all confidential communication opportunity and services. Making
3 all phone calls for petitioner before 6 a.m. and after 6 p.m. week
4 days and no confidential visits while at the jail after petitioner
5 had served lawsuits for these treatments of pretrial detention.,
6 (exhibit 39) Trial counsel verified this yet did nothing to have
7 this lifted and resorted to having extremely critical pretrail dis-
8 cussions about sensitive issues with the case in the courtroom next
9 to the a) prosecutor within ear shot b) other inmates who would
10 discuss private issues with other inmates and prosecutor. This
11 restriction occurred after the lawsuits and remained until months
12 after the trial.

13 As a result of the lawsuit filed against Ramos for the
14 use of petitioner's case in his campaign smear which affected the
15 entire venire of jurors, Ramos, Robert Alexander, and John Thomas
16 agreed to, arranged to, conspired to change petitioner's answers
17 in the interrogation recording that was created for trial purposes
18 on March 8, 2009. This transcript was altered on November 23, 2010
19 after parties had been served their copies of the complaints.
20 (exhibit 63, 64, and 65)(Copies of the state's records 1-113 page
21 transcript created on the same day as the 1- ~~xxxx~~ 136 page copy
22 for the exact same interrogation) First this interrogation was created
23 in two separate locations outside MIRANDA, while two of the recordings
24 were officers' personal recorders, the other was a camcorder that
25 was used while in detention at the police station. These officers
26 made copies of the recordings and erased sensitive and critical
27 areas of the conduct (interrogation) when they made a "COPY" of
28 this interrogation. (states exhibit 49) (exhibit 65 here)

1 The transcripts created (1 -113 page copy) (1- 136 page
2 copy) were created on the exact same day. (exhibits 63 and 64)
3 Both creating were done to change petitioners answers, placing
4 evidences into petitioners poission and answers to indiucate
5 there was no friendly key exchange relationship with Cobb. Indicating
6 that petitioner had taklena key tothe victims house at some point
7 and then held this key to return to commit a crime which petitioner
8 had been charged. (an ele ment tothe crime Motive, intent)
9 (see exhibit 40) The prosecutor then altered this once ahgain just
10 before the jury heard it, so that he could change the sopund bite
11 of the recording to match the changed answers of petitioner.
12 (exhibit 41) The prosecutor created a version of this recording
13 the was played tothe jury thatwas different that states exhibit
14 49, or 49A. The version they made was never placed into the states
15 records. Placing two very different versions intothe records as
16 exhibit 49A (the 113 page transcript) which is to be the same as
17 (exhibit 40) which is a three hour and forty eight minute recording
18 more than 136 pages in length. The changed answers are as follows;

19 (States exhibit 49 compared to states exhibit 49A)
20 (GM = Greg Myler)(JY = John Yablonsky)(RA = Robert Alexander_

21 ONE HOUR SEVEN MINUTES INTO EXHIBIT 49
22 AND FIFTEEN SECONDS

23 Q-(GM)-Ok, did you guys have a key to Ritas house ?

24 A-(JY)-No(THIS WAS CHANGED TO SAY UM YEA)

25 ONE HOUR SEVEN MINUTES TWENTY FIVE SECONDS
26 INTO EXHIBIT 49

27 Q-(GM)- Okay, so she wasnt like that it was stricly business ?
28 She didnt allow anybody in her house ?

A-(JY)- No

THIS VERIFIES THAT PETITIONER HAD NO BUSINESS IN THE HOUSE!

UNINVITED!!

COURT OF ~~DELAWARE~~ 41

1 ONE HOUR SEVEN MINUTES AND THIRTY TWO SECONDS
2 INTO EXHIBIT 49

3 Q-(RA)- Did she have a key to your apartment ?

4 A-(JY) Yes she did (WAS CHANGED TO SAYING "NO")

5 _ This was her rental, why wouldnt she have a key to her
6 own home, showing this change in answers supports that Cobb did
7 not allow anyone inside her home, not even her teneant and that
8 she was not allowed inside the apartment she rented to petitioner
9 for strange reasons.

10
11 ONE HOUR SEVEN MINUTES AND THIRTY TWO SECONDS
12 INTO EXHIBIT 49

13 Q-(RA)- Did she have a passkey to your apartment ?

14 A-(JY)- Yes she did(WAS CHANGED TO SAYING "NO")

15 These audio and visually changed answers were used in
16 the trial to coerse the jurors into beleiving culpable conduct to
17 have a key to a home there was no friendly relatiuohsip between
18 petitioner and the vi ctim, alleging that petitioner had stolen
19 one while working in the Cobb house at some point,m keeping the
20 key for some time and then to return to the home to commit this
21 crime. This was shown tothe jurors as an accurate transcript. later
22 discussed inthis petition.(exhibit 43) Petitioner during the trial
23 had told trial counsel that he needed to testify because of the
24 seriousness of the charges and the jurors comments that they would
25 believew a statement by the defendant would or should be necessary
26 to defend himself, as well as there being absolutley no evidences
27 showing petitioner had committed the crime. (exhibit44, 45)

1 In this three week trial the defense counsel did not
2 object to any of the many misconducts by the prosecutor, discussed
3 later here, did not provide an opening statement, did not challenge
4 the credibility of the states witnesses who clearly gave unrelaible
5 testimony, did not challengfe the manufactuired interrogation record-
6 ing, did not present one witness, one piecve of paper in his clients
7 defense and gave a closing statements about anchient history on
8 basevall and animals onthe plains. The jury deadlocked on February
9 2, 2011. Admitting they were hopelessly deasdlocked. (exhibit 46)
10 The Court out of the presence of trial counsel threatened the jurors
11 using wording like "Hostage" and that "he" has toime to keep the
12 jurors. Giving this speach about the jurors time,and the Courts
13 discretion to hold them on February 3, 2011. (exhibit 47)

14
15 AFTER TRIAL

16 Post trial counsel was appointed to provide an ineffective
17 assitance of counsel motion (ONLY) and apopointed Hal Smith for
18 this job on February 25, 2011. It was then that petituioner was
19 made aware that this case did in fact have 5300 pages and there
20 were several misconducts by the trial counsel that petitioner had
21 not known. Including the withholding of th e confession report, filing
22 motions for petitioner in other persons names, forfeiting rights
23 without having informed petitioner, and sabotaged any defense this
24 cae had. (exhibit 48) The court read the motion that wass conceded
25 by the prosecutor and denied the motion stating " That the Court
26 did not witness inside the four corners of the courtroom any ineffect-
27 iveness by trial counsel. Denying an investigation failure motion
28 based on in courtroom conduct" (exhibit 49)

1 It was in this disclosed post trial motion that petitioner
2 had discovered that trial counsel had not had anything from this
3 case examined at all after being told by laboratory experts there
4 were mandatory examinations needed that would cost as much as
5 \$3, 500 (well within the range of reasonable defense) (exhibit 49)
6 (exhibit 50) It was not until after the July 2014 release by trial
7 counsel of other informations that petitione~~r~~r tried to expand the
8 states grossly under created records because of misconduct, ommiss-
9 ions, and other criminal activity by state and lawyer that the request
10 to expand was denied. (exhibit 51)

11
12 THESE ARE THE FACTS SURROUNDING
13 THE CASE, AND ARE UNDISPUTABLE

14
15 THE STATES ENTIRE THEORY FOR THIS CASE
16 SUPPORTED BY THE MANUFACTURED EVIDENCES
17 WITHIN STATES EXHIBIT 49 AND 49A

18 (RT32;12-22)(DDA Thomas)

19 " The peoples position is that Mr Yablonsky's interview
20 he was given at least four opportunities to say he had
21 sex with the victim, and the detectives were very
22 clear, we dont care if you had sex with the victim
23 If you had sex with the victim, we need to know, and
24 he repeatedly denied having sex. (emphasis added)...
25 " FROM THE DENIAL OF SEX THE JURY COULD INFER THAT THE
26 SEX HE HAD WAS UNCONSENTUAL, IT IS PROPINCITY!! "

27 EVIDENCES COLLECTED FROM THE SCENE OF MATERIAL VALUES
28 (SEE EXHIBIT 26 FILED HERE)

29 There was over 80 photographs in this case, petitioner
30 points
31 points at a few which are strikingly important and briefly discusses
32 them here.

Photos three through seven

1
2 These are photos of the victims driveway and tire
3 tracks located inside the dirt drive. It was the prose-
4 cutors theory that these tracks belonged to a silver
5 pinto with a wheel base of 40 inches. The state used
6 a witness who seen a silver pinto at the scene, and
7 withled that petioners pinto was dark blue.(exhibit28)

Photo twenty three

8 This is a photo of the dining table ashtray that held
9 eight butts located in it inside a smokers house in a
10 common areas. Three of these butts had been matched
11 to Mr. Backhoff/Randolph who confessed to the crime

Photo forty six

12 This is a photo of the ring, located on the night
13 stand near the victims bed, showing this case was
14 not about robbery

Photo fifty two and three

15 This is a photo of the watchband pin located under
16 the victims head, showing that it would have had to
17 been placed there during the crime because it was
18 slightly under the side of the victims right side
19 of her head, showing that the killer had been a right
20 handed person to lose the pin on his left side as
21 they killed Cobb and she fought the pin loose from
22 the attacker. It would be inconceivable for the attacker
23 to have the train of thought to think of the watchband
24 pin as they grabbed the watch, not thinking of the
25 pin that kept the band attached when they fled from
26 the scene taking their watch, but not the PIN!!

27 EXHIBIT 26

DNA EVIDENCES LOCATED

Tag# E67999 ~~ITEMS~~ located on the body and scene
Items E4, A5., A1, A18, E3, E1, A20, A17, A15, E4a

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2
3 Item #E4 was standatrd pubic hairs that were colle tec from
4 tape liftings from be neath a comforter located on the bed
5 which were directly inthe inmedciate vacinity of the murder
6 since officers believe that Cobb had been killed where she
7 laid. The DNA from these evidences will not match nor were
8 they matched to petitioner.

9 Item #A5 is red hair that was collected with the entire roots
10 attached and were collected from off the v9ictims body. First
11 petitioner is blond, second experts stated this would be magnif-
12 icent DNA specimnens and , third this DNA was not matchved
13 to petitioner.

14 Item #A18 is the desk cover thatwas discussed earlier, where
15 petitione and the victims DNA had been mixed into a very small
16 area of this evidnece. It originally started out as a 18
17 inch by thirty inch piece of desk cover, that had been destroyed
18 into a 3 inch by fiver inch piece of evidnece. This evidnece
19 was not examined with todays experts, which would have shown
20 there was at least one other DNA opn this very small piece
21 of evidnece. Making the remainder of the original evidence
22 to have serious material; values as well as other DNA's beside
23 the petitioner and victim.

24 Item# E3 This is a metal wire that had been used as a weapon
25 and was located around the victims neck. Expr¹erts t stated
26 this would DNA terrific and this evidences having DNA on it
27 was not matched to petitioner, where a murder occured using
28 this weapon with bare hands, verified by the blood smears
onthe bedroom door jamb with unreadable prints intne victims
blood.

Item #E1 These are loose hairs that were also collected fromthe
victims torso and this DNA ~~xxxx~~ was not matched to petitioner.

1 Item #A20-23 were cigarette buttes located on the dining room
2 tabel ashtray and came back matching Gregory Randolph /William
3 Backhoff. These DNA's will not match petitioners DNA nor will
4 the other cigarette butts located in this askhtray. This
5 ashtray carried 8 butts, while three matched Gregory Randolph,
6 one matched Joseph Saunders, two matched Earyll Kramer and
7 one matched Cobb. These DNA's were not matched to petitioner

8 Item #A17 These are shorts that were crammed into the victims
9 mouth during the assault/murder. These shorts will have DNA
10 on them from the person who wore them and the person who shoved
11 them into the victims mouth. The DNA on these shorts ~~will~~ was
12 not matched to petyitioner

13 Item #A15 This is a watchband pin that was located underneath the
14 victims head. Indicating it was oplaced there at the time
15 of the crime where struggle occured and was located on a barren
16 bed sp read. This item will be DNA magnificent and was not
17 matched to eptioner, even thought he prosecutor argued it
18 belongs to eptioner because of the size.

19 Item #E4a This is a vaginal collection where sperm had been
20 collected from inside the body of the victim. This was matched
21 to Yablonsky, petitioner and expertly testified to by two
22 states leading experts. (Dr. Suakel)(RT490 who stated that
23 this DNA was the result of an encounter that occured before
24 the murder by at least one and a half dayds before Cobb had
25 been killed)(The second expert)(Criminalist Donald Jones)
26 (RT317 who stated that this DNA was the result of a sexual
27 enocounter that occured as much as severla days bve before
28 the murder occured and added that eh was certain of this)

Petiticens DNA was not located on the outside of the
victims body, not located on the vulva, labia, clitorus, inner
thighs lower buttox area, outter thighs, legs, stomache or on
the bedding beneath the victims resting spot. Petitioners DNA

1 was not located in the victims blood smeared onto her bedroom jamb
2 or pony wall. It was not located on any of the bedding, sheets,
3 pillow, comforter, nor was it located on anything directly related
4 to the actual murder. It was not on the weapon, not on the watchband
5 pin located under the victims body, nor in any of the hairs recovered
6 from the nude body. Petitioner's DNA was not collected from the
7 fingerprints that were collected, and was not on the door knobs
8 lead to or from the victims bedroom or main entrance of the house.
9 In fact the only DNA collected from this scene matching petitioner
10 could have been carried in there by the victim herself inside
11 her, while the desk blotter had originated inside the office area
12 of the house could have also been placed inside the bedroom days
13 before the murder occurred. "UNDERNEATH A COMFORTER ??"

14 There is not one piece of evidence DNA or otherwise
15 that indicates petitioner's involvement with this crime to any
16 degree outside pure speculation by the prosecutors "theory" that
17 just because petitioner lied to the cops while being asked about
18 a sexual relationship with a murdered woman while in front of his
19 wife and children. In fact the only evidence linking to culpability
20 of this crime was manufactured by the prosecutor himself by changing
21 petitioner's answers to place evidence into his possession when
22 the real time recordings will show they presented fake evidence.

23 Out of the 5300 pages of evidence that were collected
24 over the 25 years plus, after this crime had been committed had
25 not placed petitioner at that crime scene at the time of the murder.
26 Witnesses seen Cobb the day before she had been killed in the Lucerne
27 Valley Market after she got off work. They seen her the night she

1 had allegedly been killed up until 11;30 p.m. when she arrived
2 at and got drunk with them on September 20, 1985. She left the
3 party after Nash and Hooper had left. She refused the offer by
4 them to take her home and remained at the party fopr another two
5 hours after they left. She told Francesca Drake, Cynthia Hooper,
6 and Bruce Nash that she was not going home yet and that she was
7 gouing tothe Zodiac Lounge after she left the party at 11;30 p.m.
8 Witnesses seen her at the bars, one of them seen her ina fight
9 at the Zodiac lounge. One of them confessed tohave picked her
10 up at the Zodiac lounge and took her home to kill her.

11 Joseph Saunder who barely knew her at all, had a crush
12 on her so much that he kept a journal about his "relationship:"
13 with her. Learned froma mutual friemnd of theirs, to look in certain
14 areas of the high desert so that he can find out where her house
15 is, and then paid a surprize visit to her without being invited
16 or calling first. Cobb knew this person and chose not to give him
17 her address in the first place. Both Saunder andf Randolph committed
18 suicide after the Cobb murder, while both had memorials at their
19 suicide scene related to Cobb. One a memorial of their "relations
20 ship" The other a trophie.

21 The FBI was involved in helping to solve these crimes
22 and created not only a list of ttyped cases which Cobb was on,
23 but that they had solved one of the five typed and sentenced this
24 man to death. The FBI also created a profile connecting the Cobb
25 an Brooks murders as being committed by the same person. Although
26 Donald Jones opined that because the DNA's from both these crime
27 scenes were different that they were committ4ed by different people,
28 he also cleared petitioner DNA by several days fromthe time the

1 murder had occurred. Also clearing petitioner from the time the
2 crime had occurred as Dr. Saukel who was one of the pathologists
3 in this case also clearing petitioner LWA by as little as one and
4 half full days from the time Cobb had been killed. Saunders stated
5 that Cobb offered him a glass of water to drink, and everyone at
6 the party said she had been drinking bourbon. Saunders said that
7 he arrived at the party and picked pistachios with the group only
8 nobody remembers him being there, while Saunders said that to his
9 knowledge Cobb had not been drinking. He also added that she offered
10 to have him over after the party, but added that he did not go
11 to her house. / After being told that she would only accept platonic
12 relationship with him.

13 Another woman was killed in that area shortly after the
14 Cobb murder, and was committed by Meryl Gibbs who strangled and
15 killed his own wife in the exact same manner Cobb had been killed..

16 ~~Then~~ ^{Committed Suicide}
17 One bartender from town stated she did not see Cobb at the bar
18 she worked on that Friday night, and also added she seen Cobb
19 extremely drunk some time earlier. Only three other bartenders
20 stated that thought or had seen Cobb in their bar the night she
21 had been killed.

22 Every person interviewed after the crime stated that
23 Cobb was a loose woman and like to date a lot, of different men
24 from the ages of 20 and up. That she liked to frequent the bars
25 and would regularly pick men up at the cost of a drink to take
26 them home for sex. Cobb had been sexually involved with at least
27 seven men around the county, to include three bartenders from the
28 "Y" cafe, three co-workers from her job, and even the neighbor
up the street John Sullivan. Everyone said she was a heavy drinker
who got vicious when she drank. Even her own son said she had
a Jeckel and Hyde personality when she drank. She drank all the time!!

POST TRIAL FILINGS

1 Direct post trial appeal 4th district COA#Eo55850

2 Appellant counsel argued twelve grounds, filing the appeal
3 after petitioners habeas on another twelve grounds. Appeal
4 was argued by the attorney general. This Court affirmed that
5 appeal based on the records before it, different records than
6 are presented her. Denying the appeal on 12/3/13(exhibit 52)
7 Denying the appeal before the records had been discovered on
8 July 2014

9 California State Supreme Court petition for review# S215572

10 Appellant counsel filed eleven grounds on direct review. This
11 review was denied on March 17, 2014. Still before the records
12 had been released on July 2014. (exhibit not available)

13 State habeas corpus Superior Court #WHCSS1200311

14 Petitioner argued 12 grounds of error based on facts known
15 but unable to tangibly prove. Petitioner filed demands for
16 discovery and state records which was denied and refused.
17 DDA Ferguson from the appellate division of the district attorney
18 office filed brief in their defense.(perjudice) After briefing
19 by both attorney general and district attorney 13 more const-
20 itutional errors became developed. Petitioner moved the Court
21 to expand the records, which was denied. The court denied this
22 habeas stating it lacked jurisdiction, or that petitioner did
23 not have enough proof at that time. Denying this on July 12, 2013
24 before the records had been released on July 2014(exhibit,57)

25 State Court of Appeal habeas corpus #E060202

26 Petitioner separated the combine claims in superior court and
27 filed thirty two ground at the appellate court level. This
28 Court summarily denied this filing on January 14, 2014 after
twice denying petitioners plea for discovery to the case. This
habeas was denied before the release of the states records
on July 2014.

1 States Supreme Court habeas corpus#S218253

2 Petitioner combined the state direct appeal issue along with
3 habeas issues that had been exhausted by the lower courtss
4 to file a habeas petition with forty two ground into the state
5 supreme court. This was summarily denied on July 16, 2014 before
6 the release of the states records on July 23, 2014. (exhibit
7 58)

7 United States district Court#EDCV-14-01877-PA-(DTE)

8 Petitioner argued forty two grounds of constitutional dimmension
9 and formal arguments ensued. After this case had been filed
10 trial attorney had released the records that had to be developed
11 and revied. Petitioner after review discovering the state record
12 had been incorrectly presented at all lower court moved the
13 district court to expan d the records under habeas rule 6 and
14 7 without any success. Part of the release after July 23, 2014
15 state revealed that they had committed fraud withthe altering
16 of evidnee they used in the trial. Petitioner filed FRCP Rule
17 60(b)(3) fraud motion thatw as denied for timeliness.
18 The attorney general conceded erros on some of the grounds
19 whoile the court argued harmless error analysis. This filing
20 was denied on March 2016. It must beknown that the proof of
21 this fraud was r finally release on January 2016. This case
22 was published

20 California State supreme Court#S217210

21 Petitioner after being made aware of the fraud by trial counsel
22 who witheld facts related to this case moved the Superrem
23 Supreme Court for an evidnetiary heaing unde Cullen v Pinholster
24 due to facts related to the case being release after state
25 fuilings. (exhibit 5) This case was denied

25 United States Court of appeals 9th Circuit#16-8771

26 Petitioner moved the court of appeals for a certificate of
27 appealabiloity which this court denied on or about march 2016
28 (exhibit not filed here)

1 United States Supreme Court#16-8771

2 Petitioner filed for certiorari on April 3, 2017 which was
3 denied for rehearing on June 26, 2017 (exhibit not filed
4 here)Petitione for rehearing was denied on August 25 , 2017

5 Superior Court #CIVDS1506664 civil remedies based on fraud and
6 professional misconducts by government bodies

7 Once petitioner had discovered that fraud had been committed
8 by state government bodies to constitutional dimmensions petit-
9 ioner filed civil suits against several apertries to include
10 trial counsel, senior trial copuinsel, district attoerney
11 county district attorney, sheriffs department, county jail
12 and the judge for several ground which affected petitioner
13 federolly protected rights before the trial had reach its
14 finality regarding case #FVI900518. These defendants admit
15 they altererd evidences, admit they prejudicially ised petitioner
16 case intheir campaign smear, and admit they withheld evidndces
17 fromthe petitioner until the direct appeal and habeass courts
18 had been exhausted as well as several specific failure that
19 include haveing nothing investigate inthis case (FVI900518)
20 to na any degree.

21 THIS CASD IS STILL ACTIVE

22 Superior Court (FVI900518) P.C.§1405

23 Petitiopner filed section 1405 motion for DNA examinations
24 and this was appointed to an impartial member of the public
25 defnder pool that is being sued, and defended by DDA ferguson
26 who lied inthe habeas corpus WHCSS1200311. Vittually every
27 allegation made inthis motion was admitted, elluding that
28 it wass not enough to suffice DNA examinations. This was denied
on or about August 2017

29 Superior Court habeas corpus #WHC1800338

30 Petitioner filed second habeass corpus arguing newly discovered
31 evidnece that had been fully divulged on January 2016 arguing
32 for timeliness protected rights. This was denied on 10/9/18
33 for timliness. Petition for rehearing was **FILED** on OCT. 24 2018

1 Petitioner argued timeliness based on his medical condition
2 as a result of a stroke he suffered prior to the release of
3 the records on January 2016. The Court further argued that
4 two previous filings between January 2016 and October 2018
5 had been filed alleging factual innocence, suggesting petitioner
6 was barred from review herein. Petitioner argued prima
7 facie, new laws, and the authority which stated if petitioners
8 first state habeas had been denied for lack of jurisdiction,
9 or claims there was not enough proof, then the Court had an
10 obligation to review the case on the merits here. Petitioner
11 argued cause and prejudice under Park, 202 F3d at 1152(1993)
12 [THE DIXON RULE]. Petitioner filed two P.C. 1405 motions (sic)
13 Petitioner further filed a copy of the malleable compact disc
14 showing the altering of the interrogation answer and the Court
15 again denied this matter, stating the case had been closed.
16 (see attachment A)

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STATE COURT HABEAS PREJUDICE WNCJS 1860338

19 First the Court failed to honor the new laws that had just
20 passed under senate bills 1909, and 1134 affecting the manner which
21 newly discovered evidence affecting P.C. §§ 141 and 1473 which state
22 that the manner which newly discovered evidence must be viewed
23 had been changed. Neither of these laws speak about timeliness outside
24 when these evidence can be brought as soon as possible considering
25 diligence. Second the court admitted the prima facie of these arguments
26 yet based the denial on timeliness alone. Third, this Judge failed
27 to recuse himself when he knew that the parties being sued for these
28 gross misconducts had been his business partner at one time. (Michele
Ramos) Who later became a subordinate to Ramos as a DDA prosecutor
for the sanbernardino county. Judge Gregory Tavill. People v Knight
239 Cal.app.4th 1(2015) The Court (Tavill) had been reversed for
failure to honor federal laws. Case# FWV1201414.

1 In Re Andrew, 213 Cal.app.4th 678(2013) The honorable
2 Tavill had again abused his dicretion regarding jurisdiction , filing
3 a erroneous motion alleging resource issues ordering the case
4 back into the Sanbernardino jurisdiction. Most importantly though
5 was that Judge Tavill had worked undre Michael Ramos on several
6 matters, specifically as partners ina lqwfirm under People v Green
7 125 Cal.app.4th 360 (2004) as well as DDA Grover Meritt. The issues
8 are this DDA Meritt filed a bogus motion in defense of Ramos in
9 2010 regarding the campaign use of petitioners case, mistating
10 facts to defende his senior officer of that office. Next Michale
11 Ramos was not only charged with falsifying evidneces in this matter
12 here, but has admitted to misusing petitioners case in another suit
13 to satisfy6 his political agenda. Making anything Judge Gregory
14 Tavill unreliable and very prejudicial to petitoioners case here,
15 especially since this case evolves around criminal conduct of the
16 prosecutors office who had to manufacture evidneces to secure a
17 conviction,which is being challenged here in grounds one , two ,
18 three and five filed here. In short Judge Tavill should have passed
19 the case to an impartial person to protect prejudice iussues....and
20 did not. Denying this habeas at the superior court level against
21 laws, rules, statutes protecting petitiioenrs rights.

