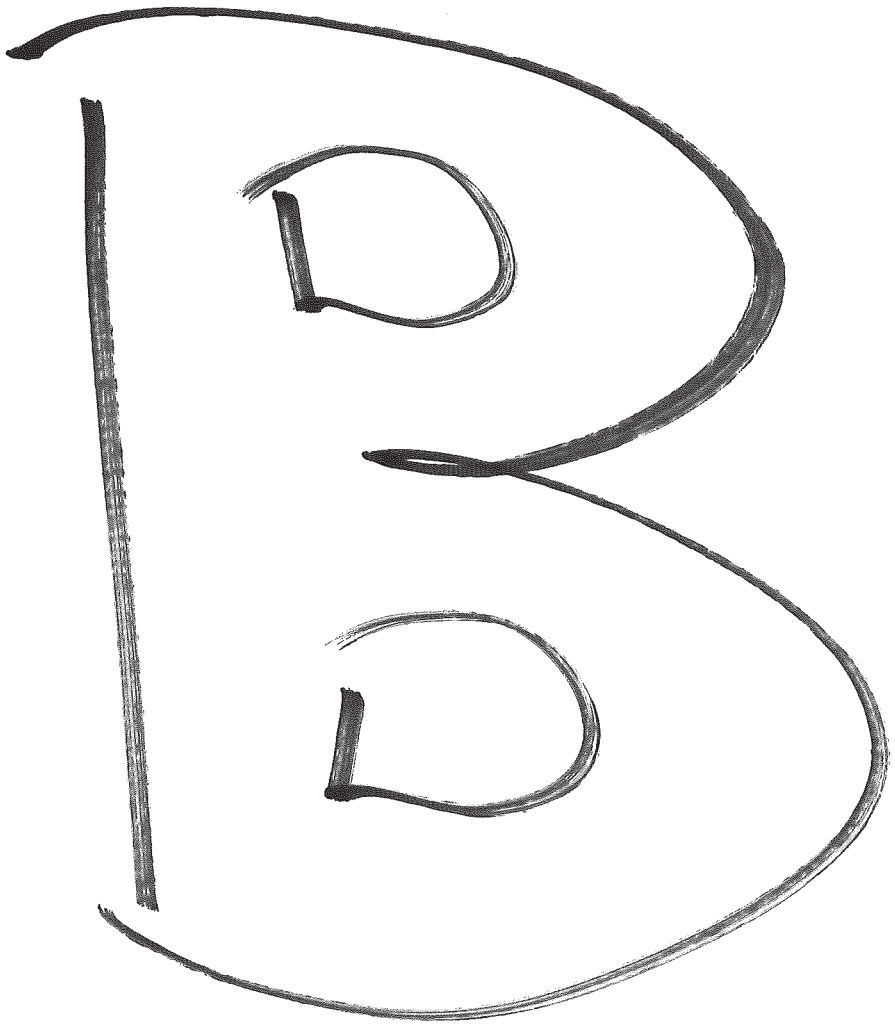

APPENDIX B

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

FACTUAL INNOCENCE CLAIM
SECOND AND SUCCESSIVE ALL WRITS ACT

CLERK OF THE COURT
SUPREME COURT FOR THE STATE
OF CALIFORNIA

In Re John Henry Yablonsky;
On habeas corpus;

No.#_____

Trial Court #FVI900518
The honorable Judge J. Tomberlin
SanBernardino County

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

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

Book ONE of four

John Henry Yablonsky
in propria persona

QUESTIONS OF THIS COURT

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

2) Is it in the interest of the state of California to allow practicioners of law to provide less than ethical levels of fiduciary duth in their respective fields regarding truth, accuracy, and full disclosure when it comes to serious issues of law that carry severe punishments to the accused or their clients ?

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

4) Is it in the interest of the state of california to allow members of the bar to withold and hide evidences so they can win cases when the punishments carry life sentneces, then hide behind the laws of the Antiterrorism Effective Death Penalty Act so these evidneces will never be seen by the federal Courts ?

APPENDIX B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

In the matter of	Case No. WHCJS1800338
John Henry Yablonsky, Petitioner	ORDER
for Writ of Habeas Corpus	

Petitioner John Henry Yablonsky filed his latest petition for writ of habeas corpus on September 13, 2018. Petitioner was convicted of first degree murder in connection with the death by strangulation of Rita Cobb. The jury also found true the special circumstance that the murder was committed during the commission of a rape. Accordingly, Petitioner was sentenced to life imprisonment without possibility of parole. The Court of Appeal affirmed the judgment in 2013, with a modification to strike the Penal Code section 1202.45 parole revocation restitution fine because Petitioner's sentence did not include parole and Petitioner committed the murder in 1985, which was 10 years before section 1202.45 was adopted.

The facts of this murder are set forth in detail in the Court of Appeal decision, Case No. E055840 (available at 2013 WL 6271920).[1] This case involved the September 1985 murder of Rita Cobb. A wire coat hanger was wrapped tightly around her neck and knotted on the side. Rita's death was caused by both manual strangulation, as evidenced by fractures to bones in Rita's neck, and ligature strangulation, as evidenced by a wire coat hanger wrapped tightly and twisted twice around Rita's neck. Defendant was arrested in March 2009, after a sample of his DNA matched DNA from sperm cells found

NEWLY DISC. EVID.

[1] The Court takes judicial notice of the petition and denial order in WHCJS1700062. (See Evid. Code, § 452, subd. (d).)

in a vaginal swab taken from Rita's body. Petitioner's DNA, and the fact that when interviewed by law enforcement officers defendant admitted he knew Rita Cobb but denied having had sex with her, is the evidence that connects defendant with the murder and therefore is the evidence on which the jury relied to find defendant guilty.[2]

Petitioner's case has been reviewed several times, including direct appeals and numerous petitions for writ of habeas corpus in both state and Federal courts. This is Petitioner's fifth petition for writ of habeas corpus to this Court. This Court denied the most recent one last year. The petition acknowledges it is a successive petition, and asserts it is a hybrid petition for writ of habeas corpus or coram nobis based on factual innocence. Because Petitioner appealed his case he may not seek coram nobis from this Court, and instead must petition the Court of Appeal for a writ of coram vobis. (See Pen. Code, § 1265, subd. (a).) Accordingly, the Court construes the petition as seeking a writ of habeas corpus.

Petitions for a writ of habeas corpus are evaluated by asking whether, if the factual allegations are true, the petitioner would be entitled to relief. (*In re Figueroa* (2018) 4 Cal.5th 576, 586.) If a claim for relief is not stated on the face of the petition, the court will summarily deny the petition. (*Ibid.*) A procedurally defective petition may also be summarily denied. (*Gomez v. Superior Court* (2012) 54 Cal.4th 293, 301.)

The petition is procedurally barred as "absent justification for the failure to present all known claims in a single, timely petition for a writ of habeas corpus, successive and/or untimely petitions will be summarily denied." (*In re Clark* (1993) 5 Cal.4th 750, 797.) "Before considering the merits of a second or successive petition, a California court will first ask whether the failure to present the claims underlying the new petition in a prior petition has been adequately explained, and whether that explanation justifies the piecemeal presentation of the petitioner's claims." (*Id.* at 774.) Unless an exception applies, or justification is provided, "successive petitions will not be entertained on their merits." (*Id.* at 775.)

To the extent some of the issues alleged in the current petition were part of a direct appeal from the judgement, or could have been, habeas relief is not available to petitioner. Petitioner has failed to alleged facts establishing an exception to the rule barring habeas consideration of claims that could have been raised on appeal. See, *In re Dixon* (1953) 41 Cal.2d 756, 759 ("[T]he writ will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction."); *In*

[2] The prosecutor did not offer evidence from two women that Petitioner had raped them, one in 1982 and another in 1996, because Petitioner did not testify at his trial.

re Reno (2012) 55 Cal.4th 428; *In re Harris* (1993) 5 Cal.4th 813, 825-826; *In re Smith* (1911) 161 Cal. 208.) Moreover, claims that were raised and rejected on appeal may not be raised on habeas corpus. (*In re Reno* (2012) 55 Cal.4th 428, 478-479; *In re Harris* (1993) 5 Cal.4th 813, 825-826 (1993); *In re Waltreus* (1965) 62 Cal.2d 218, 225.)

Petitioner claims an exception applies to his successive and untimely petition because he is actually innocent, or seeks to justify his petition on the grounds he did not obtain complete discovery until 2016. But it is now 21 months since Petitioner claims his discovery efforts were completed by finally obtaining his complete file from his trial counsel and this is now Petitioner's third petition in those 21 months. Thus, the petition is not justified based on Petitioner's discovery efforts because Petitioner could have raised any claims based on that discovery in his two most recent prior petitions.

As to the claimed actual innocence, Petitioner claimed factual innocence in his 2017 petition, and the current petition again claims factual innocence. To state a claim of actual innocence a petitioner must show "'evidence of innocence that could not have been, and presently cannot be, refuted.' [Citation.]" (*In re Reno* (2012) 55 Cal.4th 428, 474.) Petitioner does not provide any such evidence of actual or "factual" innocence. Instead, the petition merely raises claims that evidence was false, the prosecutor misstated the evidence, trial counsel failed to investigate, he was denied a speedy trial, and his life without the possibility of parole sentence is unconstitutional. Not only do these claims not "approach the high bar" set by our Supreme Court for an actual innocence claim, but they are also individually subject to procedural bars.

In particular, renewing previously rejected claims from a prior petition is an abuse of the writ of habeas corpus. (See *id.* at p. 453.) Even raising variations on a previously rejected claim justifies summary denial without reaching the merits. (See *id.* at pp. 455–456.) And, habeas corpus relief does not generally lie for claimed errors that were raised on appeal or that could have been, but were not, raised in a timely appeal. (*Id.* at p. 490.) Here, Petitioner's most recent petition already raised claims of false evidence, prosecutorial misstatements, and ineffectiveness of counsel for failure to investigate, and Petitioner's speedy trial claim and claim that his sentence is unconstitutional could have both been raised on appeal. Thus, both the petition and each of the claims within it are barred.

The petition is DENIED.

Dated: October 9, 2018

Hon. Gregory S. Tavill
Judge of the Superior Court

ACKNOWLEDGES PIECEMEAL DISC. RELEASE

IGNORES PETITIONER IS MEDICALLY HANDICAPPED VISUAL! OR THAT THE CASE WAS IN FEDERAL COURT STILL SUPREME CT. U.S.A, PETITIONER FILED P.C. 1405 PETITION FOR DNA ANALYSIS. WAS FORCED TO FILE IT TWICE, ONE TO S.B. COUNTY ONE TO VICTORVILLE CT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

In the matter of	Case No. WHCJS1800338
John Henry Yablonsky, Petitioner	ORDER
for Writ of Habeas Corpus	

RULE ERC 8.308

EVIDENCE OF FRAUD

Petitioner John Henry Yablonsky filed a petition for writ of habeas corpus on September 13, 2018. This Court denied it on October 9. Two weeks later, this Court received a motion to file a compact disc, which includes a compact disc purportedly containing an audio recording used as an exhibit in Petitioner's trial.

"An order denying a petition for writ of habeas corpus in the superior court is final immediately upon its filing, and review of the order can only be had by the filing of a new petition in the Court of Appeal. [Citation.]" (*Jackson v. Superior Court* (2010) 189 Cal.App.4th 1051, 1065, fn. 5.) As this Court denied Petitioner's petition for a writ of habeas corpus, this case is now closed and this Court may not reconsider its decision based on the disc or take any other action.

The petition remains DENIED.

Dated: October 24, 2018

Hon. Gregory S. Tavill
Judge of the Superior Court

TABLE OF CONTENTS

EXHIBITS INDEX

EXHIBIT NUMBER	DESCRIPTION
ONE	
1.....	REQUEST FROM CANTY FOR DISCOVERY
2.....	FORMAL LETTER DEMANDING DISCOVERY JUNE 2009
3.....	LOG OF MAILING 300 PAGES WITH LETTER STATING "THATS
4.....	MARSDEN ADMISSION WITHOLDING RECIRDS
5.....	FORMAL DEMAND FOR DISCOVERY SUPERIOR COURT 7/12
6.....	FORMAL DEMAND APPELLATE COURT 5/14 7/14
7.....	INTERROGATORY TO TRIAL ATTORNEY CERTIFIED MAILING
8.....	FORMAL DEMAND DISCOVERY P.C.1054.9
9.....	STATE BAR ORDER FOR DISCOVERY 6/13/14
10.....	CDCR LOG OF DELIVERY 1600 PAGES FROM SANDERS
11.....	RECORD OF FULL DISCLOSURE BY HAL SMITH 1/29/16 (OVER 5000 PAGES)
13.....	BRUCE NASH TESTIMONY AND STATEMENTS
14.....	JOHN SULLIVAN STATEMENTS
12.....	JOSEPH SAUNDERS
15.....	DAWN DISMORE/RONALD COBBS
16.....	GREGORY RANDOLPH
17.....	DNA MATCHING RANDOLPH TO CRIME SCENE /CIGARETTE BUTTS
18.....	VICAP MATCHING PROFILE
19.....	FBI PROFILE
20.....	CYNTHIA HOOPER
21.....	DORIS JACKSON
22.....	SHERYLL BRODUS
23.....	RON CAMPBELL
24.....	RENE SMITH
25.....	FRED HALBROOK
26.....	EVIDENCE FROMTHE CRIME SCENE
27.....	MERYLL GIBBS
28.....	DIANNE FLAGG /SILVER PINTO VS BLUE PINTO
29.....	FINGERPRINT REPORT
30.....	WARRANT FOR ARREST/SEARCH
31.....	UNCHARGED ALLEGATIONS TEXAS/LONGBEACH
32.....	MEDIA COVERAGE
33.....	CAMPAIGN SMEAR BY COUNTY DISTRICT ATTORNEY
34.....	COURT GRANTING OF PRO-PER STATUSE

EXHIBIT INDEX CONTINUED

35.....SUIT AGAINST RAMOS BY YABLONSKY
36.....P.C.1424 RECUSAL DEFENSE
37.....DENIAL OF RECUSAL MOTION
38.....REQUEST FOR SUBPENAS FOR ALIBI LINDA/HOLLY MITCHELL
39.....MOTION TO VACATE OFFICIAL VISIT TERMINATION
40.....VERIFY THAT TWO DIFFERENT TRANSCRIPTS CREATED 11/23/10
41.....DDA THOMAS REALTER TRANSCRIPTS FOR 1/26/11
43.....PLACE EXHIBIT 49/49A ONTO STATE RECOIRD FVI900518
42.....COPY OF ALTERRED ANSWERS INTO EXHIBIT 49A
44.....PLEA TO TESTIFY WITH TRIAL COUNSEL
45.....RECORD OF CLOSING ARGUMENTS STARTING
46.....RECORD THAT JURORS WERE DEADLOCKED "BOGUS ALLEN"
47.....MOTION TO TERMINATE TRIAL COUNSEL
48.....MOTION TO NEW TRIAL PROSECUTORIAL MISCONDUCT
49.....TRIAL COUNSEL INCOMPETANT MOTION WRONG NAME
50.....TRIAL COUNSEL PROOF NO INVESTIGATIONS
51.....DNA EXPERTS TESTIMONY JONES/DR. SAUKEL
52.....APPELLATE COURT DIRECT APPEAL RULING
53.....HABEAS CORPUS SUPERIOR INFORMAL ORDER
54.....HABEAS CORPUS WHY TO STAY UNTIL AFTER APPEAL
55.....MOTION TO STRIKE STAY AND EXPAND 13 MORE GROUNDS
56.....COURT DENYISTAY MOTION EXPAND REQUEST
57.....DENY HABEAS CORPUS AT SUPERIOR COURT LEVEL
58.....STATE SUPREME COURT FILING
59.....DDA CLOSING ARGUMENTS
60.....JONES TESTIMONY ABOUT WHAT WAS EXAMINED
61.....NEW LAWS PASSED SENATE BILL 1909 P.C.141
61.....NEW LAWS PASSED SENATE BILL 1134 P.C. 1473
62.....Copy of appealet Court regarding misconduct
63.....Copy o fhte 113 page transctript
64.....Copy of the 136 page transcript.
65.....Maliable copy of the states exhibit 49(compact disc)
(This is filed seperatley with special motion)
(If the Court refuses this filing it is available upoin request by the Court)
66- SANDERS ADMISSION IN ANOTHER COURT
67- TRIAL CASE SUMMARY
68- APPELLATE COURT RULING

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

FACTUAL INNOCENCE CLAIM
SECOND SUCCESSIVE
ALL WRITS ACT HYBRID
HABEAS CORPUS/ WRIT OR ERROR CORAM NOBIS

CLERK FOR THE COURT
SUPREME COURT FOR THE
FOR THE STATE OF CALIFORNIA

John Henry Yablonsky;
Petitioner;

vs.

Patrick Covello ;
(WARDEN):
Respondent:

No.#_____

TRIAL COURT # FVI900518
The Honorable Judge John Tomberlin

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

Attention; District attorney for
County of Sanbernardino

This factual innocence claim find this Courts jurisdiction based on newly discovered evidneces that were not made available to petitioner until five years after the trial, three years after this Court made a determination. The facts and evidneces supporting this claim were deliberatley witheld by trial counsel who repeatedly lied to client and Court that "HE HAD ALREADY RELEASED THESE RECORDS"

"PETITIONER IS FACTUALLY INNOCENT"

DELAY IN BRINGING THESE ARGUMENTS

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

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

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

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

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

2) Second release by trial counsel after the trial had already occured 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 different 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 witheld, from the states files that held 5300 pages along qwith two compact discs of states exhibit 49 (the interrogation)
RELASE 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).

DELAY IN BRING ARGUMENTS CONT.

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

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

6) That this Case involves volumnous amounts of discovery as well as research, into the amount of well over 5400 pages that had not been released until January 2016n while petitioner was inthe medical unit of Calipatria state prison. Petitionere at this time was receiving threapy and trying to learn to walk again as well as having to be made to re-evaluate the records he had been givin prior tto that date by trial counsel who in 2009 gave 300 page, telling petitioner that was all the discovery. Then again in 2011 g9iving petitioner another set of 1300 pages diffeerent than the first 300 pages and again telling petitioner that was all the discoveryt. Then again in 2014 giving petitioner another 1600 pages, different than the 300, or 1300 and once aghain telling petitioner that was all the discovery, and then finally in 2016 by post trial counsel who released 5400 pages along with compact 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

JOHNSON V. MAMMOTH RECREATION INC 975 F2d 604 (9C. 1992)
IN RE CLARK 5 CAL. 4TH 750 (1993)
PEOPLE V. SUPERIOR COURT (JOHNSON) 61 CAL. 4TH 696 (2015)
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 of 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 inthe exercise of due diligence have been discovered earlier.*People v Shipman 62 C2d 226(1965): See also People v Vasilyan 174 CA4th 443(2009);People v Cortez13 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 evidneces 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 evidneces [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 discretiuon 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 collatteral attack in state courts on federal issues. In Re Panchot(1968) 70 Cal.2d 105. And an independant 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 collatterally attack a judgment of conviction which had been obtained in violation to fundamental constitutional rights. People v Soreneson(1952 CAL APP) 111 Cal. App.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 eerrors, 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 Adanmson(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 collatterally attacked onthe basis of newly discovered evidnece only if the new evidneces cast [fundamental] doubt onthe accuracy and relaibility of the proceeding. In Re Hall91981)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 collatterally attacked based on newly discovered evidnece only if the new eviudnece casts doubt on the...

accuracy and relaibility of the proceeding at guilt phase. Such evidnce, if credited, must undermine the entire case and point unerringly to the innocnèce or reduces the culpability of the defendant People v Gonzales51 Cal.3d 1179(1990) Defense counsels incompetance resulting in failures to discover and present evidndence is a basis for habeas corpus if it would have undermine the prosecutions case, The presumption that the essential elements of an accurate anbd fair proceeding were presented would not be applicable. None the least petitioners must establish prejudice as a demonstaratable reality that counsel knew or should have known that further investigations was [necessary] and must also establish that counsel failed to present and discover, then prejudice is established if there is a reasonable probability that a more favorable outcome would have been the result of this evidnece had it been presented. Strickland v Washington466 US 668(1984);People v Gonzales, supra, 51 Cal.3d 1179; People v Williams,supra 44 Cal. 3d 883. The incompetance must have resulted inthe unfairness of the proceeding or an unrelaible verdict. Lockhart v Fretwell(1993)506 US[122, 113, s.ct.838

Newly discovered evidnece is outlined by People v Malley 62 Cal.4th 944(2016);

1) That the evidnce, and not merely its materiality be discovered
2)That the evidence not be merely cumulative
3)That it be of such as to render a different result probably on a retrial of the cause using the new evidnece
4)That the party could notnhave within reason and due diligence have discovered and produced it an an earlier time or at trial.
5)That these facts be shown by the best evidnece rule of which the case admits

In Re Miles(2017)7 Cal.5th 821 Effective january 1, 2017 the burden of rpoof in a "new evidence" habeas corpus claim is significantly lower. [New evidnece] is "evidence" tyhat had been dis-

covered after the trial that was not discovered by the petitioner and could not have been discovered as a result of ommission, deception to provide access to through the exercise of due diligence by petitioner prior to or during the trial. That these [evidences] were not discoverable until after appellate procedures and would have been admissible, not merely cumulative, corroberative, and collateral impeaching standards in motion for new trial under California law (MILES)(Holding that third party confessions qualifies as new evidence justifying relief. What qualifies a s [new] evidence new facts made available after trial that are credible. Testimony tending to prove facts are evidences if they are admitted at trial. Bermudez v. Cioek237 CA4th 1311(2015). Fraudulent checks and false statements used in court met statutory definition of [evidence] they were writings created for the purpose and could be used to disporve factrs.People v Gallardo, 239 CA4th 333(2015) A document does not lose its status as [evidence] because a party does not comply with procedural processes required for submission, and a Court may consider evidence that was not submitted in compliance with procedural rules if no objection is made or upon showing a good cause [239 CA4th 1346] The term of [due diligence] and reasonable diligence are essentially interchangable. (CITATION)

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

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

This third release was made after direct appeal had been made and denied, after state habeas corpuses had been made and denied, locking these facts out of the records becuase of the trial counsels absolute incompetance. Post trial counsel was contacted about the language and filing under P.C.§ 1054.9 and on January 29, 2016 Hal Smith(SMITH) provided petitioner with the states entire file along with a compact cisc that was created fromthe interrogation held on 3/8/09 and filed as states exhibit 49(FVI900518)

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

Petitioner was finally capable of preparing a valid and intelligible habeas petition into the Superior Court on September 9, 2018 which was denied against standing rules, laws and constitut-

ionally protected rights that occured before, during and after trial, resulting ina an absolute miscarriage of justice, reducing this case toa farce and sham. Petitioner so moves this Court under the statutes and laws surrounding these constitutional violations caused upon him under the blanket of actual innocence, and groos misconducts by government bodies.

VERIFICATION

I John Henry Yablonsky an adult over the age of 18 and a party to this action and narrator of this allegation saidforth regarding witholding evidnces and according to belief know this statement as the truth and if called to testify will sumbit the same ina court of law under oathe.

~~November 6, 2008~~ July 12, 2019

John Henry Yablonsky

DUE DILIGENCE IN DEVELOPING
THE FACTS SURROUNDING THIS MATTER

Upon arrest for aserious charge petitioner was interoduced to his trial counsel fromthe public defenders poll named Geoffery Canty(CANTY). Petitioner requested the states entire file and this request was recvorded by Canty. (see exhibit 1) Inthe discussion with Canty several strategies were discussed to protect petitioners innocnece, while Canty revealed there was serious issues with the case,and the facts surrounding the crime. Canty revealed;

1)There was a confession to the crime

2)There was other culpable parties who had committed suicide.

