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Petitioner in Pro Per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM FRENCH ANDERSON,
Petitioner,
vs.
TIM PEREZ, Warden,
Respondent.

Case No.: CV14-09463

Related to In re Anderson, S220661;
In re Anderson, S214003;
People v. Anderson, S205103
Court of Appeal No. B232746
LASC Case No. BA255257

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner William French Anderson submits this Memorandum in support of his separately filed Petition for Writ of Habeas Corpus relating to the judgment of the Los Angeles County Superior Court entered on February 2, 2007, No. BA255257, imposing a term of 14 years in state prison.

The judgment at issue was previously addressed by California Courts in People v Anderson, S205103, in which review was denied on October 31, 2012, and in in re Anderson, S214003, review denied December 11, 2013. A second state habeas corpus petition, S220661, was filed August 18, 2014, but was summarily denied on November 12, 2014. The federal form CV69 was timely filed on December 10, 2014.

STATEMENT OF THE CASE

Appellant was charged and convicted in Count 1 of the First Amended Indictment with continuous sexual abuse of a child under the age of 14 years (Penal Code section 288.5, subd. (a)), between March 1, 1999 and September 30, 1999; and in Counts 2 through 4 with committing lewd acts on Jane Doe, a child under the age of 14 years (Penal Code section 288, subd. (a)), between January 1, 1999, and December 31, 2001. On February 2, 2007, petitioner was sentenced to a term of 14 years in state prison, which he is currently serving at the California Institution for Men, at Chino, CA.

He filed a timely Notice of Appeal, B197737. While the appeal was pending, petitioner filed a Petition for Writ of Habeas Corpus in the Court of Appeal on May 3, 2011. The Court of Appeal issued an order to show cause on May 12, 2011, directing that the petition shall be heard concurrently with the appeal, and ordering respondent to show cause why the relief sought should not be granted.

The judgment was affirmed on appeal on July 26, 2012, People v. Anderson (2012) 208 Cal.App.4th 851, and the California Supreme Court denied review, S205103. The Court of Appeal denied the habeas petition on September 5, 2013, and the California Supreme Court denied review, S014003, on December 11, 2013, and again on November 12, 2014, S220661.

STATEMENT OF FACTS

The Court of Appeal summarized the trial facts at pp. 2-3 of the slip opinion:

"Anderson, a medical doctor and the founder and director of a genetic research laboratory, sexually molested the daughter of an employee of the laboratory from the time the child was in the fourth or fifth grade until the ninth grade. Anderson coached the victim in competitive karate; she won national karate competitions when she was in the fourth and fifth grades in 1997 and 1998. He also assisted her academically. However, they frequently were alone together and he regularly committed lewd acts upon her. The victim's testimony was generic in that she testified generally about a continuing course of misconduct. E-mails Anderson sent her after the abuse ended but before she decided to report him in April of 2004 corroborated her testimony. Because Anderson indicated in his e-mails he would apologize to her in person, she agreed to meet him outside a pub-

lic library while carrying a recording device provided by detectives. On July 1, 2004, she surreptitiously recorded a conversation in which she angrily confronted Anderson and asked why he had molested her. At trial, Anderson claimed the apologies in his e-mails were for applying excessive pressure on her to succeed and, at the library, she was on the verge of going out of control and he was willing to say whatever was necessary to calm her." (People v. Anderson, *supra*, 208 Cal.App.4th at p. 856.)

Petitioner maintains that the above-quoted statement of facts from the appellate court is factually false since none of the alleged "lewd" acts ever occurred. Petitioner testified and has maintained throughout these proceedings that he committed no sexual impropriety with Y, and that he is factually innocent of the charges for which he was convicted.

GROUNDS FOR RELIEF

I. PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A FAIR TRIAL BY OUTRAGEOUS GOVERNMENT MISCONDUCT IN EDITING AND ALTERING A SURREPTITIOUSLY-MADE RECORDING BETWEEN PETITIONER AND THE COMPLAINING WITNESS TO DELETE EXCULPATORY PORTIONS AND TO INSERT INCRIMINATING PORTIONS.