22 SEE ATTACHMENT B

STATEMENT OF THE CASE

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Mr Yablonsky (petitioner) was charged for murdering Mrs Rita Mabel Cobb on September 21, 1985 in the March 8, 2009 filing of a verification by DDA Ramos. The alleged victim in this case had last been seen by friends on September 20, 1985 between 7:30 p/m and 11:30 p/m that same night while she attended a drinking party at the Mini Springs ranch just up the street from her home. (RT104) There were four persons at this drinking party (John Sullivan)(Sullivan),(Francesca Drake)(Drake),(Cynthia Hooper) (Hooper), and(Bruce Nash)(Nash) Sullivan and Drake was boyfriend and girlfriend and lived at the mini springs ranch. Nash and Hooper were also boyfriend and girlfriend, but lived elsewhere. These persons regularly partied together. All persons at the party named above remember seeing Rita Cobb (Cobb) arriving at the party drinking a bottle of bourbon around 7:30 p.m. (RT407-425). Nash had arrived at the party without drinking anything, and had not drunk at all that night. He noticed that before he left the party around 9:30 p.m. that Cobb had been more drunk than usual, and chose to offer to drive Cobb while Hooper followed in their car. Cobb refused the offer, telling Nash and Hooper that she was not going home, and was going to go to a bar called the Zodiac lounge instead before she went home. (RT412) According to statements given in 1985 Nash and Hooper left the party before Cobb, leaving at 9:30 p.m.(see exhibit 13)

One of the other partygoers stated Cobb had left the party around 11:30 p.m. after Sullivan had fallen asleep at 10:30 (exhibit 14) Drake added that Cobb liked to date a lot of men, and like to frequent to the bars in town looking for them. (RT398,400,410)

1 Witnesses had seen Cobb in the bars that same night,
2 only these witnesses were not allowed to testify in the trial. (
3 (see exhibit 21, 22, 23, 24, and 25) The victims son stated that
4 he got a message from his mother on Friday September 20, 1985
5 saying something or someone had scared the hell out of her and
6 she needed his help immediately to save her. (RT113) Daryll Kramer
7 (Kramer) stated that after he called her back that weekend he called
8 her job on Monday September 23, 1985 to see if she had gone to
9 work. (RT109) He then after discovering his mother had missed work
10 he and his wife Marta Kramer drove 30 miles to check up on her.
11 Kramer stated that when he got to the Cobb house in Lucerne Valley
12 he found his mother lifeless. (RT118, 177, 182) He told the Court
13 that when he noticed his mother dead, that he ran from the house,
14 and drove straight to the home of Sullivan . Telling the Court he
15 did not know why. This Court knows because of the Comments made
16 by Kramer about Sullivans sexual involvement with Cobb.(CT61, 77,
17 60-82)(RT119)

18 Kramer noticed a ring on the night stand near the bed
19 of Cobb.(RT120,126) Kramer also added that he had not touched anything
20 in the house at that time. Kramer offered that he had married his
21 sister Marta who was at one time his step sister. (RT188) They
22 stated he called the police immediately after discovering the
23 body. Deputy McCoy arrived at the scene on September 23, 1985 at
24 1400 hours. (RT213) and made diagrams of the scene, then took photo-
25 graphs. McCoy added during the trial that there was a six pack
26 of beer missing from the scene from the time he sketched the scene
27 and took photographs. McCoy stated that he found the body of Cobb
28 in a moderate state of decomposition (RT232-33) and found clothing

1 laying on the floor near the victims bed where she laid. (RT234)
2 McCoy noticed a watchband pin laying underneath the victims head,
3 and that Cobb had been killed on top of a clear surface of bedding
4 (RT237) McCoy noticed that Cobb had been wearing her watch and
5 that it was not broken (RT240) and determined that the house had
6 not been ransacked (RT238) noticing there was no sign of forcible
7 entry. (RT 242)

8 That same day criminalist Donald Jones arrived at the
9 scene. (Jones) Jones collected several pieces of evidences (RT254)
10 including the watchband pin underneath the victims head. (RT255,
11 258) He then took notice of the blood smears on the bedroom door
12 jamb and short wall across the hall from the room where Cobb had
13 been murdered. Jones took samples from the blood. (RT264, 293) and
14 collected bodily fluids from Cobb. (RT260, 262. Jones noticed
15 there was shorts over the victims mouth and face area (RT439)
16 and determined that Cobb had been killed by strangulation after
17 he located a wire around the victims neck. The DNA collected from
18 inside the cavity of Cobb had been matched to petitioner by CODIS
19 and during trial Jones offered the following testimony about that
20 evidence. (exhibit 51) (RT 317)(Cross examination)

21 Q- You said you found a large amount of sperm cells ?

22 A- Relatively large amounts compared to other sexual cases that
23 I worked.

24 Q-All right, but you have no knowledge of the person--that--the
25 sperm count of the person that made that deposit ?

26 A-Absolutely, that's correct.

27 Q-So it could have been- you can't tell the time based on just
28 looking at what you looked at ?

28 A-No sir.

1 Q- Okay, in other words, from the information that you had, the
2 sexual experience of the victim could have been at the time
3 of death, hours before the time of death, after death ?

4 A- That's probably true. I would say it probably wasn't days before
5 in terms of she had intercourse, several days passed and then
6 she died.

7 Q- Right

8 A- I'm fairly certain of that.

9 Q- Okay.

10 A- And if you take [THOSE DAYS AND SHRINK IT DOWN TO HOURS AND
11 SO FORTH, I CAN'T TELL YOU]

(RT 317)(several days passed then she died)

12 THERE WAS NO REDIRECT OR CHALLENGE TO THIS TESTIMONY!!

13 Another state expert testified named Dr. Saukel who was
14 the pathologist for this case. He examined all the evidences and
15 and determined Cobb had been dead for two days by the time she
16 had been found. (RT440) and that he located lacerations on the victim's
17 upper right outer ribcage and arm area. (RT 443) The doctor offered
18 that there was no scientific or physical evidences Cobb had in
19 fact been raped. (RT469) Adding that there was a wire located wrapped
20 around the neck of Cobb. (RT464,465) Then offering in his expert
21 opinion on direct examination by DDA Thomas, stated the following
22 regarding the DNA located from inside the body of Cobb matched
23 to petitioner; (RT490-91)(O-DDA Thomas)(A- Dr Saukel)

24 Q- And as far as the sex was concerned, based on your training and
25 experience and based on what you ~~XXXXXX~~ termed [moderate] amount
26 of sperm cells, can you say that this occurred a week prior to
27 death ?

28 A- It would have to be shorter than that.

Q- How short ?

1 A- It could have been up to a day, a day and a half.

2 Q- Within a day and a half ?

3 A- Yes.

4 (RT490) (EMPHASIS ADDED) DAY AND A HALF! (exhibit, 51)

5 Earlier the criminalist Jone offered that the DNA could
6 be carried by objects that are touched calling this touch DNA.
7 That this would be a good source of DNA under certain examinations
8 ofr DNA. The criminalist then offered that these evidences collected
9 from the Cobb crime scene had been [contaminated] because of the
10 transference that occurred when they placed all these evidences
11 into the same bags from the scene. (RT 300-320).

12 According to Kramer, his mother was despondent and
13 lonely. (RT119-120;2)(RT153;23-28). In fact her son after thinking
14 she had committed suicide believed that Fred Berdard may be a suspect
15 for this crime. (RT149-152). It was determined the message left
16 for Kramer was in fact based on urgency (RT42;6-28) because the
17 message by Cobb was that she was worried about someone. (RT107-
18 08) It was determined that Cobb after drinking a bottle of bourbon
19 herself also drank some whitelightening with Sullivan at the party
20 on September 20, 1985. (RT426, 427, 432, 433) There was no testifying
21 witness seen her alive after the party, even her own son had not
22 seen her for six weeks prior to the murder. (RT107, 141, 142) and
23 his last visit with his mother was very violent. (exhibit 15)

24 Ronald Kobbs had witnessed Kramer attacking his mother"
25 about this same time Kramer admitted going to his mothers house.
26 Kramer though stated that when he arrived at the residence he found
27 the drapes closed and believed this to be unusual. (RT 113) while
28 inside the hosue he found a foul odor inthe air. (RT113, 169)

1 When paramedics arrived they instructed Kramer and Marta
2 to stay out of the house until after the scene had been processed
3 (RT188) yet Kramer admitted that he violated that instruction. The
4 detectives spoke to a neighbor up the street named Dianne Flagg
5 who knew alot about cars, and had seen certain cars parked in the
6 driveway the day of the murder. Recalling she seen a silver pinto
7 at the scene that day. (RT206-07)(exhibit 28) She offered that she
8 also seen a hñtchiker at the residence the same day.

9 Deputy coroner Marshall Franey was summoned and gave testi-
10 mony that he seen a white cloth in the victims mouth, covering her
11 face. (RT 439) That the state of decomposition of the body suggested
12 she had been dead for a day or two, or longer.(RT440) The coroner
13 offered that the discoloration on the ~~xpp~~ knee was possibly the
14 result of lavidity or a hand mark.(RT443) He said the wire wrapped
15 arounfd the victims neck was twisted tightly and into a knott to
16 the side of the victims neck. (RT444) The autopsy was conducted
17 by Dr Saukel who explained earlier, that the DNA collected matching
18 petitioner had been the result of a sexual encounter that occured
19 as much as a day and a half before Cobb had been killed. (RT490)
20 (exhibit 51) Saukel offered that the hyoid bone inthe victims neck
21 had been broken. (RT4575, 477) then explained how the process of
22 dying by strangulation, ^{closing} ~~taking~~ the air way. (RT482-83)

23 Sheriff criminalist Monica Siewertsen gave testimony saying
24 the DNA matched to petitioner was processed through the CODIS data
25 base.((Rt328, 340, 341). Offering that this DNA was on in three
26 quadrillion possibilities the human chain can create.

1 Criminalist Susan Anderson did a DNA analysis profile
2 of petitioners DNA and was the one who entered this into the CODIS
3 data bank. This specialist stated that if there is one number different
4 in the profile that the DNA being matched to , then it was not
5 the person. In this case there was several numbers that did not
6 match. (RT360, 361, 365, 367, 370).

7 The state then played a version of the interrogation
8 recording that had been collected on march 8, 2009 from tyhree separate
9 recording devices. (Robert Alexander personal recorder) (Greg Myler
10 personal recorder)(Cam Corder located at the signall hill police
11 station) These recordings had been altered when they created a sing-
12 ular copy versionthe state used as exhibit 49 (compact disc) as
13 discussed above and later in this petition. The "copy" shown tothe
14 jury is not available, nor was it provided to petitioner, or petit-
15 ioners counsel, that he is aware of. The state used a version that
16 wass audio and visually matched to amount to a 2 hour and fifty
17 minute recording. The interrogation was a three hour and forty eight
18 minute interrogation into two different locations. The states exhibit
19 49A that had been placed into the states records was created on
20 Novermber 23, 2010, one full year before the trial ever occured.
21 The states exhibit 49a was a 113 page version of the transcripts.
22 The state also created on Novemner 23, 2010 another copy that had
23 136 pages in it. Neight of these transcripts were accurate and had
24 petitioners answeers that had been changed. (discussed later)
25 (CT517)CT522)(CT520,521) Petitiioenr inthe interrogation denied hook-
26 ing up with the vctim! While being interrogated ^{ABOUT} a murdered woman
27 and his sexual involvement with her while being interrogated in
28 front of his wife , mother inlaw, and three daughters!!!! ^{WITHOUT} MIRANDA

1 The defense presented no evidence, no testimony, and
2 did not provide an opening statement, and focused the closing statement
3 to information about the density of baseballs and bats, while telling
4 the jury about the wildness. Defense did correctly stated that
5 findings of the DNA, That it had been the result of an encounter
6 that occurred more than one and a half full days before the murder
7 occurred. The prosecutor offered a closing statement contradicting
8 the detectives testimony about there being fingerprints located
9 at the scene. While the detective stated there was a report he
10 did not know if it had been processed, but the prints of the defendant
11 had not been located. While the prosecutor stated there was no finger-
12 print evidences to this case at all.. (RT523)(discussed later)

13
14
15 SUPERIOR COURT HABEAS
16 WHCSS1200311
17 FIRST HABEAS CORPUS FILING IN 2012
18 THE HONORABLE JUDGE KYLE BRODIE

19 Petitioner filed a first habeas corpus on August 20, 2012
20 into the Superior Court of California, before his direct appeal
21 had been filed. Petitioner argued twelve grounds of federal error
22 that occurred before and during the trial. (exhibit 53-57)
23 The Court ordered informal briefing, which petitioner did without
24 any of the transcripts. Petitioner moved the Court to order the
25 release of the transcripts, which was rejected and ignored.. DDA
26 Ferguson argued for the state from the appellate division of the
27 county. petitioner filed an objection for prejudice, because the
28 greater portion of the petitioner discussed misconduct by the prosec-
utors office. DDA Ferguson (Ferguson) argued information that did
not exist or grossly mistated facts about the case. (EXHIBIT 53)

1 With regards to the informal order by the Court
2 (exhibit 53) The Court asked regarding five of the twelve grounds
3 be responded to by informal briefing. DDA Ferguson defended the
4 state. The Court addressed ground one, the use of petitioners case
5 in a campaign smear right before the trial asking (1) Was petitioners
6 case and likeness used shortly before the trial (2) and if so,
7 was this addressed by the trial court. The district attorney disputed
8 this saying that this had been addressed by the court, and there
9 was no prejudice. (exhibit 36) First this case filed against the
10 district attorney had been current and standing for future case
11 developments at the time trial had occurred. ~~XXXXXXXXXXXXXXXXXXXX~~
12 ~~XXXXXX~~ Second the Court at the time of the recusal motion stated
13 "at this time" the Court does not recognize the prejudice which
14 could have occurred as a result of this use of petitioners case.
15 (THIS HEARING WAS HELD THREE MONTHS BEFORE THE TRIAL) Therefore
16 the Courts use of language [AT THIS TIME] could not have carried
17 into the courtroom on the first day of voir dire when every juror
18 in the courtroom stated they seen the flyers they ~~sk~~ had gotten five
19 months prior, and still made comments. The court did not ask one
20 question about the prejudice from the flyers even after jurors made
21 statements to the entire courtroom on the record (THAT WHEN THERE
22 IS THAT MUCH SMOKE THERE MUST BE FIRE) (THERE IS NO WAY THE COUNTY
23 WOULD DO SUCH A THING UNLESS THEY HAD PROOF OF GUILT BEFORE THEY
24 MAILED THOSE FLYERS) (YABLONSKY HAD BEEN SHAFTED). Petitioner did
25 dispute this and filed opposition briefs. (exhibit 55) Petitioner
26 argued under (WILSON, 149 f3d 1298(1998) and (CARGLE V MULLIN, 317
27 f3d 1196) and (BESS, 593 f2d 749(1979). In the Courts denial the
28 Court (exhibit 57) stated that respondent (DDA Ferguson) set forth

1 detailed factual summary of the case which petitioner did not dispute
2 in his reply. (exhibit 5) Petitioner move the Superior and Supreme
3 Courts for trial transcripts) (exhibit 6) Petitioner was denied
4 access to these transcripts at the Court of appeals level, [twice].

5 The Court stated that the campaign materials were discussed
6 at trial, buit did not state to what length, therefore the Court
7 ignored the plea for relief and stated the Court lacked jurisdiction
8 to "consider" the claim !. Ground three the Court asked whther
9 trial counsel was ineffective for failure to investigate the DNA from
10 this case (1) and whether there was a man who alleged to have conf~~essed~~
11 essed to thi s case (exhibit 53) DDA Gerguson argued that detec-
12 tive Myler had given trial counsel all the DNA evidneces to this
13 case, and (1) that because petitioner could not prove the red hair
14 ~~belonging~~ was actually red, or that petitioner could not prove it bel-
15 onged to the man who confessed the argument failed (2) DDA then
16 argued that just because there is another mans DNA inside the bedroom
17 regarding the watchband pin does nopt mean they killed [anybody],
18 suggesting the victim collected that watchband pin collected from
19 underneath her head (2) That trial counsel had sought DNA expert
20 funds without success, stating the Court denied that motion because
21 it had no merit. (EXHIBIT 50) TRIAL COUNSEL ASKED FOR LAB ESTIMATE
22 ~~BUT NEVER!~~ SOUGHT DNA FUNDING THEREFORE FERGUSON LIED !!
23 First there was not only a confession to this crime,
24 but that Backhoff had been arrested for this case. (exhibit 16)
25 His DNAS was matched to this case and this scene and was a suspect
26 to another murder typed byb the FBI as a serial murder. Second this
27 DNA located on the red hair that was collected fromthe victimsd
28 body (exhibit 17)(exhibit 26) indicating the hair was in fact
red, and had been processed by government labratories.

1 Then evenj though all the DNA had been made available~~de~~
2 to the trial counsel there was no such request for funding to have
3 anything examined. (exhibit 50) Trial counsel sought an estimate
4 and when the labrarotry responded with an estimate trial counsel
5 did not folow through, therefore there was no testing of the red
6 hair, watchband pin, ~~blxxx~~ smear in the voictims blood with the
7 suspects hands that did not wear gloves, nor the cigarette butts
8 that were eventually matched t0 backhoff./ In fact trial counsel
9 was so ineffective he could not write a motion without serving the
10 correct parties. (exhibit 36, pp.1;27-28) (exhibit 49, p.3;14-15)

11 The fact the district attorney placed the burden upon petitione
12 to prove the DNA in the hair or the watchband pin did not belong
13 to petitioenr was a burden that petitioner was not suppose to have
14 to make.....from a prison cell. Furhtermore DDA ferguson stated
15 that petitioenrs DNA was located underneath the victims body which
16 is not only untrue, but indicate there wass no boundery regarding
17 facts or fiction with this man. (see entire DNA experts testimony
18 by (Criminalist Jones) (Crininalist Anderson)(Pathologist Saukel)
19 (Coroner Franey)(NOT ONE EXPERT OR PIECE OF EVIDENCE SHOWS PETITIOENRS
20 DNA WAS LOCATED UNDERNEATH THE VICTIM AT ALL) The Court argued the
21 DNA matched to petitioner was powerful but ignored the fact petitioner
22 DNA was older than the murder by 1 ½ days (RT490) and several days
23 by another expert(RT317) The Court argued that petitioner had not
24 met his burden at that time.

25 Ground four, the Court addressed whether witnesses gave
26 false testimony at trial. (Bruce Nash)(John Sullivan))Daryll Kramer)
27 (DDA Thopmas)(Robert Alexander) and Ferguson argued that there
28 may be inconsistancies in statements, but " THAT INCONSISTANT

1 TESTIMONY IS NOT SYNONOMOUS TO PERJURY". The Court denied this
2 stating that these facts were before the appelalate court (exhibit
3 56 ,p.8;20-23) First this fingerprint report although before the
4 Court of appeal, the argument had nothing regarding the subornation
5 of perjury calaim the Court had an obligation to hear. Even though
6 the Court denied lack of jurisdiction.

7 DDA Ferguson argued for the stage suggesting that there was
8 no such mistatments or perjury regarding Bruce Nash, John Sullivan
9 or the detective Robert Alexander. First the original interviews
10 with Nash, Sullivan are the same facts provided by Cynthia Hooper
11 (exhibuit 20) Francesca Drake /Sullivan (exhibit 14) ~~that-Cobb~~
12 ~~arrived-at-the-aprty-around-7;30-p.m-drinking-a-bottle-ef-burbeun~~

13 Nash' statement in 1985 was that Mrs Cobb arrived at the
14 aprty at 1930 hours drinking a bottle of burboun hereselkf and became
15 too drunk to drive in his opinion that he offered to drive her home.
16 He then state he left the aprty at 2145 hours leaving Mrs Cobb at
17 the party while he and Cynthia left. In 2009 Nash was reinterviewed
18 by Greg Myler about the last known knowledge regarding Mrs Cobb.
19 Bruce Nash repeated that 1985 statement letter for letter, adding
20 that Mrs Cobb told him whenh she refused his offer to drive her
21 home was that she was going to a bar called the Zodiac Lounge.
22 (exhibit 13-2) On the stand though Nash stated that he believed
23 Mrs Cobb to have been headed home after the aprty. Strikingly differ-
24 ent that his 1985 and 2009 statements. Making this perjury. The
25 two previous statements over a period of 25 years qwas the same
26 su ggesting knowledge and truth of the factrs. Making the 2011 test-
27 imony he believed Mrs Cobb to be headed home a LIE! The prosecutor
28 knew it because his investigators did the interview.

1 John Sullivan statements in 1985 were the same as the
2 statements given by his wife Francesca and the other party goers
3 on that Friday September 20, 1985 night. That Cobb arrived at 1930
4 hours drinknibg a bottle of burboun alone and then drank more when
5 that wa gone. (exhibit 14) John Sullivan stated the same as his
6 wife that he had fallen asleep around 2230 hours after Nash and
7 Cynthia had already l;eft the ~~aprt~~ party but before Mrs Cobb had
8 left (exhibit 14-1, 14-2) In 2009 Sullivan was reinterviewed by
9 Greg Myler as well. Only in this statement 25 years later Sullivan
10 contradicted his 1985 statement, as well as Nash' 2009 statement.
11 Now Sullivan told Myler that he remembers seeing Bruce Nash giving
12 Mrs Cobb a drive home. (exhibit 14-3) Sullivan added that he drank
13 white lightening with Mrs Cobb , and that at 2200 hours Cobb stated
14 it was time to go home. Sullivan stated that he witnessed Nash
15 and Hooper driving Cobb home in her caddilac.

16 Even though Sullivans statement in 2009 was different
17 than Nash's 1985 statement, 2009 statement, and Francesca statements
18 in 1985, or his own statments in 1985 the state still used this
19 unrelaible witness they knew would give false testimony. During
20 trial and immediatley after the testimony of Bruce Nash who stated
21 he left the aprty without giving Mrs Cobb a ride home. John Sullivan
22 got onto the stand and testified that he personally remembers 25
23 years later than he did three days after that he seen Bruce Nash
24 and Cynthia Hopper giving Mrs Cobb a ride hom. Not only was this
25 testimony confusing, but was known to be false according to the
26 rest of the state entire witness es. (THIS IS THE ONLY INCONSUISSTANT
27 TESTIMONY GIVEN AND THE PROSECUTOR KNEW IT WOULD BE WHICH IS WHY
28 THEY USED HIS TESTINONY TO CONFUSE THE JURORS)

1 Detective Alexander got onto the stand and testified
2 saying that he was not sure a report exists (1) Whether it had been
3 developed (2) and if it had he cannot recall all the name they had
4 been matched to (3) (see exhibit 59). The report is simple two
5 page report nad has two conclusoive readintgs. Mrs Rita Cobb abd
6 Mr Joseph Saunders. Very intelligable and simple. Although the prosec-
7 tuors closing arguments will verify that these transcripts were
8 washed (exhibit 59-1) compared to the alleged testimony given by
9 Alexander (exhibit 59-3&4)

10 The facts that these witnesses gave deliberate or unintention-
11 al false testimony is irrelevant unti the prosecutor who knew they
12 were lying chose not to correct them. These are blatant lies on
13 behalf of Nash and Alexander about relevan tand material evidneces
14 that should have been made known. In this case because DDA Ferguson
15 also washed the false testimony affects the Court determined that
16 the Court lacked jurisdiction to consider the matter. (exhibit 57-6)

17 Ground seven > The Court inquired about the altered evidnece
18 allegations made by petitioner, while the only set of transcripts
19 placed into that record were the 113 page copy. DDA Ferguson clearly
20 admitted that this was a copy used in the hearing and that the jurors
21 relied on this to make their decision. Ferguson then commented just
22 as the jurors seen that in these transcripts petitioner had stated
23 he had a key to the home of Rita Cobb. Giving the juror knowledge
24 that petitioner had taken a key without permission, returned some
25 tim elater and killed Mrs Cobb adfter raping her. (see exhibits
26 63, 64, <65.) These exibits show that the answers were in fact changed.
27 Neither of these are the one used in the trial. In fact states exhibit
28 49 and 49A are not alike to any degree. One is one full hour longer.
That also has redacted audio, along with editing issues.

1 This is known as states exhibit 49 (compact disc of three separate
2 recordings from two separate interrogations). The other is a copy
3 that had been created on November 23, 2010 where the petitioners
4 answers had been changed. (see one hour seven minutes into states
5 exhibit 49 and petitioners exhibit 65) (compare to states exhibit
6 49A the one used by DDA Ferguson argument).

7 These satisfy that the prosecutor not only knew the
8 evidence was altered by way of audio and text, but used it to
9 coerce a verdict. The Court states that collusory allegations of
10 altered evidence is insufficient to grant habeas. (P.C. § 1473)
11 Petitioners allegation was not that they conspired to alter evidence
12 but that the state conspire to make evidence that were shown to the
13 jury. DDA Ferguson's argument support that this evidence was in fact
14 used to convince the jurors. Ground nine Petitioner argued that
15 trial counsel failed to object to the lies by the state regarding Nash,
16 Sullivan, Kramer, and Alexander. The Court chose to state that counsel
17 failed to ask additional questions (exhibit 57-9) is beside the
18 point. That counsel's performance would be presumed competent. Adding
19 that failure to object would be a tactical choice for the counsel
20 and not the client. The Court gave counsel Sanders a lot of credit
21 for the investigations when the records are absolutely absent of
22 any proof the counsel investigated anything, and what the counsel
23 did do was substandard when he could not follow court rules and
24 serve parties, or could not remember his clients name. (exhibit 36,
25 49) The Court addresses the possible confession by Gregory Randolph
26 as conclusory without sufficient basis to grant habeas (exhibit
27 57-9) The Court found counsel was not ineffective for not bringing
28 the confession reports, which is odd because the Court of Appeals

1 The bill affecting the laws made it a felony and
2 punishable by imprisonment for 16 months, two
3 years or three for a prosecuting attorney to intent-
4 ionally and in bad faith alter, modify, or withhold
5 physical matter, digital image, video recording
6 or relevant exculpatory material information knowing
7 that it is relevant and material to the outcome
8 of the case, with specific intent that the physical
9 matter digital image, video recording, or relevant
10 exculpatory material information will be concealed
11 or destroyed or fraudulently represented as
12 the original evidence upon the trial.