3)The interrogation would be transcribed for the 3/8/09 interrogations

4)There were hundreds of police reports since 9/23/85

5)There were issues regarding petitioners DNA found at the scene but they had been cleasred from the time the crime had been committed

6)There were witnesses who seen Mrs Cobb at a bar the night she had been killed

7)That there was absolutley no evidnce showing petitioner had committed the crime

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

1) Howa re investigations doing

2)Was the 25 year old DNA tainted

3)Who gathered evidneces, were they trained,certified

4)Possible conviction catagory

5)Weaknesses in the case

6)Who was the judge

7)Sentence alternatives

8)What experts spoecialist were going to be available to us

9Can we disprove the states case

10)Can I get the states entire file

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

Sandsers released 300 pages of the states files on June 2009 and incluiecx that this was everything petitioner had asked for and that he only held back DNA records related to petitioner because they would only confuse petuition. (see exhibit 3) These files held one 113 page transcript tothe 3/8/09 interrogation as well as other police reports that were created in 1985./ Once reading these records petitioner contacted Sanders fromthe county jail phone under booking #0903341068 to phone number (760-241-0413 asking why the interrogations transcripts were innaccurate. Sanders responded that they were only interpretations and if the case went to trial they would use verbatim., After trial and the degree of deception had been discovered petitioner demanded the entire states case files . After the trial and during a marssden hearing regarding counsel incompetance Sanders admitted that he withl eld these recor until his client had to beg for them. (see exhibit 4) After the begging Sanders released another 1300 pages different than the first 300 on or about March 2011. Post trial filings were made to gain access to these evidences that at this point showed there was serious reliabilities issues with the states czase that had convicted an innocent man;

a)Habeas corpu was filed requesting records #WHCSS1200311 (see exhibit 5) This reqwuest was denied by superior court

b) Habeas corpus was filed demanding states records with the Copurt of appeal. This was denied twice (May 19,2014)(July 7, 2014 (see exhibit 6)

c)Petitioner moved the state bar under P.C. °§ 1054.9 on January 21, 2014 asking several parties for these trecords (see exhibit See exhibit 7) Case #14-17946 was appointed (see exhibit 8)

d)On July 2014 petitioner received anotheer 1600 pages that were different than the first and second releas while in state pris... (see exhibit 9 10)

e) After several motions, letters, and cases without full disclosure 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)

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

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

a) Murder weapon

b) The victims bedroom door jamb inthe victims blood

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

d) The watchband pin located underneath the victims head

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

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

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

DIRECT APPEAL ARGUMENTS
(see exhibit 52)

I.....The trial court committed prejudicial error by not instructing jurors regarding murder and special circumstance

II.....The trial court abused discretion rergarding similar third party culpability issues regarding a similar case.

III....Trial court improperly excluded evidence of victims promiscuity

IV....Trial court improperly excluded hearsay evicdnce of Cobb inviting other men to her home

V.....Trial court abused its discretion regarding third aprty hearsay regarding last words of victim which she told another paerty about her destination

VI....Erroneous admission of evidnece regarding prior accusations that wrre never charged were prejudicial error

VII...The Court gave an errouneous instruction regarding deadlock after they declared they were solid in their votes

VIII..The Court erroneously interrogated the jury foreman out of the presence of trial counsel, and in from of standin counsel

IX... Trial court committed prejudicail error by denyoing new trial motion regarding IAC ,applying incorrect standard

X.....Trial court erroneously denied recusdal motion where county district attorney used petitioners case in campaign smear

XI....In effective assistance of counsel while counsel failed to file for a change of venue motion in liught of the media coverag

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

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!!

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 innocnece 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 claoims or erroneous convictions. What we have to deal with is not the petitioners innocence or guilt, but [solely] on the question whether their constitutioonal rights have been "PRESERVED".

The Supreme Court accordingly has not hesitated to grant habeas corpus relief when there was littele 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 fopund in the process, then yes innocence is irrelevant .In fact the arguable ground that habeas petitioner apparent guilt shoudl heighten, not cut off or diminish the scrutiny of the procedures by which he ea was convicted and sentenced. As used in this country, habeas corpus has been 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 dangersd of federal laws and rights inherent granting jurisdiction of the national causes.

The second historically correct answer to judge Friendly question is that [NO] innocence is not irrelevant. The fear that an innocent man liberty, or woirst, their death be forfeited because of unfair proceedings has long been recognoized as one, among others circumstances that makes issuance of the writ most [felicitous. Indeed it would not be surprisoing to learn someone could learn, that the subject of hab3eas cases in which relief wasa ctually granted included more than a proportionate share oin cases which innocent have been convicted..

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

The Courts have properly sought to take the effect that innocent persons may m have been convicted)(or the blananlyt blameworthy person has been convicxted of an offense other than the one for which he was blamed) as one, among oithers, have indicators that an unconmstitutional breakdown in the process occured. Accordingly as a mattrr of [fact and law] the petitioners [possible] innocence is clearly [RELEVANT] anbd counsel for petityioner with colorable claoims of innocence, or in which cases the state may have violated a right tied to the accurate ascertainment of guoilt is obliged to make that fact plain tothe habeas court.

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

STATEMENT OF THE CASE

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

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

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

UNDISPUTABLE
FACTS SURROUNDING THIS CASE THAT ARE
STATE CREATED RECORDS SUPPORTING PETITIONERS CLAIMS HEREIN

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

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

Cobb could operate the intercom system from the main house without the assistance of the back, or them knowing it had been activated. It was over this system that Cobb had listened intothe couples arguments. Petitioner had been married to his wife for three years at this time, and she had alrerady been having extramarital affairs by this time, which instagated the marital arguments. When these arguments would occur petitioner would take his then wife to her gransdparents for a weekend to chill the tempo of relationship where things would cool down. Petitioners wife Holly's grandparent lived in Downey California, over 160 miles away. WHILE Petitioner returned home.

Petitioners job enlisted a series of trades in the construction field that took the company to several counties around the southern Califoirnia region, which at times took as much as 15 hours per day, and others the entire week, to save on commute time. It was duruing these stays out of town that the couple argued more when petitioner had returned, causing him to deliver Holly to her grandparents for "another week end." It was later determined that this trip to Downey was when Holly would exercise her infidelity.

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

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

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

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

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

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

Petitioner baulked stating he was gouing to Downey to pick up Holly and Cobb pled it was an emergency, stating she was going to have a party that night and her bathroom was not workoing properly. Petitioner agreed to take a moment after he was done at the market, but remined Cobb he was ina hurry.

When petitioner drove into the Cobb horseshoe driveway he seen Cobb had a visitor who drove another small truck, similar to a ford pickup(small) parked in front of the cobb residence. Cobbs cadillac was parked in her garage with the door opened. When petitioner got tothe front door which stood wide open he entered the home, but did not notice Cobb inthe front rooms, and walked tothe bathroom area at the far RIGHT side of the house. Petitioner looked intothe issues explained vagueley by Cobb, and checked the sink and tooilet to see what needed fixing. All plumbing issues were working correctly and when petitioner returned tothe front area of the hoase he noticed two women engaged in kissing session by the couch in the livingroom area. One of the women was Cobb and the other petitioenr did not know. Petitioner was summoned over, and without a single thought about priorities entertained the invitations.

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

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

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

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

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

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

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

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

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

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

the age of the men she dated, and added that she would become caust
when shewas drunk. (CT66) (exhibit 14) There were two other people
at the Sullivan drinking party that September night. Bru.ce Nash
and Cynthia Hooper. Bruce Nash (Nash) offered that he arrived
at the party around 7;oo p.m. and left around 9;45 p.m. that same
night. He stated he recalled Cobb being drunker than usual and
decided to offer to drive her home while his wife Cynthisa followed.
He states that Cobb refused the offer to drive her home, and that
she returned that she was not going home and was going to a bar
called the Zodiac lounge instead.. (CT117) Nash was reinterviewed
25 year later where he offered that Cobb had been drinking white
lightening and that he and Cynthia hung out at the party till around
9 or 10 p.m. that Friday night. He restated that he beleived Cobb
to be more drunk than usual and offering her a ride home while
his wife Cynthia followed in her car. Nash restated that Cobb refused
the offer and stated she was not going home and was going to a
bar called the Zodiac lounge instead. (CT271)(exhibit 13) Nash
recalled the boyfriends Cobb had had, naming Bruce Lee, Berdard,
Art Bishop, and John Sullivan to name a few. (CT272) (exhibit 13)

Officers spoke to a bartender named Dawn Dismore who stated
she recalled Cobb, and that she last seen her drunk but it was
not on Friday or Saturday night. (CT107) This bartender also added
that the night Cobb had been killed she was working behind the bar.
(exhibit 15) While at the same bar, officers spoke several patrons
to include Ronald Kobbs, whichwas explained earlier in this petition.

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

The officers invited him to come on in and talk about it. When Gregory Randolph (Randolph) arrived he explained that he had been told by his friends that they needed his help to solve the murder. He told officers that it had been two weeks since he last seen Cobb, which was when he vi sited her at her home on his way down from the mountain. (CT66)(exhibit 16) What makes this contact so interesting is that none of the officers ever asked for this mans help, which ~~stuck~~ STRUCK the officers ~~and~~ AS suspicious. When this man arrived they spoke for some time and after Mr Randolph left they collected his cigarette butts to have them processed some time later.

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

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

The request was related to Backhoffs involvement in both cases asking for comparison with the DNA that had been collected from, the 9/26/85 interview at the Lucrene Valley sheriffs station. (cigarette butts left at the sheriffs station) That same day officer McPhail processed these cigarette butts with the crime lab requesting physical examinations so they can be typed with both Cobb and Brooks murders. (CT 751)They were proicesssed through the regional labratory for forensics (CT753) where examinations ensued (CT 910, 895, 922, 993, 994, 996, 995,) The three butts from the station interview were matched to cigarette butts located at the crime scene on September 23, 1985. Matching Gregory Ransdolph ,William Backhoff tothe crime.

On 8/9/88 officer Palacios visited Mr Backhoff at his trailer and did a field intervoiew for suspicious behavior and possible evidences coinfirming the confession report. While talking to Backhoff at the trailer the behavior and activity of Backhoff led officers to be lieve they had enough to get an arrest warrant for the murder of Cobb. (CT 219) Officers got the arrest warrant and arreested Backhoff for the murder of Cobb on August 10, 1988, and interviewed him. (CT ~~XXSX~~ 221 -235) (see page 5 of the transcripts)

Q) aside from this arrest, have you ever been arrested before ?

A) Well yea, but I dont think it really counts.

This confirms that Backhoff had been arrested as a result

not only because of his suspicious nature, but the evidneces that had been collected fromthe sheriffs station (Cigarette butts) and evidences collected from the crime scene matching Backhoff (cigarette butts)(CT 378-79)(exhibit 17) What piqued officers attentionwas that Backhoff has stated the last time he seen Cobb before the murder was about two weeks. Only the as htray located at the scene in a common area had only eight butts in it, with butts matching a man who stated he was at the scene the day before the murder occured.

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

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

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

Lather officers spoke to Bud Turner who stated he thought he last seen Cobb at the market on Saturday September 21, 1985. Recalling that she had dated several women. Officers also spoke to Cobb previous boyfriend Fred Berdard, and duruing the interview officers noticed that Berdard was wearing a gold colored watch. (CT108) Taking notivcce of this because Cobb had been locatred with a yellow colored watchband pin underneath her head. Officers did not take notice whether Berdard was right or left handed.

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

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

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

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

The examinaers report indicates the Behavioral Science Investigations reports determined these type of persons who would have commitrted this type of crimes. Each victim was the cause of litigature strangulation, one on the neck, with a witre the other with her pantyhose.

Semen was locatesd at both scenes, while one was inside the body, the other was on the bed sheets under the body. Even though DNA samples were not matched there was considerable evidence linking these two murders to the same person. (PP3) The crime scene analysis did indiucate that both scene were attacked in the evening hours, and in their hom,es. No signs of foprced entry to either house, indicating the attackers were invited in.There were no weapons brought tothe scenes and were committed byt hings already at the scenes. Both victims were left nude while articles covered their faces. It was determined that this was a message about [his] opinion of both the vicitims themselves as women.(PP4)

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

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

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

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

On September 26, 1985 Rene Smith had bene interviewed offering that she remmembers meeting a man at the Zodiac Lounge who stated he was waiting for a date with an older lady. Offering that his name was (Gaylord) and was a music entertainer at the Moose Lodge. (exhibit 24) On September 26, 1985 Fred Halbrook was interviewdd and told officers that he recalls hearing that Cobb had been seen at ther Zodiac Loungfe in a argument on Friday night, adding that the figth was a pretty good one. (exhibit 25) Doris Jackson was reinterviewed by detective Alexander in 2009 and offered she heard runours that the night Cobb had been killed she wass eeen at the Moose Lodge as well as the "Y" Cafe. (exhibit 21)

August 16, 1986 Detectvies interviewed the son Kramer once more regarding a Mel Gibbs that had killed his wife inthe same manner that Cobb had been killed and then committed suicioed. There was nothing confitrming that Gibbs killed Cobb, but the fact he kileld his wife in the same manner Cobb had been killed and that he committed suicide thereafter raised suspicious flags about cu lpability with the Cobb case. (exhibit 27) Later officers spoke to Dianne Flagg who lived around the country corner fromthe Cobb residence. Offering that she recalled seeing on Friday night cars parked inthe driveway at the cobb residence, and that one of the was a silver pinto. (exhibit 28)

Fingerprints were collected fromthe scene that had come back in1988 matching Joseph Saunders after the (1988) confession had been made. (exhibit 29) The report was generated on ~~XXXXX~~ August 9, 1988. This report clearly shows that petitioners prints were not located at the scene,where Joseph Saunders and Cobbs had.

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

The victims blood had been located onthe bedroom door jambs as well as the short pony wall across the hall from her bedroom that had prints which would indicate gloves were not worn inthis attack. (See photos 59, 60, 61, 62)(Items A23 and A24)(exhibit 26) This quality of evidence was DNA capable and because the assailant duid not wear gloves would have left their DNA smeared into the victims blood as they fled from the direct murder site(bedding area). This DNA would have been left by the assialant who grabbed the jambs with his bare hands ~~XXXXX~~ leaving unreadable prints, but their DNA. This DNA was not matched to petitioner.

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

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

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

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

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

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

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

Ford pinto, and then opined that because Dianne Flagg had seen a silver pinto,that these tracks came fromthe suspects vehicle. Petitioner owned a dark blue pinto. (exhibit 28).

The victim had been located laying on her back, yet the photos of the unaltered crime scene indicated Cobb had died while on her roight side, where lavidity had been located and photographed. (see photo 57) This phot shows that Cobb had been killed while on her right side where lavidity had been located on her upper shoulder and ribcage area. Lavidity is where blood settle after death and settles tothe lower area of the body. It occurs after several minutes in the same position the body had been laid for several minutesa after death. This induicates the body had been moved,and the scene tampered..

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

parts identifed above which would occur if the sex was current. In fact because the sex had occured more than one full day before Cobb had been killed, there may have been traces inside her panties located in the laundry hamper inthe other room, but that area of the house was not processed. Officers ahd suspected dozens of people over the eyars that followed the murder, which included as many as 26 different men, without any success outside the arrst of Gregory randolph.(discussed earlier and later in this petition)

TWENTY FIVE YEARS LATER

Petitioner had been arrested for a failure to pay fine warrant,where his DNA was collected because he had been a convicted felon from a few years before, for possession of stolen merchandice. It was then that CODIS matched petitioner to the scene as a suspect to the murder. (see exhibit 30) On March 4, 2009 officers filed and recieved a warrant for the arrest of petitioner at his LongBeach residence. Petitioner was interrogated in two locations without MIRANDA. (see exhibits 63 and 64) (see exhibit 65 Filed as a mall-iablke compact disc)

PRIOR TO TRIAL

Petitioners case had been used as a campaign slogan by the district attorney re-elect Michael Ramos after scheduling the trial to start. The slogan was a promise to convict for votes of a case that was 25 years old as the prosecutor enjoined he had filed nineteen murder charges, and petitioners trial was to start later that year,when in fact it was to begoin in less than 30 days.

Petitioners right toa speedy trial were violated forci. the trial to be postponed because of this moisconduct. (discussed later in this petition). Petitioner sued the prosecutor because of this,while the prosecutor retalliated by altering the interrogation transcripts. (Discussed later) (see exhibits 63-65) (see exhibit 32, 33)

Petitioner moved the trial counsel to subpena certain alibi witnesse s which would have corroberated his being in another county around the time this crime had occured. Trial counsel ignored that plea, while petitioner provieded the subpenas that were ignored. (e see exhibit 31) While these misconducts by trial counsel forced petitioner to defend himself, making petitioner file pro se motions tothe court. (see exhibit 36, 37, 67) Trial counsels solution tothe campaign s mear was to recuse the prosecutors office , only he filed a fault6y motion without perfecting it and following court rules about service of the P.C. § 1424 motion to serve the attorney general, therefore the only party defending the motion was a prejudical party. (The prosecutors office being recused)(The prosecutors office argued there was no conflict betwwen petitioner who at that time had a $5,ooo,ooo million dollar suit that was current about the conduct of the prosecutor tampering with the panel of jurists.)

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

and spiritual confidentiality while the county jail commander terminated all confidential communication opertunity and services. Making all phone calls for petitioner before 6 a.m. and after 6 p.m. week days and no confidential visits while at the jail after petitioner had served lawsuits for these treatments of pretrial detention., (exhibit 39) Trial counsel verified this yet did nothing to have this lifted and resorted to having extremely critical pretrail discussions about sensative issues withthe case in the courtroom next to the a) prosecutor within ear shot b) other inamtesa who would discusss private issues with other inamtes and prosecutor. This restriction occured after the lawsuits and remained until months after the trial.

As a result of th elawsuit filed against Ramos for the use of petritioners case in hois campaign smear which affected the entire venire of jurists, Ramos, Robert Alexander, and John Thomas agreed to, arranged to, conspired to change petitioners answers in the interrogation recordingh that was crearted for trial purposes on March 8, 2009. This transcript was altered on Novembner 23, 2010 after parties had been served their copies of the complaints. (exhibit 63, 64, and 65)(Copies of the states records 1-113 page trsanscript created on the same day as the 1- ~~copy~~ 136 page copy for the exact same interrogation) Firstthis interrogation was created in two seperate locations outside MIRANDA,while two of the recordings were officers personal recorders, the other was a cam corder that was used while iun detention atb the police station. These officers made copies of the recordoings and erased sensative and critical areas of the conduct (interrogation) when they made a "COPY" of this interrogation. (states exhibit 49) (exhibit 65 here)

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

(States exhibit 49 compared to states exhibit 49A)

(GM = Greg Myler)(JY = John Yablonsky)(RA = Robert Alexander_

ONE HOUR SEVEN MINUTES INTO EXHIBIT 49
AND FIFTEEN SECONDS

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

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

ONE HOUR SEVEN MINUTES TWENTY FIVE SECONDS
INTO EXHIBIT 49

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

A-(JY)- No

THIS VERIFIES THAT PETITIONER HAD NO BUSINESS IN THE HOUSE!

UNINVITED!!

ONE HOUR SEVEN MINUTES AND THRITY TWO SECONDS
INTO EXHIBIT 49

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

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

This was her rentalk, why wouldnt she have a key to her own home, showing this change in answers supports that Cobb ddid not allow anyone inside her home, not even her teneant and that she was not allowed inside the apartment she rented to petitioner for strange reasons.

ONE HOUR SEVEN MINUTES AND THIRTY TWO SECONDS
INTO EXHIBIT 49

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

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

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

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

AFTER TRIAL

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

It was in this disclosed post trial motion that petitioner had discovered that trial counsel had not had anything fromthis case examined at all after being told by labratory experts there were mandatory examinations nbeeded that would cost as much as $3, 500 (well within the range of reasonable defense) (exhibit 49) (exhibit 50) It was not until after the Jul.y 2014 release by trial counsel of other informations that petitioenr tried to expand the states grossly under created records because of misconduct, ommissions,and other criminal activity by state and lawyer that the request to expand was denied. (exhibit 51)

THESE ARE THE FACTS SURROUNDING
THE CASE, AND ARE UNDISPUTABLE

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

(RT32;12-22)(DDA Thomas)

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

EVIDENCES COLLECTED FROMTHE SCENE OF MATERIAL VALUES
(SEE EXHIBIT 26 FILED HERE)

There was over 80 photographs inthis case, petitioner points points at a few which are strikingly important and breifly discusses them here.

Photos three through seven

Thes are photos of the vioctims driveway and tire tracks located inside the dirt drive. It was the prosecutors theory that these trascks belonged to a silver pinto with a wheel base of 40 inches. The state used a witness who seen a silver pinto at the scene, and withled that petitoners pinto was dark blue.(exhibit28)

Photo twenty three

This is a photo of the dining tbale ashtrya that held eight butts located in it inside a smokers house ina common areas. Three of these butts had been matched to Mr.Backhoff/Randolph who confessed tothe crime

Photo forty six

This is a ,photo of the ring ,located onthe noight stand near the victims bed, showing this case was not about robbery

Photo fifty two and three

This is a photp of the watchband pin locatred under the victims head, showing that it would have had to been placed there during the crime because it wsas slightly under the side of the victims right side of her head, showing that the killer had been a right handed person to lose the ;lin on his left side as they killed Cobb and she fought the pin loose from the attacker. It woulkd be inconceivable for the attacker to have the ttrain of thought to think of the watchband pin as they grabbed the watch, not thinking of the pin that ket the band attached when they fled from the scene taking their wacth, but not the PIN!!

EXHIBIT 26

Photo fifty six

This item was located around the victims neck showing that time and eefort was used to place it there, and that this was a very critical piece of evidnce indicating how the victim was killed, but that this item would have material c values with the scuientific community regarding DNA that would have been left on this weapon

Photo fifty seven

This photo shows that the scen had been disturbed after the body had been killed. This photo shows lavidity which is caused when a peroson dies and is left in that spot for some time. The blood settles tothe lowest area of the body., This lavidity is located in the victims upper right ribcage area ands shoulder area. Showing that Cobb had been killed while on her right side. The body was located ontne back, suggesting a sexual position because the legs had been apart.

Photos fifty nine ans sixty

These phots are of the blood smears lovcated onthe bedroom door jamb and short pony wall adjacent tothe direct crime scene. This shows the wreckless nature of the ttacker who left unreadable prints inthe victims blood showing this crime was committed without the use of gloves.

Photos seventy one, two and three and eight

These photos show the degree of edrfforts thatwere made to wrap and tie this wore hanger ontothe victims neck, Showing this was not an easy task and the ability to manipulate this metal that had been wrapped and twisted, and twisted again, according to experts.

Because there are no witnesses tothe crime, the relevant and material evidnces to this case are hinged onthe forensics of the case which can infer what happened, and show who was at the scene, and where they were at the scene in referance tothe crime, this includes evidneces that were left at the scene the time the crime occured and evidneces that had been carried into this scene at some point. These are the DNA materials locatred at the crime scene directly related to what happened. These items have eben tagged as DR# 1331036 items B22559, B68345, B67999 as follows;

Item A18(1)

Tag#B22559 Felt pad and sheets

Petitioners as well as Mrs Cobbs DNA was located ona felt pad that was determindd to be a desk cover that was located in the bedroom and underneath a coimforter. The evidnces was DNA qualified and was matched to petitioner through CODIS. This DNA did not transfer tothe sheets, of the bed, nort did it transfer tothe comforter itr was located underneath. This was examined and testified that the DNA belonging to petitioenr was mixxed witht the DNA opf Cobb, but uncertain which was on top of whuich. This item had been damaged intentionally by sheroiffs crime labs, and removed froma 18 inch by throty inch piece of material. The remainder was 3 c, by 5 cm aprox 3 inches by five inches. Current DNA examinations could be used today to verify the time this occured as welkl as other DNA's that were untracable in 1999 when this item was examined and DNA collected.Petitioners DNA was not located on the sheets!!