The core of the prosecution's case was a surreptitiously recorded conversation between petitioner and the complaining witness. This sting meeting recording was characterized by the prosecution as a "confession," and was referred to more than twenty times during the trial, including eight times during the initial argument and nine times during the final argument. Defense counsel conducted a perfunctory investigation regarding the authenticity of the recording, ignored his consultant's advice to conduct additional investigation, and ignored petitioner's insistence that the recording had been significantly altered. Consequently, no evidence was presented at trial to question the authenticity or accuracy of the recording. However, post-conviction investigation uncovered significant quantities of evidence that this sting recording was edited in multiple places by Deputy Kurt Ebert of the Los Angeles Sheriff's Department to transform the recording from a confirmation of petitioner's innocence into a doctored claim of his guilt. Powerful new

digital technology that became available only three years ago provides conclusive additional evidence of the tampering, and how the indicia of editing were hidden by Deputy Ebert. The Attorney General did not contest the validity of this new evidence in the habeas proceedings in the Court of Appeal, but claimed that any alterations must have been innocent because the police would never fabricate evidence. In view of the egregious alterations made, this claim is absurd. The fabrication/alteration of critical evidence by the prosecution team is outrageous government misconduct, and desecrates the very concept of justice and due process as guaranteed by the state and federal Constitutions. See Rochin v. California (1952) 342 US 165.

A. Summary of Facts.

1. In July, 2003, the alleged victim, Y, then 16 years old, after a major disagreement with petitioner, told a high school counselor that "her Mom's boss" had molested her when she was younger. Y was the daughter of one of petitioner's lab employees, who was also a disgruntled former business partner in a venture developing new medical technology. Prior to Y's complaint, that venture had lost its funding, and Y's mother bitterly blamed petitioner for its demise.

2. As a teenage sexual abuse counselor at Teenline, a telephone counseling service for teenagers run by UCLA, Y was very familiar with the details of sexual abuse. The high school counselor contacted the police, who contacted Y, who recanted her accusations to both her local police and, several days later, to the police where petitioner lived. On the dates between these two retractions, Y's mother asked petitioner to delete her daughter's emails to "avoid embarrassing her." He did as she asked. Also, at that time, Y's father hit her and chased her down the street. A neighbor called the police, who filed a report.

3. A year later in May 2004, Y and her mother contacted a civil law firm (Jones Day), and revived the previously recanted complaint. After spending a month with the law firm, a Jones Day lawyer contacted the police and reported the complaint. Given the absence of any corroboration of the complaint, the police took no action against petitioner other than to arrange for Y to surreptitiously record a meeting between Y and petitioner, set up for July 1, 2004, outside the local public library. Shortly after the

meeting, petitioner alerted his local police chief to Y's suspicious and troubling behavior, and requested the police to investigate. Petitioner was eventually arrested 29 days later on July 30, 2004. A recording of that sting meeting conversation was submitted to the prosecution by Deputy Kurt Ebert of the Los Angeles County Sheriff's Department. That recording of July 1, 2004, was the core of the prosecution's case.

4. Petitioner, immediately upon hearing the recording, vehemently maintained to his attorney that it was substantially altered from the actual conversation. His attorney failed to investigate the authenticity or accuracy of the recording and, furthermore, refused to allow petitioner to question the accuracy of the recording during his trial testimony. (See Ground 3, *infra.*) Petitioner was convicted and sentenced to 14 years in state prison.

5. Subsequent forensic investigation in the course of habeas corpus proceedings revealed overwhelming evidence that the sting meeting recording provided to the prosecutor by Deputy Ebert was edited in many areas. These edits generated false inculpatory statements and eliminated multiple exculpatory statements. Specifically, the critical "confession" repeatedly referred to by the prosecution were manipulations carried out by Deputy Ebert. The actual inculpatory statements added and the exculpatory statements deleted are detailed below.

6. Most of the technical experts utilized by petitioner to analyze the sting meeting recording are internationally-recognized authorities in their respective fields: forensic digital recordings, digital signal processing, forensic computing, and human voice pattern analysis.

7. The expert consultants whose declarations were filed in the habeas proceedings are:

- Yi Xu (University College, London, UK) – one of the world's experts on human voice analysis
- Curtis Crowe (President, Tracer Technologies, Windsor, Pennsylvania) – developer of the Diamond Cut Forensic 8 (DC8) software used internationally to identify anomalies consistent with editing in digital audio recordings
- Craig Schick (Consultant, Wildemar, California) – a consultant electronic engineer

who specializes in the field of designing, engineering, constructing, and maintaining high tech electronic systems, infrastructure, and buildings

- Frederick Cohen (President and CEO of California Science Institute, Livermore, California) – one of the world's experts in digital forensics, computer engineering, computer security, and electronic mail
- Catalin Grigoras (Director of the National Center for Media Forensics in the College of Arts and Media at the University of Colorado at Denver, Denver, Colorado) – another one of the world's experts in examining digital recordings for authenticity

8. The crux of the new evidence was encapsulated in the declarations filed in the state habeas corpus proceedings, and respondent did not contest either the qualifications of the experts or the validity of their opinions. Nonetheless, the Court of Appeal denied the petition without holding an evidentiary hearing or permitting the discovery requested by petitioner.