(SEE EXHIBITS 41, 42, 43, 63, 64, 65!!)
see exhibit 61

8
9 Senate bill 1134

10 This bill passed directly affecting P.C. §§§§ 1473,
11 1485.5, 1485.55 relating to habeas corpus and newly
12 discovered evidence. This bill passed on 2017 regarding
13 the use of false evidence threshold under review.

14 Existing law required every person who is unlawfully
15 imprisoned or restrained of his liberty to prosecute
16 a habeas corpus to inquire into the lawfulness of the
17 incarceration or restraint. Existing laws allow
18 a habeas corpus to be prosecuted for but not limited
19 to false evidence that is substantially material
20 or probative to the issue of guilt or punishment that
21 that was introduced at trial and false physical evidence
22 which was a material factor directly
23 related to the plea of guilty of a person.

24 This law will now include additional habeas to be
25 prosecuted on the basis of newly discovered evidence
26 that is credible, material, and presented without a
27 substantial delay and of such decisiveness force and
28 and value that it would have more likely than not
changed the outcome of the trial

SEE EXHIBIT 61

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SWORN DECLARATION MADE BY
JOHN HENRY YABLONSKY UNDER THE
PENALTY OF PERJURY

I John Henry yablonsky an adult capable of giving testimony
under oath swear the following under the penalty of perjury
of the state of California as according to knowledge and
belief as the truth in this matter.

1 I swesar the following under oath and if called to testify
2 will state the same in a court of law under the penalty of
3 perjury.

4 That I know Mrs Rita Mabel Cobb as being her tenant at one
5 point inthe beginning of the year 1985. That I resided behind
6 her house ina bungalo that me and my wife rented from her with
7 our son. That we paid rents to Mrs Cobb for a few months and
8 chose to move away in the middle of the same year. 1985.
9 That I had began a sexual relationship with Mrs Cobb prior
10 to my family moving frombehind her house and continued to have
11 sexual relations with Mrs Cobb after we had moved awayt. That
12 My family Holly Mitchell and Son John Henry yabnlonsky Jr.
13 moved about a mile up the street and remained in contact
14 with Mrs Cobb after we moved awayt.

15 That afttrer moving away I had hyad sexual relations wñth Mrs
16 Cobb on a few occaissions in different areas of the valley.
17 One time in a hotel in Apple Valley california, and another
18 in my home I had just move on Fairlane rd, and another at her
19 residence. These sexual relations were consensual and non violent.
20 The last time I had sex with Mrs Cobb was at her house on or
21 about September 18, 1985 around noon time and this sexual activity
22 included another sex partmer name unknown. Another fenmale.

23 That at this sexual encounter we had sex in a variety of position
24 and locations of the house to include the livingroom area, and
25 the dining office area where there was a table, chairs and
26 desk. These actions were consensual by all three parties and
27 nonviolent in nature. I chose to leave the sexual activity
28 because the one woman stated that she exopected her husband
to arrive shortly, and wished for me to meet him. I did not
have that same desire. When I left the house both women were
still engaged in sex at the dining table sdesk area and were
both alive.

When I left the residence I drove to Downey California where
I stayed with inlaw relatives for the remainder of that weekend
and into the beginning of the folowing week. On or about Monday
September 23, 1985 was whenI returened fro Downey back to Lucerne
Valley. The purpose of making the trip that time was to recover
my wife Holly Yablonsky who had been rpegnant and was delievered
there for medical saftey reasoins the week prior due to work
that took myself out of two. Holly had been delievered to Downey
at the Mullen residence(her grandparents) on September 14,
1985 so that I could work out of twon and not take a medical
chance with Holly going into labor with out chold while I was
out of twon. I worked in constructioun with my father as contract
actors, and at times stayed in other towns to reduce commute
time and inconvenience.

I do not know, who committed the murder to Mrs Cobb. I did
not committ the crime of murrder to Mrs Cobb nor did I take
any part in her killing to n any degree. I did not learn about
her death until I returned fro Downey Califoirnia

Court of ~~ORDER~~ 76 75a

1 There would be corroborating statements available by other
2 family members of the Mullen residence, except they are passed
3 away. This can also be possibly verified by Linda Mitchell
4 about the stay in Downey the weekend before Holly gave birth
5 to Jasmine Yablonsky which occurred on September 30, 1985 the
6 weekend after the murder. Holly Yablonsky now Brown will offer
7 scorn testimony and may even admit that petitioner killed the
8 president Kennedy if she thought it would help hurt me.
9 There is Joy Mitchell who may also be able to provide testimony
10 supporting this visit as well as Holly's uncle (name unknown).
11 The above declaration was made with belief and knowledge as
12 being the truth in this matter.

13 I DID NOT KILL RITA MABEL COBB!!

14 November

15 2018

16 John Henry Yablonsky

17 STATUTES THAT APPLY BUT ARE NOT LIMITED TO

18 P.C. § 1473(a)(b)(1)(2)(c)

19 Every person unlawfully imprisoned or restrained of his
20 liberty under [any] pretense what ever, may prosecute a writ of
21 habeas corpus, to inquire into the cause of such imprisonment
22 or restraint (b) A writ of habeas may be prosecuted for but not
23 limited to the following reasons;

24 (1) False evidence that is substantially material or
25 probative on the issue of guilt or punishment was introduced
26 against a person at [any] hearing or trial relating to incar-
27 ceration; or

28 (2) False physical evidence, believed by a person to
be factual probative or material on the issue of guilt, which
was known by the person at the time of entering a plea of
guilt which was material factors directly related to the plea
of guilt by a person

1 Subsection (c) states any alleged that the prosecutor knew
2 or should have known of the false nature of the evidence refer-
3 ed to in subdivision (b) is material to the prosecution of
4 a writ of habeas corpus.

4 United States Constitution IV Amendment § 1

5 The right of the people to be secure in their person, houses
6 , papers and effects against unreasonable searches and seizures
7 shall not be violated, and no warrant shall issue but upon
8 probable cause, supported by oath or affirmation and particu-
9 larity describing the particular place to be searched and person
10 or things seized.

9 United States Constitution V Amendment § 1.

10 No person shall be held to answer for a capital or other
11 wise infamous crime, unless on the presentment or indictment
12 of a grand jury, except in cases arising in the land or naval
13 forces, or in the militia when an actual service in time for
14 war or public danger, nor shall any person be subject to the
15 same offense twice be put into jeopardy of life or limb, nor
16 shall be compelled in any criminal case to be witness against
17 himself, not be deprived of life, liberty or property without
18 the due process of law, nor shall private property be taken
19 without just compensation.

17 United States constitution VI amendment § 1)

18 In all criminal cases prosecutions the accused shall enjoy
19 the right to a speedy trial, by an impartial jury of the
20 states district wherein the crime shall have been committed.
21 Which district shall have been previously ascertained by
22 law, and to be informed of the nature and cause of the accusa-
23 tion, to be confronted with witnesses against him, and
24 to have compulsory witnesses process in his favor and to
25 have the assistance of counsel for his defense.

22 United States Constitution XIV Amendment § 1)

23 All persons born or naturalized in the United States and subject
24 to the jurisdiction thereof, are citizens of the United States
25 and of the state wherein they reside. No state shall make
26 or enforce any law which shall abridge the privileges or immu-
27 nities of citizens of the United States, nor shall any state
28 deprive any person of life, liberty or property without the
due process of law nor deny to any person within its jurisdiction
the equal protection of the laws.

1 P.C. § 134

2 Every person guilty of preparing any false or antedated
3 book, record, instrument in writing, or any matter or thing
4 with the intent to produce it or allow it to be produced for
5 [any] fraudulent or deceitful purpose as genuine or true
upon any trial proceeding or inquiry whatever authorized
by law is guilty of a felony

6 P.C. § 135

7 Every person who knowingly that any book, record, instrument
8 in writing or other matter or thing is about to be produced
9 in evidence upon any trial, inquiry or investigations whatever,
authorized by law willfully destroys or conceals the same,
with the intent thereby to prevent it from being produced
is guilty of a misdemeanor

10 P.C. § 141

11 Except as otherwise provided in subsection (b) any person
12 who knowingly, willfully, and intentionally alters, modifies, m
13 places, manufactures, conceals or moves any physical matter
14 with specific intent that the action will result in a person
15 being charged with a crime or with specific intent that
the physical matter will be wrongfully produced as genuine
or true upon any trial, proceeding or inquiry whatever is
guilty of a felony

16 Rule 3.8. Responsibilities of prosecutor

- 17 The prosecutors in criminal cases shall;
- 18 a) Not institute or continue to charge prosecute a charge
19 that the prosecutor knows is not supported by probable
cause.
- 20 b) Make reasonable efforts to assure that the accused has
21 been advised of the right to counsel and the procedure
for obtaining counsel and has been given reasonable oppor-
22 tunity to obtain counsel
- 23 c) Not seek to, obtain from an unrepresented accused a waiver
of important pretrial rights unless tribunal has approved
24 the appearance of the accused in propria persona
- 25 d) Make timely disclosure to the defense of all the evidence
or information known to the prosecutor that the prosecutor
26 know or reasonably should know tends to negate the guilt
of the accused, mitigate the offense, or mitigate the
27 sentence except when the prosecutor is relieved of this
responsibility by a protective order of the tribunal.

28 ~~xx) Exercise reasonable care to prevent persons including the suspect~~

1 e) Exercise reasonable care to prevent persons under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in criminal cases from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6

2
3
4
5 f) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted the prosecutor shall;

6
7 1) Promptly disclose that evidence to an appropriate authority

8 2) If the conviction was obtained in the prosecutor's jurisdiction the prosecutor shall

9 i) promptly disclose that evidence to the defendant unless a court authorizes the delay.

10 ii) undertake further investigations, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit

11
12
13
14 g) When a prosecutor knows of clear and convincing evidence established that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction

15
16
17 Rule 3.8 Special responsibilities

18 The prosecutor in criminal cases shall;

19 a) Not institute or continue to prosecute a charge the prosecutor knows is not supported by ~~the~~-probable cause

20 b) Make reasonable efforts to assure that the accused has been advised of the right to and the procedure to obtain counsel and has been given this reasonable opportunity to obtain counsel

21
22
23 c) Not seek to obtain from unrepresented accused a waiver of important pretrial rights unless a tribunal has approved the appearance of the accused in propria persona

24
25 d) Make timely disclosure to the defendant or all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt or sentence except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

- 1 e) exercise reasonable care to prevent persons under the
 2 supervision or direction of the prosecutor incl including
 3 investigaotr, law enforcement, employees or other persons
 4 assisting or associated with the prosecutor ina criminal
 5 case from making extrajudicial statments that the pro-
 6 secutor would be prohibited from making under rule 3.6
- 7 f)When a prosecutor knows of new, creidible and material
 8 evidnece creating a reasobnabl-e likelihood that a convicted
 9 defendant did not commite an offense or which the defendant
 10 was convicted,the prosecutor shall; proper authority
- 11 1) Propmyl disclose that evidnece tothe
 12
 13 2) If the conviction was obtained inthe prosecution juris-
 14 disction;
- 15 i)Promply disclose that evidnece tothe defnedant unless
 16 a court authorizes the delay
- 17 ii)Undertake further investigations or make reasonable
 18 efforts to cause an investigation to determine whether
 19 the defendant was convicted of an offense that the
 20 defnedant did nto commit
- 21 g)Whe a prosecutor knows of clear and convicing evidence
 22 established that a defendant in the prosecutors juris-
 23 diction was convocted of an offense that the defendant
 24 did not commit, the prosecutor shall seek o to remedyt
 25 the conviction

26 STANDARD OF REVIEW IN THIS CASE

27 A STATE COURT CANNOT REFUSE TO CONSIDER FEDERAL QUESTIONS REGARDING
 28 COLLATERAL POST TRIAL ATTACKS

A state court cannot refuse to consider "federal questions
 of law regarding collateral attackes against state court conviction.
In Re Panchot70 Cal.2d 105(1969) and an independant action as habeas
 corpus to eensider securte discharge from imprisonment. Francev
Superior Court201 CAL 122(1927);In Re Applications of Jacinto
 8 CAL.app.2d 275(1935); In Re Application of Conner16 Cal.2d 701,
 cetrt den., Conner v Californuia 313 US 542(1941). Habeas corpus
 and not coram nobis is the correct vehicle to collaetrally attack

1 a judgment of conviction which had been obtained in violation to
2 fundamental constitution rights People c Sorenson(1952 CalApp.)
3 111 Cal.App.2d 404; In Re Winchester(1960) 53 Cal.2d 528, cert
4 den,(1960) 363 US 852. In order to justify relief under habeas
5 corpus on grounds counsel was inadequate, it [must] appear that
6 the trial was reduced rto a farce or sham thropught the counsels
7 lack of knowledge or competance, diligence or understanding of
8 the law In Re Beaty(1966)64 Cal.2d 760; California constitution
9 Article I § 13; In Re Perez(1966) 65 Cal.2d 224; In Re Wimbs(1966)
10 65 Cal.2d 490. and the adequacy of a waiver of copunsel by defendant
11 can only be challenged by petitioner for habeas corpus after the
12 final judgment. Where a loss or impairment of a crucial defense
13 results fromthat impairment(emphasis) In Re Bell(1967 Cal.App.3d)
14 247 Cal.app.2d 655 overrrule In Re Smiley(1967) 66 Cal.app.2d 606.

15 A habeas corpus may be granted on the basis of newly discovere
16 evidnece that undermines the prosecutors case. In Re Branch(1969)
17 70 Cal.2d 200. If any representative of the state [connected] with
18 the prosecutors office either gives perjured testimony or knows
19 the prosecutoion witness have p~~erjures~~ themselves habeass corpus
20 wil. issue. It 9is immaterail if the prosecutor did not know himself.
21 In Re Imbler (1963) 60 Cal.2d 554, cdrt den, Imbler v Cal;ifornia
22 (1964)379 US 908, even regarding testimony about fingerprints
23 (CITATION)(CITATION) and especially about the contents of altered
24 evidnece(CITATION)(CITZATION)In Re Lessard*196562 Cal.2d 497;
25 People v Williams (1965)238 Cal.app.2d 585 and that the prosecution
26 knowijg offered the perjured testimnoy In Re Bunker(1967)252 Cal.app.2c
27 297;Bunker v California(1968)390 US 964

1 ERROR OF FACT

2 To vacate a judgment when error of fact affected the judgment
3 that did not go to the merits of the previously tried when ;

- 4 a) When there is no other remedy available
5 b) Due diligence pursuing these facts was exercised

6 And must be filed as soon as the error was discovered
7 and showing of preparation of the evidence that petitioner was
8 deprived of substantial legal rights by the factual error denial
9 of petitioner appealing to the next higher court. Coram Nobis
10 is an extraordinary writ available to remedies People v Miller
11 (1963) 219 Cal. ~~XX~~ App.2d 124. It becomes a collateral attack when
12 no other remedy exists while facts existed which would have affected
13 the previous judgment People v Kim 45 Cal.4th 1075(2009) Its pur-
14 pose is to enable a convicted person, even after appeal and affirm-
15 ing of the judgment, to establish that [IT TRUTH] the judgment
16 was procured under circumstances which offend fundamental concept
17 to justice such as due process clause of the 14th amendment. People
18 v Shorts(1948)32 Cal.2d 502

19
20 SUCCESSIVE PETITIONS

21 A successive habeas corpus petition can lie when facts,
22 evidences and authority are developed to support the petition.
23 People v Duval. (1995)9 Cal.4th 464. When false evidences were dis-
24 covered that are material or probative to the allegation. P.C. §1473
25 In Re Richards(2012)55 ~~XXIX~~ C.4th 948(including expert opinions
26 being rebutted or [technology]) (RICHARDS) or when false evidence
27 was a factor which was material to guilt or sentence.(RICHARDS)

NEWLY DISCOVERED EVIDENCE

1
2 Newly discovered evidence is evidence that would have
3 changed to likelihood of the outcome In Re Miles (2017) 7 Cal.app.5th
4 821. Supporting P.C. §§1473. Ineffective assistance of counsel for failing
5 to file suppressions motions People v Mendoza(1997)15 C4th 264
6 for failing to file insufficient evidence on appeal In Re Spears
7 (1984)157 CA3d 1203. The newly discovered evidences are discussed
8 at length In Re Miles 7 Cal.app.5th 821(2017) This standard set
9 forth regarding "more likely than not" for new evidence habeas
10 claims is close to but does not have the same meaning as the familiar
11 prejudice standard appellate courts use when determining whether
12 state law error affected the outcome of the trial. Nor does "more
13 likely than not" have the same meaning as the phrase "preponderance
14 of the evidence". The burden of proof in civil litigations. In
15 a civil case the party with the burden of proof must convince
16 the trier of fact that existence of a particular fact is
17 more probable than its non existence, a degree of proof usually
18 described as proof by a preponderance of the evidence is evidence
19 is a different burden of proof from proof beyond reasonable doubt.
20 A fact is proved by the preponderance of the evidence if juror [could]
21 conclude that it is more likely than not that the fact is true
22 Cal.Crim No.1191 New evidence that undermined the prosecution's case
23 and point unerringly to [innocence]. In Re Johnson (1998) 18 Cal.4th
24 447

25 The evidence could not have been discovered prior to
26 trial through the exercise of due diligence. The former Habeas
27 corpus standard for new evidence claims require that Habeas Corpus
28 petitions are acted with reasonable diligence in presenting their

1 (see In Re Happy(2007)41 Cal.4th 977)([T]he petitioners evidence
2 was not newly discovered evidence because it was reasonably available
3 to him prior to trial" ... "Had he conducted a reasonable thorough
4 pretrial investigation" the term "reasonable diligence" and Due
5 diligence are essentially interchangeable. (People v Cromer(2001)
6 24 Cal.4th 889; See also People v Herrera (2010) 49 Cal.4th 613

7 NOTICE DUE DILIGENCE STATED ABOVE

8 SEE PAGES 9:16 THROUGH 12:22

9 SEE EXHIBITS 1 THROUGH 11A

10 Newly discovered evidence is material to defendant if
11 defendant could not have with reasonable diligence, have discovered
12 these evidences prior to the trial. P.C. § 1181(8) Case law has ident-
13 ified five factors to consider when ruling on motion based on new
14 discovered evidence;

- 15 1) The evidence and not merely its materiality be discovered
- 16 2) The evidence is not merely materiality cumulative
- 17 3) That it be of such to render a different result probably based
18 on all the evidences presented at the trial
- 19 4) That the party could not with reasonable diligence have disc-
20 overed and produced it at trial
- 21 5) That these facts be shown by the best evidence of which the
22 case admits

23 Moreover the moving paper should be granted when new evidence
24 contradicts the strongest evidence introduced at trial. People v
25 Hall 187 Cal.App.4th 282(2010); Kabran v Sharp Medical Hois, 236 Cal.
26 App.4th 1294(2015); People v O'Malley 62 Cal.4th 944(2016);
27 Aron v WIB Holin, 21 Cal.app.5th 1069(2018). In fact new evidence
28 within the meaning of C.C.P. § 657(4) must be evidence that was in
existence at the time of trial on the motion. Normally to support
a motion for new trial on the ground, the Court, Must determine if

1 the evidence was in existence at the time of the trial and could
2 not have been discovered with reasonable diligence. That the Court
3 t ruling on a new trial motion pursuant to C.C.P. § 652(4) must first
4 determine whether proffered existed at the time of the trial is
5 consistant with statutory language that the evidnece be [NEW EVIDENCE]
6 implicit that term is the concept that the evidence existed, but
7 remain undiscovered at the time of the trial. In Re Miles 7 Cal.app.5th
8 821 (2017). People v Bangeneauar (1871) (CAL) 40 CAL 615; People
9 v Skoff(1933) 131 Cal.app. 235. This may be viewed for abuse of discret-
10 ion regarding request for new trial. People v McGarry (1995) 42 Cal.2d
11 429. The permissible grounds for new trial is derived from the trial
12 court constitutional duty to ensure that the accused gets a fair
13 trial in allowing due process, a duty which may not be abridged by
14 statute. People v Davis (Cal.App.1st)(1973) 31 Cal.app.3d 106.

15 Where a prosecutor mistates facts where it is clear the
16 mistatement was in bad faith in an effort to influence the jury.
17 People v Searcey (CAL 1898) 121 CAL 1. and could not be purged by
18 an instruction or abonition where evidence th ough sufficient does
19 not unerringly poiint to defendants guilt, such misconduct which
20 may be turned of the scale against the defendant in a closely balanced
21 case is the result of a miscarriage of justice. People v Kirkes(CAL
22 1952) 39 Cal.2d 719 (cotation)(citation). The trem misconduct when
23 applied to an act of an attorney dishonesty or attempt to persuade
24 the Court by usae of deceptive or reprehensible methods will not
25 be tollerable. People v Baker Cal.App.2d Dist) (1962)207 Cal.app.2d
26 717. Habeass corpus can be used to advance contentions to a right
27 to counsel, at least where no other remedy was available. People
28 v. Adams (CAL 1952) 39 Cal.2d 41 abd that the defendant was deprived
to counsel under the meaning of the VI amendment US Constitutioun.

1 The judge that pronounced against the accused in absence
2 of counsel was vulnerable to attack by habeas corpus. In Re Levi
3 (CAL1949) 34 Cal.2d 320. And that the result of trial counsels
4 inadequacies, failures, incompetences reduced the trial to a farce
5 and sham In Re Beaty(CAL1966) 64 Cal.2d 760; In Re Van Brunt(CAL.
6 APP.3d Dist 1966) 242 Cal.app.2d 96.

7 Under Brady the prosecution is responsible for disclosure
8 of "evidence that is both favorable to the accused and material
9 to, the guilt or punishment" United States v Bagley(1985) 473 US
10 567 Failure to turn over such evidence violates due process. Weary
11 v Gain 136 S.Ct. 1002(2015) The prosecutor duty to disclose material
12 evidence favorable to defendant "is applicable even though there
13 has been no request by the accused, and...encompasses [impeachment]
14 evidences as well as exculpatory evidence. Strickler v Greene 527
15 US 263(1999). Under Napue convictions obtained through the use
16 of false testimony also violated due process [360 US 269], a violation
17 occurs whether prosecutor solicited the false statements or merely
18 allows false testimony to go uncorrected. Id. The constitutional
19 ~~prohibition~~ prohibition applies even when the testimony is only
20 irrelevant to a witnesses credibility Id. and where the testimony
21 misrepresents the [truth]" Miller v Pate 386 US 1(1967)("prosecutor
22 deliberately misrepresents of the truth" by presenting testimony
23 that shorts with a large reddish brown hair stains test positive
24 for blood, while elaving out that the stains were made by paint")
25 (citation) People v Martinez 36, Cal.3d 816(1984) The right to competent
26 counsel (citing) People v Pope(1979) 23 Cal.3d 412 if the evidence
27 is material then a motion for new trial should ,have been granted
28 if it determined either[36 Cal.3d 815)]

1) The evidence was not or could not have been discovered earlier by the defendants diligent efforts

2) If it was reasonably discovered, the failure to discover or present it was an oversight by defendant.

Therefore the Court should have considered the merits of [caselaw] because there was no doubt the prosecutor used false evidence, false testimony by witnesses that were less than reliable therefor prejudicial to due process rights afforded under 5, 6, and 14 amendment U.S. Constitution . McQuiggins v Perkins, 569 US 383, 133 S.Ct 1924(2013); Carmona v Ryan, 2018 U.S. Dist. Lexis 49559 ("To invoke this exception to statute of limitations a petitioner must show that it is more than likely than not that no reasonable jurist would have convicted him in light of the new evidence") Id. at 1935(Quoting) Schulp v Delvo, 513 US 298(1995)' Schulster v Johnson 2016 US dist. LEXIS 18594(2016) In McQuiggins the Superior Court held that "actual innocence" if proved, serves as a gateway through which petitioner may pass whether in impediment is a procedural bar...or... expiration of the statute of limitations is limited. McQuiggins 135 S.Ct. 1928 " [A] petitioner does not meet the threshold requirement unless he persuades the Court that , in light of the newly discovered evidence, no juror, [acting reasonably] would have voted to find him guilty beyond reasonable doubt" id.(Quoting) Schulp v Delvo, 513 US 298(1995)

Motion to vacate judgment in [COMMON LAW] remedy used to ATTACH substantial error when time for new trial and appeal have passed and may be brought as writ of error coram nobis People v Griggs (1967)67 Cal.2d 314; *People v Kraus(1975) 47 Cal.

568 (Extraordinary writ for discussion on grounds) The ~~*****~~ ***** ~~*****~~

1 A judgment of conviction that has been affirmed on appeal is a
2 conclusion of the matter unless set aside on grounds akin to or in the
3 nature of [EXTRINSIC FRAUD] or in some other lack of due process, or upon
4 proof that a fact existed which could ~~xxx~~ not in the exercise of due
5 diligence by defendant have been provided at trial, and which if known
6 then would have precluded the judgment from being entered People v Short (
7 1943) 32 Cal.2d 502, 197 p.2d 330.

8 The writ will be granted only if the respondent can show that
9 some fact existed which without any fault or negligence on his part,
10 was not presented to the Court at the time of the trial on the merits and
11 which if presented would have prevented judgment. In Re Wessley (CAL
12 APP.2d Dist 1981) 125 Cal.app.3d 240; *People v Gilbert (CAL 1984)
13 25 cal.2d 422: see also People v Sandoval (CAL March 29, 1927) 200 CAL
14 730; People v Lucas 60 Cal.4th 153 (2014) It was previously noted that
15 "impeachment evidence other than felony convictions entail problems of
16 proof") unfair surprises and moral turpitude evaluate which the felon
17 conviction do not present" People v Wheeler (1922) 4 Cal.4th 284.

18
19
20 PETITIONER MOVES THIS COURT AS SUCH
21
22

23 A) THAT THIS COURT UTILIZE THE LAWS UNDER WRIT OF ERROR CORAM NOBIS
24 TO CORRECT THE EVIDENCES THAT WERE FRAUDULENTLY USED, HANDLED,
25 ALTERED, DAMAGED, AND OR MISREPRESENTED TO CORRECT THAT RECORD
26 "HERE AND NOW" AS PETITIONER ARGUES AND PROVIDED RECORDS TO AUTH-
27 ENTICATE, CORRECTING THE RECORD ABOUT FACTS AFFECTING STATE
28 PARTIES TO DISPUTE AUTHENTICITY OR BEST EVIDENCE USE.