Tag#B68345 Item #A13 'Pillow

This is a piloow located underneath the victims head and would have DNA on this item and because it is directly rrelatred tothe immediate crime location would have the killer DNA on it. Petitioner DNA will not be on this evidence

DNA EVIDENCES LOCATED

Tag# B67999 [illegible]s located on the body and scene

Items B4,A5,, A1, A18, B3, B1, A20, A17, A15, B4a

Item #B4 was standatrd pubic hairs that were colle tec from tape liftings from be neath a comforter located on the bed which were directly inthe immedciate vacinity of the murder since officers believe that Cobb had been killed where she laid. The DNA from these evidences will not match nor were they matched to petitioner.

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

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

Item# B3 This is a metal wire that had been used as a weapon and was located around the victims neck. Expr½erts t stated this would DNA terrific and this evidences having DNA on it was not matched to petitioner, where a murder occured using this weapon with bare hands, verified by the blood smears onthe bedroom door jamb with unreadable prints inthe victims blood.

Item #B1 These are loose hairs that were also collected fromthe victims torso and this DNA [illegible] was not matched to petitioner.

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

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

Item #A15 This is a watchband pin that was locaterd underneaththe victims head. Indicating it was oplaced there at the time of the crime where struggle occured and was located on a barren bed sp read. This item will be DNA magnificent and was not matched to eptitioner, even thought he prosecutor argued it beloings to eptitioner because of the size.

Item #B4a This is a vaginal colllectionwhere sprerm had been collected from inside the body of the victim. This was matched to Yablonsky, petitioner and expertly testified to by two states leading experts. (Dr. Suakel)(RT490 who stated that this DNa was the result of an encounter that occured before the murder by at least one and a half dayds before Cobb had been killed)(The second expert)(Crininalist Donald Jones) (RT317 who stated that this DNA was the result of a sexual enocounter that occured as much as severla days bve before the murder occured and added that eh was certain of this)

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

was not located inthe victims blood smeared onto her bedroom jamb or pony wall. It wass not located on any of the bedding, sheets, pillow, comforter, nor was it located on anything directly related tothe actual murder. It was not on the weapon, not on the watchband pin located under the victims body, nor in any of the hairs recovered fromthe nude body. Petitioners DNA was not colllected from the finfgerprints that were collected, and was not on the door knobs lead to or fromthe victims bedroom or main entrance of the house. In fact the only DNA collected fromthis scene matching petitioenr could have been carried in there by the victim herslef inside her, while the desk blotter had originated inside the office area of the house could have also been placed inside the bedroom days before the murder occured."UNDERNEATH A COMFORTER ??"

There is not one piece of evidnece DNA or otherwise that indicates petitioners involvement withg this crime to any degree outside pure speculation by the prosecutors "theory" that just because petiutioner ,lied tothe cops while being asked about a sexual relationship with amurdered woman whoile in front of his wife ands children. In fact the only evidnece linking to culpability of this crime was manufactured by the prosecutor himmself by changing petitioners answers to place evidnece into his possession when the real time recordoings will show they presented fake evidneces.

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

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

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

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

murder had occured. Also clearing petuitiooner fromthe time the crime had occured as Dr. Saukel who was oner of the pathologists inthis case also clearing petitioner DNA by as little as one and half full days fromthe time Cobb had been killed. Saunders stated that cobb offered him a glsass of water to drink, andeveryone at the party said she had been drinking burboun. Saunders said that he arrived at the aprty and picked pistachios with the group only nobody remembers him being there, while Saunders said that to his knowledge Cobb had not been drinking. He also added that she offered to have hoim over after the party, but added that he did not go to her house./ After being told that she would only accept platonic relationship with him.

Another woman was killed inthat area shortly after the Cobb mmurder, and was committed by Meryl Gibbs who strangled and killed his own wife inthe exact same manner Cobb had been killed.. Then Committed Suicide
One bartender from twon stated she did not see Cobb at the bar c she worked on that Friday night, and also added she seen Cobb extremely drunk some time earlier. Only three other bartenders stated that thought or had seen Cobb in their bar the nuight she had been killed.

Every person interviewed after the crime stated that Cobb was a loose woman and like to date alot, of different men fromthe ages of 20 and up. That she liked to frequent the bars and would regularly pick men up at the cost of a drink to take them home for sex. Cobb had been sexually involved with at least seven men around the county, to include three bartenders fromthe "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 viscious 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

Direct post trial appeal 4th district COA#Eo55850

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

California State Supreme Court petition for review# S215572

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

State habeas corpus Superior Court #WHCSS1200311

Petitioner argued 12 grounds of error based on facts known but unable to tangibly prove. Petitioner filed demands for discovery and state records whuich was denied and refused. DDA Ferguson from the appellate division of the district attorney offivce filed breif in their defense.(perjudice) Afgter breifing by boithg attornet general and district attorney 13 more constitutional errors became developed. Petitioner moved the Court to expand the records,which was denied. The court denied this habeas stating it lacked jurisdiction, or that petitioner did not have enough proof at that time.Denyoing this on July 12,2013 before the records had been released on July 2014(exhibit,57)

State Court of Appeal habeas corpus #EO60202

Petitioner seperated the combine claims in superior court and filed thrity two ground at the appellate court level. This Court summarily denied this filing on January 14, 2014 aftre twice denying petitioners plea for doiscovery tothe case. This habeas was denied before the release of the states records on July 2014.

States Supreme Court habeas corpus#S218253

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

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

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

California State supreme Court#S217210

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

United States Court of appeals 9tth Circuit#16-8771

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

United States Superreme Court#16-8771

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

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

Onee petitioner had discovered that fraud had been committed by state government bodies to constitutional dimmensions petitioner filed civil suits against several aperrties to include trial counsel, senior trial copuinsel, district attoerney county district attorney, sheriffs department, county jail and the judge for several ground which affected petitioner federolly protected rights before the trial had reach its finality regarding case #FVI900518. These defendants admit they altererd evidences, admit they prejudicially ised petitioner case intheir campaign smear, and admnit they witheld evidndces fromthe petitioner until the direct appeal and habeass courts had been exhausted as well as several specific failure that include haveing nothing investigate inthis case (FVI900518) to na any degree.

THIS CASD IS STILL ACTIVE

Superior Court (FVI900518) P.C.§1405

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

Superior Court habeas corpus #WHC1800338

Petitioner filed second habeass corpus arguing newly discovered evidnece that had been fully divulged on January 2016 arguing six federally protected rights. This was denied on 10/9/18 for timeliness for timliness. Petition for rehearing was FILED on Oct. 24 2018

Petitioner argued timliness based on his medical condition as a result of a stroke he suffered prior to the release of the records on January 2016. The Court further argued that two previous filings between January 2016 and October 2018 had been filed alleging factual innocnece, suggesting petitioner was barred from review herein. Petitioner argued prima facie, new laws , and the authority which stated if petitioners first state habeas had been denied for lack of jurisdiction, or claims there was not enough proof, then the Court had an obluigatuion to review the case onthe merits here. Petitioner argued cause and prejudice under Park, 202 f3d at 1152(1993) [THE DIXON RULE]. Petitioner filed two P.C. 1405 motions(sic) Petitioner further filed a copy of the malliable compact disc showing the altering of the interrogation answre and the Court again denied this matter, stating the case had been closed.
(see attachment A)

STATE COURT HABEAS PREJUDICE ⌀HCJS 1860338

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

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

SEE ATTACHMENT B

STATEMENT OF THE CASE

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 froiends on September 20, 1985 beteen 7;30 p/m amnd 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 drinkjimng party (John Sullivan)(Sullivan),(Francesca Drake)(Drake),(Cynthia Hooper) (Hooper), and(Bruce Nash)(Nash) Sullivan and Drake was boyfriend and girlfriend and lived at teh mini springs ranch. Nash and Hooper wre also boyfriend and girlfriend, but lived elsewhere. These persons regulalry partied together. All persons at the party named above remember seeing Rita Cobb (Cobb) arriving at the aprty drinking a bottle of bourbon around 7;30 p.m. (RT407-425). Nash had arrived at the aprty without drinking anything, and had not drank at all that night. He noticed that before he left the aprty around 9;30 p.m. that Cobb had been more drunk than usual, and chose to offer to drive Cobb while Hopper followed in their car. Cobb refused the offer, telling Nash and Hopper that she was not going home, and was goiung to go to a bar called the Zodiac lounge instead before she weernt home. (RT412) Accordiong to statements given in 1985 Nash and Hooper left the aprty before Cobb, leavoing at 9;30 p.m.(see exhibit 13)

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

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

Kramer noticed a ring onthe night stand near the bed of Cobb.(RT120,126) Kramer also adeed that he had not touched anything inthe house at that time. Kramer offered that he ha dmarried his sister Marta who was at one time his step sister. (RT188) They stated he called the police immedu iatley after discovering the body. Deputy McCoy arrived at the scene on September 23, 1985 at 1400 hours. (RT213) and made diagrams of the scene, then took photographs. McCoy added during the trial that there was a six pack of beer missiing fromthe scene from the time he sketched the scene and took photographs. McCoy stated that he found the body of Cobb in a moderate state of decomposition (RT232-33) and found clothing

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

That same day criminalist Donald Jones arrived at the scene. (Jones) Jones collected several pieces of evidences (RT254) including the watchband pin underneath the victims head. (RT255, 258) He then took notice of the blood smears onthe bedroom door jamb and short wall acroes the hall fromthe room where Cobb had been murdered. Jones took samples from the blood.(RT264, 293) and collected bodily fluids from Cobb. (RT260, 262. Jones noticed there was shorts o ver the victims mouth and face area (RT439) and determined that Cobb had been killed by strangulation after he located a wire around the victims neck. The DNA colelcterd from insie the casvity of Cobb had been matched to petitioner by CODIS and during trial Jones offered the following testimony about that evidence. (exhibit 51) (RT 317)(Cross examination)

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

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

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

A-Absolutely, thats correct.

Q-So it could have been- you cant tell the time based on just looking at what yuu looked at ?

A-No sir.

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

A-Thats probably true. I would say it probably wasnt days before in terms of she had intercourse, several days passed and then she died.

Q- Right

A- Im fairly certain of that.

Q- Okay.

A- And if you take [THOSE DAYS AND SHRINK IT DOWN TO HOURS AND SO FORTH, I CANT TELL YOU]

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

THERE WAS NO REDIRECT OR CHALLENGE TO THIS TESTIMONY!!

Another state expert testified named Dr. Saukel who was the pathologist for this case. He examined all the evidneces and and determined Cobb had been dead for two days by the time she had been found. (RT440) and that he located lavi dity on the victims upper right outter ribcage and arm area. (RT 443) The doctor offered that there wass no sceintific or physical evidneces Cobb had in fact been raped. (RT469) Adding that there was a wire located wrapped around the neck of Cobb. (RT464,465) Then offering in his expert opinion on direct examination by DDA Thomas, stated the following regarding the DNA located from inside the body of Cobb matched to petitioner; (RT490-91)(Q-DDA Thomas)(A- Dr Saukel)

Q-And as far as the sex was concerned, based on your training and experiencne and based on what you [XXXXX] termed [moderate] amount of sperm cells, can you say that this occured a week prior to death ?

A- It would have to be shorter than that.

Q- How short ?

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

Q- Within a day and a half ?

A- Yes.

(RT490)(EMPHASIS ADDED) DAY AND A HA:LF!) (exhibit,51)

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

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

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

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

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

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

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

The state then played a version of the interrogation recording that had been collected on march 8, 2009 from tyhree seperate recording devices. (Robert Alexander personal recorder) (Greg Myler personal recorder)(Cam Corder located at the signall hill police station) These recordings had been altered when they created a singular copy versionthe state used as exhibit 49 (compact disc) as discussed above and later in this petition. The "copy" shown tothe jury is not available, nor was it provided to petitioner, or petitioners counsel, that he is aware of. The state used a version that wass audio and visually matched to amount to a 2 hour and fifty minute recording. The interrogation was a three hour and forty eight minute interrogation intwo different locations. The states exhibit 49A that had been placed into the states records was created on Novermber 23, 2010, one full year before the trial ever occured. The states exhibit 49a was a 113 page version of the transcripts. The state also created on Novemner 23, 2010 another copy that had 136 pages in it. Neight of these transcripts were accurate and had petitioners answerrs that had been changed. (discussed later) (CT517)CT522)(CT520,521) Petitioenr inthe interrogation denied hooking up with the vctim! While being interrogated ~~by~~ ABOUT a murdered woman and his sexual involvement with her while being interrogated in front of his wife , mother inlaw, and three daughters!!!!! WITHOUT MIRANDA

The defense presented no evidence, no testimony, and did not provide an opening statement, and focused the closing statement to information about the density of baseballs and bats,while telling the jury about the wildreness. Defense did correctly stated thsat findings of the DNA, That it had been the result of an encounter that occured more than one and a half full days before the murder occured. The prosecutor offered a closing statement contradicting the detectives testimony about there being fingerprints located at the scene. While the detective stated there was a report he did not know if it had been processed,but the prints of the defendant had not been located. While the prosecutor stated there was no fingerprint evidnces to this case at all.. (RT523)(discussed later)

SUPERIOR COURT HABEAS
WHCSS1200311
FIRST HABEAS CORPUS FILING IN 2012
THE HONORABLE JUDGE KYLE BRODIE

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

On April 12, 2013 the Court requested reasons this case should not be stayed until after the appeal/(exhibit 54) Petitioner filed a brief arguing the Court had jurisdiction and asked for the Court to grant leave to expand the record of thirteen more grounds that developed inthe habeas breifing and direct appeal breifing that occured after the habeas had been filed(exhibit 56) The motion was denied on June 12, 2013. The Court then denied the habeas corpus stating that petitioner did not have enough proof, or that the Court lacked jurisdiction. (exhibit 57) Tyhe court ruled as follows;

<u>Grounds</u>

I.........This Court lacks jurisdiction to consider the claim

II........Collusory allegations without moore are insufficient warrant habesas, petitioner has not met that burden.

III.......Petitioner has not shown that counsel was ineffective and has not provided any evidences showing this

IV........This Court lacks jurisdiction to consider this claim

VI........Petitioners claim there was insufficient evidences to support the conviction is not cognizable on habeas

VI........This Court lacks jurisdiction to consider the claim

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

VII.......Collusory allegations about conspirac to alter evidence does not warrant habeas relief.

VIII...... Petitioners allegations that counsel was ineffectiove for not investigating burden was nopt met, petitioner had not shown how the outcome would have changed

IX........Colusory allegations are not sufficient to warrsant habeas

X..........This Court lacks juridication to consider the claim

XI.........This court lacks jurisidiction to, connsider the claim

XII.........This Court lacks jurisidiction to consider the claim

COURT OF APPEAL HABEAS SUMMARILY DENIED 1/14/14
ON THIRTY TWO GROUNDS

STATE SUPREME COURT HABEAS SUMMARILY DENIED 7/16/14
ON FORT TWO GROUNDS

With regards to the informal order by the Court (exhibit 53) The Court asked regarding five of the twelvegrounds be responded to by informal briefing. DDA Ferguson defended the state. The Court addressed ground one the use of petitioners case in a campaign smear right before the trial asking (1) Was petitioners case and likeness used shortly before the trial (2) and if so, wsas this addressed by the trial court. The district attorney disputed this saying that this had been addressed by the court, and there ws no prejudice. (exhibit 36) First this case filed against the district attorney had been current and standing for future case developments at the time trial had occured. ~~Secondxeverycoxinxthe courtx~~ Second the Court at the time of the recusal motion stated "at this time" the Court does not recognize the prejudice which could have occured a s a result o f this use of petitioners case. TRIAL HAD NOT STARTED YET! (THIS HEASRING WAS HELD THREE MONTHS BEFORE THE TRIAL) Therefore the Courts use of language [AT THIS TIME[could not have carried intothe courtroom onthe first day of voir dire when every jurors inthe courtroom stated they seen the flyers they ~~xx~~ had gotten five months prior,and still made comments. The court did not ask one question about the prejudice fromthe flyers even after jurors made statements to the entire courtroom on the record (THAT WHEN THERE IS THAT MUCH SMOKE THERE MUST BE FIRE)(THERE IS NO WAY THE COUNTY WOULD DO SUCH A THING UNLESS THEY HAD PROOF OF GULT BEFORE THEY MAILED THOSE FLYERS)(YABLONSKY HAD BEEN SHAFTED). Petitiuoner did dispute this and filed opposition briefs.(exhibit 55) Petitioner argued under (WILSON,149 f3d 1298(1998) and (CARGLE V MULLIN, 317 f3d 1196) and (BESS, 593 f2d 749(1979). In the Courts denial the Court(exhibit 57) stated that respondent(DDA Ferguson) set forth

(RT 77:14-17) (RT 164:24-166:12) (RT 113:27-114:) (Exhibit 33-34)

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

The Court stated that the campaign materials were discussed at trial, buit did not state to what length, therefore the Court ignored the plea for relief and stated the Court lacked jurisdiction to "consider" the claim !. Ground (three) the Court asked whther trial counsel was ineffective for failure to investigate the DNA from this case (1) and whether there was a man who alleged to have confessed to this case (exhibit 53) DDA Gerguson argued that detective Myler had given trial counsel all the DNA evidneces to this case, and (1) that because petitioner could not prove the red hair was actually red, or that petitioner could not prove it belonged to the man who confessed the argument failed (2) DDA then argued that just because there is another mans DNA inside the bedroom regarding the watchband pin does nopt mean they killed [anybody], suggesting the victim collected that watchband pin collected from underneath her head (2) That trial counsel had sought DNA expert funds without success, stating the Court denied that motion because it had no merit. (EXHIBIT 50) TRIAL COUNSEL ASKED FOR LAB ESTIMATE BUT NEVER! SOUGHT DNA FUNDING THEREFORE FERGUSON LIED!!

First there was not only a confession to this crime, but that Backhoff had been arrested for this case. (exhibit 16) His DNAS was matched to this case and this scene and was a suspect to another murder typed byb the FBI as a serial murder. Second this DNA located on the red hair that was collected fromthe victimsd body (exhibit 17)(exhibit 26) indicating the hair was in fact red, and had been processed by government labratories.

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

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

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

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

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

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

COURT OF APPEAL-70

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

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

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

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

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

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

These satisfy that the prosecutor not only knew the evidnece was altered by way of audio and text, but used it t0o coerse a verdict. The Court states that collusory allegations of altered evidnece is insufficient to grant habeas .(P.C.§ 1473) Petitioners allegationwas not that they conspired to alter evidnece but that the state conspire to make evidnecws that were shown tothe jury. DDA Fergusons argument suport that this evidnece was in fact used to convince the jurors. |Ground nine| Petitioner argued that trial counsel failed to object tothe lies by the state regading Nash, Sullivan, Kramer, and Alexander. The Court chose to state that counsel failed to ask additional questions (exhibit 57-9) is beside the point. That counsels performance would be presumed competant. Adding that failure to object would be a tactical choice for the counsel and not the client. The Court gave counsel Sanders alot of credit for the investigations when the records are absolutely absebnt of any proof the counsel investigated anything, and what the counsel did do was substandard when he could nto follow court rules and serve parties, or could not rememebr his clients name. (exhibit 36, 49) The Court addfresses the possible confgession by Gregory Randolph as conclusorty without sufficient basis to grant habeas(exhibit 57-9) The Court found counsel was not ineffective for not bringing the confession reports, which is odd because the Court of Appeals

found that the Court and counsel erred by failing to provide the correct evidnece arguments about the confession report and the results of that confession. (i.e. further investigations, arrest etc) (see exhibit 16) The Court finally provided that"judges are not like pigs who hunt through breifs of counsel for truffles"

As to ground one the Couyrt stated it lack juri sdictuion, the same as grounds five, ten, eleven, and twelve.. For grounds two the Court found that petitioner did not provide sufficient facts to support the claim. [illegible]

Because these facts were not available at the first filing of habess and petitioners diligence in developing these through the Court, trial counsel and post counsel makes these facts now available through the new laws within this state regardoing newly discovered evidnece. The Superior Court of California faield at the findings of the heabesa corpus presented for WHCSS1200311.

NEW LAWS AFFECTING REVIEW BY STATE COURTS

Senate Bill 1909

This bill paased affecting P.C. § 141 with regards regards to the use of altered evidnece, false evidnece and C.R.P.C. regarding the knowijn g use of false evidnece in a hearing. The bill passed in2017 stating the following;

> Existing law made it a misdemeanor for a person or a felont for a peace office to knowingly willfully intentionally, and in bad faith alter, modify,plant, manufacture, conceal or move any physical evidnece matter, digital matter, or video image with sdpecific intent that the actiuon will result in a person being charged with a crime

The bill affecting the laws made it a felony and punishable by imprisonment for 16 months, two years or three for a prosecuting attorney to intentionally and in bad faith alter,modify, or withold physical matter, digital image, video recording or relevant exculpator material information knowing that it is relevant and material to the outcome of the case, with specific intent that the physical matter digital image, video recording, or relevant exculpatiry material information will be concealed or destroyed or frauduyulantly represented as the origianl evidnece upon the trial.

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

Senate bill 1134

This bill passed directly affecting P.C.§§§§ 1473, 1485.5, 1485,55 relating to habeass corpus and newly discovered evidneces. This bill passed on 2017 regarding the use of false evidneces threwshold under review.

Existing law required every person who is unlawfully improisoned or restrained of his liberty to prosecute a habeas corpuys to inquire intothe lqwfullness of t the incarceration or restraint. Existing laws allow a habeas corpus to be prosecuted for but not limited to false evidnece that is substancially material or probative to the issue of guilt or puinishment th that wass interoduced at trial and false physica;l e evidnecwe which was n material factors directly related to the plea of guo;lt of a person.

This law will now include additional habeas to be prosecuted on the basis of newly discopvered evidnec that is credible, material, and presented woitou s substancial delayt and of such decisivness force and value that it would have more likely than not ch changed the outcome of the trial

SEE EXHIBIT 61

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 hte Penalty of perjury of the satate of California as according to knowledg e and belief as the truth inthis matter.

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

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

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

That at this sexual encounter we had sex in a variety of position and locations of the house to include the livingroom area,and the dining office area where there was a table, chairs and desk. These actions were consentual by all three parties and nonviolent in nature. I chose to leave the sexual activity 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 constructiuon 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 murderr 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

Cover of [illegible] 76

There would be corroberating statements availabel by other family members of the Mullen residence, except they are pasewd away. This can also be possibly verified by Linda Mitchell about the stay in Downey the weekedn before Holly gave birth to Jasmine Yablonsky which occured on September 30, 1985 the weekend after the murder. Holly Yablonsky now Brown will offer scorn testimony and may even admit that petitioner killed the president Kennedy if she thought it would help hurt me. There is Joy Mitchell who may also be able to provide testimony su;ppporting this visit as weell as Holly uncle (name unknown) The above declaration was made with belief and knowedge as beigng the truth inthis matter.

I DID NOT KILL RITA MABEL COBB!!

November 2018 John Henry yablonsky

STATUTES THAT APPLY BUT ARE NOT LIMITED TO

P.C.§ 1473(a)(b)(1)(2)(c)

Every person unlawfully imprisoned or restrained of his libertty under [any] pretense what ever, may prosecute a writ of habeasc orpus, to,inqwuire int0o the cause of such improisonment or restraint (b) A wroit of habeas may be prosecuted for but not limited to the following reasaons;

(1) False evidnece that is substancially material or probative onthe issue of guilt or pubnishment was interoduice against a person at [any] hearing or trial relating to incarceration; or

(2)False physical evidnece, believed by a person to be factual probative or amterial on the issue of guilt, which was known by the person at thge time of entering a plea of guilt which was material facotrs directly related tothe plea of guoilt by a person

Subsection (c)states any alleged that the prosecutor knew or should have known of the false nature of the evidnece refer-ed to insubdivision (b) is material tothe prosecutoion of a writ of habeas corpus.