9. Multiple prejudicial indicia of alterations in the recording have been documented by the experts. Furthermore, there is considerable additional evidence that confirms that the recording was altered and then re-recorded in an attempt to hide the alterations. A compilation of all the indicia of alteration is set forth below in B.3 to B.8.

10. Although substantial evidence existed at the time of trial that would have raised serious doubt about the authenticity and accuracy of the sting meeting recording, compelling new evidence proving the malicious editing has only recently become possible because of the development of powerful new technology. The forensic digital recording software, DC8, became available only three years ago. This new software is ten times more powerful than the forensic software that was available in 2006, at the time of trial. Using the new software, there is new absolute forensic proof of significant prejudicial editing of the sting meeting recording.

B. The Outrageous Government Misconduct.

1. The Attorney General conceded the factual evidence in this case, but not the legal interpretation of this evidence.

"Likewise, the fact that respondent filed declarations does not create a factual dispute necessitating an evidentiary hearing, as petitioner seems to suggest. (Petition for

Rehearing at p.3) Respondent's declarations mainly serve to fill-in minor gaps in the record and clarify some facts. Respondent's declarations did not contradict any other evidence, so no evidentiary hearing is necessary." (Attorney General's Answer to Petition for Rehearing, July 26, 2013, p.4, fn.1)

The Attorney General filed declarations that delineate the exact procedures carried out by the Sheriff's Department and maintains that these were all appropriate procedures. The Attorney General's position is that, although they do not dispute petitioner's factual evidence, "any alterations must have been innocently made or did not change the meaning of the recording." (page 7) Petitioner's position is that the Attorney General's legal position is absurd because Deputy Ebert, by deletions and substitutions of words and phrases in the conversation, intentionally and prejudicially changed the sting meeting recording from one that would have proven petitioner's innocence into one that suggested guilt. Deputy Ebert, in his declaration (Attorney General Return, Exhibit 3, 8/1/12) responding to petitioner's evidence that he had prejudicially edited the sting meeting recording, did not deny his editing. He simply said: "I never altered, manipulated, or edited any file without documenting it." His refusal to deny his alterations is a concession. Because of the intentional, material, prejudicial, and flagrant editing of the core evidence in this case, petitioner is entitled to relief based on outrageous government misconduct.

2. The following conceded evidence of malicious editing, Items #3 through #8, demonstrates the outrageous government misconduct. (See Exhibit A.)

3. There was an absence of authentication of the sting meeting recording. (This contention is set forth in the original state habeas corpus petition at pp. 8-53, with Exhibits A-M, O, S, W.)

a. Deputy Ebert testified that he failed to follow the fail-safe authentication procedure specified by the manufacturer (ADS) of the law-enforcement-only recording device, and that he erased the original recording without making a write-once CD-ROM of the original recording.

b. The download time on Ebert's computer of when he allegedly received the original recording from Detective Ronald Jester was a physical impossibility

in that it was allegedly "received" long before it was actually delivered.

c. It is a given that every authentic copy of an original recording must have the same running time, byte size, hash value, and origination date and time as the original recording. Yet, these values are all different on the "original" CD that Ebert gave the court compared with the "original" CD in Deputy Ebert's file.

d. An Amicus Curiae Brief by 14 international experts in digital audio recording, not associated with this case, pointed out that Ebert's actions could not constitute factual authentication of a digital recording.

4. Deputy Ebert made significant deletions in the sting meeting recording. (This contention is set forth in the original state habeas corpus petition at pp 8-14, 34-38, with Exhibits I, N, P-R, T.)

a. Detective Jester gave Ebert an 85-minute original recording, but the recording that Ebert gave the prosecutor was only 78 minutes in length. There were 7 minutes deleted from the recording. Subsequent investigation has demonstrated that the missing 7 minutes were composed of a 2-3 minute deletion that eliminated the entire beginning of the conversation between Y and petitioner, and a 4-5 minute deletion that eliminated Y and Jester's discussion after the sting conversation. (See Exhibit B.)

b. There is a two- to three-minute deletion in the recording that removed the beginning of the conversation:

- Y's opening loud exclamation: "You ruined my life!" as heard by the covert surveillance officers surrounding the meeting site, was deleted.
- The first two or so minutes of the actual conversation were deleted, in which Y attempted to entrap petitioner by carefully setting him up to think that his excessive pressure on her to do well academically pushed her to attempt suicide. The deleted section began:

  A: Hi, Y[…].