CORAM NOBIS- 89

1 B) THAT THIS COURT UTILIZE THE LAWS SURROUNDING HABEAS CORPUS
2 AND NEWLY DISCOVERED EVIDENCES AS BROUGHT HERE OFFERING
3 THE STATE AN OPPORTUNITY TO AUTHENTICATE AND OR DISPUTE
4 THEM AND THEIR VALUES REGARDING BEST EVIDENCE, WHILE ENFORCING
5 SUCH PROOFS NOW BEFORE THIS COURT IN THIS PETITION FOR
6 HABEAS/CORAM THAT VIOLATED THE FAIRNESS OF A HEARING WHERE
7 PETITIONER WAS MADE TO SUFFER PERMANENT INJURY AS A RESULT
8 OF STATE INCOMPETENCE, MISCONDUCT VIOLATING FEDERALLY PRO-
9 TECTED RIGHTS AND DUE PROCESS GUARANTEES

10
11 GROUND ONE

12 THAT THE STATE PROSECUTOR AND SHERIFFS DEPARTMENT VIOLATED
13 DUE PROCESS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS
14 WHEN THEY ALTERED ANSWERS IN AN INTERROGATION RECORDING
15 THAT WAS TRANSCRIBED ON NOVEMBER 23, 2010 BY ROBERT ALEXAN-
16 DER THE STATES LEAD INVESTIGATOR APPOINTED BY DDA JOHN THOMAS
17 MAS WITH THE INTENT TO PRESENT THESE ALTERED RECORDS TO
18 A PANEL OF JURISTS FOR CASE FVI900518 ~~EXHIBIT~~-FURTHER VIOLATING
19 DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT UNITED
20 STATES CONSTITUTION AND STATE LAWS-

21 Facts surrounding this misconduct

22 That as a result of CODIS matching petitioners DNA
23 to the scene that a crime had been committed DDA Thomas gave
24 detective Robert Alexander instructions to file an affidavit
25 regarding an arrest warrant. (see exhibit 30) This was applied
26 for on March 4, 2009 and approved by the honorable judge
27 Nakata who ordered that John Henry vablonsky be arrested for
28 the murder of Rita Mabel Cobb as a result of the affidavit filed by
Alexander. (Alexander) On March 8, 2009 Alexander along with other offi
from the sanbernardino sheriffs department as well as police officers
from Longbeach and Signal hill arrived at the residence of petitioner.

CORAM NOBIS 90

1 The three agencies arrived at 1700 E Silva st. Long Beach
2 ca, 90807 at 0900 hours to serve the arrest warrant as well as a
3 search warrant that had been procured on March 4, 2009. Officer arrived
4 stating that they were sheriffs and investigating a crime, asking
5 to speak to John Henry yablonsky. This interrogation was recorded
6 on personal recorders without petitioners permission. The interrogatio
7 occurred inside the kitchen area of the home where petitioners family
8 also resided. His daughters were in the living room, ~~xxx~~ both under
9 age and another girl that was petitioners niece as well as petitioners
10 mother in law and his wife, who all sat in the living room while this
11 barrage of intruding questions were delivered by two officers that
12 identified themselves as homicide detectives Robert Alexander, and
13 Greg Myler, *WHILE OTHER AGENCIES WERE OUTSIDE THE HOUSE*

14 The interrogations was without MIRANDA waiver by petitioner
15 nor were any rights read or given, while these detective asked personal
16 questions, specific questions and directly related questions regard-
17 information to a crime the detectives knew petitioner was a suspect
18 to while carrying a warrant for the arrest of John Henry Yablonsky
19 for the murder of Rita Mabel Cobb. Throughout this interrogation
20 petitioner was asked about his knowledge and information regarding
21 the murder of Mrs Cobb (COBB) while detectives asked about petitioners
22 sexual relationship with Cobb. Because of the nature and sensitivity
23 of those questions being asked in front of children and there was
24 no obligations to reveal these private answers ~~petitioner~~ ^{was deceptive}
25 about his sexual relationship when asked. Detective also asked about
26 whether petitioner had keys to the Cobb home and petitioner stren-
27 uously denied having any such keys. Officer then asked whether
28 petitioner had given Cobb keys to his rental, and petitioner admitted

1 that she would have keys to her own rental property. Officer again
2 asked if petitioner may have had keys to the Cobb home and petitioner
3 again denied having any such keys. Throughout the interrogation
4 petitioner tried to terminate the uncomfortable interrogation that was
5 being held in front of his family and children who were less than
6 fifteen feet away listening to their father being asked about his
7 sexual relationship with an older woman "while he was married".

8 After about an hour and fifteen minutes into the interrogat-
9 ion petitioner tried to move the interrogation outside away from
10 his family, making an excuse that he needed to smoke and went to
11 the driveway near the garage. Alexander followed petitioner along
12 with Myler who turned left when Alexander and petitioner turned right.
13 Alexander was told by petitioner that we should move the discussion
14 to a local cafe around the corner when Alexander stated that he'd
15 like to go someplace more comfortable. Alexander stated that the
16 cafe would not be comfortable enough and stated that they had to
17 move the questioning to the police station. After an argument
18 about the location it would be Alexander stated that it will have
19 to be the Signal Hill police station, and that he'd drive me and
20 bring me back. Another argument about who drove whom where Alexander
21 agreed to allow petitioner to drive his own vehicle.

22 Petitioner's vehicle was followed to the Signal Hill police
23 station about five miles away while being escorted by several police
24 cars (marked) and (unmarked) (Turns out that both Long Beach and Signal
25 Hill police participated in this escort. When petitioner got into
26 the station he was escorted into a locked location of the station
27 where an interview area was set up that had a ^(TURN ON) cam corder on the wall
28 facing the interrogation desk. Again the interrogation was conducted
without MIRANDA waiver or warning and this was recorded by camcorder.

1 Repeatedly petitioner tried to leave the station and
2 was refused to leave, and when asking to call his wife was refused,
3 when he asked to call his attorney that too was refused. When petitioner
4 asked to go outside and smoke he was also refused. While all
5 these refusals were being given officers ~~has~~ stated that petitioner
6 was free to leave at any time, but when petitioner tried he was
7 refused. Petitioner after four hours of interrogation regarding his
8 involvement with the murder of Rita Cobb petitioner was then placed
9 under arrest and not allowed to leave as stated by police.

10 On November 23, 2010 the sheriff's department at the instruct-
11 ion of Michael Ramos and John Thomas detective Robert Alexander created
12 two separate transcripts to this four hour interrogations;

13 (One 113 page version where all custodial markers were removed)
14 (This same 113 page version petitioner's answers were changed)
15 (one 136 page version that had custodial markers, but answers changed)
16 (Both versions are missing discussion about [custodial] at the house)

17
18 (CAPITAL LETTERS IS THE ALTERED VERSIONS IN THIS TRANSCRIPT)

19 (lower case letter are the actual in real time answers given).

20 (This transcript is for the 136 page version as well as 113 page)

21 (The 113 page version was used in the trial as exhibit 49A)
(EXHIBIT 63 + 64)

22 (see exhibit 42, 41, 40) (PAGE 44 + 45) (OF STATE EXHIBIT 49A)

23 This is verified by state exhibit 49 (compact disc available upon
24 request)

25 (One hour seven minutes and fifteen ~~seconds~~^{SECONDS} into state 49)

26 (GM=Greg Myler)(RA= Robert Alexander)(JY=John Henry Yablonsky)

27 GM-6k, did you guys also have a key to Rita's house ?

28 GM- No

1 (One hour seven minutes and ~~thirty two~~^{FIFTEEN} seconds into exhibit 49)

2 GM- OK, DID YOU GUYS HAVE A KEY TO RITAS HOUSE ?

3 JY-UM, YEA

4 (THEY ALTERED PETITIONERS ANSWERS PLACING EVIDNECE INTO POSSESSION)

5 ~~XXXXXXXXXX~~

6 (One hour seven minutes and ~~thirty two~~ twenty five seconds into exhibit 49)

7 RA
8 -Did, did she have a key to your apartment ?

8 JY- Yes she did

9 (One hour seven minutes and twenty five seconds into exhibit 49)

10 RA- DID SHE HAVE A KEY TO YOUR APARTMENT ?

11 JY-NO

12 (They altered this to establish there was no freindly exchanges)

13

14 (One hour seven minutes and thirty two seconds into exhibit 49)

15 RA- Did she have a pass key to your apartment ?

16 JY- Yes, she did.

17 (One hour seven minutes ~~thirty two~~ and thirty two seconds into exhibit 49)

18

18 RA- DID SHE HAVE A PASS KEY TO YOUR APARTMENT ?

19 JY- NO.

20 (They altered this answer to verify there was no friendly key exchange)

21

22

23 This next altreration involves the removal completely
24 fraom all versions of the transcript as well as erasing the audio
25 fromthe personal recorders they used to record this transaction.
26 This occured at one hour fifteen minutes into the interrogations
27 and can be verified throught states exhibit FVI900518 exhibit 49
28 which is available upon request of the Court will not allow filing

1 At this point into the interrogation petitioner had moved
2 the conversation outside under the guise of smoking. To offer a non
3 custodial location to continue the discussion. This was transcribed
4 into states exhibit 49A.(see exhibit40)

(one hour fourteen minutes and forty three seconds into exhibit 49)

5 RA-You wanna after you discuss this a little more in detail with
6 him I wanna ask him some more questions. I'd like to go to um,
7 (the other location) to speak. I think some things we're gonna talk about
8 are gonna be a little bit[private]embarrassing and I just wanna make sure that
9 we're ina [comfortable location] um, kinda away from your wife

10 JY well there is a cafe around the corner called Spires and has enough seating
11 for everyone.

12 RA- ~~well~~ its gonna have to be a little bit more comfortable than
13 that .

14 JY- What did you have in mind ?

15 RA- How about the police station, would that work ?

16 JY- That would be more comfortable for whom?

17 RA- Well we're going to have to take this to the Signal hill police
18 station, and we'll give you a ride there, and bring youn back

19 JY- If I have to go then i'll need to drive my own vehicle so I can
20 make some calls along the way

21
22 (This was altered by conjoining serveral conversations between Myler
23 and petitioner as follows)

24
25 RA- YOU WANNA AFTER YOU DISCUSS THIS A LITTLE MORE IN DETAIL WITH
26 HIM I WANNA ASK HIM SOME MORE QUESTUION. I'D LIKE TO GO DOWN TO
27 UM, THE OTHER LOCATION TO SPEAK.

(THIS CONVERSATION WAS WITH MYLER AND NOT PETITIONER)

WHO WAS IN ANOTHER SUCCOE EAR SHOT LOCATION

1 (Second half of this statement was with petitioner in another location)

2 I THINK SOME THINGS WE'RE GONNA TALK ABOUT ARE GONNA BE A LITTLE
3 BIT PRIVATE, EMBARRASSING AND I JUST WANNA MAKE SURE THAT WE'RE
4 IN A COMFORTABLE LOCATION UM, KINDS AWAY FROM YOUR WIFE.
5 DO YOU MIND GOING WITH US ?
6

7 This is verified through several manners . First this
8 "recording" can be authenticated at this very location in real time
9 to verify that there was no sound differences in RA statement that
10 would lead one to believe a conversation outside near a highway
11 that would imply damage to the recording or tampering. Second, the
12 conversation occurred outside while Myler went to the front yard where
13 the other officers were located, while Alexander followed me into
14 the back yard. (different locations) Third is that in this specific
15 police a two minute discussion ensued about where it would occur
16 and who was going to drive what vehicle with whom in the back seat.

17 Any expert witnesses regarding audio equipment, would have
18 been able to detect these anomalies in the "alleged copy" states
19 exhibit 49 (compact disc)., Or would have known the order the release
20 and access to the actual original recording devices for "real time"
21 authentications about a) tampering b) equipment failure c) audio
22 distinctions that would lead any expert to believe the original
23 recording equipment had been altered, tampered with, or that state
24 parties did in fact deliberately change answers by petitioner.

25 These records were altered for the sole purpose of presenting
26 to a hearing where a panel of jurists would be coerced into decisions
27 regarding the guilt phase of the trial. While the custodial marking
28

1 would have validated the jurors question about MIRANDA because the
2 custodial argument would have supported that petitioner should have
3 been mirandized. (One question by the jurors from the court)

4 The jurors were not allowed to determine whether petitioner had malice
5 or premeditated intentions because their decisions were coerced by
6 the records now saying that petitioner now had a key to the victims
7 home, ^{and} ~~but~~ that he did not have a friendly relationship with Cobb
8 where an exchange of key in case of emergencies could be reasonably
9 concluded. What the jurors heard, was that there was no friendship,
10 and that petitioner for some reason retained a key to Rita's house
11 months after he had moved out. (One of the elements to the charge
12 was supported by this manufacturing)

13 DDA Ferguson admitted that petitioner had a key to the house
14 because it was in the trial records. In fact DDA Ferguson admitted
15 that petitioners filing of the 113 page transcript along with other
16 papers was insufficient when a habeas petition was filed admitting
17 that it was in fact admitted into states exhibits as 49A and the
18 jurors used this in their reasoning. The attorney general parroted
19 this exact same argument in their defense, stating that collusory
20 allegations without more is insufficient. In fact the US District
21 magistrate admitted that the case teetered on the contents of this
22 "transcript" in their reasoning that reach a verdict of guilt.

23
24 A) Altering these records violated petitioner due process rights to
25 a fair trial under the fifth amendment of the US constitution

26 B) Altering these records violated petitioners due process right
27 of the sixth amendment of the US constitution to an impartial
28 jury and petitioners right to confront witnesses against him

28 C) Altering this records violated due process rights under the
XIV amendment due process right of laws P.C. 134 + P.C. 135 + P.C. 141

1 Points and authorities FOR GROUNDS ONE, TWO, THREE, FOUR AND FIVE

2 in order to prevail on a misconduct claim premised on
3 the alleged presentation of false evidence, petitioner must establish
4 that his conviction was obtained by the use of false evidence,
5 petitioner must establish that his conviction that the conviction
6 was obtained by the use of false testimony that the prosecutor
7 knew at the time to be false, or later discovered to be false and
8 allowed to go uncorrected. Nabue v Illinois, 360 US 264; Carothers
9 v Rhay 594 f2s 225 (9th cir 1979); Pavao v Cardwell, 583 f2d 1075
10 (9th cir 1979)(per curiam)(Noting that petitioner was to alleges
11 facts showing that there was a knowing use of perjured testimony
12 by the prosecution) Due process against the admission of false
13 evidence, whether it be by document, testimony, or any other
14 form of admissible evidence) Hayes v Brown 339 f3d 972(9th cir 2005)
15 (en banc) Where false evidence is presented to the jury, the con-
16 viction will be reversed where;(1)"[T]he prosecution knowingly
17 presented to the jury false evidence or testimony at trial; "and
18 (2)" it was material that is, there is a reasonably likelihood
19 that the false evidence or testimony could have affected the jud-
20 ment of the jury. Morris v Ylst 447 f3d 735(9th cir 2006); Jackson
21 v Brown 513 f3d 1057(9th cir 2008) Mere inconsistencies in testimony
22 are insufficient to establish that the testimony was perjured.
23 United States v Croft 124 f3d 1109(9th cir 1997); United States v
24 Zuno-Acre 44 f3d 1420(9th cir 1997. California Evidence Code §1401
25 (b) Authentication of a writing is required before a secondary
26 evidence of its content may be received into evidence. Spottiswood
27 v Weir 80 CAL, 22 pac 239(1889); Smith v Brennan 13, CAL. 107(1859)
28 Forman v Goldberg 42 Cal.App.2d 308(1941)

1 under § 1401, therefore if a person offered into evidence a copy
2 of a writing, he must make sufficient showing (preliminary) of
3 the authentication of [both] the copy and the original (emphasis)
4 (i.e. the writing sought to be proved a copy) While this case
5 these testimonies, altered evidences, supporting an y writkng
6 known to be false, testimony known to be false is irrelevant because
7 the prosecutor has a duty to know about the evuicneces he is going
8 to present inthe first instance. People v Gallegos (Cal.1971)93 Cal.
9 Rptr 229; Boykin v Alabama (1969) 1 Cal.3d 122, 81 cal.rptr.577,
10 460 p.2d 449 In this stipulation to police reports by trial attorney
11 to the Court was prejudicial error. In Gallegos the plea of guilt
12 was consistaint tothe stipulation by counselor for transcripts
13 making the plea involuntary and unintelligible because the stipulation
14 was prejudicial. People v Fonnville 111 cal.rptr. 53(cal.app.5th
15 dist 1973).

16 California rules of professional conduct rule 5-220 a
17 member shall not suppress any evidence that an member has an obligation
18 to produce or reveal. Brady v Marylan(1963)377 US 83; Giglio v
19 United States(1991 501 US 1030; United States v Agurs 427 US 79
20 (1976); California v Trombetta, 467 US 479(1984) Under the fourteenth
21 amendment due process claims in criminal prosecutions must comply
22 with prevailing notions of fairness that if fundamentally respected
23 will prevent such miscarriages of justice safeguarding a right
24 to what the courts may loosely consider CONSTITUTIONALLY GUARANTEED
25 ACCESS TO EVIDENCE(emphasis added)United tates v Valenzuela-
26 Bernal 458 US 858, 458 US 867(1982. While defendants claims could
27 be considered directly caused by trial counsel incompetence
28 People v Pote(CAL 1979)152 cal rptr 732, 23 Cal.3d 412.

1 CA. Ev Code § 1280 Evidence of a writing or record of
2 an act, condition, or event is not made inadmissible by hearsay
3 rules when offered into evidence to prove a thing, act, or content
4 or condition even if the following applies ;

5 a)The writing was made by and within the scope of duty

6 b)The writing was made near the time of the act, condition,
or event.

7 c)The source of information and method and time were such
8 as to indicate trustworthiness

9 P.C. § 134 To constitute the offense of procuring a false affidavit
10 recordsd, writing, recording or papers to be used as evidence does
11 require specific intent. People v Horowitz(CAL APP 1945) 70 Cal.
12 app. 2d 675 and can turn up on what the evidence was offered to
13 prove People v Bamberg(CAL APP1st dist 2009)175 Cal.app.4th 618.

14 The preparations of documents are within the meaning of section
15 134 does not require the document was created by a specific person
16 People v Ehasin(CAL APP.4th dist 2009) 176 Cal.app.4th 461. Altered
17 and or fabricated documents where the result would have been
18 different without the altered or fabricated statements, records,
19 writing, papers would have reasonably been different by a reasonable
20 jurist People v Blaydon 154 Cal.App.2d (1957). Preparing false
21 and antedated papers for fraudulent purposes with the intent
22 to produce it or allow it to be produced as genuine into trial,
23 proceeding was sufficient showing People v Clark(1977) 72 Cal.app.3d
24 80. Under section 132 false evidence and or fabricated or altered
25 records should have known that it was forged and or false was sufficient
26 People v Horowitz 70 Cal.app.2d 675(1945) And is broad enough
27 to include any interference with the production of true evidence
28 People v McAllister 99 Cal.app. 37 (1929)

1 The professional crime for offering false evidence involves
2 moral turpitude. In Re Jones 5 Cal. 3d 390(1971); People v Pereria
3 207 Cal.App.3d 1057(1989) Where prosecutions misstatements of facts
4 were it was clear the misstatement were in bad faith in an effort
5 to influence a jury People v Searcey(CAL1898)121 CAL 1 and could
6 not be cured by admonition or instruction, where evidence though
7 sufficient or insufficient does not erringly point to the defendants
8 guilt, such misconduct which may be turned the scales against a
9 defendant in a closely balanced case resulted in a miscarriage of
10 justice People v Kirkes(CAL1952) 39 Cal.2d 719(citation)(citation)

11 The term of misconduct when applied to an act by an
12 attorney implies dishonesty, an act or attempt to persuade Court
13 by use of deceptive methods People v Baker(CAL app.2d dist 1962)
14 207 Cal app.2d 717.

15 California Evidence Code § 1235 The admission of earlier
16 statements made by witnesses presently on the stand is not constitution
17 limited to impeachment § 1235 People v Woodberry(1970 CAL.APP.2d
18 duist) 10 Cal.app.3d 695 and does not violate confrontation clauses
19 of the sixth amendment People v Green 9(1971)3 Cal.3d 981, cer den,
20 Green v California(1971) 404 US 801 and the right to confront
21 has been preserved People v Strickland(1974)11 Cal.3d 946. Its applic-
22 ation is designed to fulfill that opening of the door to a second
23 opinion of the facts that are inconsistently relied People v Freeman
24 (1971) 20 Cal.app.3d 488; People v Aeschlimann (19762) 28 Cal.app.3d
25 460 and are admissible if they are consistent with testimony.
26 People v Morgan (1978) 87 Cal.app.3d 59; People v Kane (1984)150
27 Cal.app.3d 523; § 1235 also provides the effect that prior inconsistent
28 statements of witnesses is admissible not only to impeach their

1 requirement for impeachment testimony was not necessary, where it was
2 impossible to comply with at due "to no fault of the party using the
3 impeaching materials" and that justice and fairness compelled either
4 that the testimony at the former trial be excluded or that the impeach-
5 ing evidence be admitted.

6 The ninth circuit agrees with this analysis under Salcedo
7 v Hedgcock 2013 US district LEXIS 133001 (July 30, 2013)

8
9 Analysis of the around one merits

10 First these facts that had been illegally collected were
11 protected from intrusion by government bodies under the fourth amend~~xxi~~
12 dment, which was mandatory according to (exhibit 30) The warrant
13 for the arrests filed and ordered on March 4, 2009. Furthermore the
14 search warrant that was also ordered by Judge Nakata did not include
15 intrusions into petitioner's personal knowledge, and without MIRANDA
16 Miranda v Arizona 384 US 436(1935) This act is further protected
17 by the fourteenth amendment due process of law which is outlined
18 by the requirement to read [suspect's] their rights before question-
19 ing. It was the responsibility of the prosecutor to protect these
20 evidences, to comply to all state laws requiring copying of recordings
21 which includes the transcripts created from such recordings.

22 These recordings were never authenticated at all by any
23 parties in the interests of petitioner to comply to Ev.Code § 1401

24 section 14091 requires that a writing be authenticated even
25 when it is not offered as evidence but is sought to be
26 proved by a copy or by testimony as to its content
27 under circumstance permitted.

28 Evidence code § 1402 the party producing a writing as genu-
ine which has been altered must account for the alteration or appearanc

1 thereof. He may show that the alteration was made a by another, without
2 his concurrence, or was made without the consent of the parties
3 affected by it or otherwise innocently made, or that the lateration
4 did not change the meaning or language of the instrument.

5 In this case the prosecutor knew that petitioners DNA
6 was older than the crime by more than n one full day to as many as
7 several days before the crime had been committed, making it difficult
8 if not impossible to, place him at the scene at the time of the crime,
9 unless petitioner had some interests inthe crime. For first degree
10 murder to stand there must be several elements satisfied, and without
11 them first degree charges could not stand. Placing an item that
12 was crafted to fit only "one door" inthe entire desert area (a key)
13 that fit Rita Cobbs door, was enough to suggest that a person who
14 had no business entering the home without permission , who not only
15 had a key but had had the key for months after he and his wife moved
16 out, would have ~~o~~ propincity to comit a crime with that key. INFERRED
17 (Hence robbery, murder) It was because the jurors had asked about
18 MIRANDA, and who heard that there was no custodial markers that
19 would induicate a reasonable persoin felt they could not leave, and
20 that this person had a key to the home where a person was killed
21 that he was suspect to, was sufficient inthis case.

22 The answers thatbwere changed were not similar answering
23 in sound, and because this occured at three very specific locations
24 does imply intent to coerse a different [view] about the fsacts
25 regarding Yablonskys relationship to Cobb that [DID] LEAD a reasonable
26 jurist to believe that petitioner had committred a crime with the
27 key he held after he had moved out. In this case these answers were
28 volatile and contaminating to a matter that was close at one time

1 where the jurors were hopelessly deadlocked at one point, that a
2 different version that was real time transcribed would have given the
3 jurors a different perspective. It is irrelevant that these alterations
4 were made to get revenge for the lawsuit filed by petitioner against
5 Mr. Michael Ramos, even though that is more likely the answer, but
6 (see exhibit 35)
7 the answers were known, and deliberately created. Why else create
8 two different versions on the exact same day about the exact same set
9 of circumstances and facts.??? To manipulate a different outcome.

8 BAIT AND SWITCH(SEE GROUND TWO HERE)

9 AS A RESULT OF THE MISCONDUCT BY ALEXANDER AND THOMAS
10 DUE PROCESS RIGHTS WERE VIOLATED TO A POINT THAT AN ADMONITION
11 OR INSTRUCTION COULD NOT CURE THE ELEPHANT IN THE ROOM!!