United States Constitution IV Amendment § 1

The right of the people to be secutre in their person, houses, papers and affects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation and particularity describing the opk place to be searched and person or things seized.

United States Constitrutuion V Amendment §§1·

No person shall be hedl to answer for a caopital or other wise infamous crime, unless onthe presentment or indictment of a granbd jury, except in cases arising inthe land or naval forces, or in the malitia when an actual serice in time for war or public danger, nor shall any person be subject to the same offense twice be put into jeapordy of life or limb, nor shall be compelled in any criminal case to be witrnesse against himself, not be deprived of life, liberty or propertyt without the due process of law, nor shall private pproperty be taken without just compensation.

United States constitution VI amendment $§1)

In all criminal cases prosecutions the accused shall enjoy the right to a speeddxy trial, by an impartial jurty of the states district whjereinthe crime shall have been committed. Which district shall have been previolsly ascetrtained by law, and to be informed of the nature and cause of the accusation, to be confronted e with witnesees against him, asnd to have compuldosry witnesses process in his favor and to have the assistance of counsel for his defense.

United States Constitution XIV Amendment§ 1)

All persons born or natualized inthe United States and subject tothe jurisdication therefo, are citizens of the Untied States and of the satate wherein they reside. No state shall make or enfoce any law which shall abridge the privileges or immunities of citizebns of the United States, nor shall any state deprive any person of life, liberty or propperty without the due process of law nor deny to any person withinits jurisdiction the equalt protectuions of the laws.

P.C. § 134

Every person guilty of peeparing any false or anteerdated book, record, instrument in writing, or any matter or thing with the intent to produce it or alow it to be produiced for [any] fraufdulent or deceitful purpose as genuine or true upon any trial proceeding or inquiry whatever authorized by law is guilty of a felonty

P.C. §§ 135

Every person who knowingly that any book, record, instrunent in writing or other matter or thing is abouit to be produced in evidnece upon any trial, inquiry or investiogations whatever, authorized by law willfully destroys or conceakls the same, withthe intenct thereby to prevent it from being produiced is guilty of a misdemeanor

P.C.§ 141

Except as otherwose proviced in subsection (b) any person who knowingly, willfully, and intentionally alters, modifies,m places, maunufactures, conceals or moves any physical m,atter with specific intent that the action will result ina person being cvharges with a crime or with specuific intent that the physical matter will be wrongfully proidcued as genuine or true upon any trial , proceeding or inquiry whatever is guilty of a felony

Rule 3.8. Responsibilities of prosecutor

The porsecutors in criminal cases shall;

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

b) Make reasonable efforts to assure that the accused has been advised of the right to ~~counsel~~ and the procedure for obtaining counsel and has been given reasonable opportunity to obtyain counsel

c) Not seek to,obvtain from an unrepresented accused a waiver of important pretrial rights unless tribunal has apporved the appearance of the accused in propria ½persona

d)Make timely disclosure tothe defense of all the evidnece or information known tothe prosecutor that the prosecutor know or reasonably should know tends to negate the guilt of the accuse, mitrigate the offense, or mitigate the sentence excpet when the prosecutor is releived of this responsibility by a protective order of the tribunal.

XX)Exercise reasonable care to prevent persons ~~agents, law enforcement personnel~~ under the prosecutor, including investiger-

e) Exercise reasonable casre to prevent persons under the supervision or direction of the prosecutor, including investigaotr law enforcement personnel, employees or other persons assisting or assocuiated with the prosecutor in criminal cases from making an extrajudicial statementr that the prosecutor would be prohibitied from making under rule 3.6

f)WWhen a prosecutor knows of new, credible and material evidnece creating a reasonable likelihood that a convicted defendnat dfid not commit an offense of which the defendant was con=v-victed the prosecutor shall;

1)Propmtly disclose that evidnece to an appropriate authroty

2)Ifd the conviction was obtained intyhe prosecutors jurid-iction the rposecutor shall
i)prmptly disclose that evidnece tothe defnednat unless a court authorizes the delay.

ii)undertake furhter investigations, or make reasonable e efforts to cause an investigation, to determine whether the defnedant we was convicted of an offense that the defendant did not coimmit

g) When a prosecutor knows of clear and convincing evidnece established that a defendant inthe prosecutors jurisdiction was convicted of an offense that the defendant did not commit,t the prosecutor shall seek top remedt the convction

Rule 3.8 Special responsibilities

The prosecutor in criminal cases c shall;

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

b)Make reasonable efforts to assutre that the accused has been advised of the right to and the proceudure to obtyain counsel and has been given this reasonable opportuinity to obtain counsel

c)Not seek to obtain from unrepresented accused a waiver of important prettrial rights unless a truibunal has apporcvec the appearance of the accused in proprias persona

d)Make timely disclosure to the defnedse or all evidnece or information known tothe prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt or sentence except when the prosecutor is releived of this responsibility gy a protective order of the tribunal

e) exercise resaonable care to prevent persons under the suprevision or direction of the prosecvutor invl including investigaotr, law enforcement, employees or other persons assisting or associated with the prosecutor ina criminal case from making extrajudicial statments that the prosecutor would be prohibited from making under rule 3.6

f)When a prosecutor knows of new, creidible and material evidnece creating a reasobnabl-e likelihood that a convicted defendant did not commite an offense or which the defendant wass convicted,the prosecutor shall;

1) Propmyl disclose that evidnece tothe proper authority

2) If the conviction was obtained inthe prosecution jurisdisction;

i)Promply disclose that evidnece tothe defnedant unless a court authorizes the delay

ii)Undertake further investigations or make reasonable efforts to cause an investigation to determine whether the defendant wass convicted of an offense that the defnedant did nto commit

g)Whe a prosecutor knows of clear and convicing evcidence established that a defendant in the prosecutors jurisdiction was convocted of an offense that the defendant did not commit, the prosecutor shall seek o to remedyt the conviction

STANDARD OF REVIEW IN THIS CASE

A STATE COURT CANNOT REFUSE TO CONSIDER FEDERAL QUESTIONS REGARDING 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 ~~consider~~ 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

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

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

ERROR OF FACT

To vacate a judgemtn when error of fact affected the judgment that did notgo to the merits of the previously truiaed when ;

a) When there is no other remedy avaiable

b)Due diligence pursuing these facts was exercised

And must be filed as soon as the error were discovered and ashowing of preperatrion of the evidnece that petitioner was deprived of substancial legal rights by the factual error denial of petitioner appealing to the next higher court. Coram Nobis is an extraoridinarty writ available to remedies Pweople v Miller (1963) 219 Cal.XXX App.2d 124. It becomes a collateral attack when no other remedy exists while facts existed which would have affected the previous judgment People v Kim 45 Cal.4th 1075(2009) It's purpose is to enable a convicted person, even after appeal and affirming of the judgment, to establish that [IT TRUTH] the judgment was procured under coircumstances which offends fundamental concept to justuice such as due process clause of the 14th amendment.Poeple v Shorts(1948)32 Cal.2d 502

SUCCESSIVE PETITIONS

A successiv ehabeas corpus petition can lie when facts, evicdences and authority are developed to support the petition. Peoplev Duval. (1995)9 Cal.4th 464. When false evidneces were discovered that are material or probative tothe allegation. P.C. §1473 In Re Richards(2012)55 XXXX C.4th 948(including expert opinions being reputiated or [technology]) (RICHARDS) or when false evidnece was a factor which was material to guilt or sentence.(RICHARDS)

NEWLY DISCOVERED EVIDENCE

Newly discovered evidnece is evidnece that would have changed to likelihood of the outcome In Re MIles (2017) 7 Cal.app.5th 821. Supporting P.C. §§1473· . Ineffective assistanc efoir failing to file suppressions motions Pweople v Mendoza(1997)15 C4th 264 for failing to file insufficient evidnece on appealIn Re Spears (1984)157 CA3d 1203. The newly discovered evidneces are discussed at length In Re Miles 7 Cal.app.5th 821(2017) This standard set forth regarding "more likely than not" for new evidence habeas claims is close to but does not have the same meaning as the familiar prejudice standard appellate courts use when determining whether state law error affected the outcome of the trial. Nor does "more likely than not" have the same meaning as the phrase "preponderance of the eivendence". The burden of proof in civil litigations. In a civil case the partry with the butrden of rpoof mus convince the ~~trial~~ trier of fact that existance of a particular facts is more probable than its non existance, a degree of proof usually described as proof by a preponderance of the evidnece is evidence is a different burden of proof from proof beyond reasonable doubt. A fact is proved by the preponderance of the evidnece if juror [could] conclude that it is more likely than not that the fact is true Cal.Crim No.1191 New evidnece that undermined the prosecutions case and point unerr8ingly to [innocence].In Re Johnson (1998) 18 Cal.4th 447

The evoidnece could not have been discovered prior to trial through the exercise of due duiligence. The former Habeas corpus standard for new evidnece claims require that Habeas Corpus petitions are acted with reassonable diligence in presenting their

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

NOTICE DUE DILIGENCE STATED ABOVE
SEE PAGES 9:16 THROUGH 12:22
SEE EXHIBITS 1 THROUGH 11A

Newly discovered evidnece is material to defendant if defendant could not have wuith reasonable diligence, have discovered these evidneces prior to the trial. P.C.§ 1181(8) Case law has identified five factors to consider when rulijg on motion based on newl discovered evidnece;

1)The evidnece and not merely its materiality be discovered
2)The evidnece is not merely ~~materiality~~ cumulative
3)That it be of such to render a different result probably based on all the evidneces presented at the trial
4)That the party could not with reasonable duiligence have discovered and produced it at trial
5)That these facts be shown by the best evidnece of which the case admits

Moreover the moving paper shoudl be granted when new evidnece contradicts the strongest evidnece introduced at trial. People v Hall187 Cal.App.4th 282(2010):Kabran v Sharp Medical Hois, 236 Cal. App.4th 1294(2015);People v O'Malley 62 Cal.4th 944(2016); Aron v WIB Holin, 21 Cal.app.5th 1069(2018). In fact new evidnece withinthe meaing of C.C.P.§ 657(4) must be evidnece that was in existance at the time of trial on t6he motion. Normallyt to support a motion for new trial onthe ground ,the Court, Must determine if

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

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

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

Under Brady the prosecution is responsible for disclosure of "evidnece that is both favorable to the accused and material to, the guilt or punishment "United States v Bagley(1985) 473 US 667 Failure to turn over such evidnece violates due process. *Weary v Gain 136 S.Ct. 1002(2016) The prosecutor duty to disclose material evidnece favorable to defendant "is applicable even though there has been no request by the accused, and....encompasses [impeachmannt] evidneces as well as exculpatory evidnece. *Strickler v Greene 527 US 263(1999). Under Napue convictions obtained through the use of false testimony also violated due process [360 US 269], a violation occurs whether proseutor solicited the false statements or merely allows false testimony to go uncorrected. Id. The constitutional prohibition applies even when the testimony is only irrelevanty toi a witnesses credibility Id. and where the testimony misrepresents the [truth]" Miller v Pate 386 US 1(1967)("prosecutor deliberatley mirsrepresents of the truth" by presenting testimony that shorts with a large reddish brown hair stains test positive for blood, while elaving out that the stains were made by paint") (citation)People v Martinez36, Cal.3d 816(1984) The right to competant counsel (qouting) People v Pope(1979) 23 Cal.3d 412 if the evidnece is material then a motion for new trial should ,have been granted if it determined either[36 Cal.3d 816)]

1) The evidnece 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 statue of limitiations 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 evidnece") Id. at 1935(Quoting) Schulp v Delvo, 513 US 298(1995)'Schulster v Johnson2016 US dist. LEXIS 18594(2016) In McQuiggins the Superior Court held that "actual innocence" if proved, serves as a gateway through which petituioner may pass whether i&n impediment is a procedural bar...or... experation of the statute of limitiations is limited. McQuiggins 135 S.Ct. 1928 " [A] petitioner does not meet the threshold requirment unless he pursuades the Court that , in light of the newly discovered evidnece, no juror, [acting reasonably] would have voted to find him guilty beyond reasonabel doubt"id.(Quoting) Schulp v Delvo, 513 US 298(1995)

Motrion to vacate judgment in [COMMON LAW] remedy used to ATTACH substancial error when time for new trial and appeal have passed and may be broughty as write 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 [illegible] (1974)

Rosa v United States, 2017 US District LEXIS 9098. The common law writ of coram nobis is available in criminal cases under the ALL WRITS ACT 28 USC § 1651 Mautus - Leva v Unites States 287 f3d 758(9th cir 2002) The all writs act provide that "all courts may issue writs necessary to appropriate aid of their respective jurisdiction and agreeable tothe usages and principles of [law]. 28 USC § 1651(a) However the all writs act, is not juriddiction itself a sonne Chavez v Superior Court of Califoirnia, 194 f.supp, 2d 1037(C.D. Cal 2002)(citing Lights of America v United States District Court, 130 f3d 1369(9th cir 1997)(per curiam) A writ of coram nobis thus cannot can only issue "in aid of jurisdiction of the Court......in which the convictuion was had" Madigan vWells 224 f2d 577, 578 n.2 (9th cir. 1955). To warrant on relief a petitioner must establuish that;

1)A more usual remedy is not available
2)Valid reasopns exist for not attakking the conviction earlier
3) Adverse consequences exist fromthe conviction sufficient to satisfy the case or controversy required of art.III; ands
4) The errors is of fundamental character.

Matus-Leva287 f3d at 760

Because these requirements are conjunctive, "failure to meet anyone of them could prove fatal"id The ALL WRITS ACT $ 1652(a) is meant to be used only in exeeptional cases where there is clear abuse of discretion or ursurptations of][power] La Buy v Howes Leather Co (1957) 352 US 249. As a means of reviewing interlocutory now an appealable order, especially in criminal cases amounting to judicial urpurptation of POWERS. United Styates v. Grand Jury(1970 CA 5 Fla) 425 f2d 327. [illegible]

A judgment of convictionthat has been affirmed on appeal is a conclusion of the matter unless set aside on grounds akin to or in the nature of [EXTRINSIC FRAUD] or in some other lack of due process, or upo proof that a fact existed which could ~~have~~ not inthe exercise of due diligence by defendant have been provided at trial,and which if known then would have precluded the judgment from being enteredPeople v Short(1948) 32 Cal.2d 502, 197 p.2d 330.

The writ will be granbted only if the respondent can show tha some fact existed which withoiut any fault or negligence on his part, wass not presented tothe Court at the time of the trial onthe merits and which if presented would nhave prevented judgmentIn Re Wessley(CAL APP.2d Dist 1981) 125 Cal.app.3d 240;*People v Gilbert(CAL1984) 25 cal.2d 422: see also People v Sandoval(CAL March 29, 1927) 200 CAL 730; People v Lucas 60 Cal.4th 153(2014 It was previously noted that "impeachment evidnece other than felony convictions entail problems of proof") unfair surpirses and moral turptitude evaluate which the felont conviction do not present"People v Wheeler(1922) 4 Cal.4th 284.

PETITIONER MOVES THIS COURT AS SUCH

A) THAT THIS COURT UTILIZE THE LAWS UNDER WRIT OF ERROR CORAM NOBIS TO CORRECT THE EVIDNECES THAT WERE FRAUDULENTLY USED, HANDLED, ALTERED, DAMAGED, AND OR MISREPRESENTED TO CORRECT THAT RECORD "HERE AND NOW" AS PETITIONER ARGUES AND PROVIDED RECORDS TO AUTHENTICATE, CORRECTING THE RECORD ABOUT FACTS AFFORDING STATE PARTIES TO DISPUTE AUTHENTICITY OR BEST EVIDENCE USE.

B) THAT THIS COURT UTILIZE THE LAWS SURROUNDING HABEAS CORPUS AND NEWLY DISCOVERED EVICENCES AS BROUGHT HERE OFFERING THE STATE AN OPPRTRUNITY TO AUTHENTICATE AND OR DISPUTE THEM AND THEIR VALUES REGARDING BEST EVIDNECE, WHILE ENFORCING SUCH PROOFS NOW BEFORE THIS COURT IN THIS PETITION FOR HABESAS/CORAM THAT VIOLATED THE FAIRNESS OF A HEARING WHERE PETITIOENR WAS MADE TO SUFFERPERMANENT INJURY AS A RESULT OF STATE INCOMPETANCE, MISCONDUCT VIOLATING FEDERALLY PROTECTE D RIGHTS AND DUE PROCESS GUARANTEES

GROUND ONE

THAT THE STATE PROSECUTOR AND SHERIFFS DEPARTMENT VIOLATED DUE PROCESS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS WHEN THEY ALTERED ANSWERRS IN AN INTERROGATION RECORDING THAT WAS TRANSCRIBVED ON NOVEMBER 23, 2010 BY ROBERT ALEXANDER THE STATES LEAD INVESTIGATOR APPPOINTED BY DDA JOHN THOMAS WITH THE INTENT TO PRESENT THESE ALTERED RECORDS TO A PANEL OF JURISTS FOR CASE FVI900518 ~~EXERCI~~-FURTHER VIOLATING DUE PROCESS RIGHTS UNDERHT E FOURTEENTH AMENDMENT UNITED STATES CONSTITUTUION AND STATE LAWS-

Facts surrounding this misconduct

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

The three agencies arrived at 1700 E Silva st. Longbeach ca, 90807 at 0900 hours to serve the arrest warrant as well as a search warrant that had been procured onMarch 4, 2009. Officer arrived stating that theye were sheriffs and investigating a crime, asking to speak to John Henry yablonsky. This interrogationwas recorded on personal recorders without petitioners permission. The interrogatuio occured inside the kitchen area of the home where petitioners family also resided. His daughters were inthe living room, sxmx both under age and another girl that ws petitioners niece as well as petitioners mother inlaw and his wife, who all sat inthe living room while this barrage of intruding questions were delivered by two officers that identified themselve as homicide detectives Robert Alexander,and Greg Myler, WHILE OTHER AGENIES WERE OUTSIDE THE HOUSE

The interrogations was without MIRANDA waiver by petitioner nor were any rights read of given, while these detective asked personal questions, specific questions and directly related questions regard- informatiomnto a crime the detectived knewe petitioner was a suspcet to while carrying a warrant for the arrest of John henry Yablonsky for the murder of Rita Mabel Cobb. Thgroughout this interrogation petitioenr was asked about his knowledge and information regarding the murder of Mrs Cobb (COBB) while detectives asked about petitioners sexual relationship woith Cobb. Because of the nature and sensativity of thiose wuestions being asked in front of children and there was no ohligations to reveal these private answers ~~h~~petitioner ~~lied~~ WAS DECEPTIVE about his sexual relationship when asked. Detective also asked about whether petitioner had keys to the Cobb home and petitioner strenuously denied having any such keys. Officer then asked whether petitioner had given Cobb keys to his rental ,and petitioner admitted

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

After about an hoiur and fifteen minutes intothe interrogatiom petitioner ttried to move the interrogation outside away from his family, making an excuse that he needed to smoke and went to the driveway near the garage. Alexander follwed petritioner along with Myler who turned left when Aleander and petitioenr turned wight. Alexander was told by petitioenr that we should move the discussion to a local cafe around the corner when Alexander stated that he'd like to go someplace more comfoirtable. Alexander stated that the cafe would nto be confortable enough and stated that they had to move the questioning to the police station, After an argument about the location it would be Alexander stated that it will have to be the Signal Hill police statioin, and that he'd drive me and bring me back. Another argument about who drove whom where Alexander agreed to allow petitioner to drive his own vehicle.

Petitioenrs vehicle was follwed tothe Signal hill police station about five miles away while being escorted by several police cars(marked) and(unmarked) (Turns out that boith Longbeach and Signal hill police particiapetdd inthis escort. When petitiioenr got into the station he was escorted into aa locked locatioin of the station where an interview area was set up that had a cam (TURN ON) corder onthe wall facing the interrogation desk. Again the interrogation was conducted without MIRANDA waiver or warning andf this 3was recorded by camcorder.

Repeatedly petitioner tried to leave the station and was refused to leave, and when asking to call his wife was refused, when he asked toc all his attorney that too was refused. When petitioner asked to go outside and smoke he was also refused. While all these refusals were being given officers was stated that petitioenr waas free to leave at any time,but when petitioenr tried he wwas refuse. Petitioner after fourt hours of interrogstion regarding his involvelemmnt with the murder of Rita Cobb petitioenr was then placed under arrest and not allowed to leave as stated by police.

On November 23, 2010 the sheriffs department at the instruction of Michael Ramos and John Thomas detective Robert Alexander created two seperate transctipts to this four hour interrogations;
(One 113 page version where all custodial markers were removed)
(This same 113 page version petitioenrs answers werre changed)
(one 136 page version that had custodial markers,but answers changed)
(Both version are missing discussion about [custodial] at the house)

(CAPITAL LETTERS IS THE ALTERED VERSIONS IN THIS TRANSCRIPT)
(lower cadse letter are the actual in real time answers given)
(This transcript is for the 136 page version as weel as 113 page)
(EXHIBIT 63+64)
(The 113 page version was used inthe trial as exhibit 49A)
(see exhibit42, 41, 40)(PAGE 44+45 OF STATE EXHIBIT 49A)
This is veriffied by states exhibit 49 (compact disc availlable upon request)

(One hour seven minutes and fuifteen SECONDS into state 49)
(GM=Greg Myler)(RA= Robert Alexander)(JY=John Henry Yablonsky)
GM-6k, did you guys also have a key to Rita's house ?
GM- No

(One hour seven minutes and FIFTEEN [redacted] seconds into exhibit 49)

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

JY-UM, YEA

(THEY ALTERED PETITIONERS ANSWERS PLACING EVIDNECE INTO POSSESSION)

[redacted]

(One hour seven minuteds and twenty five [redacted] seconds into exhibit 49)

RA [redacted]-Did, did she have a key to your apartment ?

JY- Yes she did

(One hour seven minutes andtwenty five seconds into exhibit 49)

RA- DID SHE HAVE A KEY TO YOUR APARTMENT ?

JY-NO

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

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

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

JY- Yes, she did.

(One hour seven minutes and thirty two seconds into exhibit 49) [redacted]

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

JY- NO.

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

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

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

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

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

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

RA- Well its gonna have to be a little bit more comfortable than that .

JY- What did you have in mind ?

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

JY- That would be more comfortable for whom?

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

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

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

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

(THIS CONVERSATION WAS WITH MYLER AND NOT PETITIONER)
WHO WAS IN ANOTHER CUBICLE EAR SHOT LOCATION

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

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

This is verified through serveral manners . Fuirst this "recording" can be authenticated at this very location in real time to verify that there was no sound differences in RA statement that would lead one to believe a conversation outside near a highway that would imply damage tothe recording or tampering. Second, the conversation occured outside while Myler went tothe front yard where the otehr offeers were located, while Alexander followed me into the back yard. (different locations) Third is that inthis specific splice a two minute discussion ensued aboput where it would occur and whowas goiung to drive what vehicle with whom inthe back seat.

Any expert witnesses regrading audio equipment, would have been able to dectect these annomolies inthe "alleged copy" states exhibit 49 (compact disc)., 0r would have known the order the release and access tothe actual original recording devices for "real time" authentications about a)tampering b) equipmnent failure c) audio distinctions that would lead any expert to believe the original recording equipment had been altered, tampered with, or that state parties did in fact deliberatly change answers by petitioner.