  Y: You ruined my life! [Loud]

  A: Y[…]?

  Y: Why did you molest me? [Quiet]

  A: Oh, Y[…], not again. You know I didn't.

Y: But you did ruin my life.

A: Y[…], we've been through this and you know I'm sorry. I thought you were better.

Y: No, I'm worse. Look at my arm! [Shows her fresh suicide cuts]

A: Oh my heavens!!

Y: You did this! You kept pushing me and I begged you to stop. I don't want to go to Harvard. I don't want to be a scientist. I don't want to be your protégé. Why didn't you stop when I asked?

A: I'm sorry, I'm sorry, I'm sorry. [Long pause]

- Acoustic and electronic evidence in the recording of Y's movements produced, in the recording, the physically impossible occurrence of Y being in one location, and an instant later, talking to petitioner 60 feet away.
- Electronic evidence of the exact site in the recording (at the time of 44:37) where the two- to three-minute deletion was made.
- The emotional tenor of the opening of the conversation was clearly abnormal in the edited recording. Petitioner expected a happy reunion (Y's exuberant phone message to petitioner just before the sting conversation: see Defense Exhibit QQQQ).) Dr. Xu examined this opening in detail and concluded in his 10/30/11 declaration (Exhibit P): "Based on this analysis, Anderson's first six utterances at the beginning of the conversation do not show socially appropriate greeting behavior…but rather suggest an emotional state of sadness. For these reasons, it is highly likely that the syllable "um" at 45:13 was not Anderson's first utterance to YH in the actual conversation. Rather, the "um" is more likely to have been made after an initial greeting, and after some conversation that induced the sad emotional tenor of the six utterances examined here."

c. There is a four- to five-minute deletion near the end of the recording after the meeting ended when Detective Jester and Y were together discussing the sting conversation.

5. Deputy Ebert made significant alterations by moving pieces of conversation

from one site in the conversation to another site. (This contention is set forth in the original state habeas corpus petition at pp. 87-93, with Exhibits N, P-R, T, U.)

a. There is acoustic and electronic evidence that the "Hey" that purportedly begins the conversation with petitioner was moved from a brief exchange Y had with friends outside the library on the concrete walkway (30 minutes before petitioner arrived) to the beginning of the truncated conversation (that took place on a grassy slope 60 feet away). Since Ebert had deleted the actual beginning of the conversation, some appropriate beginning was needed, so Ebert took the "Hey" from the earlier exchange that Y had with friends (see below for documentation).

- Y can distinctly be heard taking several steps before and two steps after saying "Hey," yet the surveillance officers observed no steps by Y from the time that petitioner arrived until the conversation ended 14 minutes later.
- Y's steps around the "Hey" were clearly on concrete, yet the meeting site was on a grassy slope 20 feet away from the nearest concrete, and 60 feet away from the front of the library where she had talked with friends. Consequently, it was impossible for the "Hey" to have been said to petitioner, but rather it was moved from 30 minutes earlier in the recording to where it is now found at the beginning of the edited conversation.
- There is electronic and auditory evidence of the exact site in the recording where the "Hey" was taken from. Using the powerful new software, DC8, at its maximum resolution (131,000 FFTs), our digital audio expert was recently able to precisely cut-out the "Hey" from its current anomalous position using the presumed "splice site spikes," themselves, and then was able to drop it into its original location at the presumed "deletion site spike." It fit perfectly! Like dropping a jigsaw puzzle piece into its correct location. With this electronic and auditory demonstration, there is now absolute forensic proof, on top of all the other forensic evidence, that the sting meeting recording was intentionally, expertly, and maliciously edited.

b. There is acoustic, electronic, and other evidence that the accusation, "Why did you molest me?" the core of the prosecution's case, was inserted into the middle of the conversation (taken from the now-deleted initial opening of the conversation,

see 4.b., *supra*).

- Human voice analysis revealed that the insertion of "Why did you molest me?" in the middle of the conversation produced several obvious anomalies, including voice sounds that are physically impossible for a human voice to make.
- Electronic analysis revealed that the anomalous voice sounds occurred at exactly the same sites as electronic signatures of editing, including the impossible loss of background noise at one point, and abrupt changes in background sounds at other places.