12 Regarding the alterations of the interrogation transcript
13 habeas corpus should issue, allowing petitioner to correct the
14 records about [facts] under the law in this petition, and vacate
15 the conviction based on the due process rights that were violated
16 by the prosecutor who knowingly manufactured evidence he intended
17 on using to coerce a verdict where there was no other evidence pointing
18 towards culpability other than this false, fake evidence. That they
19 not only created but placed into the states records [forever]!!!
20 as states exhibits to case FVI900518 as exhibit 49 (compact disc
21 copy) and 49A (113 page transcript)

22 (see exhibits 40, 41, 42,)

23 THIS GROUND WARRANTS HABEAS BE GRANTED UNDER P.C. § 1473
24
25
26
27
28

GROUND TWO

1
2 THAT THE STATE TEAM DDA THOMAS AND DETECTIVE ~~ALEXANDER~~
3 FROM THE SHERIFF DEPARTMENT VIOLATED PROTECTED RIGHTS
4 UNDER THE FIFTH AND SIXTH AMENDMENT WHEN THEY ALTERED
5 ANSWERS ON JANUARY 26, 2011 THAT INCLUDED AUDIO ANSWERS
6 THAT MATCHED THE TEXT ANSWERS THAT HAD BEEN ALTERED
7 ON NOVEMBER 23, 2010 FOR THE PURPOSE OF COERSING A
8 VERDICT FOR CASE FVI900518 FURTHER VIOLATING FOURTEENTH
9 AMENDMENTS UNITED STATES CONSTITUTION AND OTHER LAWS.
10 VIOLATING PETITIONERS RIGHT TO A FAIR TRIAL UNDER
11 THE FIFTH AMENDMENT ~~AND~~ DUE PROCESS OF LAW. VIOLATING
12 PETITIONERS SIXTH AMENDMENT RIGHT TO AN IMPARTIAL
13 PANEL OF JURISTS, AND PETITIONERS RIGHT TO CONFRONT
14 WITNESSES COMPEEED AGAINST HIM. FURTHER VIOLATING
15 PETITIONER FOURTEENTH AMENDMENT TO DUE PROCESS OF
16 LAW ALSO PETITIONER RIGHT TO BE FREE FROM SELF COMPULSORY
17 WITNESS AGAINST HIMSELF DUE PROCESS VIOLATIONS

18 Facts surrouinding this ground

19 That as a result of the claims in ground one filed here
20 are now incorporated by reference herein. Fuyrther that now the
21 state parties known as the prosecutor DDA Thomas(Thomas) and detec-
22 tive Robert Alexander (Alexander) had a transcript set, one 113
23 page version , and one 136 page version chose the more intrusive
24 one to present to the jurists after they took these material home
25 on January 26, 2011 after the trial had already begun, and drew
26 near closing of ~~the~~ hearing. Where state experts had already cleared
27 petitioners DNA from the time the crime had been committed by more
28 than one full day. (see exhibit 51) Then as many as several days
before the crime had ocured. (emphasis added) That Thomas chose
to argue that he needed to take this "transcript " home so that
he could wash all the things that needed to be taken out from the
recordings, and that he did not trust anyone else to do this.
(see exhibit 41)

(Thomas) Then my last witness which will have to be on
the stand Thursday is detective Robert Alexander. I need to wait
for Mr Sanders to take out the redactions that he has in the recording

1 because that was what I was going to play on Thursday and at that
2 point the people will rest. (RT 402) Then I need to make the redaction.
3 Sanders at this point stated that he could do that to night. (This
4 was wednsday January 26, 2011 during chambers discussions)(RT403)
5 (T-Thomas)(S-Sanders)(C-Court)
6 T- Then I can get it done tomorrow, ill do that when I get home
7 tomorrow night.
8
9 C- All right, do you have jury instructions ?
10 T-Illl have those for you by Thursday.
11 C-Do you know that I like them ?
12 T-I have no idea. Last time I did a trial in here--
13 C- How about Wednesday ? (RT403)
14 S-S- Thank you your honor. I had indicated to the prosecutor the
15 parts of the statement that I felt should be redacted.
16 C- Lets talk about this a little information before we make assump-
17 tions.
18 S- I believe we agree
19 C- The statement thats going to be offered by the prosecution,
20 and its a statments alleged to be a statement by your client,
21 is that correct ?
22 S- Yes your honor.
23 C- Alright you are not going to object to entry of the statements,
24 but you believe there should be some things that were stated
25 by your client that shoudl be removed from the statement, is that
26 correct ?
27 S- Mostly statments by the police officers, but some statments
28 by my cluient.
29 C-Mr Thomas has not disagreed with you and attempted to provide
30 you with specifics of [how] he [intends] to redact the statement
31 of your client, so that is not objectionable to you ? is that
32 correct ?

1 S- That's correct

2 C- Mr Thomas you've seen that, and do you have any reason to
3 disagree with the --

4 T- No , as far as -- (here these statements were redacted from
5 transcripts to cover misconduct

6 C-Statements that Sanders --

7 T- As far as Sanders, he provided, I don't have any problems with
8 the redactions of the [stuff]. The only question I did have
9 for Mr Sanders is there's reference at the end of the interview
10 where Mr. Yablonsky invoking. [I was planning on taking that
11 out] unless you wanted to keep it in.

12 S-I did this very late last night, and I did forget when he invoked
13 MIRANDA to take that out.

14 C- Other than that, sounds like we're in conjunction on what
15 should be [done]. No disagreements between the two of you ?

16 S-I believe so.

17 C- Alright, that can't be done until tomorrow

18 T- I wouldn't be able to do it until tonight. I'm going to start
19 this afternoon once we're done.

20 C- How much is it ?

21 S- It's about a three hour interview. I'm requesting a redaction
22 of about ten minutes but in different parts of the interview.

23 T- So I got to go through everything and find out where I got
24 to cut the interview and make sure it "sounds good"

25 C- Can't be done between 11:05 and noon ?

26 (remember Sanders only wanted ten minutes to be missing...allegedly)

27 (see exhibit 43) On January 27, 2011 at 0916 hours detective

28 Alexander got onto the stand and swore to the authenticity of the
29 interrogations transcripts that allegedly had been transcribed on
30 November 23, 2010, where Thomas admitted to the Court that he on
31 January 26, 2011 had to further redact ten minutes from a four hour
32 interrogation. Detective Alexander under oath swore that the transcript
33 the jury was about to hear was the exact transcript from originals.

1 On January 26 , 2011 sanders had told the Court that he
2 needed to take them home that night so he could redact statement
3 he felt wsas damning to his client, only he had already made some
4 type of arrangem,ent with Thomas to redact invokation of MIRANDA
5 and other alleged mistatements involving, petitiioenr du rug use history
6 and criminal background.....allegedly. But if he had actually
7 listend tothe interrogation as he suggested then he wouyld have heard
8 that petitiioenr had /stated that he did not have any keys tothe rita
9 Cobb home. Futher, he only wanted a ten minute window from diffeeretn
10 locatinns inthe interrogation to be removed. Only this recording
11 was from trhee seperate recording devices that included one cam
12 corder cassette that lasted three hours and firty eight minutes.

13 Sanders stated (RT454;3-7) Thta he had already made these
14 redactions after telling the Court he needed to do it that niught.
15 The Court gave Sanders an op;ertuinity to protect petitiioenrs rights
16 regaridng the invokationwhich would have strikent this entire recording
17 fromthe record for breach of rights under the fourth amendment, but
18 this imbusil had already cut a deal with the prosecutor,who now
19 had to take this evidnece home and make it "SOUND GOOD". (RT455:24)

20 After alleging to ~~authenticating~~ authenticating the recoird-
21 ing that was created on march 8, 2009 and alterrd on November
22 23, 2010 the state predsentd tothe jury a two hour and fifty
23 five minute version of the states interrogation. Placing this into
24 the states records under exhibit 49-CD interview with defendant
49A- transcript of 49 exhibit

25 (see exhibit43)

26
27 The prosecutor then played a version that wass two hours
28 and fifty five minutes tothe jury ona ~~text~~ text version that played

1 on a screen that stood over the jury box. This was accompanied by
2 an audio sound that was also played to the jurors who were allowed
3 to read along with the text and audio. This version was verbatim
4 to the altered sounds where petitioner's answers were changed placing
5 evidence into his possession. Also petitioner's wife that was right
6 there when the interrogation occurred was also washed from this version.

7 As well the statements made by petitioner and detective
8 knowing that petitioner owned a dark blue pinto were also washed
9 from this version. This is verified by (exhibit 28) where a witness
10 seen a silver pinto at the Cobb residence. This exhibit shows that
11 Diuanne Flagg had stated in 1985 that she seen the [~~SILVER~~ silver]
12 pinto at the Cobb residence the night she had been killed. Only
13 the version of the interrogations shown to the jury washed this
14 fact out. Further state placed this alleged transcript into state
15 records as exhibit 49A only the version they placed was the November
16 23, 2010 version, neglecting to place the January 26, 2011 version
17 ever being seen. (see exhibit 40) Notice the recorder's information
18 at the lower right of the page (49A) entered on January 27, 2011)

19 What the jurors seen in text on the screen were the markers
20 that this transcript had been done on (November 23, 2010) which
21 had just been verified by Alexander (reviewed by Det Rob Alexander)
22 (#A1672) Why wouldn't they believe a detective who just swore to
23 its authenticity under oath.

24 This information placed before the jurors violated
25 so many rights, where do I begin. First I begged the attorney after
26 seeing that they had altered my answers to review this, telling
27 him that I had not been properly MIRANDIZED. (see exhibit 3) I
28 told him this on June 2009.

1 Had Sanders done a preliminary listening he would have
2 heard that ~~nevertheless~~ his client had tried at least three times to
3 terminate the interrogation. This verifies that he never listened
4 to the evidence. Or he assisted the prosecutor. In either event
5 petitioner's rights under the fourth amendment were abolished without
6 his consent, which he had already tried to invoke that right in
7 2009, and was refused. Also ignoring that his client's answers changed.

8 Second, after invoking this protected right, this team
9 then allegedly agreed to wash it from what they were going to show
10 a panel of jurists who were watching and listening. They asked about
11 miranda right after they heard this version. This was then argued
12 by the Court and prosecuting team that included Sanders. Thomas boasted
13 that he encountered this situation before and even though those
14 rights were violated suggested that they could draw up something
15 that would stipulate petitioner had been ready his w rights (RT532)
16 only they knew that petitioner would have never waived this right.
17 Next where the Court tried to give them a chance to correct this
18 the Court tried to plead with the counsels to draw something up,
19 but neither of the parties wished to get involved with this ~~stipulation~~
20 conundrum of a pickle where not only were the rights invoked, but
21 the prosecutor had also washed the recording for the direct non
22 custodial request that was denied and petitioner was forced to the
23 local police station while being escorted by more than one agency.
(RT454; 19-25) (RT 532:

24 Because petitioner was not intelligibly informed about
25 this access to a protected right before they abolished it from the
26 records, they then presented to the jury a piece of evidence that
27 was fake, forbidding petitioner an opportunity to challenge this
28 through right to confront, while placing this into the records against

1 So, with regarding the transcript shown to the jury
2 who listened ~~to~~ to the fake evidence that showed it was transcribed
3 on 11/23/10 when it was in fact altered on 1/26/11. They did not
4 get this information. Further Thomas then had to take this evidence
5 home with him, download the recordings from the [copy] of the int-
6 errogations and dub sound in from another locations to a newly
7 transcribed answer, then make another copy of the transcript
8 while placing onto the [text] version of this [transcript, showing
9 it was not transcribed on 1/26/11 in an effort to prevent the jurors
10 who were watching and listening from knowing that it was done
11 at the last minute. 1/26/11

12 Next Thomas then placed his expert witness detective
13 alexander onto the stand to swear it was an exact copy of the record-
14 ings that were created on 3/8/09, when it was anything else but
15 that. Falsifying the records they knew would cause a verdict
16 in this matter. In fact this decision was not made until after
17 the states entire case where;

18 a) Kramer admitted to finding his mother after being alarmed she
19 was in danger, and that he ignored instruction about entering
the residence until after investigations

20 b) Nash who stated that his last knowledge of Cobb was that she
21 arrive at a party on September 20, 1985 drinking a bottle of
22 liquor and drank more after that had been finished. That when
he offered to drive her home, she told him she was not going
home and would be going to a bar instead. (See exhibit 13)

23 c) Dianne Flagg had seen a silver silver Pinto at the residence the
24 day of the murder, and that she was a car enthusiast and would
know the make because her neighbor had one, and that she was
certain of the silver color (see exhibit 28)

25 ~~25~~
26 d) That Sullivan testified that he remembers better after 25 years
27 than he did three days after the murder and that he now knows
28 he was not asleep when Nash left the party (contradicting
Nash testimony), and that he seen Cobb at the party on 9/20/85
and that they drank white lightning together, and then seen
Cobb being given a ride home by Nash (also contradictory to
Nash testimony) (SEE EXHIBIT 14)

1 e) That Criminalist Jones testified that he had not matched petitioners
2 DNA to the murder weapon, watchband pin, or the red hair located
3 at the scene on the body. In fact Jones stated that the DNA
4 matching petitioner that was located inside Cobb was the result
of an encounter that occurred several days before she had been
killed and that he was certain of that. (see exhibit 51)
(RT 317)

5 f) The Dr. pathologist Saukel who stated there was no evidence
6 that Cobb had been murdered. Physiological or scientific. (RT 491)
7 and that the DNA matching petitioner that was located from inside
the cavity of Cobb was the result of an encounter that occurred as
much as one and a half days before she had been killed. (RT 490)
8 (see exhibit 51)

9 g) That the detective Alexander gave testimony that there was
10 was no fingerprint report from this crime scene, and if there
11 was that he does not recall whether it had been developed or not,
opining that he knew petitioners prints were not located at
the scene (see exhibit 29)

12 h) That detective McCoy admitted that the evidence had been cross
13 contaminated, because they were placed into the same bags
when they collected these evidence

14 ~~XXXX~~

15 This decision to finally place the manufactured evidence
16 into the possession of the defendant's case, was a last hail mary
17 to get this skellitin to stick on a person they knew to be innocent.
18 Which explains their need to purge the entire panel with prejudicial
19 material before the trial ever started telling them that they
20 had failed 19 murder charges against a defendant who was being tried
21 later that year, and that Ramos promised closure in that case.

22 (see exhibit 33) Further more these ^{Pratt vs} defendants chose to admit
23 these allegations in the civil arenas while petitioner charged
24 them with gross negligence, professional negligence, and other
25 misconducts regarding the conspiracy to manufacture evidence.
26 These parties (David Sanders) (John Thomas) (Robert Alexander)
27 admitted as much and failed to even dispute the charges in Court

28 Claiming immunity under HECK and AEDPA while they suggest They

1 that they are immune so long as these acts stand and the conviction
2 is uncorrected, boasting that they owe no professional quality as
3 long as their acts reach a verdict, irregatrdrless of the gravity
4 of misconduct that was committed or acts that they did caused injury
5 to petitioner because they are government bodies. This can be verif-
6 ied through case numbers #CIVDS 1506664 (superior court) and
7 #E068775 (Court of appeals) Briefing by county counsel for John
8 Thomas, Robert Alexander, Greg Myler, Michael Ramos, Mark Shoup,
9 Geoffery Canty who all to some degree participated in a conspiracy
10 to alter and fabricate evidencenes that they knew were false and
11 would cause injury.....or hoide these proofs until after the
12 direct appeal had been exhausted. Sealing these facts behind AEDPA.
13 (see exhibit 61) The appellate Courts findings about the allegations
14 made by petitioner under civil rights. Although the court minimallized
15 the claims veracity it acknowledged them without dispute for valid-
16 ity.

17 Further because petitiioenr could not file the galliable
18 compact disc in the Court, stating they will not sacccept compact
19 discs, the Suoperior Court prevented a record from beina developed
20 that would have supported the verification that the transcripts
21 were in fact altered comparing exhibit 49 (compact disc) to exhibit
22 49A the states exhibit of 113 pages that was used in the trial where
23 petitioners answers were in fact changed.

24

25 Points and authorities as stated above are hereby now incorporated

26 In the Court People v William, 1 Cal.5th 1166(2016) discussed
27 how and why due process applies to mistatements. "There are some
28 residual effects to due process exceptions to hearsay rules, which

1 require some [reliability] and upon reflections it seems that.....
2 we all get caught up the [right] to cross examine under the right
3 to confront, and the timing about [cross], it is that period of
4 time in which lawyers get the chance to destroy another[s] witness
5 through impeachments. But it also is the time when reliability
6 of the evidence is demonstrated....." People v Lucas 60, Cal.4th
7 153(2014) The Court added that although evidence could have discount-
8 ed credibility issues, that unless the record is vacant for a plene-
9 of evidence supporting the jury's conclusion, credibility issue
10 may have no effect on their view of the case. People v Butler, 212
11 Cal.app.4th 404(2012); (arguing) People v Avila 46 Cal.4th 680(2009)
12 ("under well established principles of due process the prosecutor
13 cannot present evidence he knows to be false and must correct
14 [any] falsity of which it is aware in the evidence it presents, even
15 if the false evidence was not intentionally submitted")(AVILA):
16 See United States v Agurs, 427 US 97(1976); In Re Richards 63 Cal.4th
17 291(2016)(That is reasonably probable that the false evidence affected
18 the outcome because with exceptions of the bite mark evidence
19 the defense had a substantial responsibility to much of the prosecution
20 evidence was so weak (transparent) for culpability that carried
21 any weight

22 23 ANALYSIS OF THE FACTS

24 It is because there was literally no evidence placing petita
25 itioner at the scene other than the DNA collected from inside the
26 victim that had been verified that it had been placed there from
27 one and a half days before the murder occurred(RI49) to as many as
28 [several] days before the crime occurred(RI317) that there was

1 [NOTHING] in the states entire case that placed petitioner in that
2 house, much less placed there when the crime was committed. Further
3 because the state relied on the testimony of Dianne Flagg who seen
4 a specific type of vehicle at the home that was [SILVER] that Pinto
5 was suggesting that the actual killer had in fact driven a silver
6 [pinto]. Only in real time the recording shows that petitioner owned
7 a dark blue pinto; which further supports that they also removed
8 the discussion in two different locations while being interrogated
9 that detectives knew petitioners pinto was blue and not silver.

10 As well when the prosecutor asked the jury why would a man
11 lie about his sexual involvement with a person that had been killed
12 unless he was the actual killer. In fact there was a jury instruction
13 about what the jurors seen and weight they gave that evidence. Only
14 in this case the facts that petitioner wifes presence that had occurred
15 at about page ten of the states interrogation and later in that
16 same interrogation had also been washed from the recording and
17 transcripts creating exhibit 49A. In fact the murder weapon that carried
18 DNA, none of the DNA was matched to petitioner. The state relied
19 on the watchband pin located under the victims head also carried
20 DNA according to the criminalist, yet that DNA was not matched to
21 petitioner either. All making the value of the fake evidence carry
22 weight, and even after the jurors heard all the states [theory] and
23 evidences tying petitioner to the crime of murder, they came back
24 hopelessly deadlocked. Suggesting that any of these facts inside
25 the "doctored" records where state parties deliberately and in a cal-
26 culated manner removed specific facts which would have contradicted
27 their arguments and evidence, but then forced them to hear that
28 petitioner had a key to a home he did not live and a crime was committed

1 Because DDA Ferguson argued that the jurors did rely
2 on this fake evidences as exhibit 49A for the state to reach their
3 verdict, petitioner agrees, they did rely on the transcripts that
4 were doctored to place evidence into petitioners possession.
5 As a result of this act along with the ground one here, habeas should
6 issue for the due process violations perpetrated by design and
7 malicious intent by state parties. (see exhibit 51, 62, 43)

8 You cant waive petitioners rights outside of his presence,
9 and you can stipulate to manufacture evidence that will be used in a
10 criminal trial, irregardless of who that crafter is. (THE RULE OF
11 LAW APPLIES TO ALL PEOPLE.....EVEN A JUDGE)

12
13 GROUND THREE

14 DDA THOMAS, DETECTIVE ALEXANDER, DPD SANDERS VIOLATED DUE
15 PROCESS RIGHTS AFFORDED UNDER FIFTH AMNEDMENT TO A FAIR
16 TRIAL, SIXTH AMEDNMENT RIGHT TO IMPARTIAL JURISTS, RIGHT T
17 TO CONFRONT WITNESESES AGAINST HIM, RIGHT TO DUE PROCESS
18 UNDER THE FOURTEENTH AMENDMENT UNITED STATES CONSTITUTION
19 WHEN PROSECUTOR AND COUNSEL PRESENTED LIARS ON THE STAND
20 OF ALEXANDER WHO LIED ABOUT THE AUTHENTICATION OF AN INTE
21 RROGATION TRANSCRIPT CONTENT, AS WELL AS LYING ABOUT THE
22 EXISTANCE AND CONTENT OF A FINGERPRINT REPORT. THAT BURCE
23 NASH LIED ABOUT THE DESTINATION OF RITA COBB WHENE SHE L
24 LEFT THE DRINKING PARTY. THAT JOH SULLIVAN ~~KAYK~~ LIED ABOUT
25 WHAT HE SEEN ON SEPTEMBER 20, 1985 REGARDING NASH TAKING
26 COBB HOME

27 A & B-Robert alexanders lies to the court

28 C-Bruce Nash lies about the destination of Rita Cobb after the party

D- John Sullivan who lied about what he seen regarding nash giving
cobb a ride home

Facts surrounding false testimony

A.

Detective Robert Alexander was assigned as the lead investigator

1 four the state regarding a case #EVI900518. His duty as an officer
2 of the Court was to provide truthful and reliable evidences regard-
3 ing his knowledge of facts of the case and evidence. Alexander
4 was asked about the contents of a fingerprint report during cross
5 examination. Trial counsel had asked whether the detective had
6 seen the entire file regarding the case. Alexander gave very mislead-
7 ing responses trying to prevent the contents of the report that
8 had been collected from the crime scene. Alexander was asked whether
9 he had seen and has knowledge of all the evidences to the case and
10 he responded he did. (RT687) He then was asked was he familiar with
11 the entire investigations since ~~2009~~ the crime was committed in
12 1985 until the facts of the case up until 2009, and he stated
13 he did. Admitted that all of the reports that had been generated
14 were in fact in his possession. Stating that he had not discovered
15 any later that he did not know about. (RT687:9-19) He then stated
16 that he was not sure whether there were fingerprints that had been
17 developed. (RT688:5) But then suggested that he knew that petition-
18 ers prints were not located at the scene. (RT688) Stating that if
19 he had seen the reports that he don't recall all the names, but
20 then admits that there was a print on a cup located in the kitchen.
21 (RT688:5-19) The prosecutor entered an objection that was allegedly
22 sustained as hearsay. The Court abusing the discretion for hearsay
23 statements by a state employee about state records that had been
24 collected was an abuse. The prosecutor knew the report existed as
25 well as the detective knew that it existed and there was a result
26 which shows that petitioners prints were not located at the scene.

27 Because these records are state records and deemed to be
28 credible, they are not hearsay and are an exception, all parties

1 knew this, including trial counsel. But because of the Courts inter-
2 ferance with cross examination the results of that print were not
3 divulged, but more importantly was the results where petitioners
4 prints were not revealed in this report because his prints were
5 not found at this scene. Trial counsel did not have the knowledge
6 to navigate this hurdle which would have been Evidence Code § 1280
7 making this record exception to the hearsay standard the prosecutor
8 allegedly objected to. By refusing access to the information in this
9 report that Alexander was mistating facts to evade the release of
10 the results was prejudicial to petitioners case, specifically that
11 the jurors asked about Joseph Saunders presence at the scene.

12 //
13 IN REAL TIME TRANSCRIPTS THIS WAS NOT THE DISCUSSION ABOUT THE REPORT
14 THIS IS EXACTLY WHAT WAS ASKED AND ANSWERD.

14 Q- DID YOU RECEIVE ALL THE EVIDENCE TO THIS CASE AND DO YOU HAVE KNOWLEDGE
15 ABOUT THE EVIDENCES TO THIS CASE ??

15 A- YES I DO.

16 Q- DO YOU RECALL A FINGERPRINT REPORT FROM THIS CASE ??

17 A- NO NOT THAT I CAN RECALL .

18 Q_ SO YOU DONT RECALL ANY FINGERPRINT REPORT FOR THIS CASE ??

18 A- NO, NOT THAT I CAN RECALL.

19 These transcripts were alteredd after the trial and is supported by Thomas'
20 closing statements saying that there was no fingerprint evidence presented
21 in this case SEE EXHIBIT 59

21 //

22
23 The prosecutors closing statement is as follows regarding
24 this alleged denial of access to the results of the fingerprint
25 report (R1048:26- 649:7) (Prosecutors closing) "Lets say that
26 we did collect-- there was evidence that there wwere fingerprints,
27 [AND YOU DIDNT HEAR ANY EVIDNCE], BUT LETS SAY THER WAS EVIDNECE
28 THAT FINGERPRINTS EX WERE COLLECTED, AND IT CAME BACK TO ..

1 TO MR YABLONSKY. WHAT WOULD HIS EXCUSE BE ? OF COURSE MR YABLONSKY
2 WASSIN THE HOUSE AT SOME POINT, BUT THAST FINGERPRINT, THAT WOULDNT
3 TELL US TWT HE WAS IN THERE THAT FRIDAY NIGHT OR SATURDAY MORNING.
4 HE'S HAVE ANOTHER EXCUSE, JUST LIKE THE CONSENSUAL SEX.....HE HAS
5 AN EXCUSE".

6
7 First it is almost irregardless if the transcripts were
8 altered after the trial, but for arguments sake even the altered
9 version violates due process rights to question witnesses against
10 petitioner, giving him the oppertunity to develop the facts about
11 not onlty that the prints were found matching Saunders, and petitioners
12 were not at the residence, but that this print supported a defense
13 that would have falledn undetr third party culpability, because
14 saunders was at the house just after Cobb got home, and arrived un-
15 invoted. His arrival scared the hell out of Cobb so much that after
16 he arrives she tells him that a) she lives near friends b) That
17 there goes one of them now c) That she was on the phone d) That
18 Cobb had never divulged to Saunders where she lived for peculiar
19 reasons e) That his arrivial and parking onthe highway over 100-
20 yarsds down hill froim her house and walking to her home that she
21 called a son that beats the hell out of her and lives in another
22 town 30 milesd away for his help. f) He committes suicide three
23 months after telling the sheriffs that he did not have a relationship
24 with cobb, nor had they discussed having sex, g) onltn after he
25 kiloled himself the sheriff located a journal in his home [ABOUT
26 HIS RELATIOSHIP WITH COBB] AND THAT HE HAD CHANGED HIS LAST WILL
27 AND TESTIMENT !) But to state that he has no knowledge of the finger-
28 print report does match what the prosecutor told the jury in his

1 closing argument, that there was no fingerprint evidence in this
2 trial. Even though Alexander "allegedly stated" he knew Yablonsky's
3 prints were not found in the scene. b) That the prosecutor stated
4 there was no evidence of fingerprints in this case, but Alexander
5 allegedly ~~stated~~ stated that he doesn't remember all the
6 ~~names~~
7 names, or that if it had even been developed yet. By refusing this info
8 to the jury that was not hearsay violated petitioners right to confront
9 as well as to fairness of the trial because if the DNA was in fact
10 older as the experts stated, (RT317, 490) that a fingerprint from
11 a man who stated he last seen Cobb at a party, and was invited back
12 to her house but never went and cannot account for his time or proof
13 he did in fact go home suggests that his culpability outweighed
14 petitioners by a landslide. This lie was deliberate and intentional.