These records were altered for the sole purpose of presentin to a hearing where a panel of jurists would be coersed into decisions regarding the guilt phase of the trial. While the custodial marking

would have validated the jurors question about MIRANDA because the custodial argument would have supported that petitioner should have been mirandized. (One question by the jurors fromthe court) The jurors were not allowed to determine whether petitioner had malice or premeditated intentions because their decisions were coersed by the records now saying that petitioner now had a key to the victims home, and that he did not have a friendly relationship woith Cobb where an exchange of key in case of emergencies could be reasonably concluded. What the jurors heard, was that there was no friendship, and that petitioner for some reason retained a key to Rita's house months after he had moved out. (One of the elements to the charge was supported by this manufacturing)

DDA Ferguson admitted that petitioner hada key tothe hosue becaudse it was inthe trial records. In fact DDA Ferguson admitted that petitioners filing of the 113 page transcript along with othr papers was insufficient when a habeas petition was filed admitting that it was in fact admiitted into states exhibits as 49A and the jurors used this intheir reasoning. The attorney general parroted this exact same argument intheir defense, stating that colludory allegations without more is insufficient. In fact the US District magistrate admitted that the case teetered onthe contents of this "transcript" intheir reasoning that reach a verdict of guilt.

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

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

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

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

In order to prevail ona misconduct claim premised on the alleged presentation of false evidnece, petitioner must establish that his conviction was obtained by the use of false evidence, petitioenr must establish that his convictions that the conviction was obtained by the use of false testimony that the prosecutor knew at the time to be false, or later discovered to be false and allowed to go uncorrected. Napue v Illinois , 360 US 264; Carothers v Rhav 594 f2s 225 (9th cir 1979);Pavao v Cardwell, 583 f2d 1075 (9th cir 1979)(per curiam)(Noting that petitioenr was to alleges facts showing that there was s knowiong use of perjured testimony by the proesecution) Due process against the admission of false evidence, whether it be by document, testimomny , or any other form of admissible evidnece)Hayes v Brown 339 f3d 972(9th cir 2005) (em banc) Where false evidnece is presented to the jury, the concvition will be reveresed where;(1)"[T]he prosecution knowingly presented to the jury false evidence or testimony at trial; "and (2)" it was material that is, there is a reasonably likelihood that the false evidence or testimony coul d have affected the jud ment of the jury. Morrios v Ylst447 f3d 735(9th cir 2006);Jackson v Brown 513 f3d 1057(9thc ri.2008)Mere inconsistancies in testimony are insufficient to establish that the testimony was perjured. United States v Croft124 f3d 1109(9th cir 1997):United States v Zuno-Acre 44 f3d 1420(9th cir 1997. California Evidnece Code §1401 (b) Authentication of a writing is required before a secondary evidnece of its contant may be received into evidnece. Spottiswood v Weir80 CAL, 22 pac 289(1889);Smith v Brennnan 13, CAL. 107(1859) Forman v Goldberg 42 Cal.App.2d 308(1941)

under § 1401, therefore if a person offeres into evidnece a copy of a writing, he must make sufficient showing (preliminary) of the authentication of [both] the copy and the original (emphasis) (i.e. the writing sought to be proved a copy) Whiule this case these testimonies, altered evidences, supporting an y writkjng known to be false, testimony known to be false is irrelevant because the prosecutor has a duty to know about the evuicneces he is gouing to present inthe first instance. People v Gallegos (Cal.1971)93 Cal. Rptr 229; Boykin v Alabama (1969) 1 Cal.3d 122, 81 cal.rptr.577, 460 p.2d 449 In this stipulation to police reports by trial attorney to the Court was prejudicial error. In Gallegos the plea of guilt was consistaint tothe stipulation by counselor for trasns&ripts making the plea involunsary and uninteliigible because the stipulatior wass prejudicial. People v Fonnville 111 cal.rptr. 53(cal.app.5th dist 1973).

California rules of professional conduct rule 5-220 a member shall not supress any evidnece that an member has an obligatior to produce or reveal. Brady v Marylan(1963)373 US 83; Giglio v United States(1991 501 US 1030; United States v Agurs 427 US 79 (1976); California v Trombetta, 467 US 479(1984) Under the fourteenth amendment due process claims in criminal prosecutions must copmply with prevailing notions of fairness that if fundamentally respected will prevent such miscarriages of justice safegaurding a right to what the courts may loosely consider CONSTITUTIONALLY GUARANTEED ACCESS TO EVIDNECE(emphasis added)United tates v Valenzuela-Bernal 458 US 858, 458 US 867(1982. While defendants claims could be considered directly caused by trial counsel incompetance People v Pope(CAL 1979)152 cal rptr 732, 23 Cal.3d 412.

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

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

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

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

P.C. § 134 To constitute the offense of procuring a false affidavit recordsd, writing, recording or papers to be used as evidence does require specific intent. People v Horowitz(CAL APP 1945) 70 Cal. app. 2d 675 and can turn upOon what the evidnece was offered to prove People v Bamberg(CAL APP1st dist 2009)175 Cal.app.4th 618. The preperations of documents are within the meaing of section 134 does not require the document was created by a specific person People v Bhasin(CAL APP.4th dist 2009) 176 Cal.app.4th 461. Altered and or fabricvateds dopcuments where the result would have been different without the altered or fabricated statements, records, writing, papers would have reasonably been different by a reasonable juristPeople v Blaydon 154 Cal.App.2d (1957). Perparing false and antedated papers fopr fraudulent purposes with the intent to produce it or allow it to be produced as genuine into trial, proceeding was sufficient showingPeople v Clark(1977) 72 Cal.app.3d 80. Under section 132 false evidnece ands or fabricated or altered records should have known that it was forged and or false was sufficent People v Horowitz 70 Cal.app.2d 675(1945) And is broad enough to include any interferance with the production of true evidnece People v McAllister 99 Cal.app. 37 (1929)

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

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

Californai Evidnece Code § 1235 The admission of earlier statements made by witnesses presently on the stand is not constitutio limited to impeachment § 1235 People v Woodberry(1970 CAL.APP.2d duist) 10 Cal.app.3d 695 and does not violate confrontation clauses ofhe sixth amendnent People v Green 91971)3 Cal.3d 981, cer den, Green v California(1971) 404 US 801 and the rigfht to confront has been preserved Peoplev Strickland(1974)11 Cal.3d 946. Its applic-ation is designed to fullfill that opening of the door to a second opinion of the facts that are inconsistantly relied People v Freeman (1971) 20 Cal.app.3d 488; People v Aeschelimann (19762) 28 Cal.app.3d 460 and are admissible if they are consistant with testimony. People v Morgan (1978) 87 Cal.app.3d 59; People v Kane (1984)150 Cal.app.3d 523. § 1235 also proivides the effect that prior inconsistant statements of witnesses is admissible not only to impeach their

credibility but also to prove thetruth of mattersPeople v Green (1971)3 cal.3d 981 cret, dis,Green v California(1971) 404 US 801; People v Strickland(citation ommitted).This also included an officers testimony as to the alleged inconsistant statments People v Williams (1973)9 Cal.3d 24; People v Cromer(2001)24 Cal.4th 889. Prosecutorial misconduct is cognizable under habeas corpus, but the standard of review is that under Due Process Darden v Wainwright477 US 168 (1986) Touchsotnes is not the culpability opf the prosecutor but the fairness of the trial Smith v Phillips 455 US 299(1982); Giglio v United States, 405 US 150(1972) ;Pavoi v Cardwell583 fed 1075(9th cir 1978)

In fact extrajudicial statements are not hearsay if they are offered for the truth of the maatter Am-Cal Inv Co v Sharlyn Estates inc.(1967)255 Cal.app.2d 526. The purpose of allowing extrajudicial statments is to be fair to the paryt whom they were used, denying the oppertunity inasmuich as was the oppertunity to cross examine, thus such a party should at "least" be allowed to impeach the declarants by admitting the declarants own statments whuich were inconsistant People v Lawrence supra 21 Cal 368 . People v Collup, 27 Cal.2d 829(1945) The Court found that the failure to allow impeaching p materials be used that had occured was prejudicial. The Court also found there was a heavy reliance on extrajudicial statments of a party and the acquainatance testimony and acquaintance observations. The Court further found under the circumstances error with regarding to impeaching materials was of vital importance even though many of the circumstances were brought from other witnesses, and determined that the foundation

requirment for impeachment testimony was not necessary, where it was impossible to comply with at due "to no fault of the party using the impeaching materials" and that justice and fairness compelled either that the testimony at the former trial be excluded or that the impeaching evidnece be admitted.

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

Analysis of the ground one merits

First these facts that had been illegally collected were protected from intrusion by government bodies under the fourth amendment, which was mandatory according to (exhibit 30) The warrant for the arrests filed and ordered on March 4, 2009. Furthermore the search warrant that was also ordered by Judge Nakata did not include intrusions into petitioenrs personal knowledge, and without MIRANDA Miranda v Arizona 384 US 436(1935) This act is further protected by the fourteenth amendment due process of law which is outlined by the requirment to read [suspectys] their rights before questioning. It wass the responsibility of the prosecutor to protect these evidneces, to comply to all state laws requiruing copying of recordings which includes the transcripts created from such recoirdings.

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

> section 14091 requires that a writing be authenticated even when it is not offered as evidnece but is sought to be proved by a copy or by testimony as to its content under circumsance permitted.

Evidnece code § 1402 the party producing a writing as genuine which has been altereed must account for the alteration or appearanc

thereof. He may show that the alteration was made a by another, without his concuurrance, or was made without the consent of the parties affected by it or otherwise innocently maden or that the lateration did not change the meaning or language of the instrumment.

In this case the prosecutor knew that petitioenrs DNA was older than the crime by more than n one full day to as many as several days before the crime had been committed, making it difficult (SEE EXHIBIT 51) if not impossible to, place him at the scne at the time of the crime, unless petuitioner had some interests inthe crime. For first degree murder to stand there must be several elements satisfied, and without them first degree charges could not stand. Placing an item that was crafted to fit only "one door" inthe entuire desert area (a key) that fit Rita Cobbs door, was enough to suggest that a person who had no busuiness entering the home without permission , who not only had a key but had had the key for months after he and his wife moved out, would have propincity to comit a crime with that key. INFERED (Hence robbery, nurder) It was because the jurors had asked about MIRANDA, and who heard that there was no custodial markers that would induicate a reasonable persoin felt they could not leave, and that this person had a key top the home where a person was killed that he was suspect to, was sufficient inthis case.

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

where the jurors were hopelessly deadlocked at one point, that a different version that was real time transcibed would have giventhe jurrors a different perspective. It is irrelevant that these alterations were made to get revnge for the lawsuit filed by petitioner against Mr. Michael ramos, even though that is more likely the answer, but the answers were known, and deliberately created. Why else creat two different version onthe exact same day about the exact same set of circumstance and facts.??? To manipulate a different outcome. (see exhibit 35)

BAIT AND SWITCH(SEE GROUND TWO HERE)

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

Regarding the alterations of the interrogationtranscript habeas corpus should issue , allowing petitioner to correct the records about [facts] under the law in this petition, and vacate the conviction based on the due process rights that were violatds by the prosecutor who knowingly manufactured evidnece he intended on using to coerse a verdict where there was no other evidnece pointing towards culpabilty other than this false, fake evidcnece. That they not only created but placed into the states records [forever[]!! as states exhibitds to casee FVI900518 as exhibit 49 (compact disc copy) and 49A (113 page ttranscript)

(see exhibits 40, 41, 42,)

THIS GROUND WARRANTS HABEAS BE GRANTED UNDER P.C.§ 1473

GROUND TWO

THAT THE STATE TEAM DDA THOMAS AND DETECTIVE ALEXANDER FROMTHE SHERIFF DEPARTMENT VIOLATED PROTECTED RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENT WHEN THEY ALTERED ANSWERS ON JANUARY 26, 2011 THAT INCLUDED AUDIO ANSWERS THAT MATCHED THE TEXT ANSWERS THAT HAD BEEN ALTERED ON NOVEMBER 23, 2010 FOR THE PURPOSE OF COERSING A VERDICT FOR CASE FVI900518 FURTHER VIOLATYNG FOURTEENTH AMENDMENTS UNIOTED STATES CONSTITUTION AND OTHER LAWS. VIOLATING PETITIOENRS RIGHT TO A FAIR TRIAL UNDER THE FIFTH AMDENDMENT [redacted] DUE PROCESS OF LAW. VIOLATING PETITIONERS SIXTH AMEDNMENT RIGHT TO AN IMPARTIAL PANEL OF JURISTS, AND PETITIONERS RIGHT TO CONFRONT WITNESSES COMPEEEED AGAINT HIM. fURTHER VIOLATING PETITIONER FOURTEENT AMENDMENT TO DUE PROCESS OF LAW ALSO PETITIONER RIGHT TO BE FREE FROM SELF COMPULSOURY WITNESS AGAINST HIMSELF DUE PROCESS VIOLATIONS

Facts surropuinding this ground

That as a result of the claims in ground one filed here are now incorperated by reference herein. Fuyrther that now the state parties known as the prosecutor DDA Thomas(Thomas) and detective Robert Alexander (Alexander) had a transcript set, one 113 page version , and one 136 page version chose the more intrusive one to present tothe jurists after they took these material home on January 26, 2011 after the trial had already begun, and drew near closing of the hearing.Where state experts had already cleared petitioners DNA fromthe time the crime had been committed by more than one full day. (see exhibit 51) Then as many as several days before the crime had occured. (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 inthe recording

because that was what I was going to play on Thurday and at that point the people will rest. (RT 402) Then I need to make the redaction. Sanders at this point stated that he could do that to night. (This was wednsday January 26, 2011 during chambers discussions)(RT403) (T-Thomas)(S-Sanders)(C-Court)

T- Then I can get it domne tomorrow, ill do that when I get home tomorrow night.

C- All right, do you have jury instructions ?

T-Illl have those for you by Thursday.

C-Do you know that I like them ?

T-I have no idea. Last time I did a trial in here--

C- Hoiw about Wednesday ? (RT403)

S-S- Thank you your honor. I had indicated tothe poosecutor the parts of the statement that I felt should be redacted.

C- Lets talk about ~~this~~ a little information before we make assumptions.

S- I believe we agree

C- The statement thats going to be offered by the prosecution, and its a statments alleged to be a statement by your client, is that correct ?

S- Yes your honor

C- Alright you are not going to object to entry of the statements, but you believe there should be some things that were stated by your client that shoudl be removed fromthe statement, is that correct ?

S- Mostly statments by the police officers, but some statments by my cluient.

C-Mr Thomas has not disagreed with you and attempted to provide you with specifics of [how] he [intends] to redact the statement of your client, so that is not objectionable to you ?is that correct ?

S- Thats correct

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

(here these statements were redacted from transcripts to cover misconduct

T- No , as far as --

C-Statments that Sanders --

T- As far as Sanders, he provided, I dont have any problems with the redactions of the [stuff]. The only question I did have for Mr sanders is theres reference at the end of the interview where Mr.Yablonsky invoking. [I was planning on taking that out] unless you wanted to keep it in.

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

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

S-I believe so.

C- Alright, that cant be done until tomorrow

T- I wouldnt be able to do it until tonight. Im going to star this afternoon once we're done.

C- hopw much is it ?

S-Its aboiut a three hour interview. Im requesting a redaction of about ten minutes but in different parts of the interview.

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

C- Cant be done betrween 11:05 and noon ?

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

(see exhibit 43) On January 27, 2011 at 0916 hours detective Alexander got onto the stand and swore tothe authenticity of the interrogations transcripts that allegedly had been transcribed on November 23, 2010, wqhreee Thomas admitited tothe Court that he on Januarty 26, 2011 had to further redact ten minutes froma four huuir interrogation. Detective alexander unde oather swore that the transc ipt the jury was about to hear was the exact transcript fro originals.

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

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

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

(see exhibit43)

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

on a screen that stood over the jury box. This was accompanied by an audio sound that was also played tothe jurors who werre allowed to read along with the text and audio. This versionwas verbatim to the altered sounds where petitioenrs answerrs were changed placing evidnece into his possession. Also petitioners wife thatw as right there when the interrogation occured was also washed fromthis version.

As well the statements made by petutioner and detectived knowing that petitioner owne a dark blue pinto were also washed fromthis version. This is verified by (exhibit 28) where a witness seen a silve r pinto at the cobb residence. This exhibt shows that Diuanne flagg had stated in 1985 that she seen the [~~XXXXX~~ silver] pinto at the Cobb residence the night she had been killed. Only the versdion of the interrogationws shown tothe jury washed this fact out. Furhter state placed this alleged transcript into states records ars exhibit 49A only the versionthey placed was the November 23, 2010 version, neglecting to place the January 26, 2011 versionfrom ever being seen. (see exhibit 40) Notice the recordeds information at the lower right of the page (49A) entered on January 27, 2011)

What the jurors seen in text on the screen were the markers that this transcript had been done on (November 23, 2010) which had just been verified by Alexander (revied by Det Rob Alexander) (#A1672) Why wouldnt they believe a detective who just swore to its authenticity under oathe.

This information placedc before the jurors violated so many rights,where do I beging. First I begged the attorney after seeing that they had altered my answers to review this, telliong him that I had not been ptroperly MIRANDIZED. (see exhibit 3) I told himthis on June 2009.

Had Sanders done a preliminary listening he would have heard that ~~heardxthere~~ his client had tried at least three times to terminate the interrogation. This verifies that he never listened tothe eviudnece. Or he assisated the prosecutor. In either event petitioners trights under the fourth amendment were abolished woithout his coinsent, which he had already tried to invole that right in 2009, and was refused. Also ignoring that his clients answers changed.

Second, after invoking this protected right, this team then allegedly agreed to wash it from what they were going to show a panel of jurists who were watching and listening. Thye asked about miranda right afetr they heard this version. This was then argued bythe Court and prsecuting team that included Sanders. Thomas boasted that he encountered this situation before and even though those rights were violated suggested that they could draw up something that would stipulate petitioner had been ready his w rights(RT532) only they knew that petiutioner would have never waived this right. Next where the Court tried to give them a chance to correct this the Court treid to pelad with the counsels to draw something up, but neither of the parties widshed to get involved with this ~~mess~~ canundrum of a pickle where not only were the rights invoked, but the prosecutor had also washed the recording for the direct non custodial request that was denied and petitioner was forced tothe local police station while being escorted by more than one agemncy. (RT454;19-25)(RT 532:

Because petitioner wads not inteligably informed about this access to a prtoected right before they abolished it fromthe records, they then presented to the jury a ~~p~~piece of evidnece that was fake, forbidding petitioner an oppertu nity to challemnge this through right to confront, while plading this into the records againrt

the protected right to be free from compulsory witness against himself where [information] may caue injury upon petitioner against his interests. Only this is exactly what they did by placing a piece of evicnece that had been altered tothe point it was destroyed, and virtually unusable. [illegible]

Because petitioner had heard this and tried to get the attorney to at least let him testify, counsel said he'd prepare that later on in the trial. Leaving petitioner to believe that there was in fact a defense strategy about presenting evidneces.(see exhibit 44)

The prosecutor then stated that as far as the transcript, that neither of the parties havea problemn with the jurty getting it as an aid to exhibit 49 itself. (RT533) The Court again stated that he wanted them to write something up regarding the MIRANDA issue. (RT533:17-19) while neither party wanted anything to do with this dragon of error. Both counsels asked the Court to give an instruction according to what the Court had said previously, then injected "Something tothe effect of I'll instruct the jury that they will disregard that issue" (RT533:25-27) Adding [or] do you want us to write something up ?(RT534:2-4)(see exhibit 41) Thomas added (RT534:5-12) "In the past, I used to do the drug cases, and as an issue that would come up would be whether or not the defendan vehicle or a person house was searched in accordance tothe laws. The special instructuion that would be given usually in "that case] "] woudl be something tothe effect that, its- this is a maatter for the Court to decide,and the Court has decided it was a lawful; search" This type of statements suggerst that Thomas did not respect any laws protecting defendants, and the Court aggreed here.(RT534)

So, with regarding the transcript shown to the jury who listened to the fake evidnece that showed it was transcribed on 11/23/10 when it was in fact alterred on 1/26/11. They did not get this information. Further Thomas then had to take this evidnece home with him, down load the recordings fromthe [copy] of the interrogations and dubb sound in from another locations to a newly trasnscribed answqer, then make another copy of the transcript while placing onto the [text] version ofm this [transcript, showing it was not tanscribed on 1/26/18 in an eefort to prevent the jurors who were wantching and listening from knowing that it was doen at the last minute. 1/26/11

Next Thopmas then placed his expert witness detective alexander onto the stand to swear it was an exact copy of the recordings that were created on 3/8/09, when it was anything esle but that. Falsifying the recoirds they knew would coerse a verdict int h this matter. In fact this decision was not made until after the states entires case where;

a) Kramer admiitted to finding his mother after being alamed she was in danger, and that he ignored instruction about enbtering the residence until after investiogations

b) Nash who stated that his last knowledge of Cobbwas that she arrive at a party on September 20, 1985 drinking a bottle of liquor and drank more after that had been finised. That when he offered to drive her home, she told himshe was not going home and would be going to a bar instead. (Seeexhibit13)

c)Dianne flagg had seen a siver silver Pinto at the residence the day of the murder,and that she was a car entheusuiast and would know the make because her neighbor had one,and that she was certain of the silver color (see exhibit28)

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

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

f) The Dr. pathologist Saukel who stated there was no evidnecwe that Cobb had been murdered. Physiucal or scientific. (RT 491) and that the DNA matching petitioner that was locatd from inside the cavit of Cobbw as the result of an encounter that occured as much as one and a half days before she had been killed. (RT 490) (see exhibit 51)

g) Thatbthe detective Alexabnder gave tsestimony that there was was no fingerprint report from this crime scene,and if there was that he dont recall whther,it had been developed or not, opining that he knew petitiioners prints were not ,located at the scene9(see exhibit 29)

h) That detective McCoy admitted that the evidneeces had been cross contaminated, because they were placed intot the sasme bags when they collected these evidnece

This decision to finally place the manufactured evidneces intothe possesion of the defendants case, was a last hail mary to get this skellitin to stick ona person they knew to be innocent. Whuich explains their need to purge the entire panel with prejudicial materioal before the trial ever started telling them that they had foiled 19 murder charges against a defenant who was being tried later that year,and that Ramos promised closure inthat case. (see exhibti 33) Further more these PARTIES AS defendants chose to admit these allegations in the civil arenas while petitioner chjarged them with gross negligence, professional negligence,and other misconducts regarding the coinspiracty to manufacture evidnece. These parties (David sanders) (John Thomas) (Robert Alexabnder) admitted as much and faiLed to even dispute the charged in Court CLAIMING immunity under HECK and AEDPA while they suggest THEY

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

Furhter because petitioenr could not file the malliable compact disc in the Court, stating they will not aaccept compact discs, the Suoperior Court prevented a rercord from being developed that would have supported the verification that the transcripts were in fact altered comparing exhibit 49 (compact disc) to exhibit 49A the states exhibit of 113 pages that was used in the trial where petitioners answers were in fact changed.

Points and authorities as stated above are hereby now incorperated

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

require some [relaibilitv] and upon reflections it seems that..... we all get caught up the [right] to cross examine under the right to confront, and the timing about [cross], it is that period of time in which lawyers get the chance to destroy another[s] witness thtrough impeachments. But it also is the time whjen reliability of the evidfnece is deminstrated....." People v Lucas60,Cal.4th 153(2014) The Court added that although evidbnece could have discounted credibiltyiissues, that unl;ess the record is vacant for ampleness of evidnece supporting the juries conclusion , credibility issue may have no effect ontheir view of the case. Peopel v Butler, 212 Cal.app.4th 404(2012):(arguing)People v Avila 46 Cal.4th 680(2009) ("under weell established principles of due process the prosecutor acannot presente evidnece he knows to be fakse and must correct [any] falsity of which it is aware inthe evidence it presents, even if the fasle evidnece was not intentionally submitted")(AVILA): See United States v Agurs, 427 US 97(1976);In Re Richards 63 Cal.4th 291(2016)(That is resonably probable that the fasle evidnece afffected the outcome because with exceptions of the bite mark evidndece the defense had a substancial responsibility to much of the prosecution evidnece was sop weak (transparent) for culpability that carried any weights

ANALYSIS OF THE FACTS

It is because there was litterally no evidnece placing petitioner at the scene other than the DNA collected from inside the victim tyhat had been verified that it had been placed there from one and a half days before the murder occured(RT49) to as many as [several] days before the crime occured(RT317) that there was

[NOTHING] inthe states entire case tnat placed petitioner in that house, much less placed there when the crime was committed. Furhter because the state relied onthe testimonmy of Dianne Flagg who seen a specific type of vehicle at the home that was [SILVER] that Pinto was suggesting that the actual killer had in fact driven a silver [pinto]. Only in real time the recording shows that petitioner owened a dark blue pinto, which further suppoirts that they also remoived the discussion in two different locatéon while being interrogated that detectives knew petitioenrs pinto was blue and not silver.

As weél whenthe prosecutor asked the jury why would a man lie about his sexual involvement with a person that had been killed unless he was the actual killer. In fact there was a jury instruction about what the jurors seen and weight they gave that evidnece. Only in this case the facts that petitioner wifes presence that had occured at about page ten of the states interrogation and later in that same interrogation had also been washed fromthe recoirding and transcripts creating exhibit 49A. I fact the murder weapon that carried DNA , none of the DNA was matched to petitioner. The state relied on the watchband pin located under the vicitims head also carried DNA according the the criminalist, yet that DNA was not matched to petitioner either. All making the value of the fake evidnce carry weight, and even after the jurors heard all the states [theory] and evidences tying petitioner tothe crime of murder, they came back hoppelessly deadlocked. Suggesting that any of these facts inside the "doctored" records where state parties deliberatley and ina calculated manner removed specific facts which would have contradicted their arguments and evidndeence, but then forced them to hear that petitioner had a key to a home he did not live and a crime was committed

Because DDA Ferguson arued that the jurors did rely on this fakle evidndces as exhibit 49A for the state to reach their verdict, petitioner agrees, they did rely onthe transcripts that were doctored to place evidence into petitioners possession. As a result of this act along with the ground one here, habeas should issue for the due process violations perpetraited by design and malicous intent by state parties. (see exhibit 51, 62, 43)

You cant waive petitioenrs rights outside of his presence, and you can stipulate to manufacture evidnece that will be used ina criminal trial, irregardless of who that crafter is. (THE RULE OF LAW APPLIES TO ALL PEOPLE.....EVEN A JUDGE)

GROUND THREE

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

A & B-Robert alexanders lies tothe court

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

fopr the state regardi g case #FVI900519. His duty as an officer of the Court wass to proviude truthful and reliabel evidneces regarding his knowledge of facts of the case otr evidcncee. Alexander was aksed about the contents of a fingerprint report during cross examination. Trial counsel had asked whetrher the detective had seen the entire file regarding the case. Alexander gacve veruy misleading responses trying to prevent the comntents of the report that had been collected fromthe crime scene. Alexander was asked whether he had seen and has knowledge of all the evidnces tothe case and he responded he did. (RT687) He then was asked was he familiar with the entire investigations since 2009 the crime was committed in 1985 until the facts of the cadse up until 2009, and he stated he did. Admitted that all of the reports that had been generated were in fact in his possession. Stating that he had not discovered abny later that he did not know about. (RT687:9-19) He then stated that he was not sure whether there were fingerprints that had been developed. (RT688:5) But then suggested that he knew that petitioners prints were not located at the scene. (RT688) Stating that if he had seen the reports that he dont recall all the mnames, but then admits that there was a print on a cup located in the kitchen. (RT688:5-19) The prosdecutor entered an objection that was allegedly sustained as hearsay. The Court abusing the discretion for hearsay statements by a state employee about state records that had been collected was an abuse. The prosecutor knew the report existed as well as the detectoive knew that it existed and there was a result which shows that petitioners prints were not located at the scene.

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

knew this. including trial counsel. Put because of the Courts interferance with cross examination the results of that print were not divulged, but more importantly was the results where petitioners proints were not revealed in this report because his prints were not found at this scene. Trial counsel did not have the knowledge to navigate this hurdle which would have been Evidnce Code § 1280 making this record exception to the heasrsay standartd the prosecutor allegedly objected to. By refusing access tothe information in this report that Alexander was mistating facts to evade the release of the results was prejudicial to petitioners case, specifically that the jurors asked about Joseph Saunders presence at the scene.

//

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

Q- DID YOU REVEIVE ALL THE EVIDNECE TO THIS CASE AND DO YOU HAVE KNOWLEDGE ABOUT THE EVIDNECES TO THIS CASE ??

A- YES I DO.

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

A- NO NOT THAT I CAN RECALL

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

A- NO, NOT THAT I CAN RECALL.

these transcripts were alteredd aftrer the trial and is supported by Thomas' closing statements saying that there was no fingerprint evidece presented in this case SEE EXHIBIT 59

//

The prosecutors closing statement is as follows regarding this alleged denial of access tothe results of the fingerprint report (RT648:25- 649:7) (Prosecutors closing) "Lets say that we did collect-- there was evidnce that there wwere fingerprints, [AND YOU DIDNT HEAR ANY EVIDNCE], BUT LETS SAY THER WAS EVIDNECE THAT FINGERPRINTS KN WERE COLLECTED, AND IT CAME BACK TO ..

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

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

closing argument, that there was no fingerprint evidence in this trial. Even though Alexabnder "allegedly stated" he knew Yablonsky's prints were not found in the scene. b) That the prosecutor stated there was no evidcnece of fingerpritns inthis cadse, but Alexander allegedly ~~xtxtxdxthxt~~ stated that he dont remembers all the ~~xxxxxx~~ names, or that if it had even been developed yet. By refusing this info tothe jury that was not hearsay violated petitioners right to confront as well as to fairness of the trial because if the DNA was in fact older as the experts stated, (RT317, 490) that a fingerprint from a man who stated he last eseen Cobb at a party,and was invoted back to her house but never went and cannot account for his time or proof he did in factr go home suggests that his culpabuility outsweighed petitioenrs by a landslide. This lie was deliberate and intentional.

B.

That detective Alexander was aksed to testify about the ~~xxxxxxxx~~ accuracy of the transcript of exhibit 49 to 49A that was used in the trial on January 27, 2011 where the prosecutor asked Alexander whether the ~~xxx~~ transcipt was accurate to the best of his ability.

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

D- Yes.

P- As far as exhibit 49A which is the recoirding do you believe that thats accurate tothe best of your ability ?

D- Yes.

Because the detective knew that the answers were no accurately transcribed intothe exhibit 49A(113 page traanscript) because the andswers were not only changed by him inthe initial changing on November 23, 2010, but he assisted the prosecutor o n January 26, 2011 to futher altering the answers so that the sound now matched the terxt that was used in exhibit 49A (see exhibit40, 41) The evidence code aloowed for copies of recordings so long as the meaning had not been changed. Only the evidnece code does not cob ver the altering of answers. That is covered by P.C. §§ 134, 135. For the sheriff officer to swear under othe about evidbnece he knew to be false at the assistanc eof his prosecutor who alos knew the evidnece to be false violates due proicess rights to due process rights to access top evidnece,andf the right to confront., Furhter trial counsel cannot waive rights to his client without discussing the exposures of the waiver, unleess the trial counsel participated inthe conspiracy to present false evidnece, and even then he cannot waive rights of the client without the permission. The sheriffs officer had an obligation to the truth, and even if it could be interpreted as misleading that amoiunts to lying tothe jurors who were relying on the integrity of the state official to be honest, why else take the sworn pathe before giving testimony.

When this was argued under habeas corpus with the state DDA Ferguson stated that inconsistant statemrntds are not synonomous to perjury. Only these statements were in the first hand nature by an expert aboput evidnece that was relevant on both accounts , but specifically about the authentication of the recording that was manufactured on 11/23/10 as well as on 1/26/11. (SEE EXHIBIT 29)

C.

The state relied on the testimony of Bruce Nash who was one of the lat people to see Rita Cobb alive. Bruce Nash (Nash) gave statem in 1985. (see exhibit 13) telling officers he seen Cobb at the drinking party at the mini spring ranch (John Sullivan) Nash stated that he seen Cobb arrive at the party on 9/20/85 around 1930 hours (&; (7:30 p.m.) That he seen Cobb drinking bourbon and that he and his then girlfriend Cynthia Hooper, now wife left the partry aroubnd 2145 ((;45 p.nm.) and that when they offered Cobb a ride home because she was a little "buzzed" but that they left her there with Francesca Drake. Nash told sheriffs that Cobb was a lonely woman that was looking for a man she could share her life with. (CT117) Nash was again reinterviewed two decades later recalling the same conversation he gave Det. Knapp in 1985. This time he was interviewd by Det Myler in 2009 almost 25byears after the crime had occured. Inthe statement ~~XXXXX~~ Nash told Myler a) That he hada pinto back then b) that they all hung out together until about 9-10 p.m. c) That Cobb was good about holding her liquor, but that she seemed more drunk that night than usual d) That he and Cynthia tried to give Cobb a ride home, but that she was adament that she could drive herself e) That he did not give her a ride home f) Becausae Cobb told hiom that she was gouing to go to a bar in town called the Zodiac Lounge or somewhere else before gouing home.

Admitting that this left Cobb, John Sullivan and Francesca at the ranch drinking. Nash did offer a fwe list of a couple boyfriend he though Cobb to have. (CT 270 -272)) (seee exhibit 13) (

Nash was called to testify inthe trial, and during cross examination was asked about his last known conversation with Cobb

who very weel may have been the only one who could state what Cobbs last words wer. Nash was asked (RT416) whether he recalled having a con versation with Cobb on 9/20/85 and Nash admiited that he had. He then stated that he did offere her a ride home, but that she refused his offer. Whe tria counsel asked if he remembers what she said, Nash stated that he did. The prosecutor argued under objection that this information was hearsay. Trail counsel could not defend that objection and had no undertsanding of the laws of the staeed regarding herasay exception when the Court asked for authority of "indica of reliability" (That answer is Ev. Code § 1250)

Because trial counsel did not have that knowledge the states objection was sustained under hearsay by the Court. (discussed later here). The trial counsel then asked another way of the informatior that was refused by the Court (RT 417 :13-26)

O- So did you-- you offered her-- to take her home. Was she in the prtocess of getting ready to go home ?
A- Yes I Dont remember. I believe so.
O- Okay, she declined your offer to drive her home ?
A- Yes.
O- Did you watch her as she left to go to her house ?
A_ I dont remmber that.
O_ Was there some discussion between she and your girlfriend ?
A- Coorrect.
Q- Was there some discussion between the two of you that you should follow her home to make sure she got home safe ?
A- I dont remmember .

Here because ther Court intruded upon the right to probe snd develop facts that were related to the last known conversation it was wwithheld fromthe jurors that Nash was told by Cobb that she said she was not going home. In fact she told Nash that she was going to a bar,which she also told Hopper.

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

All of these statements agree that Nash did not give Cobb a ride home after the party and that he had left aropund 9:30 p.m, almost two hours eb before Cobb left the aprty which was verified by Francesca who was there after Nash had left. Further because the state ebntered an objection and the trial counsel could not intelkigably defend it for lack of knowledge, the tright to probe was cumulative. First violation to due process rights to probe a witness under the sixth anednemtn which the Court of appeals aggreed intheir ruling. (see exhibit 52) Stating that this information should have been made known tothe jurors and unddeer Ev.Code § 1250 this information would habve.

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

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

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

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

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

D.

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

Sullivan never told officer back then that he seen Nash giving Cobb a ride home, while he did offer Rita had been drinking alot and that she dated a man named Fred Berdard who drove a van. He told officers that she was a lonely woman and seen alot of men and that as far as he knew she was seeing someone from Sptring valley. He admiitted that the last time he seen heer ws at the party and added that he remmembers Cobb being hit by Fred(CT64-65) In fact Sullivan told investigators almost a mirror statement in 2010 about his knowledge of Cob b and her going to his party and again he did not say anything about Cobb being driven home although he admitted Cobb and her sone had been estranged from some time.

He was again interviewd in 2009 by Myler on March 9 2009. In this intervuiew he told officers that Cobb had gone to his house about twice a month and usuallu on Fridays and Saturday nights. (CT256)(see exhibit 14) He recalled Rita arriving at 8:00 p.m. where his earlier statments were that she arrived at 7:30 one time and 6:00 p.m anothetr. He then admiitted to giviner her some whitelightneing and that they continued to socialize. He added that soemtime around 10:00 p.m. that Cobb said it was time to go home and that the rrest of the aprty goers felt she was too drunk to drive home. He said he seen Bruce Nash get into her drivers seat of Rita's cafddillac and drove Rita home as Cynthia followed them. Knowing that Sullivan had just told him a different story that he told in 1985 25 years ago and two days after the crime, Myler probed and recorded these extreme differences in Sullivans testimony as well as Nash' testinony and Francesca Sullivan terstimony. (see exhibits 13, 14)

When Sullivan got onto the stand he offered that he had been coached by Alexander and Myler and then told the jury who just heard Nash's testimony that he did not give Cobb a ride home, that Sullivan now tells thewm he seen Nash drive Cobb home. The prosecutor knew these differences would only confuse the jurors, but more impoirtantly was that he knew that Sullivan statements in 1985 were corroberated by every other witness at the party (Bruce Nash)(Cynthia Hooper)(Frabcesca Drake) admitted that Sullivan had fallen asleeop at 10:30 and that Burce and Cynthia had left the party while not driving Cobb home and left around 9:30-45 p.m.. Francesca stated that she recalled Cobb leaving at 11;30 p.m. well aftrer Nash had left and after her husband had already falledn asleep and that she may have been going to a bar because she liked to frequesnt the bars. This information was well established and the prosecutor knew that this mans unreliablity would only confuse the jurros. But when Sullivan bantered aboiut how his memory now 25 years after the crime is better than it was three days after the crime and that his memry was coached by Alexander who visited his ranch that Friday before. It was the duty to correct this mistatement by the prosecutoions team Alexander and Thomas but they allowed this to stand. Because this liar got ontothe stand at the guidence of Alexander who knew that he was either incapable of remembering, or only remembered the storyy that Alexander had planted on March 10, 2009 AND AGAIN ON JANUARY BEFORE TESTIMONY when Myler interviewed him and knew that Sullivan had then been incapable of recalling facts ol outside his name, Coobbs arrival at the party and the names of the oother party attenders. This was very prejudicial to the trial and the prosecutor banked on this.

E.

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

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

> "WHAT ABOUT THE WATCHBAND PIN ? tHATS INPOTTANT BECAUSEW LOKK WHERE ITS AT. ITS ABOVE HER RIGHT SIDE. ITS LIKE IF SOMEBODY WERE TO HOLD MKR THEIR HANDS--IF A MALE WERER TO HOLD THEIR HAND, AND SHE WAS STRUGGLING, SHE MIGHT HAVE GOTTEN THE WATCH PIN OUT. IT WAS THE DEFENDANTS WATCH PIN. [YOU HEARD THE TESTIMONY, THAT THEWATCHBAND PIN DOES NOT MATCH THE WATCHBAND PIN THAT RITA HAD] 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 MOTIVE IN THIS CASE WAS RAPE, THEN EVERYTHING POINTS TO THIS P PERSON WHO COMMITTED THE RAPE.

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

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

This was a critical point in the case, where there "really" was "nothing" inthe case that placed the petitioner at the criem scene the day the crime occured., And even though this expert cleared the DNA matching petitioner by several days before the crime occured (RT 317) The other expert cleared the DNA by as much as one and a half full days(RT490) So this mistatement was made to coerse the jurors into believing that there was DNA [redacted] onthe watchband pin and that it had been matched to pettiioner, when it had not. After he had given them this gross mistatement the jurors were now to believe that he had another expert have this evidnece examined , only forzot to produce it ?????. Only that watchband pin belonged to a right handed person. It is common knowledge that right handd people wear their watch on their left hand, while left handed people wear their watches on their right. PETITIONER IS LEFT HANDED. The prosecutor then aruged effectively that "they" held their hands

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

But that the prosecutor argued that this [pin] should be included intheir detrminations of a[element] where sex was to be determined as consensual or non consensual makes this mistatement that much more valuable in a defense. As like the entire case, counselor Sanders did not challenge this error either, while he warmed the seat in this courtroom, forfieting this LIE by the state, possibly because he didnt know that law either.....or he had already told Thomas that he was not going to challenge the case on any meritorious matters at all. I would not be surprised if Sanders had already applied for the job as being a prosecutor in that county.

Now when this was argued by Ferguson in habeas, he offered that because petitioner could not provie who's DNA was on this item, that the argument should fail. Adding that even though there is another mans DNA in this bedroom does not mean they killed anybody adding that possibly Mrs Cobb was collecting watchband pins. (emphasis added) Petitioner filed a objection for the grosss and heartless comments by ferguson about Cobb collecting pins. (BECAUSE FERGUSON STATEMENTS WAS SO DISPROPORTIONATE TO AN ITEM THAT WAS LEFT BEHIND BY THE KILLER, THEN ADMITS THAT THERE WAS DNA ON THIS ITEM AND IT DID NOT MATCH PETYITIONER()

Points and authorities listed above are herby now incorperated

Perjury is defined by United States v White 2016 US Distric LEXIS 54486 as whoever havinbg taken an ~~oath~~ oathe before a competant tribunal, office or person in [any] case in whioch a law of the U.S. authorizes an oathe to be administered, that he will testify, declare, depose, or certify as true, or that any written testimony, declaration, deposition or certified by subscription ,is true, willfull and contrary to such othe statute or subscription in any manner or matter which he does not believe to be true in order to establish due process violations stemming fromthge use of ½perjured testimmony the defendant must;

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

See also U.S. v Agurs, 427 US 97(1976):In Re Richards 63 Cal. 4th 291(2016) That is reasonably probable that the false testimomny or evidnece affected the oputcome because with the exception of a certe evidence the defnedants prosecutor had a substancial responsibility to present evidnece above the threshold of mere suspicions or circumstamnciality. Furhter more CRPC Rule 5-200(A)(B) state that a member of the bar shall employ all means that are consistant inthe truth, and ah shall not seek to mislead the judge, judicial officer by any artiface or false staement of facts.....or law.

Analysis of ground three A through E

The prosecutor had an obligation regardin g the witnesses he used in trial as well as the statements he was to give the jurors throughout the trial regarding facts, testimoinies and witnesses he presented in order to protect the integrity of the rights afforded the defnedants interests, When the state lead detective gave false testimony the prosecutor knew or should have known regarding the a) Fingerprint report b) the authenticity ofhte interrogation transcript which he both knew was false as well as misleading had an obligation to correct the statements by his detective about state evidence. Only Thomas assisted, and coersed thesde mistatements that were ~~xxxxx~~ false about specific material evidnces. First the fingerpritn teport that the prosecutor corroberated was misleading when he stated that no evidnceds were presented regarding fingerprints. When the detective gave misleading responses a)not sure there were results b) if there were any results developed c) But that he knew Yablonsky's prints were not located. All of which are misleading. But when an objection that is against heasay xxx blockades suggesting state evidneces are hearsay was wrong per § 1280 as explained above. Next when the detective alleged to authenticate the interrogation he gave knowing falkse and misleading statements that the jury relied as factual.....and it was not!!!

The state ehtn relied on two very critical witnesses Nash and Sullivan who for a better way of words gave confusing statements to the jurors either contradictorty to their previous statements or one o another statements copntradicting each other about the last kbnown destination of Cobb and whether anyone drove her home!!!

These were critical as to how and what the jurors we. believe regarding the last destination of Cobb after the drinking party at the Sullivans. Because neither of these witnesses gave relaible testimony boith shoudl be impeached for factual material evidnece as to whether theybgave Cobb a drive home,and whehter Nash did in fact drive Cobb home that night, or whetherr Thomas and Alexander coersed the testimony of both these witnesses. Because of the knowingthe false statements enjoined by Thomas and Al;exander does suggest that they too coersed the statements before these witneses entered the courtroom on Monday .

These facts violated due prosess tights under the right to confroint and caused such unfairness that the entire became a sham and farce regarding the states entire case. Especially when the experts who placed Yablonsky at the crime scene did so by placing him there from one to several days before the crime ever ocvcured(RT317,490) and then these witnesses gave such unrelaible testimony the jurors didnt have a chance to see the historical facts of the czase. They were shown a manufactured recording transctrip that was so altered that it did not resemble the actual interrogation, while they were to believe Yablonsky hads keys tothe Cobb residence.

These repeated injections of falseness crippled the entire case into an absolute miscariage of jusitce that could not be relied. As a result of hte prosecutors acts and misconduct that violated due process rights guaranteed petitioner habes must be issue and an order to show cause where state parties are to authenticate the exhibits in this petitioner and admit their values or provide such proofs that woudl diminish their values. These evidndces are material and relevant to the case and should be alowed in the record!

GROUND FOUR

TRIAL COUNSEL DAVID SANDERS VIOLATED PETITIONERS SIXTH AMENDMENT RIGHT TO EFFECTIVE COUNSEL WHEN HE DELIBERATELY, RECKLESSLY, INCOMPETANTLY FAILED TO INVESTIGATE MATERIAL AND RELEVANT EVIDNCES, WITNESSES WHILE REPRESTENTING PETITIONER VIOLATING DUE PROCESS RIGHTS TO EFFECTIVE REPRESENTATION WHEN HE FAILED TO INVESTIGATE AND HAVE EXAMINED THE RED HAIR WITH THE ENTIRE ROOTS ATTACHED,, THE WATCHBAND PIN LOCATED UNDER THE VICTIMS HEAD THE MURDER WEAPON FOUND ON THE VICTIMS BODY THE BLOOD SMEARS LOCATED ONTHE VICTIMS BEDROOM JAMB THE CIGARETTE BUTTS LOCATED INTHE DINING ROOM THE ALIBI WITNESSES THAT PLACED PETITIONER AT ANOTHER LOCATUION WHEN THE CRIME ALLEGEDLY TOOK PLACE FAILED TO INVETIGATE GREGORY RANDOLPH FAILED TO SUPRESS EVIDNECE HE KNEW HAD BEEN ILLEGAL AND ALTERED. REDUCING THIS CASE TO A FARCE AND SHAM.

Facts surrounding ground four

On or about May 2009 David Sanders was appointed to represent petitioner for a serious crime #FVI900518. Upon the very first discussion petitioner asked had he spoke to Geoffery Cantv about = the case and Sanders admitted he had. Petitioner then asked counxsel about the states entire case file and Sanders stated he wsa told by Canty that it had already been released. Petitioenr told Sanders it had not, and demanded to see the states entire case file. After about a month of no response. petitioenr wriote and vcalled sanders demanding the entire file and asked about specific investigations regarding petitioners rights and interests. (see exhibit 2-1)

Sanders then chose to tr release only 300 of the over ~~5~~ 5000 pages, less than 7 % percent of the states file, enclosing a note saying that this is the states entire records except for the DNA records for petitioner. Telling petitioner that they were difficult to understand anbd would only coinfuse petitioner. (see exhibit 1-3) Sanders was asked about specific investigations which were related to viable and intelligable defenses.

Sanders had repeatedly asked petitioenr to waive time so that Sanders could conduct investigations that had been asked for by petitioner, telling petitioner he was going to investigate the DNA evidence that was found at the scene, specifically the desk cloth that was located which had petitioners DNA on it, because Canty had stated that it wads found. Sanders was also asked about the investigations to a We-Tip investigation about a confession. When petitioner spoke to Canty the first counsel from this firm Canty stated that there was [nothing] that placed petitioner at the crime scene that relates tothe crime, but stated this without the release of any tangible papers fromthe case to support these comments by coiunsel.