15
16 P.

17 That detective Alexander was asked to testify about the
18 ~~accuracy~~
19 accuracy of the transcript of exhibit 49 to 49A that was used in
20 the trial on January 27, 2011 where the prosecutor asked Alexander
21 whether the ~~transcript~~ transcript was accurate to the best of his ability.

22 P- As far as the digital audio portion, have you had the opportunity
23 to review the transcript, along with the recording to ensure it
24 was [accurate].

25 D- Yes.

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

28 D- Yes.

CORAM NOBIS ~~192~~

1 Because the detective knew that the answers were not accurately
2 transcribed into the exhibit 49A (113 page transcript) because the
3 answers were not only changed by him in the initial changing on
4 November 23, 2010, but he assisted the prosecutor on January 26, 2011
5 to further altering the answers so that the sound now matched the
6 text that was used in exhibit 49A (see exhibit 40, 41) The evidence
7 code allowed for copies of recordings so long as the meaning had
8 not been changed. Only the evidence code does not cover the alter-
9 ing of answers. That is covered by P.C. §§ 134, 135. For the sheriff
10 officer to swear under oath about evidence he knew to be false at
11 the assistance of his prosecutor who also knew the evidence to be
12 false violates due process rights to due process rights to access
13 to evidence, and the right to confront., Further trial counsel cannot
14 waive rights to his client without discussing the exposures of the
15 waiver, unless the trial counsel participated in the conspiracy to
16 present false evidence, and even then he cannot waive rights of
17 the client without the permission. The sheriff's officer had an oblig-
18 ation to the truth, and even if it could be interpreted as misleading
19 that amounts to lying to the jurors who were relying on the inte-
20 grity of the state official to be honest, why else take the sworn
21 oath before giving testimony.

22 When this was argued under habeas corpus with the state
23 DDA Ferguson stated that inconsistent statements are not synonymous
24 to perjury. Only these statements were in the first hand nature by
25 an expert about evidence that was relevant on both accounts, but
26 specifically about the authentication of the recording that was manu-
27 factured on 11/23/10 as well as on 1/26/11. (SEE EXHIBIT 29)

28

C.

1
2 The state relied on the testimony of Bruce Nash who was one
3 of the last people to see Rita Cobb alive. Bruce Nash (Nash) gave a statement
4 in 1985. (see exhibit 13) telling officers he seen Cobb at the drinking
5 party at the mini spring ranch (John Sullivan) Nash stated that
6 he seen Cobb arrive at the party on 9/20/85 around 1930 hours (8;
7 (7:30 p.m.) That he seen Cobb drinking bourbon and that he and his
8 then girlfriend Cynthia Hooper, now wife left the party around
9 2145 ((;45 p.m.) and that when they offered Cobb a ride home
10 because she was a little "buzzed" but that they left her there with
11 Francesca Drake. Nash told sheriffs that Cobb was a lonely woman that
12 was looking for a man she could share her life with. (CT117) Nash
13 was again reinterviewed two decades later recalling the same convers-
14 ation he gave Det. Knapp in 1985. This time he was interviewed by
15 Det Myler in 2009 almost 25 years after the crime had occurred. In the
16 statement ~~XXXX~~ Nash told Myler a) That he had a pinto back then
17 b) that they all hung out together until about 9-10 p.m.
18 c) That Cobb was good about holding her liquor, but that she seemed
19 more drunk that night than usual d) That he and Cynthia tried
20 to give Cobb a ride home, but that she was adamant that she could
21 drive herself e) That he did not give her a ride home f) Because
22 Cobb told him that she was going to go to a bar in town called
23 the Zodiac Lounge or somewhere else before going home.

24 Admitting that this left Cobb, John Sullivan and Francesca
25 at the ranch drinking. Nash did offer a few list of a couple boyfriends
26 he thought Cobb to have. (CT 270 -272)) (see exhibit 13) (

27 Nash was called to testify in the trial, and during cross
28 examination was asked about his last known conversation with Cobb

1) (see exhibit 20) That Hooper was interviewed by an investigator
2 on 1/13/10 and told the investigator that she remembers seeing Cobb
3 at the Sullivan drinking party, but recalls that someone had taken her
4 home or checked up on her to make sure she arrived home safely. Hooper
5 added that she believed it odd for Kramer to have found
6 his mother because they had been so estranged for some time. Now
7 when Francesca Drake gave an interview in 1985 she told det,
8 Tuttle that she had also been at the party and did see Cobb
9 there drinking. She stated that she recalled Cobb leaving the party
10 around 2330 (11:30 p.m.) that Friday night on 9/20/85.

11 All of these statements agree that Nash did not give
12 Cobb a ride home after the party and that he had left
13 around 9:30 p.m, almost two hours before Cobb
14 left the party which was verified by Francesca who was there
15 after Nash had left. Further because the state entered an objection
16 and the trial counsel could not intelligibly defend it for lack
17 of knowledge, the right to probe was cumulative. First violation
18 to due process rights to probe a witness under the sixth amendment
19 which the Court of appeals agreed in their ruling. (see exhibit
20 52) Stating that this information should have been made known
21 to the jurors and under Ev. Code § 1250 this information would
22 have.

23 Had this witness told the truth, he would have told
24 the Court that Cobb had not been headed home, and that she was
25 going to a bar, even though he stated he did not give her the
26 ride, could not recall whether she left the party before he did
27 or not. That information is irrelevant when it comes to whether he
28 knew her to be headed home or not. As a result of this lie

1 Further when Fergusoin argued under habeas his statement
2 to the Court that inconsistant statements are not synonomous to
3 perjury puts this "mistatementy" into a catagory that does not
4 qualify in this instance. First Nash gave repeated same statements
5 to police and investiaztors of the facts over a period of 25 years
6 that was exactly the same. (see exhibit 13) (see exhibit 20)
7 (see exhibit 14) The fact the Court gave Sanders the oppertunity
8 to challenge the appeal which could have been won.....but did
9 not know the ;law does not change the result of the testimony, nor
10 does it recharacterize its nature. Nash lied. He told the Court
11 he believed that Cobb was headed home, when he distinctly remembers
12 that conversation that she did not want a ridfe home when he offered.

13 He remembered the statement she gave about going someplace
14 else other than home, so for himto say he thinks she was going home
15 is critical for the victims past words. But more importantly this
16 would have supported another third party culpability issue regarding
17 Gregory Randolph who admmittingly stated that he A) met Cobb at
18 the same bar she said she was going (see exhibit 16)(see exhibit
19 25) B) and that he met her Friday night , took her home and after
20 an arguement about sex strangled her until she turned black and then
21 he raped her. (emphasis added)

22 The lie was not only coersed by detective Alexander who
23 visited both Nash and Sullivan before thier Monday testimony in
24 Court. (discussed later here) But then interfered first by the
25 prosecutor who entered a bogus objection on hearsay whop also should
26 have klnown the laws (Ev.Code §§ 1250) but chose not to honor the
27 law in an effort to diminish the petitioners right to a defense.
28 Furhter the Court entertained this objection and Sanders "FAILED"

1 For third party to stand there has to be something
2 direct or circumstantial to connect that party to the crime, and
3 here Cobb going to a bar where another man who not only confessed
4 to the crime, but at one time had been under arrest for this crime
5 stated that he met her before he killed her meets that requirement
6 under the HALL theory regarding third party culpability.
7 The Court of appeals agreed that this information should have been
8 allowed and that the Court had committed prejudicial error from
9 not allowing it, and admitted the laws under § 1250 should have been
10 applied for the victims last statements, which in this case Nash
11 knew, Thomas knew, Alexander knew, and even the damn attorney Sanders
12 knew should have been admitted. It was as if Sanders had worked
13 with the prosecutor to discuss issue but fail to prepare, research
14 or challenge the states case with any effort, interests, or showing
15 of professionalism. But none of this changes the facts that Nash
16 lied, he admitted that he was coached about what to say, and even
17 though the transcript has been washed for this the elephant in that
18 room could not be overcome.

19
20
21 D.

22 John Sullivan was interviewed several times over the years
23 (see exhibit 14) and in those interviews from 1985 until 1988 had
24 been consistent, telling officers that he knew Cobb and the last
25 time he seen her she was at his drinking party on 9/20/85. He told
26 officers that she arrived at about 7:30 p.m. drinking a bottle
27 of bourbon (her favorite drink) alone and that when she finished
28 that he offered her some moon shine (whitlightning) He told officers
the same account that Francesca had that he had fallen asleep
around 10:30 p.m. after Nash had left.

1 Sullivan never told officer back then that he seen Nash
2 giving Cobb a ride home, while he did offer Rita had been drinking
3 alot and that she dated a man named Fred Perdard who drove a van.
4 He told officers that she was a lonely woman and seen alot of men
5 and that as far as he knew she was seeing someone from Spring
6 valley. He admitted that the last time he seen beer ws at the
7 party and added that he remembers Cobb being hit by Fred(CT64-65)
8 In fact Sullivan told investigators almost a mirror statement
9 in 2010 about his knowledge of Cobb and her going to his party
10 and again he did not say anything about Cobb being driven home
11 although he admitted Cobb and her sone had been estranged from
12 some time.

13 He was again interviewd in 2009 by Myler on March 9
14 2009. In this intervuiwe he told officers that Cobb had gone
15 to his house about twice a month and usuallu on Fridays and Satur-
16 day nights. (CT266)(see exhibit 14) He recalled Rita arriving
17 at 8:00 p.m. where his earlier statments were that she arrived
18 at 7:30 one time and 6:00 p.m another. He then admitted to
19 giviner her some whitelightneing and that they continued to soc-
20 ialize. He added that soemtime around 10:00 p.m. that Cobb said
21 it was time to go home and that the rrest of the aprty goers
22 felt she was too drunk to drive home. He said he seen Bruce Nash
23 get into her drivers seat of Rita's cafdillac and drove Rita
24 home as Cynthia followed them. Knowing that Sullivan had just
25 told him a different story that he told in 1985 25 years ago
26 and two days after the crime, Myler probed and recorded these
27 extreme differences in Sullivans testimony as well as Nash' testimony
28 and Francesca Sullivan terstimony. (see exhibits 13, 14)

1 When Sullivan got onto the stand he offered that he
2 had been coached by Alexander and Myler and then told the jury
3 who just heard Nash's testimony that he did not give Cobb a ride
4 home, that Sullivan now tells them he seen Nash drive Cobb home.
5 The prosecutor knew these differences would only confuse the
6 jurors, but more importantly was that he knew that Sullivan
7 statements in 1985 were corroborated by every other witness at
8 the party (Bruce Nash)(Cynthia Hooper)(Francesca Drake) admitted
9 that Sullivan had fallen asleep at 10:30 and that Bruce and
10 Cynthia had left the party while not driving Cobb home and left
11 around 9:30-45 p.m.. Francesca stated that she recalled Cobb
12 leaving at 11:30 p.m. well after Nash had left and after her
13 husband had already fallen asleep and that she may have been
14 going to a bar because she liked to frequent the bars. This
15 information was well established and the prosecutor knew that
16 this mans unreliability would only confuse the jurors. But when
17 Sullivan bantered about how his memory now 25 years after the
18 crime is better than it was three days after
19 ^{the} crime and that his memory was coached by Alexander who visited
20 ~~RIN~~ his ranch that Friday before. It was the duty to correct this mistatement
21 by the prosecutoions team Alexander and Thomas but they allowed this
22 to stand. Because this liar got onto the stand at the guidance of Alex-
23 ander who knew that he was either incapable of remembering, or only
24 remembered the story that Alexander had planted on March 10, 2009
25 when Myler interviewed him and knew that Sullivan had then been incapable
26 of recalling facts of outside his name, Cobbs arrival at the party
27 and the names of the other party attenders. This was very prejudicial
28 to the trial and the prosecutor banked on this.

E.

1
2 During the trial the state presented evidences that had
3 been collected from the crime scene. Specifically a watchband pin that
4 had been pulled from the perpetrators arms during the struggle of
5 the crime. Being ripped from his arm on his left side while he strangle
6 d Cobb . This was identified as states evidence for DR#1331036
7 Item #A15 (watchband keepr) During the testimony by criminalist
8 Jones (RT292- 297) he testified that skin cells werew great source
9 for DNA samples (RT292:13-15) adding that they can get great results
10 from sweat (RT292:18-19) admittting tha there were blood
11 splatters in the ahll way that may have transfers of DNA(RT293)
12 and that they are able to get DNA from cigarette butts. (RT293-94)
13 He was then asked about the collections fromthe watchband pin ,where
14 he stated that there was no testing of the pin. (RT297:8)"To have
15 DNA, no sir. I dont know if anybody has looked atb it again. I did
16 not, and honestly, if anybody requested we do touch DNA on it, I
17 would find a way to convince them that we weren't going to do it"
18 (RT297:11-14) (see exhibit 60)

19 Later during the prosecutors closing statements he grossly
20 mistated the experts testimony as such. (see exhibit 59)(RT596)

21 "WHAT ABOUT THE WATCHBAND PIN ? THATS INPOTTANT BECAUSEW
22 LOKK WHERE ITS AT. ITS ABOVE HER RIGHT SIDE. ITS LIKE IF
23 SOMEBODY WERE TO HOLD KKK THEIR HANDS--IF A MALE WERER
24 TO HOLD THEIR HAND, AND SHE WAS STRUGGLING, SHE MIGHT
25 HAVE GOTTEN THE WATCH PIN OUT. IT WAS THE DEFENDANTS
26 WATCH PIN. [YOU HEARD THE TESTIMONY, THAT THEWATCHBAND
27 PIN DOES NOT MATCH THE WATCHBAND PIN THAT RITA HAD]
28 LOOK AT THE SIZE. I WOULD ARGUE ITS A MALES PIN
THAT WOULD SHOW ADDITIONAL SIGNS OF A STRUGGLE AND SHOW
ADDITIONAL SIGNS THAT SHE WAS, IN FACT RAPED AND THIS
WAS UNCONSENSUAL . IF YOU CONCLUDE THE MOTIVZ
IN THIS CASE WAS RAPE, THEN EVERYTHING POINTS TO THIS P
PERSON WHO COMMITTED THE RAPE.

1 DNA EVIDNCES SHOWED THAT ONLY THE DEFENDANT HAD SEX WITH
2 RITA. THERES NO OTHER EVIDNECE SHOWING THAT ANYBODY
3 ELSE HAD SEX WITH RITS OTHER THAN THE DEFENDANT

4 Because the prosecutor relied on this (watchband pin) to s
5 show that there waaas a struggle when Cobb had been killed and showed
6 that it was left behind by the actual killer when they strangled
7 her, but when it came to making comments about the facts of the
8 experts testimony Thomas fg grossly mischaracterized what was said
9 (That there was no DNA testing) by the expert. Only Thomas asked
10 the jurors to remember what was said inthe [ttestimony] placing
11 the value of this pin as being something left by the killer and
12 proof that the alleged sex at the time of the murder was non consensual
13 and had been committed by the [defendant].

14 This was a critical point in the case, where there "really"
15 was "nothing" inthe case that placed the petitioner at the crime scene
16 the day the crime ocured., And even though this expert cleared the
17 DNA matching petitioner by several days before the crime ocured
18 (RT 317) The other expert cleared the DNA by as much as one and
19 a half full days(RT490) So this mistatement was made to coerse the
20 jurors into believing that there was DNA ~~matching petitioner~~
21 onthe watchband pin and that it had been matched to pettiioner,

22 when it had not. After he had given them this gross
23 mistatement the jurors were now to believe that he had another expert
24 have this evidnece examined, only forgot to produce it ??????. Only
25 that watchband pin belonged to a right handed person. It is common
26 knowledge that right handd people wear their watch on their left
27 hand, while left handed people wear their watches on their right.
28 *PETITIONER IS LEFT HANDED.*
The prosecutor then aruzed effectively that "they" held their hands

1 over while they leaned into Rita as they strangled her from the
2 top, which would have left a watchband pin on her right side lying
3 face up from a right handed person hovering over her as they committed
4 the crime. (A watch that ~~was~~ was strapped to the left wrist of [the
5 right] handed person), This could have also been scientifically
6 supported by an expert who examined the manner which the weapon
7 that had been wrapped around the victims neck when she was killed.

8 But that the prosecutor argued that this [pin] should
9 be included in their determinations of a [element] where sex was to

10 be determined as consensual or non consensual makes this
11 mistatement that much more valuable in a defense. As like the entire
12 case, counselor Sanders did not challenge this error either, while
13 he warmed the seat in this courtroom, forfeiting this LIE by the
14 state, possibly because he didnt know that law either.....or
15 he had already told Thomas that he was not going to challenge the
16 case on any meritorious matters at all. I would not be surprised
17 if Sanders had already applied for the job as being a prosecutor
18 in that county.

19 Now when this was argued by Ferguson in habeas, he offered
20 that because petitioner could not provide who's DNA was on this
21 item, that the argument should fail. Adding that even though there
22 is another mans DNA in this bedroom does not mean they killed anybody
23 adding that possibly Mrs Cobb was collecting watchband pins.

24 (emphasis added) Petitioner filed a objection for the gross
25 and heartless comments by ferguson ~~about~~ ^{about} Cobb collecting pins.

26 (BECAUSE FERGUSON STATEMENTS WAS SO DISPROPORTIONATE TO KN ITEM
27 THAT WAS LEFT BEHIND BY THE KILLER, THEN ADMITS THAT THERE WAS
28 DNA ON THIS ITEM AND IT DID NOT MATCH PETITIONER())

1 Points and authorities listed above are hereby now incorporated

2 Perjury is defined by United States v White 2016 US District
3 LEXIS 54486 as whoever having taken an ~~oath~~ oath before a competent
4 tribunal, office or person in [any] case in which a law of the
5 U.S. authorizes an oath to be administered, that he will testify,
6 declare, depose, or certify as true, or that any written testimony,
7 declaration, deposition or certified by subscription, is true, will full
8 and contrary to such oath statute or subscription in any manner or
9 matter which he does not believe to be true in order to establish
10 due process violations stemming from the use of ~~perjured~~ perjured testimony
11 the defendant must;

- 12 1) The witness committed perjury
13 2) The government knew or should have known the testimony was false
14 3) The testimony went uncorrected
15 4) There is a reasonable likelihood that the false testimony could have
16 affected the verdict

16 See also U.S. v Agurs, 427 US 97(1976); In Re Richards 63 Cal.
17 4th 291(2016) That is reasonably probable that the false testimony
18 or evidence affected the outcome because with the exception of a certain
19 evidence the defendant's prosecutor had a substantial responsibility
20 to present evidence above the threshold of mere suspicions or circum-
21 stantiality. Further more CRPC Rule 5-200(A)(B) state that a
22 member of the bar shall employ all means that are consistent in the
23 truth, and shall not seek to mislead the judge, judicial officer
24 by any artifice or false statement of facts.....or law.

1 Analysis of ground three A through F

2
3 The prosecutor had an obligation regarding the witnesses
4 he used in trial as well as the statements he was to give the jurors
5 throughout the trial regarding facts, testimonies and witnesses
6 he presented in order to protect the integrity of the rights afforded
7 the defendants interests, When the state lead detective gave false
8 testimony the prosecutor knew or should have known regarding the
9 a) Fingerprint report b) the authenticity of the interrogation
10 transcript which he both knew was false as well as misleading had
11 an obligation to correct the statements by his detective about state
12 evidence. Only Thomas assisted, and coerced these mistatements
13 that were ~~xxxx~~ false about specific material evidences. First
14 the fingerprint report that the prosecutor corroborated was mis-
15 leading when he stated that no evidences were presented regarding
16 fingerprints. When the detective gave misleading responses a) not
17 sure there were results b) if there were any results developed
18 c) But that he knew Yablonsky's prints were not located. All of
19 which are misleading. But when an objection that is against
20 hearsay ~~xxx~~ blockades suggesting state evidences are hearsay was
21 wrong per § 1280 as explained above. Next when the detective alleged
22 to authenticate the interrogation he gave knowing false and mislead-
23 ing statements that the jury relied as factual.....and it was not!!!

24 The state then relied on two very critical witnesses
25 Nash and Sullivan who for a better way of words gave confusing state
26 ments to the jurors either contradictory to their previous state-
27 ments or one to another statements contradicting each other about the
28 last known destination of Cobb and whether anyone drove her home!!!

1 These were critical as to how and what the jurors were to
2 believe regarding the last destination of Cobb after the drinking
3 party at the Sullivans. Because neither of these witnesses gave
4 reliable testimony both should be impeached for factual material
5 evidence as to whether they gave Cobb a drive home, and whether Wash
6 did in fact drive Cobb home that night, or whether Thomas and Alex-
7 ander coerced the testimony of both these witnesses. Because of
8 the knowing~~ly~~ false statements enjoined by Thomas and Alexander
9 does suggest that they too coerced the statements before these
10 witnesses entered the courtroom on Monday .

11 These facts violated due process rights under the right to confront
12 and caused such unfairness that the entire became a sham and
13 farce regarding the states entire case. Especially when the experts
14 who placed Yablonsky at the crime scene did so by placing him there
15 from one to several days before the crime ever occurred (RI 317,490)
16 and then these witnesses gave such unreliable testimony the jurors
17 didnt have a chance to see the historical facts of the case. They
18 were shown a manufactured recording transcript that was so altered
19 that it did not resemble the actual interrogation, while they were to
20 believe Yablonsky had keys to the Cobb residence.

21 These repeated injections of falseness crippled the entire
22 case into an absolute miscarriage of justice that could not be
23 relied. As a result of the prosecutors acts and misconduct that
24 violated due process rights guaranteed petitioner habeas must be issued
25 and an order to show cause where state parties are to authenticate
26 the exhibits in this petitioner and admit their values or provide
27 such proofs that would diminish their values. These evidences are
28 material and relevant to the case and should be allowed in the record!

GROUND FOUR

1 TRIAL COUNSEL DAVID SANDERS VIOLATED PETITIONERS
2 SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL WHEN
3 HE DELIBERATELY, RECKLESSLY, INCOMPETANTLY FAILED
4 TO INVESTIGATE MATERIAL AND RELEVANT EVIDNCES,
5 WITNESSES WHILE REPRESENTING PETITIONER VIOLATING
6 DUE PROCESS RIGHTS TO EFFECTIVE REPRESENTATION
7 WHEN HE FAILED TO INVESTIGATE AND HAVE EXAMINED
8 THE RED HAIR WITH THE ENTIRE ROOTS ATTACHED,,
9 THE WATCHBAND PIN LOCATED UNDER THE VICTIMS HEAD
10 THE MURDER WEAPON FOUND ON THE VICTIMS BODY
11 THE BLOOD SNEARS LOCATED ONTHE VICTIMS BEDROOM JAMB
12 THE CIGARETTE BUTTS LOCATED INTHE DINING ROOM
13 THE ALIBI WITNESSES THAT PLACED PETITIONER AT ANOTHER
14 LOCATUION WHEN THE CRIME ALLEGEDLY TOOK PLACE
15 FAILED TO INVETIGATE GREGORY RANDOLPH
16 FAILED TO SUPRESS EVIDNECE HE KNEW HAD BEEN ILLEGAL
17 AND ALTERED.
18 REDUCING THIS CASE TO A FARCE AND SHAM.

11 Facts surrounding ground four

12 On or about May 2009 David Sanders was appointed to repres
13 ent petitioner for a serious crime #FVI900518. Upon the very first
14 discussion petitioner asked had he spoke to Geoffery Cantv about =
15 the case and Sanders admitted he had. Petitioner then asked counxsel
16 about the states entire case file and Sanders stated he was told by
17 Canty that it had already been released. Petitionenr told Sanders it
18 had not, and demanded to see the states entire case file. After
19 about a month of no response. petitionenr write and vcalled sanders
20 demanding the entire file and asked about specific investigations
21 regarding petitioners rights and interests. (see exhibit 2-1).

22 Sanders then chose to tr release only 300 of the over 50
23 5000 pages, less than 7 % percent of the states file, enclosing a note
24 saying that this is the states entire records except for the DNA
25 records for petitioner. Telling petitioner that they were difficult
26 to understand and would only coinfuse petitioner. (see exhibit 1-3)
27 Sanders was asked about specific investigations which were related
28 to viable and intelligible defenses.

1 Sanders had repeatedly asked petitione~~r~~r to waive time
2 so that Sanders could conduct investigations that had been asked
3 for by petitioner, telling petitioner he was going to investizate
4 the DNA evidence that was found at the scene, specifically the
5 desk cloth that was located which had petitioners DNA on it, because
6 Canty had stated that it wads found. Sanders was also asked about
7 the investigations to a We-Tip investiaation about a confession.
8 When petitioner spoke to Canty the first counsel from this firm
9 Canty stated that there was [nothing] that placed petitioner at
10 the crine scene that relates tothe crime, but stated this without
11 the release of any tangible papers fromthe case to support these
12 comments by coiunsel.

13 After Sanders released 300 pages of the states records
14 on June 2009 petitioner made more requests regarding the records
15 that had beebn rckleased. Specifically the transcript to the interr-
16 ogation that occured on march 3, 2009. Petitioner stated that the
17 transcript was innaccurate Sanders stated that it was on.ly an inter
18 preterd transcript. This was a 113 page version. Petitioner was not
19 told there was another version and then told Sanders that answers
20 had been changed with the interrogation transcript as weell as the
21 jail phone call transcripts. Sanders stated that if the case went to
22 trial that verbatim records woudl be used. Petitiocer did not know tha
23 suppression retrion could be used, and did not know to s ask, counse
24 did not explain possible defenses either, onlov that verbatim would
25 be used if the case went to trial. This is verified by Global tel
26 calls to (760)241-0413 from booking #0903341068 after June 2009.

27 Sanders had kept telling petitioner that he was getting
28 expert witnesses, and was having all the DNA examined by labratories.

1 In fact there was a specific motion to recuse the prosec
2 tors office where the Court specifically granted Sanders a continuance
3 to conduct certain investigations. (see exhibit 35, 36 ~~37~~ ³⁷ ~~37~~ NOTICE
4 exhibit 37 where the minute order stated motion denied and continuance
5 granted. The transcript to this hearing does stated continuance to
6 investigate. Sanders had never even filed for expert witnesses
7 stipen. In fact it was not until after the trial when Sanders release
8 another 1500 pages in March 2011 and another 1500 pages in July 2014
9 that trial counsel had not investigated one piece of evidence, had
10 challenged the states case to any degree. In fact when full disclosure
11 was made to petitioner by Hal Smith and Richard Levy that trial coun
12 els actions, inactions and failures amounted to an absolute mis
13 carriage of justice forfeiting rights , benefits, and privileges
14 guaranteeing petitioner to a fair trial by the inbusilic incompet
15 ance of David Lynn Sanders who had been a state employee and appoint
16 ed to defend petitioners rights. Once petitioner had discovered that
17 trial counsel was doing nothing more than sabotaging the entire cas
18 case petitioner filed a motion to [terminate] appointment. (see
19 exhibit 47) This was filed immediately after the petitioner had been
20 trised and convicted by fake and false evidences where Sanders did
21 not challenge the states case to any reasonable, or competent
22 degree that would lead the reasonable person to believe Sanders was
23 the defense copunselor. (see exhibit 47) Filed on February 25, 2011

24
25 c A.

26 Trial counsel had time and acces to the states entire case
27 and all the evidences collected throughout thew states case cfrom
28 9/23/1985 until 3/8/2009 when petitioner had been arrwsted as well

1 all the evidences that had been examined by state experts. Specif
2 ically a red hair that had been collected from the victims body. This
3 hair had been collectred and processed by state experts see
4 (exhibit 26) (Exhibit 26-9) That a red hair had been collected and
5 and the entire troot structure still in tact. This is valuabe not onl
6 because of where it had been found, but that it was DNA magnificent
7 accordinz the criminalist Jones (RT300-330) That hairs with the roots
8 in tact would be DNA crefible(see exhibit 60) Then that this hair
9 was in fact red, while petitioner was a blonde suspect makes this
10 evidnce material and relvant . Sanders did not have this results
11 produced tothe Court, nor did he expamine the result or did and chose
12 to forfiet those results from being known to his client or the Court.

13 This evincece is very critical tothe case, specifically tha
14 petitioners DNA was older then the crime (RT317, 490) for as many as
15 several days before the crime ovoured. Put also that the states argued
16 that Cobb pulled a watchband pin loose from her attacker, which
17 peroduced a watch band pin that was located under her head. Put
18 more imporatnly was that if she did pull that watch freee she would
19 have also been able to free the hairs thast were directly under that
20 band the pin was attached to. THE RED HAIR WITH THE ENTIRE ROOTS ATTAC
21 ATTACHERD (sTATES EVIDNECE #B67999 ITEM #A1 AND A5)(SEE EXHIBIT
22 26) Not only would this evidnced have provided anothere DNA profi
23 profile for the jurors to look into, but would have been more co
24 cuplable than petitioners DNA beoing that petitioner DNA was several
25 days older then the crime(RT317) When petitioner argued this to
26 collaterally attack the convictio under habeas these records
27 were not availabel, while DDA Ferguson argued that petitioentr could
28 not prove the hair was red, nor could he prove it belinged to ~~Cobb~~

1 Gregory Randolph, and that just because there was another
2 mans DNA inside the bedroom that it did not mean they had killed someone
3 somebody. (emphasis added) The failure to use this evidence in trial
4 was prejudicial because the states argument was that there was no
5 other DNA's located at this scene, nor was there any presented in
6 this trial, making petitioners DNA the only DNA irregardless if it
7 was older than the crime by several days (RT317, 490) Had the jurors
8 known that there was red hair found on the victims body while they
9 were looking at a blond suspect they would never reach a verdict,
10 especially since they were already deadlocked with all the states
11 facts, evidences and witnesses, anything else would have tilted the
12 scales into petitioners favor and there is not a reasonable jurist
13 on this planet that would have convicted petitioner, therefore prejudice
14 for ^{NOT} presenting the states investigations, and prejudice for failing to
15 to have this examined by states experts which would have given the
16 jurors a DNA match to the killer, irregardless if it came back to
17 Gregory Randolph or somebody else. In fact because there is another
18 mans DNA inside that bedroom does infer that they are the true kill
19 ers in this case, especially when petitioners DNA is expertly examined
20 to be older by several days (RT490, 317) (emphasis added).

21
22 B.

23 Like above Sanders had access to the states case, especially
24 when Myler had given him all the evidences before trial. Sanders knew
25 that the states intended on using DNA evidence that was located under
26 the victims head. (watchband pin (Item #A15) Sanders knew that the
27 statew prosecutor would be relying on this evidences to support his
28 element of the charge of intent and knew that this was DNA

1 credible and withheld that it existed from his client so that specific
2 investigations could not be asked for. Sanders knew that this was
3 credible evidence and could be used as a defense when his client spe
4 cifically stated that he was last with Cobb the week before the crime
5 crime occurred. (see exhibit 2, 3) Sanders knew that this DNA
6 evidence should have been examined or was told by the prosecutor
7 it had been examined and failed to challenge the states case for
8 the relevance of this material ~~and~~ evidence that was located
9 in a remote ~~sp~~ spot, under the victims head, and ~~failed~~ ^{Failed} to have this
10 this evidences examined. Sander knew that the prosecutor would be
11 using this evidence and knew that the prosecutor would be telling
12 the jury that it belonged to the defendant Mr. Yablonsky. (RT596)
13 (see exhibit 59) Sanders failure to have this examined by experts
14 or to challenge this evidences to any certain degree was prejudicial
15 not only because he could have used the different DNA profile other
16 that petitioners that would have come off this evidences but it
17 would have reduced the prosecutors argument to show it had
18 belonged to someone else. DDA Ferguson argued that counsel did not
19 have this examined because it may have come back matching the
20 petitioner. Adding that just because there was another man DNA
21 in the bedroom where Cobb was killed does not mean they killed some
22 body. Further adding that maybe Cobb collected watchband pins from
23 her killers and kept them. *(emphasis added)(EMPHASIS ADDED !!!)
24 Failing to inform his client of its existence was prejudicial, while
25 failing the opportunity to have it examined reduced the trial to
26 a farce and sham, because this evidences was relevant, and material!!!
27 Sanders failed to challenge the states use of this evidence nor
28 did he bring to the attention that it was DNA magnificent!!

1 Just as the red hair there was no tactical reason to not
2 challenge the states case which DNA would have dramatically undermine
3 the states theory that petitioner had committed the crime relying
4 on false statements in an illegal interrogations. Where DNA matching
5 petitioner to the scene was older than the crime by more than one full
6 day and as many as several days before the crime occurred, making this
7 item left behind by the killer extremely critical and failure to ~~ex-~~
8 examine it very prejudicial. Because Ferguson argued that because
9 petitioner cannot prove who it belonged to does not satisfy the
10 prosecutors responsibility to prove beyond reasonable doubt., Only
11 how they place that burden upon petitioner while he is in a concrete
12 tomb to make this showing. Had these results been shown to a reason-
13 able jurist there would not be one jurist on this planet who would
14 have reach a verdict of guilt. Especially when the trial was close
15 where the jury actually deadlocked with no evidence at all, making
16 this evidence that much more powerful.

17
18
19 ~~or~~

C.

20
21 With the above in mind, the counsel also knew that there
22 was a murder weapon located around the victims neck, and that the
23 state also intended on using this evidence to show how the victim
24 was killed while states expert Jones qualified solid non porous
25 objects as powerful DNA materials and that there would be DNA on
26 this specific item. Sanders knew this and knew that the DNA matching
27 petitioner was in fact the result of the encounter he had with Cobb
28 the week before the crime occurred as petitioner told him this before

1 petitioner ever seen one piece of evidence showing that petitioner
2 was in fact telling the truth when he stated it was the week before
3 Cobb had been killed that he was sexually with her. Making it that
4 more important that Sanders have this evidence tested when his client
5 states that he wanted all the DNA evidences tested. Specifically the
6 the murder weapon. This was states evidence Item # 23 (Metal coat
7 hanger) States expert testified that this would be DNA credible while
8 Sanders already knew this when Myler and Alexander gave him the states
9 complete file and all DNA evidences. Sanders did not have this evidence
10 tested and did not challenge the states use of the weapon ~~whether~~ making
11 this material and relevant evidence be forfeited. Sanders could have
12 validated his clients statements that he was innocent and have all
13 the evidences examined as he told his client that he would, only
14 Sanders forfeited this opportunity to place the states case to [some]
15 adversarial challenge. (see exhibit 50) Sanders had sent the states
16 file to an expert for estimate so that the estimate could be used
17 to file for P.C. 987.2 stipen for DNA examination. When the experts
18 stated that the case required mandatory examinations Sanders failed
19 to secure that opportunity as he did the rest of petitioners case,
20 ^{Fixed} to place the states case to [some] challenges, especially if these
21 opportunity had merit. DNA had merit at this trial. Especially
22 since the prosecutor placed this into a DNA case. Forfeiting this
23 opportunity to show the jurors that the murder weapon was never
24 touched by petitioner would have crippled the states entire case.

25 This failure was prejudicial because this examination
26 would have presented another DNA for the jurors to examine and since
27 petitioners DNA was older then the crime , the murder weapon
28 could have proven the entire case and acquitted petitioner.

1 With the results of this evidence before the jurors
2 who in this case were paying attention and were reasonable. That
3 there is not one reasonable jurist that would have reached a verdict
4 of guilt, making this failure critical and prejudicial.

5
6
7 D.

8
9 The states experts located blood smears on the bedroom
10 doorjamb in this case. They later determined this blood to be the
11 victims blood and had been smeared into the jamb leaving fingerprints
12 that were unreadable. States experts testified that this type of
13 evidence would have touched DNA and could produce a DNA profile
14 regarding who smeared the blood, and may have come back to matching
15 someone other than the murder victim herself. In fact because Cobb
16 was found in her room laying on the bed with blood smeared on her
17 face could have been determined that the killer had smeared her
18 blood into the jamb. Even if the prints were unreadable, there would
19 have been DNA because there were partial prints that led one to
20 believe that the killer did not wear gloves. Confirming that the
21 murder weapon as well as the watchband pin had DNA as well.

22 Sanders knew that this was a DNA case and that petitioner
23 DNA had been cleared for the time the crime was committed as his
24 client stated (RT317, 490) and would have been able to have this
25 evidence examined for another DNA profile. Because Sanders had sent
26 DNA records to experts who stated this case needed mandatory
27 review that this evidence would have been material and relevant
28 as to who killed Cobb and then left her blood on the door jamb.

1 Failure to test this evidence and place the states case
2 under some challenge was prejudicial and causes caused irreparable
3 harm to petitioners case to challenge the states case in his defense.
4 Furthermore Sanders did not reveal this information to his client
5 until after the trial had been completed and the injury sustained.

6 Because this evidence had not been secure the opportunity
7 to present this to the reasonable jurist was prejudicial as to who
8 actually killed Cobb and left their handprint in her blood as their
9 calling card and Sanders forfeited that opportunity as the rest
10 of the opportunities he sacrificed incompetently.....or deliberately!!

11
12
13 E.

14
15 Sanders knew that there was evidence collected at
16 this scene that came from the victims dining room as a tray that had
17 eight cigarette butts in it. Sanders knew that this would have
18 supported the third party culpability to Gregory Randolph who confessed
19 to the this crime. (see exhibit 15, 16-6, 16-7, 16-5,)

20 Three of the cigarette butts collected from the crime
21 scene were matched to Randolph while two matched Kramer, and
22 one of the butts matching Randolph also had Cobb DNA on that as
23 well. Sanders knew this, and when he alleged to try to get this
24 third party evidence into the states records, the Court asked for
25 indications of reliability to show some (reliable source) of the confession
26 made by Randolph on 8/6/88 that he alleged to kill Cobb. The
27 Court of appeals admitted that the Court violated due process (COA14)
28 by forbidding access to the we tip confession, which needed support

THE RESULT OF THE CONFESSION LED TO POLICE INVESTIGATIONS
CORAM NOBIS- (S) 147

1 (See exhibit 52) and that the we tip was an exception
2 to hearsay if trial counsel had argued the result of it ereport
3 under (People v Waidla supra, 22 cal.4th at 724) only counsel
4 failed to know the laws surrounding his alleged strategy of tactical
5 choices. This was supported by the Court of appeals ruling in
6 (Case #FO55840) Because trial counsel did not examine this evidence
7 he should have known would have placed Randolph at the scene he
8 earlier told police he had not been at the scene for two weeks
9 prior to the crime being committed. But more importantly this would
10 have supported a motion to complete compell discovery that would
11 have produced the arrest warrant, the interrogation transcripts
12 for when Randolph had been arrested on August 10, 1988 after
13 the confession instigated a flurry of investigation, and arrest.

14 Knowing that these cigarette butts came back matching
15 *Kenner, Cobb, Sanders and Randolph* everyone other than the client and did not match his client's
16 then that much more credible regarding a defense, showing that this
17 opportunity was also forfeited matched the momentum of this trial
18 counsel's abilities. That Sanders did not know, or understand about
19 the duty he owed his client about presenting a defense, or at least
20 challenge the state's case to some degree, but to not challenge
21 the case to any degree is not only incompetent but agrees with
22 petitioner's summation, that Sanders assisted the prosecutor in alter-
23 ing evidence, and then hiding the facts to prevent direct appeal
24 making this failure doubly prejudicial. Because not only was the
25 trial reduced to a sham and farce, but petitioner's right to
26 direct appeal was also prejudiced by this incompetence display
27 of a trial attorney.

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Trial counsel Sanders was told from the very beginning of the representation of petitioner that he was innocent and that he was not in Lucerne Valley for the week end that Cobb had been killed and was in Downey California over 160 miles away with an entire family who would have and could have vouched for him. This petitioner was in Downey from Thursday September 19, 1985 and as early as September 18, 1985 until September 24, 1985 when he returned with his wife Holly and son John Jr. Petitioner told his counsel that one of the parties that could verify this was his mother in law who was a retired laws enforcement named Linda Mitchell. Sanders stated that she was on the prosecutors list as a witness. Petitioner gave Sanders questions that he could ask her that would verify that petitioner was in fact in Downey when this alleged crime occurred with at least ten other family members from the Mitchell, Mullen family visiting with his wife and son.

When Sanders responses were negative and unreliable regarding this alibi testimony petitioner filed and prepared subpoenas for Holly Mitchell/Yablonsky/Brown and Linda Mitchell and sent them to Sanders for service. Sanders stated that it was not necessary that they would be at the trial. Petitioner asked had he investigated these witnesses and Sanders stated that he had not. (see exhibit 38) These were prepared by petitioner and sent to trial counsel before the trial occurred. When trial started petitioner asked the prosecutor whether Linda and Holly Mitchell were going to testify and Thomas stated that Holly was crazy as a loon and that she would not be there to testify. Possibly because Sanders had told

1 that his client had prepared a series of questions that would have
2 gotten alibi responses verifying that petitioner was in fact in
3 Downey at the time this alleged crime occurred. In fact because these
4 witnesses were used to develop the state case about alleged
5 violent behavior by petitioner to Holly (his ex wife) that these
6 witnesses needed to be there to be examined and were not. In fact
7 petitioner had told Sanders that there would be two witnesses in the
8 courtroom audience that were there to validate the allegations about
9 Yablonskys' abuse to Holly that was not only a lie, but would have
10 provided credibility issues with these witnesses had the state
11 relied on their statements given in 2009 that Yablonsky had beat
12 Holly.

13 In fact petitioner gave Sanders a list of possible leads to
14 to Holly's medical records that would have supported that Holly was
15 Masochistic and would cause harm to herself which her police retired
16 mother would have corroborated and been morally obligated to admit
17 this on the records about her daughter. Furthermore Sanders would
18 have been able to probe for names of other witnesses that were
19 also at the family gathering at the Mullen residence that weekend
20 who gathered for Holly's last visit for some time due to her being
21 due to deliver almost anyday.

22 Because these witnesses were not in the courtroom and were
23 on the prosecution's witness list and Sanders did not protect this
24 valuable defense by filing and serving the subpoenas suggest that
25 he was "assisting the prosecution's" case at every opportunity he could
26 ~~prevent~~ preventing this reliable and credible alibi testimony. In fact
27 petitioner's own daughter Jasmine Shawnda Jade, Yablonsky (the ¹⁹⁸⁵~~1985~~
28 child) at the time of the alleged crime was in the Courtroom with

1 with her cousin that could have also provided corroborating testimony
2 that John was in Downey for the weekend before Jasmine had been
3 born. It would be impossible to remember dates, but an event such
4 as giving birth would have tabbed the timeline to something more
5 memorable where this could have been ~~remembered~~ ^{remember} with specificity.
6 The family gathering at the Mullens included Hollys uncle, and his
7 wife. His two children. Hollys mother, and sister Joy Mitchell, as
8 well Thomas and June Mullen. All of the information here was given
9 to Sanders, who for some reason relied on the prosecutors witness
10 list to provide the alibi testimony as stated above. But Sanders
11 entire conduct pretrial, and during trial suggest that Sanders
12 bagged these witnesses with the assistance of Thomas to prevent the
13 alibi testimony needed in this case. Failure to interview, or subpoena
14 these witnesses was very prejudicial and would have been able to
15 provide reliable corroborating testimony that matched the DNA in
16 this case (RT317, 490) That petitioner had been with Cobb the week
17 before and there was NO OTHER EVIDENCE IN THIS CASE OR EXISTANCE
18 THAT PLACED PETITIONER IN THAT HOUSE THE DAY THE CRIME OCCURED!!!!!!

19 Because Sanders knew these were valuable and would have
20 been verified, yet he chose to forfeit these opportunities he per-
21 judiced petitioner beyond understanding. Had these witnesses been
22 allowed to testify in trial along with the less than weak case the
23 prosecutor presented, there is not one reasonable juror on this
24 entire planet that would have found petitioner guilty beyond reasonable
25 doubt. In fact the case was so close to acquittal anything leaning
26 towards not guilty would have completely undermine the entire
27 states case and an acquittal would have been the response!!

1
2
3 As stated above that Gregory Randolph had confessed to
4 this crime and state sheriffs had processed investigations that
5 could have supported the arrest that occurred on or about August 10,
6 1988. Sanders knew all of this and knew that the result of the wa-
7 tip report that led to investigations where Gregory Randolph had
8 been suspected of not only the Rita Cobb murder, but was also
9 a suspect in Helene Errooks=murder that occurred a couple months
10 before the Cobb murder and was committed in a very similar manner
11 as well as circumstance. (see exhibit 13, 19, 17, 16)

12 Sanders had all this information and withheld this from his client
13 when he gave petitioner 300 pages of the over 5000 pages., When
14 petitioner asked for these records in May 2009 (see exhibit 1,2)
15 Sanders chose then to hide them from petitioner. Sanders admitted
16 on the record during narsden hearing that he withheld the states entire
17 file even after his client had begged for them. (see exhibit 4)

18 Sander failure to investigate this specific evidence for-
19 feited third party culpability opportunity where direct or cir-
20 cumstantial evidence was needed to attach another person to the
21 crime. The confession was hearsay without the investigations, but
22 with the investigations which could have provided matches to the
23 cigarette butts at the scene. (see exhibit 17) would have been
24 enough to get this information into the trial records and the jurors
25 would have been made aware of the person who not only admitted
26 to being at the residence, but also provided a confession that stated
27 he last seen Cobb at the very bar she stated she was going. (see
28 exhibits 13, 161, 25)

1 This failure was very prejudicial as stated above that
2 the Court of appeals for this stated that this information would
3 have been allowed under state law had the trial attorney known the
4 ;law, but because Sanders did not the trial, Court violated due
5 process rights by withholding this information from the jurors
6 (COA 14) (see exhibit 52) Furthermore Sanders not only failed at
7 this point but withheld these facts until July 2014 after the direct
8 appeal had been exhausted, further injuring petitioner's due process
9 rights to a fair trial and fair direct appeal. The cigarette butts
10 were matched to the crime scene among the other characters provided
11 by the state and federal governments. (see exhibit 19) where Gregory
12 Randolph was most likely to have been the true killer, and Sanders
13 knew this and chose to refuse any investigation efforts for missing
14 this opportunity for his client. Had this information been made known
15 to the jurors there is not one reasonable jurist on this planet that
16 would have found defendant guilty and would have acquitted petiti-
17 oner. Even after the trial jurors told the media there was no evidence
18 and that was why it took so long to decide. (see exhibit 32,46)
19 SOME JURORS FELT THEY NEEDED MORE EVIDENCE!!!! This failure to invest-
20 gate fits into the character of Sanders trial capabilities in this
21 case. That he either did not care to do his job, did not know how
22 to do his job, or had assisted the state prosecutor win reaching
23 a verdict of guilt for favor later on in his career.

24
25
26 Sanders had all this evidence and time to investigate
27 and when he was told by his client the interrogation transcripts
28

1 were incorrectly transcribed and illegally collected he forfeited
2 the opportunity as discussed above to suppress this interrogation
3 transcripts that were used in trial that showed petitioner had
4 lied to the detectives on March 8, 2009. Had Sanders filed a suppression
5 motion it would have had merit because the evidence had been
6 illegally collected outside of MIRANDA and had that motion been
7 denied it would have been reserved for appellate purposes. ~~at~~

8 Petitioner told Sanders that he did not give some of
9 the answers the transcript was recorded saying, and had Sanders
10 filed the motion to suppress it would have been granted, and possibly
11 had the case thrown out for fraud the state parties committed....
12 unless Sanders did in fact assist these parties in creating this
13 false evidence that were created after Yablonsky sued Ramos
14 (see exhibit 35) Because the suppression motion was never filed,
15 the false evidences were then presented into the courtroom even
16 after the judge basically begged Sanders to challenge this in
17 the hearing inside chambers out of the presence of petitioner on
18 January 26, 2011. (see exhibit 42, 43) Sanders stated then that
19 he will not enter an objection, nor will he file suppression motion
20 that would have protected his client from deception by the state
21 who had no case without this manufactured piece of evidence that
22 was used on January 27, 2011 where the jurors were told that
23 Yablonsky not only lied to the cops about his sexual relationship
24 but held a key to the Cobb home for months after they moved out
25 so he could return and commit a crime. Failure to suppress this
26 valuable opportunity to destroy the states case prejudiced petitioner
27 beyond repair as the state habeas court and federal habeas court
28 were made to hear that evidence was used to show the jurors that
petitioner had lied to the cops therefore he is guilty of killing
2855.

1 Had this evidence been suppressed the prosecutor would have
2 been left with the fact that petitioners DNA which had been examined
3 and verified as the result of an encounter that occurred several days
4 before the crime occurred and [nothing] else indicating petitioners
5 guilt. But because this evidence was not suppressed the prosecutor
6 had an opportunity to alter the course of the trial with inferences,
7 possibilities, and propensity of a piece of evidence that was so
8 contaminating and worthless for its values with accuracy. The prosec
9 had no case without this critical piece of evidence he altered to
10 support his theory, that because Yablonsky lied to the cops about
11 his sex with Cobb then he [must] be the killer.....look he had a key
12 to Cobb house.....weren't you listening ??

13 Points and authorities above incorporated herein along with these
14 for ground four

15
16 An attorney can ^{be} liable to former client for actual fraud
17 if the elements are proven Frost v Fanscome(1926)198 550 559 246
18 p.53 It is an attorney's duty to protect his client in every possible
19 way and it is a violation of that duty for the attorney to assume
20 a position that is adverse or antagonistic to the client without
21 the latter's free and intelligent consent given [after] full knowledge
22 of the facts and circumstances Anderson v Eaton (1930)211 CAL 113.

23 Collateral attack on the basis of newly discovered evidence
24 only if the new evidence casts fundamental doubt upon the accuracy
25 or reliability of the proceeding. In Re Hall(1931)30 CAL.3d 408;
26 In Re Webber(1974)11 Cal.3d 703; In Re Branch (1969)70 Cal.2d 200
27 Only if the new evidence casts doubt upon the unferringly accuracy
28

1 and reliability of the proceedings at guilt phase of the hearings.
2 It must undermine the the entire case and point toward innocence
3 or reduce culpability People v Gonzales (1990)51 Cal.3d 1179.

4 Defense counsels incompetance resulting in failure to
5 discover and present evidence is a basis for habeas corpus if it
6 under mines the prosecutions case. The presumption that the essential
7 elements of an accurate and fair proceeding were present is not
8 applicable. None the less petitioner must establish prejudice as
9 demonstratable that counsel knew or should have known that further
10 investigations was necessary and must establish the nature and relevance
11 of the evidence the counsel failed to present and or discover.
12 Prejudice is established if there is a reasonable probability that a
13 more favorable outcome would have resulted if the evidence was prese
14 nted Strickland v Washington(1984) 466 US 668 : People v Gonzales
15 supram 51 Cal.3d 1179,

16 None the less petitioner must establish as a demonstratable
17 reality not simply speculate as to the effect of error, or omission
18 of the counsel (citation) Petitioner must demonstrate counsel knew
19 or should have known that further investigations was necessary and
20 must establish the relevance and nature of the evidence counsel fail
21 to present or discover People v Williams(1988)44 Cal.3d 883.