After Sanders released 300 pages of the states records on June 2009 petitioner made more requests regarding the records that had beebn rekleased. Specifically the transcript to the interr-ogation that occured on march 8, 2009. Petitioner stated that the transcript was innaccurate Sanders stated that it was on.ly an inter preterd transcript. This was a 113 page version. Petitioner was not told there was another version and then told Sanders that answers had been changed with the interrogation transcript as weell as the jail phone call transcripts. Sanders stated that if the case went to trial that verbatim records woudl be used. Petitioer did not know tha suppression motrion could be used, and did not know to s ask, counse did not explain possible defenses either, onloy that verbatim would be used if the case went to trial. This is verified by Global tel calls to (760)241-0413 from booking #0903341068 after June 2009.

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

In fact there was a specific motuion to recuse the prosecu tors office where the Court specifically granted Sanders a continuanc to coinduct certain investigations. (see exhibit 35,36 37) NOTICE exhibit 37 where the minute order stated motion denied and continuance granted. The transcript to this hearing does stated continuance to investigate. Sabnders had never even filed for expert witnesses stipen. In fact it was not until after the trial when Sanders release another 1600 pages in March 2011 and another 1600 pages in July 2014 trhat trial counsel had not investigated one piece of evidnece, had challenged the states case to any degree. In fact when full disclosur was made to petitioner by Hal Smith and Richard Levy that trial coun els actions, innactions and failures amounted to an absoulte mis carriage of justice forfieting rights , benefits,and privileges guaranteeing petitioner to a fair trial by the imbusilic incompet ance of David Lynn Sanders who had been a state employee and appoint ed to defend petitioners rights. Once petitioenr had discovered tyat trial counsel was doing nothing more than sabotaging the entire cas case petitioenr filed a motion to [terminate] appointment. (see exhibit 47) This was filed immediatley after the petitioner had been triaed and convicted by fake and falee evidneces where Sanders did not challemnge the states case to any reasonable, or competant degree that would lead the reasoanble person to believe Sanders was the defense copunselor. (see exhibit 47) Filed on February 25, 2011

c A.

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

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

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

Gregopry Randolph, and that just because there was anoth mans DNA inside the bedroom that it did not mean they had killed som somebody.(emphasis added) The failure to use this evidnece in trial was prejudicial because the states argument was that there was no other DNA's located at this scene, nor was there any presented in this trial, making petitioners DNA the only DNA irregardless if it was older than the crime by several days(RT317, 490) Had the jurors knew that there was red hair found onthe victims bodym while they we were looking a5ta blond suspect they would never reach a verdict, especially since they were already deadlocked weith all the states facts, evidncee and witnesses, anything else would have tilted the scales into petitioners favor and there is not a rewsonable juriost on this planet that would have convicted pettioner,therefore prejudice for NOT presenting the states investigations, and prejudice for failing to to have this examined by states experts which would have given the jurors a DNA match tothe killer, irregardless if it came back to Gregory Randolph or somebody else. In fact because there is another mans DNa inside that bedroom does infer that they are thr true kill ers in this case, especially when petitioners DNA is expertly examine to be older by several days(RT490, 317) (emphasis added)

B.

Like above Sanders had access to the states case, especiall when Myler had given him all the evidcnes before trial. Sanders knew that the states intended on using DNA evidence that was locatred unde the victoims head. (watchband pin (Item #A15) Sanders knew that the statew prosecutor would be relying on this evidnceds to support his element &m of the charge of intent and knew that this was DNA

credible and witheld that it existed from his client so that spec... investihgations could niot be asked for. Sanders knew that this was credible evidnces and could be used as a defense when his client specifically stated that he was last with Cobb the week before the crim crime occured. (see exhibit 2, 3) Sanders knew that this DNA evidence should have been examined or was told by the prosecutor it had been examined and failed to challenge the statesa case for the relevance of this material ~~of sans~~ evidence that was located in a remote ~~osp~~ spot, under the victims head, and ~~f~~ FAILED ~~ailed~~ to have thi this evidences examined. Sander knew that the prosecutor woudl be using this evidnece and knew that the prosecutor would be telling the jury that it belonged to the defendant Mr. Yablonsky. (RT596) (seee exhibit 59) Sanders failure to have this examined by experts or to challenge this evidnces to any certain degree was ½prejudicail not only because he could have used the different DNA profile other that petitioners that would have comne off this evidnces but it would have reduced the prosecutors argument to show it had belonged to someone else. DDA Ferguson arguied that counsel did not have this examined because it may have come back matching the= petitioiner. Adding that just because there was abnotyher man DNA inthe bedroom where Cobb was killed does not mean they killed some body. Futher adding that maybe Cobb collected watchband pins from her killers and kept them. *(emphasis added)(EMPHASIS ADDED !!!) Failing to inform his client of its existance was prejudicial, while failing the oppertunity to have it examined reduced the trial to a farce and sham, because this evidnces was relvant, and material!!. Sanders failed to challeng e the states use of this evidnedce nor did he bring tothe attention that it was DNA magnificent!!

Just as the red hair there was no tactical reason to not challenge the states case which DNA wou.d have dramatically undemine the states theory that petitioner had coimmiited the criem relying on false statements in an illegal interrogation. Where DNA matching petitioner tothe scene was older than the crime by more than one full day and as many as several days before the crime occured, making this item left behind by the killer exteremel critical and failure to ~~a~~ examine it very prejudicial. Because Ferguson argued that because petitioner cannot prove who it belonged to does not satisfy the prosecutors responsibility to prove beyond reasonable doubt., Only now they place that burden upon petition while he is in a concrete tomb to make this showing. Had these results been shown to a reasonable jurist there would not be one jurist on this planet who wouyld have reach a verdict Oof guilt. Especially when the trial was close where the jury actually deadlocked with no evidnece at all, making this evidnece that much more powerful.

C.

With the above in mind, the counsel also knew that there was a murder weapon located around the victims neck, and that the state also intended on using this eviudnece to show how the victim was killed while states expert Jones qualifored solid non pourous o objectrs as powerful DNA materials and that there would be DNA on this specific item. Sanders knew this and knew that the DNA matching petitioenr was in fact the result of the encounter he had with Cobb the week before the crimeoccured as petitioner told him this before

petitioner ever seen one piece of evidnece showing that petitioner was in fact telling the truth when he stated it was the week before Cobb had been killed that he was sexually with her. Making it that more important that Sanders have this evidnece tested when his client stateds that he wanted all the DNA evidneces tested. Specifically th the murder weapon. This was states evidnece Item # 83 (Metal coat hanger) States expert testified that this would be DNA credible while Sanders already knew this when Myler and Alexander gave himthe states complete file and all DNA evidnces. Sanders did not have this evidndece tested and did not challenge the States use of the weapon wether making this material and relvant evidnced be forfieted. Sanders could have validated his clients statements that he was innocent and have all the evidences examined as he told his client that he would, only Sanders forfeited this oppertunity to place the states case to [sopme] adversarial challenge. (see exhibit 50) Sanders had sent the states file to an expert for estimate so that the estimate could be used to file for P.C. 987.2 stipen for DNA examination. When the experts stated that the case required mandatory examinations Sanders failed to secure that oppertunity as he did the rest of petitioners case, to place the states case to [sopme] chgallenge, especially if these oppertuinity had merit. DNA had merit at this trial. Especially since the prosecutor placed this into a DNA case. Forfieting this oppertunity to show the jurors that the murder weapon was never tounhed by petitioner would have crippled the states entire case.

This failure was prejudcial because this examination would have presented another DNA for the jurors to examine and soince petitioners DNA was older then the crime , the murder weapon could have proven the entire case on and acquitted petitioner.

With the results of this evidndec before the h jurists who in this case were paying attention and were reasonable. That there is not one reasonable juri st that would ahve reach a verdict of guilt, making this failure critical and prejudicial.

D.

The states experts located blood smears on the bedroom doorjamb in this case. They later determined this blood to be the victims blood and had been smeared into the jamb leaving fingerprints that were unreadable. States experts testified that this type of evidndce would have touch DNA and could produce a DNA profile regarding who smeared the blood, and may have come back to matching someone other than the murder victim hereself. In fact because Cobb was found in her room laying on the bed with blood smeared on her face could have bheen determiend that the killer had smeared her blood intothe jamb. Even if the prints were unreadable, there would have been DNA because there were aprtial prints that led one to believe that the killer did not wear gloves. Confirming that the murder weapon as a well as thwe watchband pin had DNA as well.

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

Failure to test this evidndece and place the states case under some challenge wass prejudicial and cauxses caused irreperable harm to petitioners case to challenge the states case in his defense. Fuirhtermore Sanders did not reveal this information to his client until after the trial had been coppleted and the injury sustained.

Because this evidnece had noit been secutre the oppertunity to present this tothe reasonable jurist was prejudicial as to who actually killed Cobb and left their handprint in her blood as their calling card and Sanders forfieted thsi oppertunity as the rest of the oppertunities he sacrificed incompetantly.....or deliberately!!

E.

Sanders knew that there was evidnceds collected at this scene that came fromthe victims dining room as htray that had eight cigerrette butts in it. Sanders knew that this would have supported the third party culpability to Gregory Randoplh who confe ssed tothe this crime. (see exhibit 16, 16-6, 16-7, 16-5,)

Three of the cuigarette butts collected fromthe crime scene were matfched to Ran fdolph while two matched Kramer, and one of the butts mnatching Randolph alos had Cobb DNa on that as well. Sanders knew this,and when he alleged to try to get this third aprty evidnece intothe states records, the Court asked for indica of relaibility to show sone (relaible source) of the confess-ion made by Randoplh on 8/6/88 that he alleged to kill cobb. The Court of appeals admitted that the Court violated due process (COA14) by forbidding access tothe we tip confession, which needed suppoirt

THE RESULT OF THE CONFESSION LED TO POLICE INVESTIGATIONS

(See exhibit 52) and that the we tip was an exception to hearsay if trial counsel had argued the result of ht ereport under(Pweople v Waidla supra, 22 cal.4th at 724) only counsel failed to know the laws surrpiunding his alleged strategy of tactical choices. This was supported by the Court of appeals ruling in (Case #E055840) Because trial counsel did not examine this eviddence he should have known woiuld have placed Randolph at the scene he earlier told police he had not been at the scene for two weeks prior tothe crime being committed. But more importyantly this would have supported a motion to complee compell discovery that would have produced the arrest warrant, the interrogation transcripts for when Randolph had been arrestred onm August 10, 1988 after the confession instigated aflurry of investigation, and arrewst.

Knowing that these cigarette butts came back matching everyone other than the client and did not match his client made them that much more credible regarding a defense, showing that this oppertunity was also forfieted matched the momentum of this trial counsels abilites. That Sanders did not know, or understand about the duty he owed his client about presenting a defense, or at least challenge the stateds case to some degree, but to not challenge the case to any degree is not only incompetant but agrees with petitioners summation, that Sanders assisted the prosecutor in altering evidnece, and then hiding the facts to prevent duirect appeal making this failure doubly prejudicial. Because not only was the trial reduced to sa a sham and farce, but poetitioenrs right to direct appeal was also prejudiced by this incompetance display of a trial attorney.

KRAMER, COBB, SAUNDERS AND RANDOLPH

F.

Trial counsel Sanders was told from the very beginning of the representation of petitioner that he was innocent and that he wass not in Lucerne Valley for the week end that Cobb had been kille and was in Downey california over 160 miles away with an entire fam family who would have and could have vouched for him. Thta petitione was in Downey from Thursday September 19, 1985 and as earlty 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 b verify this was his mother inlaw 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 pet itioner was in fact in Downey when this alleged crime occured with at least ten other family members fromthe Mitchell , Mullen family vising with his wife and son.

When Sanders responses were negative and unrelaible regar ding this alibi testimony petitioner filed and prepared subpenas for Holly Mitchell/Yablonsky/Brown and Linda Mitchell and sent them to Sanders for sertvice. Sanders stated that it was not necessary that they would be at the trial. Petitioner asked had he investi gated these witnesses and Sanders stated that he had not. (see exhibit 38) These were prepared by petitioenr and sent to trial counsel before the trial occured. When trial started petituioner ask the prosecutor whether Linda and Holly Mithcell were going to test ify and Thomas stated that Holly was crazy as a loon and that she would not be there to testify. Possibly because Sanders had told

that his client had prepared a series of questions that would have gotten alibi responses verifying that petitioner was in fact in Downey at the time this alleged crime occured. In fact becuase these witnesees were used to devvelop the states case about alleged violent behavior by petitioner to Holly (his ex wife) that these witnesses needed to be there to be examined and were not. In fact petitioner had told Sanders that there woudl be two witneses in the courtroom audience that were there to validate the allegations about Yablonsktys' abcuse to Holly that was not only a lie, but would have provided credibility issues with these witnesses had the statee relied on their statements given in 2009 that Yablonsky had beat Holly.

In fact petitioner gave Sanders a list of possible leads t to Holly;s medical recorss that would have supported that Holly was Masochistic and would cause harm to herself which her police retired mother would have corroberated and been morally obligat4ed to admitt ing this on the records about her daughter. Furhtermore Sanders w would have been able to probe for names of other witneses that were also at the family gathering at the Mullen residence that weekend who gathered for Holly's last visit for some time due to her being due to deliver almost anyday.

Because these witneses were not inthe courtroom and were onthe prosecutions witneses list and Sanders did not protect this valuable defense by filing and serving the subpenas suggest that he was "assisting the prosecutions" case at every opportunity he could preventing this relaible and credible alibi testimony. In fact petitioners own daughter Jasmine Shawnda Jade, Yablonsky (the 1985 child) at the time of the alleged crime was in the Courtroom with

with her cousin that could have also provided corroberating testimo... that John was in Downey for the weekend before Jasmine had been born. It would be impossible to remember dates, but an event such as giving birth would have tabbed the timeline to somehting more memorable where this could have been remembered with specificty. The family gathering at the Mullens included Hollys uncle, and his wife. His two children. Hollys mother,and sister Joy Mithcell, as well Thomas and June Mullen. All of the information here was given to Sanders, who for some reason relied onthe prosecutors witness list to priovide the alibi testimony as stated above. But Sanders entire conduct pretrial, and dutring trial suggest that Sanders bagged these witneses with the assistance of Thomas to prevent the alibi testimony needed in this case. Failure to interview, or subpena these witneses was very prejudicial and would have been able to provide reliable corroberating testimony that matched the DNA in this case (RT317, 490) That petitioner had been with Cobb the week before and there was NO OTHER EVIDENCE IN THIS CASE OR EXISTANCE THAT PLACED PETITIONER IN THAT HOUSE THE DAY THE CRIME OCCURED!!!!!!

Because Sanders knew these were valuable and would have been verified, yet he chose to forfiet these oppertunities he perjudiced petitioenr beyond undertsanding. Had these witnsese been allowed to testify in trial along with the less than weak case the prosecutor presented, there is not one reasonable juror on this entire planet that would have found petitioner guilty beyond reasonable doubt. In fact the case was so close to acquittal anything leaning towards not guilty would have completely undermoine the entire states case and an acquittal would have been the respOnse!!

As stated above that gregory Randolph had confessed to this crime and state sheriffs had processed investigstions that could have supported the arrst that occured on or about August 10, 1988. Sanders knew all of this and knew that the result of the we-tip report that led to investigations where Gregory Randoplh had been suspected of not only the Rita Cobb murder, but was also a suspect in Helene Brrooks=murder that occured a couple months before the Cobb murder and was commitred ina very similar maner as well as circumstance. (see exhibit 18, 19, 17, 16) Sanders had all this information and witheld this from his client when he gave petitioner 300 pages of the over 5000 pages., When petitioner asked for these records in May 2009 (see exhibit1,2) Sanders chose then to hide them from petitioner. Sanders admitted onthe record during marsden hearing that he witheld the states entire file even after his clint had beggoed for them. (see exhibit 4)

Sander failure to investigate this specific evidnece forfeited third party culpabuility oppertuinity where direct or circumstancial evidence was needed to attach anoither person to the crime. The confession was hearsay without the investigations, but with the investigations which could have provided matches to the cigarette butts at the scene. (see exhibit 17) would have bneen enough to get this information into the trial records and the jurors would have bneen made aware of the person who not only admitted to being at the residence, but also provided a confession that stated he last seen Cobb at the very bar she stated she was going. (see exhibits 13, 161, 25)

This failure ws very prejudicail as strated above that the Court of appeals for this stated that this information would hvae been aloowed under state law had the trial attorney known the ;law, but beciase Sanders did not the tria., Court violated due process rights by witholding this information fromthe jurors (COA 14) (see exhibit 52) Furthermore Sandersnot only failed at this point but witheld these fascts until July 2014 after the direct appeal had been exhausted, further injuring opetitioenrs due process rights to a fair trial and fair direct appeal. The cigarette butts were matched tothe crime scnee among the other characters provided by the state and federal governments. (see exhibit 19) where Gregory Randolph was most likely tom have been the true killer,and Sanders knew this and c chose to refuse any investigatioin efforts forfieting this opertunity for his client. Had this informationbeen made known tothe jurors there is not one reasonabel jurist on this plaret that would have found defendsant guilty and would have acquitted petiti= ioner. Even after the trial jurors told the media there was no evidndfa and that was why it took so long to decide. (see exhibit 32,46) SOME JUROIR FELT THEY NEEDE MORE EVIDNECE!!!! This failure to invest- gate fitrs into the character of sanders trial capabilities inthis case. That he either did not care to do his job, did not know how to do his job, or had assisted the state prosecutor win reaching a verdict of guilt for favor later on in his carreer.

H.

Sanders had all this evidndce and time to investigate and when he was told by his client the interrogation transcripts

were incorrectly transcribed and illeasily collected he forfieted the opertunity as discussed above to supress this interrogation transcripts that were used in trial that showed petitioner had lied tothe detectives on march 8, 2009. Had Sanders filed a supression motoina it would have had merit because the evidnece had been illegally collected outside of MIRANDA and had that motion been denied it would,have been reserved for appellate purposes. at

Petitioner told Sanders that he did not give some of the answers the transcript was recorded saying,and had sander filed the motion to supress it would have been granted, and possibly had the case thrown out for fraud the state parties committed..... unless Sanders did in fact assist these parties in creating this false evicnece that wwere created after Yablonsky sued Ramos (see exhibit 35) Because the suppression kotion was never filed, the false evidnces were themn presented into the courtroom even after the judge basically begged Sanders to chalenge this in the heaing inside chambers out of the presnece of petitioner on January 26, 2011. (see exhibit 42, 43) Sanders stated then that he will not enter an objection, nor will he file suppression motion that would have protected his client from deception by the state who had no case without this manufactured piece of evidence that was used on January 27, 2011 where the jurors were told that Yablonsky not only lied tothe cops about his sexual relatuionship but held a key tothe Cobb home for months afrer they moved out so he could return and commite a crime. Failure to supress this valuable oppertunity to destroy the states case prejudiced petitioner beyond repair as the state habeas court and federal habeas court were made to hear that evidanece was used to show the jurors that petitioner had lied to the cops therefore he is guilty of killing Cobb.

Had this eviodndce been suppressed the prosecutor would ha. been left withthe fact that petitioners DNA which had been examined and verified as the result of an embcountert hat occured several day before the crime occured and [nothing] else indicating petitioners guilt. Put because this evidnece was not suppressed the prosecutror had an opertunity to alter the course of the trial with inferances, possibilities, and propincity of a piece of evidnece that was so contaminating and worthless for its values with accuracy. The prosec had no case without this critical piece of evidmnece he altrered to support his theory, that becauee Yablonsky lied to the cops about his sex with Cobb then he [must] be the killer.....look he had a key to Cobb house.....weren't you listening ??

Points and authorities abopve incorperated herein along with these for ground four

An attorney can be liable to formers client for actual fraud if the elements are proven Frost v Hanscome(1926)198 550 559 246 p.53 It is an attorneyd duty to protect his client in every possible way and it is a violatuion of that duty for the attornerywe to assume a position that is adveree or antagonistic to the client without the latters free and intelligent consent given [after] full knowledge of the facts and circumsaances Anderson v Eaton (1930)211 CAL 113.

Collateral attack on the basis of newly discovered evidnece only if the new evidnece casts fundamental doubt upon the accuracy or relaibility of the proceeding. In Re Hall(1981)30 CAL.3d 408; In Re Webber(1974)11 Cal.3d 703; In Re Branch (1969)70 Cal.2d 200 Only if the new evidndce casts doubt upon the unferringly accuracy

and reliability of the proceeding at guilt phase of the hearions. It must undermine the the entire case and points toward innocence or reduce culpability People v Gonzales (1990)51 Cal.3d 1179.

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

None the less petitioner must establish as a demonstratable reality not simply speculate as to the effect of error, or ommission of the counsel (citation) Petitioner must demonstrate counsel knewe or should have known that further investigations was necessary and muyst establish the relevance and nature of the evidnce counsel fail to present or discover People v Williams(1988)44 Cal.3d 883.

Ignorance of the laws and responsibilities was not this counsels only fatal flaw which denied petitioner his right under the sixth amendment and ineffective assitance claims are better addresse unde r habeas collateral attacks, rather than direct appeal. even though in petitioner direct appeal the court recognized the incomp etance (COA 14). Since the record of appeal often does not fully illuminate the reasons for trial counsels actions or ommissions

However in cases such as this those facts could have been hidden or witheld where counsels explaination for the poor preformance an issue which should be considered here rather than on direct appeal People v Mendoza Tello,(1997)15 Cal.4th 264; In Re Jones (1996)13 Cal.4th 552. Further the Court in this case heard a motion for new trial where compteance of counsel was at issue and inthat hearing the Court relied onthe counsels perfoprmance inside the courtroom which was not incorrect by prejudice on petitioner for the case had not been investoigated at all much less sufficient to make the much needed and required decisoins that would have ptotected petitioner rights. Under the sixth amednment of the United states constitution and article I section 15 of the California constituton a criminal defendant has the right to assistance of counsel "An accused right to be represented by counsel is a fundamental component or our justice system. Lawyers in criminal cases are [necessities and not luxuries]. Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself be "of little avail" United States v Cronic (1984) 466 US 648. This right also guarantees the right to [effective] representation, not just some bare assistance. McMann v Richardson (1970)397 US 759;People v Ledesma(1987) 43 Cal.3d 171 "That a person who happens to be a lawyer is present at trial along side the accused in not enough to satisfy the [constitutional command]" Strickland v washington (1984)466 US 688. In other words, "because the right to counsel is so fundamental to a fair trial, the constitution cvannot tollerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits" Evitts v Lucey(1985) 469 US 387

The right to counsel thus encompasses "the right to effectiv toiver assistance of counsel(ciatation) United States v Cronic supra, 466 US at pp.654 (The sixth amednment requires counsel acting inthe rolse as an advocate (citation)(id at p.656) Generally a defendant claiming incompetance of trial counsel must show both that counsels assistance was deficient and that this deficiency performance prejudiced the case. Strickland v Washington supra, 466 US 668;People v McDermott(2002)28 Cal.4th 946. However in United States v Cronic 466 US 648, The Supreme Court held that per se reversa;l is reqwuired when counsel entirely failed to [subject] the prosecutions case to meanmingful adversarial testing." (id at p.659) The fuindamental question is whether the"[process] has lost its character as a confrontation between adversaries: (Id at pp.656-657) If so, then it is not necessary to demomnstarte actau;l prejudice. This exception to the prejudice requirments may arise in several different contexts. [Most obvious], the Cronic Coiurt noted "is the cOmplete [i.e. actual] denial of counsel" (Id at p.659) Of course that is only part the issue here. But Cronic Court also noted the possibility of constructive denial of counsel when , although counsel is rpesent, the "performance of counsel is so inadequate that , in effect, no assistance of counsel was provided"(Id at 654 fn.11)That is precisely what happened in this case here. (emphasis added)

Because the Court "normally apply a strong presumption of reliability upon the proceedings "in cases of mere attorney n error, "defendant are required to overcome the presumption by "Showijng how specific errors of counsel undermine the reliability of the fainding of [guilt](citation)

Roe v Flores -Ortega(2000)528 US 470. Where defendants are actually constructively .....denied the asistance altogehher , howeverm no speicif showing of prejudice is requuired because the adversary processitself is [presumptively] unrelaible""(Id at,483) In Cronic the defendant was was indicted on mail fraud charges involving a check kiting scheme where checks were transfereed between banks in Florida and Oklahoma. When defendant there retained counsel who withdrew shortly after the scheduled trial date the Court appointed a young lawyer with a real estate practice who had no trial experience in jury trials, was allowed to represtent the defendant, but only aloowed 25 days to prepare for trial

While the prosecutor had four and a half years to prepare and review the thousands of documents tothe case. The defendant was convicted while the Court of appeals reveresed the matter under the sixth amednment that had been viiolated. The Court based its inferance onthe circumstances surrounding the representation the defendant received 1) Time offerddd to investigate and prepare 2) the experience of counsel 3) the gravity of the offense 4)the complexity of possible defenses and 5) the assessibility of the witnesses. The Supreme Court, while reversing the lower Court decision utilized thes factors. United States v Cronicsupra 466 US 648. The holding in Cronic was reitterated by the Supreme Court in Bell v Cone(2002)535 US 685. The United States Supreme Court in BELL explained that it identified three situations implicxating the right to counsel that incvolved circumsxxxxx tances so likely to prejudice the accused that the cost of litigating their effect ina particular case is unjustified(citastion) First and foremost obvious was the compklete denied access to counsel(citation) A trial would be presumtively unfair, we said, where the accused is denied

is denied the presence of counsel(citation) [fn omitted]. Second that a similar presumption was warranted if counsel entirely fails to subject the prosecutions case to meaningful adversarial testing (citation) Finally we said.....where counsel is called upon to render assitance under circustances where competabnt counsel very likely could not, the defendant need not show theat the proceedings were affected(Id at 695-96) Under Cronic and Bell prejudice is presumed only under the most egregious conditions. Error by counsel may be presumed inthe rare circumstances when counsel actions undermined the reliability of the finding of gublt, such ads, when counsel has repeatedly slept through a guilt phase (e.g Burdine v Johnson,(2001) 262 f3d 336) counsel was intoxicated during trial (e.g. States v Keller (1929)57 N.D. 645; or counsel had a conflict in interests affecting the preformmance (~~EMIYEE~~ Cuyler v Sullivan (1980) 466 US 335

LACK OF PREPERATION

In sufficient preperation for trial may be constitutionally ineffective assistance odf counsel In Re Gay (1998)19 Cal.4th 771; People v Bolin(1998)18 Cal.,4th 297; Seerules of profesional conduct Rule 3-110. "To render reasonable competant assistance ,an attorney in criminal cases must perform critical duties. Generally the sixth amendment requires counsels diligence, active participation inthe proceedings, knowledge,and understanding of the laws and a duty to diligently investigate carefully all defenses of fact and law that may be available to the defnedant.(citation)This includes confering withthe client [without undue delay] and as often as necessary to elicit matters of defense(citation)People v Pope, supra 23 Cal.3d 412;People v Berryman (1993) 6 Cal.43th 1048. Wiggins v Smith (2003)539 US 510 (That adversairial testing required throrough

investigations, describing the significance of thoee investigations befor making critical decisions. In this case there was no rewquest for DNA funding through P.C. 987.9, hence all DNA in this case was therefore prejudiced for failure to challenge its values and integrities as well as all the DNA qualifioed evidnces that were not presented in this case that were relevant and material. Rompilla v Beard(2005) 545 US 374; In Re Cox(2003) 30 C4th 643, where investigations showed that testimony would have been impeached

ANALYSIS OF COUNSELS INCOMPETANCE

Bringing the Court focus onthe DNA that was presented in this case. (RT317 criminalist Jones who stated that solid surfaces would caryy DNA possibilities. That he did not examine the watchband pin, and the DNA matched to petitioner was the result of an encounter that occured several days before the crime of murder occured and that he was certain of that finding) (RT490 Dr Saukel stated that there was no physical or scientific evidnces Rita Cobb had been raped,and that the DNA matching petitioner was the result of an encounter that occured as many as one full day before she had been killed,and as many as up to kne and a half full days before Cobb had been killed)

Neither of these experts were contested, standing this FACT inside the courtroom. The other evidncences in this case involved the illegal intrusions into ones proivacy protected by the fourth amendment while warrant for arrest was on the record. That collection, although illegal had no values until the officers chose to present this tothe court, after that evidnce had been tampered, altered, and doctored to show a different result than the real time recordiongs.

The jurors were listening to the three week trial where that state presented experts that verified that Rita Cobb had been killed on or about September 20, 1985 by strangulation and the use of a murder weapon thatwas rapped arounfd her neck and twisted until she turned bl;ack. These experts testified that Mrs Cobb hyoid boine had been crushed and that she had livvidity on her upper right outter shoulder and ribcahge area. The jurors then heard that Cobb had past been seen by her son six weeks before she had been kuilled but he was the one who found her afer she called him with a distressing call that Friday before(September 20, 1985) asking for his help becuazwe someone scared the hell out of her. The jurors heard that Cobb was last seen at the Sullivan drinking party and that she arrived atthe party around 7;45 p.m drinking a bottle of bourbon herself and then drank moyre after she finished the first bottle. The jurors heard that when Pruce Nash was about to leave that he offered Cobb, to drive her home, but that she refused his offer so he and his wife Cynthia Hopoper ledft around 2100 that evening.

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

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

contaminated ~~s~~ when they were collected by detective McCopy who also took pictures of the scene,while admitting to the jurors that there was a six pack of beer missing from the tables that he had included in his sketch of the scene he made befre taking photos. The jurors heard greats details about how the petitioners DNA had been placed into this CODIS data base and matched him tothe crime scene, while being told that this DNA thatwas collected from inside the vagina of rita Cobb had been placed there as much as several days before she had been killed to as little as one and a half days before she had been killed. The jurors were told how there were no fingrepritns tothe case, and then told that they would listemn to a recording and given a transcript to rerad along with of the interview that occured on march 8, 2009. The juurors were trold that this transcript was accurate tothe best of the detective ~~was~~ abeility and made to listen to how petitioner lied tothe cops about his sexual relationship with cobb.

The jurors heard the state case for three solid weeks of grusome photos of the victims neck, hyoid bone and her dead bodsy laying on her bed with her legs spread and photos of a watchband pin laying underneather her head and told that the expert did not match petitioienrs DNA to this item even though the prosecutor dutring closing arguments stated that the expert testified it bewlonged tothe petitioenr.....and still came back hopelessly deadlocked after three days of deliberations. All of this above before the jurors and they still deadlocked! WHY????? Because they were listeming tothe state case,and even asked about the validity of the interview as tot whether it was illegal or not,and were misinstructed by the Court about that !!!!!

While this panel of reasonable jurists were litening and paying attention to [all] the evidneces in the case asking who spoke about Joseph Saunders atthe party first, and asking that testimony be read back, and then concluding they were deadlocked. (see exhibit 67 pp.29) Trial counsel Sanders happen to admit to all of this during another case where he not only defaulted for failing to respond timely there by admitted to all of these alegations by failing to respond timely to that as well. (see exhibit 66) Admiting that he witheld 4700 paged expecting his client to make reasonable decisions from that first 300 pages he released in June 2009 for the trial in 2011. Sanders admitted that he never examined a) the watchband pin b) the red hair c) or even authenticated the interrogation recording. He admitted that he helped alter the recordings and that he scehedueld trail dates without having one piece of evidnce tested [at all]!!.

David Lynn Sanders forfieted every oppertunity that was available to his client by the states release to him and his clients pleas for a defense providing reliable persons and evidnes for his defense and still made incompetant decisions to not investigate the evidnces in this case. While he had moved the Court eight times for cointinuances for the oppertunity to investigate. (see exhibit 67) In fact at one point Sanders stated that he filed a motiuon for change of venue, only the case summary is vacant, while it does show that Sanders filed a faulty motion in another persons mname regardign two of the states coritical witnesses. (see exhibit 49, 67) He also filed a recusal motion in the wrong capacity as there being a conflict between Michael Ramois and petitioenr through jail house treatments which the Court denied for several rerasons but mainly

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

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

a) failed to file chang eof venuie when the prosecutor flooded the community with prejudicail flkyers right before the trial (see exhibt 32, 33)

b) Deliberatley wuitheld records from his client so that he could hide his incompetance until after direct appeal (see exhibit,3,4).

c)Made wreckless and prejudicail errors to not have [anything] tested in this case after he initially was told by experts that this case required mandatory examination. (see exhibit 50)

d) Failed to supena alibi witneses as he relied on the prosecutors witneses list allowing the prosecutor to know that Lind and Holly Mitchell were expected to excuplate petitioner with alibi testimony 38)

The record is completelv blank for trial attorneys proof of competance while the cadse summary shows he knew to ask for continuances to investigate. Had any one of these evidncese been presented tothe jury in the capacity and volume of a thimble they would have completelv a;ltered the course of the trial forcing the state to abandon the chargres or face acquittal, and because the level of incompetance is ∓ of such great volumes prejudice should not be required. But while each of these pieces of evidcnexse, defense oppertunities found the hands of Sanders, they diminished, vanished and or changed into different evidnces as trail counsel sabotaged, traded, and conspired to force this case into a verdict of guilt. Hell, 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 evidnce or reliable authority throughout the entire case .

Sanders did not do an opening statement, cheated his client out of an oppertunity to tell his side of the story which had been blown completely out of context regarding the lies in the interrogation (states theory) and about his involvement with the deceased Rita Cobb. Sanders closing statement was about baseball and the density of bats, while he led the jurors into history about animlas intothe wildreness. In fact Sabnders is such a team player that he asisted Detective Alexander and DDA Thomas in changing the trial transcripts where Alexabnder sated that he did not knwo anything about any fingerprint report. (see RT 59, 29 ,) There was not one thing competabnt about Sanders while he could not arguclaw with the Court about facts he tried to bruing into the record (Gregory Randolph) (Bruce Nash conversation with Cobb the night she was killed) or was he able to provide one authority regading theird party culpability outside the [hall theory] He forfieted petitioenrs right to a fair trial, foreiting rights to due process in so many whays and did this with absolute ignorance of the applications of law, or rights afforded the people he swoire to defend. THEN TRIED TO HIDE THESE PROCESS!

GROUND FIVE

PROSECUTOR THOMAS AND COUNTY PROSECUTOR MICHAEL RAMOS VIOLATED DUE PROCESS RIGHTS AFFORDED UNDER THE FIFTH AND SIXTH AMEDNMENTS TO A SPEEDY TRIAL WHEN RAMOS USED PETITIONERS CASE IN A CAMPAIGN SMEAR POLLUTING THE ENTIRE VENIRE OF JURISTS AS HE ENTERED INTO THE HOMES OF EVERY REGISTERED VOTER TELLING THEM HE FILED 19 MURDER CHARGES AGAINST PETITIONER AND PROMISED THEN CLOSURE INTHE TRIAL LATER THAT YEAR WHEN HE SENT THREE RED BULLITENS INTO EACH HOME IN A ONE WEEK TIME SPAN PLANTING PREJUDICE INTO THEIUR MINDS ABOUT PETITIONERS GUILT. FORCING TRIAL POST PONEMENT

Trial counsel told petitioner in May 2010 that he had completed the investigations asking to place the case onto the calendar for trial to beguin. Petitioner agreed to schedule trial dates ~~farx~~ on April 2, 2010, being made to believe the ttrial would begin within 60 days from that date. Thomas and Sanders sceduled these dates ontothe Court calendar. (see exhibit 67) This trial was to begin within 60 days from that date. In May 2010 the county prosecutor had created campaign flyers thata were 8 x 12 in in size and red in color with the petitioners case on them along with petitioners photograph that was as big as 8 X 12 with prejudicial commentys about the prosecutors belief in the defnedant guolt as Michael Ramos promise closure inthe upcoming trial in exchange for votes. (see exhibits 32, 33, 67) These flyers had information about the petitioners case and suggestions that they had solved the crime 25 years after it had been committed. Ramos then after the case had been placed onto the records to begin had these flyeres made to enlist(on trial later that year) into the contaminating materials that were meant to cause prejudice on petitioner while gaining voters conmfidence withthe trial ;later that year, only trial was set to begin on June 2010.

Ramos then mailed into every Business, home, residence three seperate flyers ina one week span of time beginning on May 13, and ending on May 20, 2010, [just days before the trialw as to start]. These flyers were so contaminating that their valuas and contents were remembered seven months later when the tria finally began. On July 12, 2010 the trial was vacated because of the campaign smear by Michael Ramos that occured on May 2010 . The trial had been vacate several more times vo over trht the fo~~l~~oowing months because of the

campaign that led to further litigationby petitioner who fought for this protected right (impartial jurors) (see exhibit 35) where trial counsel ignore the right and chose against petitioners advice, chose to file recusal motions.(seee exhibit,36) Petitioner was not given the choice to vacate this trial and discussed this with his attorney, who argued that the entire panel of jurists will be prejudiced. Please take notice on the voir dire that occured several months later.....they were still prejudiced. While some of the jurors stated that did not recall these mailers, other stated that they did making comments that they believed the county to have proof of guilt before they aloowed these mailers to be sent. Other made comments about how Yablonsky had been burnt, and other made stated that when there that much smoke there must be fire. Because it was the actions on behalf of the government who forced the case to be vacated from trial dstarting petitioenrs rights were violated, violating due process rights toa speedy and fair trial . The repeated vacating of trial dates did not cure the level or prejudice caused by this misconduct, in fact the jurors came to a verdict of guilt with absolutley no evidndes tothe case suggesting these prejudicial flags mailed in May 2010 did the trick

Points and authorities for ground five

Constitutional safegaurds against post accusation delays The sixth amendment provides fundamental right to a speedy trial that serves to 1) Prevent undue and oppeessive incarceratuion, 2)mininize anxieties and concern accompanying public accusation,and

3) Minimicen tne possibilities that long depev will impair the abilituy of an accused fóromoresenting a defense. U.S. V Ewell 383 US 116(1966): Klopfer v.N.C., 386 US 213(1967) The right to a speeeddy trial attaches at the time of form,el charge. The remedy for violation of this right is to duismiss the indictment and vacate any sentence that had been imposed. Strunk v U.S., 412 US 514(2009)= Here the state took responsibilkiyt for the April 2, 2010 conduct that they planned to destruct the right to speedy trial knowing thyat the campaign flyers woul;d frustrate the petitiojers ability to provide a defense against the erroneous charge because there was no evidence, which was explained with the November 23, 2010 altering of hte evidence which was in feat the [only] incriminating evidnces inthe states entire case, that the petitioner had lied duriung an interrogation about his relationship wit Cobb. Fut they took it a step further and vashed the custodial marker foom the "COPY" tyhey made fromthe three sets they had, and then changed petitioners answers so that they can place evidnced into petitioenr possession while the t real time record shows that he did not have this evidence at all. (see exhibit 49A 49 of the states evidences for case #FVI900518) By intentionally presenting a plov to begin trial they got two fold. The oppertunity to momopolize onthe publicity of the case that had by then been made infamous inan election campaign, where promises were changed for voites. Then giving the state team to learn and perfect their audio and technical manufacturing skills as they created evidences they needed to reach a verdict of guilt. These acts were calculated and deliberate with the assistance of meny parties, violating due process rights under the sixth and fourteenth amendments.

GROUND SIX

THE COURT ABUSED ITS DISCRETION WHEN THE COURT VIOLATED DUE PROCESS RIGHTS AND SAFEGAURDS ENLISTED BY THE EIGHT AMENDMENT WHEN THEY SENTENCED PETITIONER TO LIFE WITHOUT THE POSSIBILITY OF PARCLE FOR A CRIME THAT OCCURED WHILE PETIUTICNER WAS UNDER THE AGE OF TWENTY FIVE YEARS OLD PETITIONER WAS BORN ON SEPTEMBER ON THE THIRTIEHT DAY OF 1963. WHILE THE ALLEGED CRIME TOOK PLACE ON SEPTEMBER 20, 1985 WHEN PETITIONER WAS ONLY TWNETY TWO YEARS OLD MAKING THE MAXIMUM SENTENCE PETITICNER 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 noit 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 SuprememCourt findings and reduce this petitioners sentence to the maximum term of 25 yeard to life, to cohabitate the language of hte Supreme Court

POINTS

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

CONCLUSION

As a result of the allegations within this petition along with the exhibits attached support that the state of california violated substancial due process rights outlined by the Untied States Constitution fifth, sixth and fourtenth amednemtns when petitiopenr was tried for a crime that he did not commit. That the prosecutor knowingly altered evidneces, witheld evidneces, and coersed testimony he knew to be false and misleading. That the prosecutor colluded with the trial counsel to hide these facts from the state records to secure and protect this wrongful conviction of a man they knew was innocent.

That as a result of these misocnducts petitioners substancila rights were violated, resulting in an absolute miscarriage of justice ina case that held less than circumstancial evidneces petitioner was the true suspect. That the prosecutor, along with the sheriff department withled evidences regarding a confession by gregory Randolph who left his DNA at this crime scene on September 20, 1985 when he killed Rita Mable Cobb. That Gregory randolph then while employed asa county coroner found out that this case DNA was going to produce results of his activity in this case, killing himself in his Lucerne Valley trailer on June 1, 1999 but not until after his arrest for this case on August 10, 1988.

THIS ARREST WARRANT WAS WITHLED BY DDA THOMAS

PRAYER FOR RELIEF

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

2) That this Court order the state of california to authenticate these exhibits attached herein and admit or deny their validity.

3) That this Court grant en evidentiary hearing for the allegations within this petition, and determine whether the interrogations recordings had actually been altered, whether the transcripts of those recordsings had in fact been altered fromtheir original content, that the DNA located on the red hair, watchband pin, murder weapon, cigarette butts, victims blood actually belonged to petitioner, and why trial counsel failed to investigate these evidences

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

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

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

July ~~13~~ 13. 2019

John Henry Yablonsky

PROOF OF SERVICE BY AN INMATE

ACCORDING TO PRISONER MAILBOX RULE

THIS MAILING IS DEEMED FILED AND SERVED UNDER ANTHONY V CAMERA, 236 F.3d.568(9th cir.2000)

WHEN THIS MAILING HAS BEEN DELIVERED INTO THE CUSTODY OF CDCR STAFF

This service and mailing was conducted by a party and inmate of CDCR, and was conducted according to California Code Regulations § 3142 and P.C.§2601(b) This mailing was inspected and sealed in the presence of an on duty correctional officer, into a fully prepaid envelope to be delivered by the U.S.P.S. as addressed to the following parties;

~~SUPREME COURT OF CALIFORNIA~~
~~350 McALLISter~~
~~San Francisco, ca,~~
~~94102~~

ATTORNEY GENERAL
BOX 85266
S.D, CA, 92101

This service contained the following documents;

HABEAS CORPUS WITH EXHIBITS

ONE OF FOUR

This service was conducted by an adult over the age of 18 years of age and mailed from a state institution, which will be logged by facility mailroom parties as [LEGAL] mail. This mailing was conducted from ;

SANDIEGO — CITY

92179 — ZIP CODE

This service was conducted on (DATE) [redacted] SEPTEMBER 20 2019

UNDER THE PENALTY OF PERJURY
THE FORGOING IS TRUTHFUL AND ACCORDING TO BELIEF

(NAME) john henry yablonsky (SIGNED) [signature]

My address is 480 alta rd sandiego, ca,92179

ın Henry Yablonsky
18-147
480 Alta rd.
Sandiego,ca,92179

SUPREME COURT COPY

HC-001

SECOND SUCCESSIVE PETITION
FACTUAL INNOCENCE

CONFORMED COPY

SUPREME COURT
FILED

JUL 18 2019

Jorge Navarrete Clerk

Deputy

CDC or ID Number: AL0373

SUPREME COURT OF CALIFORNIA
350 McAllister
Sanbfrancisco ca,

(Court)

John Henry Yablonsky
Petitioner

vs.

Patrick Covello (warden)
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. S256961

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

RECEIVED

JUL 18 2019

CLERK SUPREME COURT

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2016). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

[XX] A conviction [ ] Parole

[ ] A sentence [ ] Credits

[ ] Jail or prison conditions [ ] Prison discipline

[ ] Other *(specify)*: _____

1. Your name: John Henry yablonsky
2. Where are you incarcerated? R.J. Donovan CDCR snadiego ca.
3. Why are you in custody? [XX] Criminal conviction [ ] Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
Murder in the first degree

b. Penal or other code sections: p.c. 187, 190.2

c. Name and location of sentencing or committing court:
Superior Court of california
Sanbernardino county

d. Case number: FVI900518

e. Date convicted or committed: January 2011

f. Date sentenced: January 2012

g. Length of sentence: Life without parole

h. When do you expect to be released? granting of habeas

i. Were you represented by counsel in the trial court? [XX] Yes [ ] No *If yes, state the attorney's name and address:*
public defenders officer
14455 civoic dr, victorville ca. 92392

4. What was the LAST plea you entered? *(Check one)*:

[XX] Not guilty [ ] Guilty [ ] Nolo contendere [ ] Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

[XX] Jury [ ] Judge without a jury [ ] Submitted on transcript [ ] Awaiting trial

RELIEF

1. State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

SEE ATTACHED

a. Supporting facts:
Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*.

b. Supporting documents:
Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duval* (1995) 9 Cal. 4th 464, 474.)

c. Supporting cases, rules, or other authority *(optional)*:
(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. Ground 2 or Ground _____ *(if applicable)*:

SEE ATTACHED

a. Supporting facts:

b. Supporting documents:

c. Supporting cases, rules, or other authority:

d appeal from the conviction, sentence, or commitment? [XX] Yes [ ] No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): COURT OF APPEAL 4TH DIST

b. Result: DENIED c. Date of decision: 20-14

d. Case number or citation of opinion, if known: unk

e. Issues raised: (1)

(2)

(3)

f. Were you represented by counsel on appeal? [XX] Yes [ ] No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? [XX] Yes [ ] No If yes, give the following information:

a. Result: denied b. Date of decision: 2014

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal. (See *In re Dixon* (1953) 41 Cal.2d 756, 759):

trial counsel was incompetant qwitholding evidneces fromthe record

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available? [ ] Yes [ ] No
Attach documents that show you have exhausted your administrative remedies. (See People v. Duvall *(1995) 9 Cal.4th 464, 474.)*

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)
[X] Yes If yes, continue with number 13. [ ] No If no, skip to number 15.

13 a. (1) Name of court: ALL COURTS OF THIS STATE AND THE UNITED STATES

(2) Nature of proceeding (for example, "habeas corpus petition"):

(3) Issues raised: (a)

(b)

(4) Result (attach order or explain why unavailable):

(5) Date of decision:

b. (1) Name of court:

(2) Nature of proceeding:

(3) Issues raised: (a)

(b)

(4) Result (attach order or explain why unavailable):

(5) Date of decision:

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)
COUNSEL ALONG WITH PROSECUTOR WITHLED RECORDS, EVIDNECES, FROM PETITION THROUGH ~~THE FIRST ROUND IN THIS CASE, AND DID NOT MAKE FULL DISCLOSURE TO PETITIONER~~
UNTIL 2016 UNDER P.C. 1054.9 FOR LWOP INMATES DISCUSSED PAGE # 2-2½

16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☒ No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
This petition hads been made to the lower courts

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters I believe them to be true.

July 3 2019

John Henry yablonsky
(SIGNATURE OF PETITIONER)