22 Ignorance of the laws and responsibilities was not this
23 counsels only fatal flaw which denied petitioner his right under the
24 sixth amendrent and ineffective assistance claims are better address
25 unde r habeas collateral attacks, rather than direct appeal. even
26 though in petitioner direct appeal the court recognized the incompet
27 etance (CCA 14). Since the record of appeal often does not fully
28 illuminate the reasons for trial counsels actions or omissions

1 However in cases such as this those facts could have been
2 hidden or withheld where counsels explanation for the poor performance
3 an issue which should be considered here rather than on direct appeal
4 People v Mendoza Tello, (1997)15 Cal.4th 264; In Re Jones (1996)13
5 Cal.4th 552. Further the Court in this case heard a motion for new
6 trial where competence of counsel was at issue and in that hearing
7 the Court relied on the counsels performance inside the courtroom
8 which was ~~not~~ incorrect by prejudice on petitioner for the case
9 had not been investigated at all much less sufficient to make the
10 much needed and required decisions that would have protected petitioner
11 ~~rights~~ rights. Under the sixth amendment of the United States consti-
12 tution and article I section 15 of the California constitution a
13 criminal defendant has the right to assistance of counsel "An accused
14 right to be represented by counsel is a fundamental component
15 or our justice system. Lawyers in criminal cases are [necessities
16 and not luxuries]. Their presence is essential because they are
17 the means through which the other rights of the person on trial
18 are secured. Without counsel, the right to a trial itself be "of
19 little avail" United States v Cronin (1984) 466 US 648. This right
20 also guarantees the right to [effective] representation, not just
21 some bare assistance. McMann v Richardson (1970)397 US 759; People
22 v Ledesma(1987) 43 Cal.3d 171 "That a person who happens to be a
23 lawyer is present at trial along side the accused is not enough
24 to satisfy the [constitutional command]" Strickland v Washington
25 (1984)466 US 688. In other words, "because the right to counsel
26 is so fundamental to a fair trial, the constitution cannot tolerate
27 trials in which counsel, though present in name, is unable to assist
28 the defendant to obtain a fair decision on the merits" Evitts v
Lucy(1985) 469 US 387

1 The right to counsel thus encompasses the right to effective
2 triver assistance of counsel (citation) United States v Cronin
3 supra, 466 US at pp.654 (The sixth amendment requires counsel act-
4 ing in the role as an advocate (citation)(id at p.656)
5 Generally a defendant claiming incompetence of trial counsel must
6 show both that counsel's assistance was deficient and that this def-
7 iciency performance prejudiced the case. Strickland v Washington
8 supra, 466 US 668; People v McDermott(2002)28 Cal.4th 946. However
9 in United States v Cronin 466 US 648, The Supreme Court held that
10 per se reversal is required when counsel entirely failed to
11 [subject] the prosecution's case to meaningful adversarial testing."
12 (id at p.659) The fundamental question is whether the "[process]
13 has lost its character as a confrontation between adversaries:
14 (Id at pp.656-657) If so, then it is not necessary to demonstrate
15 actual prejudice. This exception to the prejudice requirements may
16 arise in several different contexts. [Most obvious], the Cronin
17 Court noted "is the complete [i.e. actual] denial of counsel"
18 (Id at p.659) Of course that is only part the issue here. But Cronin
19 Court also noted the possibility of constructive denial of counsel
20 when, although counsel is present, the "performance of counsel
21 is so inadequate that, in effect, no assistance of counsel was
22 provided"(Id at 654 fn.11)That is precisely what happened in this
23 case here. (emphasis added)

24 Because the Court "normally apply a strong presumption
25 of reliability upon the proceedings "in cases of mere attorney n
26 error, "defendant are required to overcome the presumption by "Show[ing]
27 how specific errors of counsel undermine the reliability of the
28 finding of [guilt](citation)

1 Roe v Flores -Orteza(2000)529 US 470. Where defendants
2 are actually constructivelydenied the assistance altogether
3 , however no specific showing of prejudice is required because
4 the adversary process itself is [presumptively] unreliable""(Id at,483)
5 In Cronic the defendant was indicted on mail fraud charges involving
6 a check kiting scheme where checks were transferred between
7 banks in Florida and Oklahoma. When defendant there retained counsel
8 who withdrew shortly after the scheduled trial date the Court appointed
9 a young lawyer with a real estate practice who had no trial experience
10 in jury trials, was allowed to represent the defendant, but
11 only allowed 25 days to prepare for trial

12 While the prosecutor had four and a half years to prepare
13 and review the thousands of documents to the case. The defendant was
14 convicted while the Court of appeals reversed the matter under the
15 sixth amendment that had been violated. The Court based its inference
16 on the circumstances surrounding the representation the defendant
17 received 1) Time offered to investigate and prepare 2) the experience
18 of counsel 3) the gravity of the offense 4) the complexity of possible
19 defenses and 5) the accessibility of the witnesses. The Supreme Court,
20 while reversing the lower Court decision utilized these factors.
21 United States v Cronis supra 466 US 648. The holding in Cronic was
22 reiterated by the Supreme Court in Bell v Cone(2002)535 US 685. The
23 United States Supreme Court in BELL explained that it identified three
24 situations implicating the right to counsel that involved circumstances
25 so likely to prejudice the accused that the cost of litigating
26 their effect in a particular case is unjustified(citation) First and
27 foremost obvious was the complete denied access to counsel(citation)
28 A trial would be presumptively unfair, we said, where the accused
is denied

1 is denied the presence of counsel (citation) [fn omitted]. Second
2 that a similar presumption was warranted if counsel entirely fails
3 to subject the prosecution's case to meaningful adversarial testing
4 (citation) Finally we said.....where counsel is called upon to render
5 assistance under circumstances where competent counsel very likely
6 could not, the defendant need not show that the proceedings were
7 affected (Id at 695-96) Under Cronic and Bell prejudice is presumed
8 only under the most egregious conditions. Error by counsel may be
9 presumed in the rare circumstances when counsel's actions undermined
10 the reliability of the finding of guilt, such as, when counsel has
11 repeatedly slept through a guilt phase (e.g. Burdine v Johnson, (2001)
12 262 F3d 336) counsel was intoxicated during trial (e.g. States v Keller
13 (1929) 57 N.D. 645; or counsel had a conflict in interests affecting
14 the performance (~~RELEVANT~~ Cuyler v Sullivan (1980) 456 US 335

15 LACK OF PREPARATION

16 In sufficient preparation for trial may be constitutionally
17 ineffective assistance of counsel In Re Gay (1998) 19 Cal.4th 771;
18 People v Polin (1998) 18 Cal., 4th 297; See rules of professional conduct
19 Rule 3-110. "To render reasonable competent assistance, an attorney
20 in criminal cases must perform critical duties. Generally the sixth
21 amendment requires counsel's diligence, active participation in the
22 proceedings, knowledge, and understanding of the laws and a duty to
23 diligently investigate carefully all defenses of fact and law that
24 may be available to the defendant. (citation) This includes conferring
25 with the client [without undue delay] and as often as necessary to
26 elicit matters of defense (citation) People v Pope, supra 23 Cal.3d
27 412; People v Ferryman (1993) 6 Cal.4th 1048. Wiggins v Smith
28 (2003) 539 US 510 (That adversarial testing required thorough

1 investigations, describing the significance of those investigations
2 before making critical decisions. In this case there was no request
3 for DNA funding through P.C. 987.9, hence all DNA in this case was
4 therefore prejudiced for failure to challenge its values and integrities
5 as well as all the DNA qualified evidences that were not presented
6 in this case that were relevant and material. Rombilla v Beard(2005)
7 545 US 374; In Re Cox(2003) 30 C4th 643, where investigations showed
8 that testimony would have been impeached

9 10 ANALYSIS OF COUNSELS INCOMPETANCE

11
12 Bringing the Court focus on the DNA that was presented in
13 this case. (RT317 criminalist Jones who stated that solid surfaces
14 would carry DNA possibilities. That he did not examine the watchband
15 pin, and the DNA matched to petitioner was the result of an encounter
16 that occurred several days before the crime of murder occurred and that
17 he was certain of that finding) (RT490 Dr Saukel stated that there
18 was no physical or scientific evidences Rita Cobb had been raped, and
19 that the DNA matching petitioner was the result of an encounter that
20 occurred as many as one full day before she had been killed, and as
21 many as up to one and a half full days before Cobb had been killed)

22 Neither of these experts were contested, standing this
23 FACT inside the courtroom. The other evidences in this case involved
24 the illegal intrusions into one's privacy protected by the fourth
25 amendment while a warrant for arrest was on the record. That collection,
26 although illegal had no value until the officers chose to present
27 this to the court, after that evidence had been tampered, altered, and
28 doctored to show a different result than the real time recordings.

1 The jurors were listening to the three week trial where
2 that state presented experts that verified that Rita Cobb had been
3 killed on or about September 20, 1985 by strangulation and the use
4 of a murder weapon that was rapped around her neck and twisted until
5 she turned black. These experts testified that Mrs Cobb hyoid
6 bone had been crushed and that she had a laceration on her upper right
7 outer shoulder and ribcage area. The jurors then heard that Cobb
8 had past been seen by her son six weeks before she had been killed
9 but he was the one who found her after she called him with a distress-
10 ing call that Friday before (September 20, 1985) asking for his
11 help because someone scared the hell out of her. The jurors heard
12 that Cobb was last seen at the Sullivan drinking party and that
13 she arrived at the party around 7:45 p.m drinking a bottle of bourbon
14 herself and then drank more after she finished the first bottle.
15 The jurors heard that when Bruce Nash was about to leave that he
16 offered Cobb to drive her home, but that she refused his offer
17 so he and his wife Cynthia Hopoper left around 2100 that evening.

18 The jurors then heard contradictory testimony by another person
19 who seen Cobb at that same party and stated he remembers seeing
20 Nash giving Cobb the ride home, and that he drank while lightening
21 with her before she left the party around 2200 that evening. They
22 were also made to listen to the testimony of Francesca Sullivan who
23 stated that she remembers Cobb likeing men and went to the bars alot
24 while not telling the jurors what time she left the party.

25 The jurors heard that the state had a reliable witness
26 who seen a specific vehicle parked in the Cobb c driveway and that
27 she knew this to be a Ford Pinto and that it was silver in color.
28 They then heard how these evidences that were collected were cross

1 contaminated ~~ex~~ when they were collected by detective McCoy who
2 also took pictures of the scene, while admitting to the jurors that
3 there was a six pack of beer missing from ~~the~~ table~~s~~ that he had
4 included in his sketch of the scene he made before taking photos.
5 The jurors heard great details about how the petitioners DNA had
6 been placed into this CODIS data base and matched him to the crime
7 scene, while being told that this DNA that was collected from inside
8 the vagina of Rita Cobb had been placed there as much as several
9 days before she had been killed to as little as one and a half days
10 before she had been killed. The jurors were told how there were
11 no fingerprints to the case, and then told that they would listen
12 to a recording and given a transcript to read along with of the
13 interview that occurred on March 8, 2009. The jurors were told
14 that this transcript was accurate to the best of the detective's
15 ability and made to listen to how petitioner lied to the cops about
16 his sexual relationship with Cobb.

17 The jurors heard the state case for three solid weeks of
18 gruesome photos of the victims neck, hyoid bone and her dead body
19 laying on her bed with ~~her~~ legs spread and photos of a watchband
20 pin laying underneath her head and told that the expert did not
21 match petitioner's DNA to this item even though the prosecutor during
22 closing arguments stated that the expert testified it belonged
23 to the petitioner.....and still came back hopelessly deadlocked
24 after three days of deliberations. All of this above before the
25 jurors and they still deadlocked, WHY????? Because they were listening
26 to the state case, and even asked about the validity of the interview
27 as to whether it was illegal or not, and were misinstructed by the
28 Court about that !!!!!

1 While this panel of reasonable jurists were listening and
2 paying attention to [all] the evidences in the case asking who spoke
3 about Joseph Saunders at the party first, and asking
4 that testimony be read back, and then concluding they were
5 deadlocked. (see exhibit 67 pp.29) Trial counsel Sanders happened
6 to admit to all of this during another case where he not only
7 defaulted for failing to respond timely there by admitted
8 to all of these allegations by failing to respond timely to
9 that as well. (see exhibit 66) Admitting that he withheld 4700 pages
10 expecting his client to make reasonable decisions from that first
11 300 pages he released in June 2009 for the trial in 2011. Sanders
12 admitted that he never examined a) the watchband pin b) the red
13 hair c) or even authenticated the interrogation recording. He
14 admitted that he helped alter the recordings and that he scheduled
15 trial dates without having one piece of evidence tested [at all]!!!

16 David Lynn Sanders forfeited every opportunity that was
17 available to ^{his client} him by the states release to him and his clients pleas
18 for a defense providing reliable persons and evidences for his defense
19 and still made incompetent decisions to not investigate the evidences
20 in this case. While he had moved the Court eight times for contin-
21 uances for the opportunity to investigate. (see exhibit 67) In
22 fact at one point Sanders stated that he filed a motion for change
23 of venue, only the case summary is vacant, while it does show that
24 Sanders filed a faulty motion in another persons name regarding
25 two of the states critical witnesses. (see exhibit 49, 67) He
26 also filed a recusal motion in the wrong capacity as there being
27 a conflict between Michael Ramois and petitioner through jail house
28 treatments which the Court denied for several reasons but mainly

1 that Sanders did not know that law either and failed to perfect
2 it by not serving the attorney general. (see exhibit 36, 37)

3 This case was reduced to less than a sham and farce,
4 it amounted to a circus where Sanders assisted in, participated
5 in, allowed and or just did not have his clients interests when
6 he;

- 7 a) failed to file change of venue when the prosecutor flooded the
8 community with prejudicial flyers right before the trial
9 (see exhibit 32, 33)
- 10 b) Deliberately withheld records from his client so that he could
11 hide his incompetence until after direct appeal (see exhibit, 3, 4)
- 12 c) Made reckless and prejudicial errors to not have [anything] tested
13 in this case after he initially was told by experts that this
14 case required mandatory examination. (see exhibit 50)
- 15 d) Failed to subpoena alibi witnesses as he relied on the prosecutors
16 witnesses list allowing the prosecutor to know that Lind and Holly
17 Mitchell were expected to exculpate petitioner with alibi test-
18 imony 38)

19 The record is completely blank for trial attorneys proof
20 of competence while the case summary shows he knew to ask for
21 continuances to investigate. Had any one of these evidences been
22 presented to the jury in the capacity and volume of a thimble they
23 would have completely altered the course of the trial forcing the
24 state to abandon the charges or face acquittal, and because the
25 level of incompetence is of such great volumes prejudice should
26 not be required. But while each of these pieces of evidence, defense
27 opportunities found the hands of Sanders, they diminished, vanished
28 and or changed into different evidences as trial counsel sabotaged,
traded, and conspired to force this case into a verdict of guilt.
Well, he would not stand in the courtroom when they announced they
had a verdict on February 2, 2011. Sanders did not present one piece
of evidence or reliable authority throughout the entire case .

1 Sanders did not do an opening statement, cheated his
2 client out of an opportunity to tell his side of the story which
3 had been blown completely out of context regarding the lies in the
4 interrogation (states theory) and about his involvement with the
5 deceased Rita Cobb. Sanders closing statement was about baseball
6 and the density of bats, while he led the jurors into history about
7 animals into the wilderness. In fact Sanders is such a team player
8 that he assisted Detective Alexander and BDA Thomas in changing the
9 trial transcripts where Alexander stated that he did not know anything
10 about any fingerprint report. (see RT 59, 29 ,) There was not one
11 thing competent about Sanders while he could not argue law with the
12 Court about facts he tried to bring into the record (Gregory Randolph
13 (Bruce Wash conversation with Cobb the night she was killed) or was
14 he able to provide one authority regarding their party culpability
15 outside the [hall theory] He forfeited petitioners right to a fair
16 trial, forfeiting rights to due process in so many ways and did this
17 with absolute ignorance of the applications of law, or rights afforded
18 the people he swore to defend. *THEN TRIED TO HIDE THESE PROCEEDINGS*

19
20
21 GROUND FIVE

22 PROSECUTOR THOMAS AND COUNTY PROSECUTOR MICHAEL RAMOS
23 VIOLATED DUE PROCESS RIGHTS AFFORDED UNDER THE FIFTH
24 AND SIXTH AMENDMENTS TO A SPEEDY TRIAL WHEN RAMOS
25 USED PETITIONERS CASE IN A CAMPAIGN SMEAR POLLUTING
26 THE ENTIRE VENIRE OF JURISTS AS HE ENTERED INTO THE
27 HOMES OF EVERY REGISTERED VOTER TELLING THEM HE FILED
28 19 MURDER CHARGES AGAINST PETITIONER AND PROMISED
THEN CLOSURE IN THE TRIAL LATER THAT YEAR WHEN HE
SENT THREE RED BULLETINS INTO EACH HOME IN A ONE WEEK
TIME SPAN PLANTING PREJUDICE INTO THEIR MINDS ABOUT
PETITIONERS GUILT. *FORCING TRIAL POSTPONEMENT*

1 Trial counsel told petitioner in May 2010 that he had com-
2 pleted the investigations asking to place the case onto the calendar
3 for trial to begin. Petitioner agreed to schedule trial
4 dates for on April 2, 2010, being made to believe the trial would
5 begin within 60 days from that date. Thomas and Sanders scheduled
6 these dates onto the Court calendar. (see exhibit 67) This trial was
7 to begin within 60 days from that date. In May 2010 the county pro-

8 secutor had created campaign flyers that were 8 x 12 in
9 in size and red in color with the petitioners case on
10 them along with petitioners photograph that was as big as 8 X 12
11 with prejudicial comments about the prosecutors belief in the defend-
12 ant guilt as Michael Ramos promise closure in the upcoming trial
13 in exchange for votes. (see exhibits 32, 33, 67) These flyers had
14 information about the petitioners case and suggestions that they
15 had solved the crime 25 years after it had been committed. Ramos
16 then after the case had been placed onto the records to begin had
17 these flyers made to enlist (on trial later that year) into the
18 contaminating materials that were meant to cause pre-
19 judice on petitioner while gaining voters confidence with the trial
20 ; later that year, only trial was set to begin on June 2010.

21 Ramos then mailed into every business, home, residen-
22 ce three separate flyers in a one week span of time beginning on May
23 15, and ending on May 20, 2010, [just days before the trial was to
24 start]. These flyers were so contaminating that their values and cont-
25 ents were remembered seven months later when the trial finally began.
26 On July 12, 2010 the trial was vacated because of the campaign smear
27 by Michael Ramos that occurred on May 2010 . The trial had been vacate
28 several more times over the following months because of the

1 campaign that led to further litization by petitioner who fought
2 for this protected right (impartial jurors). (see exhibit 35)
3 where trial counsel ignore the right and chose against petitioners
4 advice, chose to file recusal motions. (see exhibit, 36)

5 Petitioner was not given the choice to vacate this trial
6 and discussed this with his attorney, who argued that the entire
7 panel of jurists will be prejudiced. Please take notice on the

8 voir dire that occurred several months later.....they
9 were still prejudiced. While some of the jurors stated that did
10 not recall these mailers, other stated that they did
11 making comments that they believed the county to have proof of
12 guilt before they allowed these mailers to be sent.

13 Other made comments about how Yablonsky had been burnt, and other
14 made stated that when there that much smoke there must
15 be fire. Because it was the actions on behalf of the government who
16 forced the case to be vacated from trial dstarting petitioners
17 rights were violated, violating due process rights too speedy and
18 fair trial . The repeated vacating of trial dates did not cure the
19 level or prejudice caused by this misconduct, in fact the jurors
20 came to a verdict of guilt with absolutley no evidndes to the case
21 suggesting these prejudicial flags mailed in May 2010 did the trick

22
23 Points and authorities for ground five

24 Constitutional safegaurds against most accusation delays
25 The sixth amendment provides fundamental right to a speedy trial
26 that serves to 1) Prevent undue and oppressive incarceration,
27 2) minimize anxieties and concern accompanying public accusation, and

1 3) Minimize the possibilities that long delay will impair the
2 ability of an accused from presenting a defense. U.S. V Swell
3 783 383 US 116(1966); Klopfer v N.C., 385 US 213(1967) The right
4 to a speedy trial attaches at the time of formal charge. The
5 remedy for violation of this right is to dismiss the indictment
6 and vacate any sentence that had been imposed. Strunk v U.S.,
7 412 US 514(2009)= Here the state took responsibility for the
8 April 2, 2010 conduct that they planned to obstruct the right to
9 speedy trial knowing that the campaign flyers would frustrate
10 the petitioners ability to provide a defense against the erroneous
11 charge because there was no evidence, which was explained with the
12 November 23, 2010 altering of the evidence which was in fact the
13 [only] incriminating evidence in the states entire case, that the
14 petitioner had lied during an interrogation about his relationship
15 with Cobb. But they took it a step further and washed the custodial
16 marker from the "CCPY" they made from the three sets they had,
17 and then changed petitioners answers so that they can place evidence
18 into petitioners possession while the real time record
19 shows that he did not have this evidence at all. (see exhibit 49A xxxix
20 49 of the states evidences for case #FV1900518) By intentionally
21 presenting a ploy to begin trial they got two fold. The opportunity
22 to monopolize on the publicity of the case that had by then been
23 made infamous in an election campaign, where promises were changed
24 for votes. Then giving the state team to learn and perfect their
25 audio and technical manufacturing skills as they created evidences
26 they needed to reach a verdict of guilt. These acts were calculated
27 and deliberate with the assistance of many parties, violating
28 due process rights under the sixth and fourteenth amendments.

GROUND SIX

THE COURT ABUSED ITS DISCRETION WHEN THE COURT VIOLATED DUE PROCESS RIGHTS AND SAFEGUARDS ENLISTED BY THE EIGHT AMENDMENT WHEN THEY SENTENCED PETITIONER TO LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR A CRIME THAT OCCURED WHILE PETITIONER WAS UNDER THE AGE OF TWENTY FIVE YEARS OLD. PETITIONER WAS BORN ON SEPTEMBER ON THE THIRTIETH DAY OF 1963. WHILE THE ALLEGED CRIME TOOK PLACE ON SEPTEMBER 20, 1985 WHEN PETITIONER WAS ONLY TWENTY TWO YEARS OLD MAKING THE MAXIMUM SENTENCE PETITIONER SHOULD HAVE GOTTEN TO BE 25 YEARS TO LIFE FOR FIRST DEGREE MURDER.

Facts of the matter

That petitioner was 22 years of age when this alleged crime took place, and even though the Court did not sentence petitioner until he was 44 years older that does not alter the language of the laws that recently passed where the Supreme Court decided that sentencing persons to a life without the possibility of parole where the crime took place when the defendant was under the age of 25 years of age to be of some diminished capacity to have knowledge and maturity regarding understanding. The Supreme determined this sentence to violate defendants eight amendment right to be free from cruel and unusual punishment under the constitution. Therefore this Court must adhere to the Supreme Court findings and reduce this petitioners sentence to the maximum term of 25 years to life, to cohabitete the language of hte Supreme Court

POINTS

B.B. 261 PEOPLE V. FRANKLIN (2016) 63 CAL. 4TH 261, MAKING LWOP INMATES ELIGIBLE FOR PAROLE. EXTENDING THE MATURITY AGE TO 25 YEARS OR YOUNGER WHEN THE OFFENSE WAS COMMITTED MILLER V. ALABAMA (2012) 567 US 460; PEOPLE V. CASALLERO (2012) 55 CAL. 4TH 262

CONCLUSION

1
2 As a result of the allegations within this petition along
3 with the exhibits attached support that the state of California
4 violated substantial due process rights outlined by the United
5 States Constitution fifth, sixth and fourteenth amendments when
6 petitioner was tried for a crime that he did not commit. That
7 the prosecutor knowingly altered evidence, withheld evidence,
8 and coerced testimony he knew to be false and misleading. That
9 the prosecutor colluded with the trial counsel to hide these facts
10 from the state records to secure and protect this wrongful conviction
11 of a man they knew was innocent.

12 That as a result of these misconducts petitioners substantial
13 civil rights were violated, resulting in an absolute miscarriage
14 of justice in a case that held less than circumstantial evidence
15 petitioner was the true suspect. That the prosecutor, along with
16 the sheriff department withheld evidence regarding a confession
17 by Gregory Randolph who left his DNA at this crime scene on Sep-
18 tember 20, 1985 when he killed Rita Mable Cobb. That Gregory Rand-
19 olph then while employed as a county coroner found out that this
20 case DNA was going to produce results of his activity in this
21 case, killing himself in his Lucerne Valley trailer on June 1, 1999
22 but not until after his arrest for this case on August 10, 1988.

23 THIS ARREST WARRANT WAS WITHHELD BY DDA THOMAS
24
25
26
27
28

PRAYER FOR RELIEF

1
2 1) That this Court take judicial notice of the exhibits
3 attached to this petition as state generated documents, records,
4 that are memorialized for the purpose of fact finding for this
5 case.

6 2) That this Court order the state of california to authen-
7 ticate these exhibits attached herein and admit or deny their
8 validity.

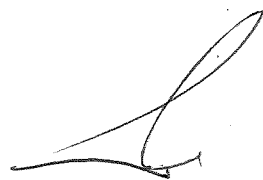
9 3) That this Court grant an evidentiary hearing for the
10 allegations within this petition, and determine whether the interr-
11 ogations recordings had actually been altered, whether the trans-
12 cripts of those recordings had in fact been altered from their
13 original content, that the DNA located on the red hair, watchband
14 pin, murder weapon, cigarette butts, victims blood actually belonged
15 to petitioner, and why trial counsel failed to investigate these
16 evidences

17 4) That this Court grant an order to show cause regarding
18 these allegations, and order counsel be appointed in this case.

19 5) That this Court grant habeas relief, and order the
20 trial court to resentence petitioner according to the juvenile
21 offender laws of this state.

22 6) Any other relief this Court deems appropriate in this
23 matter.

24
25
26 July 14 2019


John Henry Yablonsky