6. Deputy Ebert made significant alterations by removing petitioner's exculpatory responses to Y's incriminating statements. (This contention is set forth in the original state habeas corpus petition at pp 87-93 with Exhibits N, P-R, T, U.)

a. There is substantial acoustic and electronic evidence that petitioner's exculpatory responses to the following statements by Y were altered:

- "Why did you do it?" – This question was, in reality, a Freudian slip because Y actually said, "Why didn't you do it?" Every reference by Y to what petitioner allegedly did was only to "it." Y never mentions sexual abuse. She had set petitioner up to believe that "it" meant pushing her to suicide by excessive pressure to do well academically. There is only one specific reference to sexual abuse, and that was "Why did you molest me?" edited in by Deputy Ebert (see above).
- "You checked my weight and stuff. . . When I was naked" – As petitioner told Detective Jester, what he replied was: "I didn't weigh you, you weighed yourself." Y's trial testimony supports petitioner:

  Q: Isn't it true that you would go in Dr. Anderson's bathroom and close the door and weigh yourself and then come downstairs and tell Kathy Anderson and French Anderson how much you weighed?

  Y: I did weigh myself on his suggestion, not mine. And I did tell him how much I weighed. I don't remember telling Kathy Anderson.

  [RT 1529: 11-13, 2227: 11-15, 2228: 3-8]
- "It's not making it better." – Petitioner's response was: "I did a horrible thing pushing you so much that you attempted suicide." Deputy Ebert edited out: "…pushing you so much that you attempted suicide."

- "What, touching me would help me?" – The actual exchange was:

  Y: What, touching me would help me?

  A: What touching?

  Y: You drove me.

  A: I know.

  Deputy Ebert deleted the middle two statements, leaving petitioner replying, "I know," to Y's damaging question.

b. These four examples, together with the moved "Hey" and the moved "Why did you molest me?" provide clear evidence of the extensive, prejudicial, egregious, and flagrant alterations that were made to the sting conversation recording by Deputy Ebert.

7. Deputy Ebert re-recorded the edited sting recording in order to hide the evidence of insertion of damaging phrases and deletion of exculpatory phrases. (This contention is set forth in the original habeas corpus petition, pp. 91-93 with Exhibits N, U.)

a. The evidence that the recording given to the prosecution by Deputy Ebert was an edited re-recording is as follows:

- The presence of a 58.3 Hertz electronic signal that starts 33.3 seconds before the initial "Hey" and ends two seconds after the final "OK" of the conversation. This is a signature of editing in an indoor setting. (A 58.3 Hertz electronic signal is characteristic of equipment, such as a computer, that does not occur in an outside environment. Indeed, an expert recorded signals in the entire area where the conversation took place and there was no 58.3 Hertz signal anywhere.)
- Multiple variations of 60 Hertz signals occurred in the altered recording. 60 Hertz is the Electronic Network Frequency (ENF) in the United States and can only occur as a single signal in an original recording. More than one near-60 Hertz signal is a signature of editing and re-recording.
- A strong 120 Hertz harmonic signal is present only during the conversation itself: another signature of editing and re-recording. (A harmonic occurs naturally with an electronic signal and is always a multiple of the signal: 120 = twice 60). This strong 120 Hertz signal probably arose from the fluorescent lights in Deputy Ebert's work-

station.

- The echo pattern of the conversation should be characteristic of an outdoor setting, but instead it appears to be the echo pattern in a relatively small space, i.e., an indoor room.
- The anomalous occurrence in the recording of synchronous phone pulses, just before the conversation begins, could not have taken place at the meeting site because Y was not carrying a cell phone to receive such pulses, again corroborating editing and re-recording.

b. The evidence that two different recorders were used to provide the final edited re-recording provided to the prosecutor is as follows:

- Detective Jester explained to Y (at the very beginning of the recording) how the recorder she was about to put into her purse was turned on and off. He pointed out the on/off button which is "up" when the recorder is running. However, the prosecution informed the court that the recorder used by Y was an ADS Mono 8A. But the ADS Mono8A is turned on and off by inserting a small probe into a pinhole in the recorder's case. There is nothing in the operation of the ADS Mono8A that corresponds to Jester's description that: "This part is up." Clearly, the recorder used by Y was <u>not</u> the Mono8A that Ebert utilized to re-record the sting meeting.
- The ADS Mono 8A recorder that Ebert used was acknowledged by the LASD (Sergeant John Powell) and by ADS itself to have 2 series of bad chips which each left a 3-second gap in the recording. Yet, the meta-data associated with the sting recording documents stated: <u>no</u> bad chips. This fact establishes that the recorder used by Y had no bad chips, while the recorder utilized by Ebert for re-recording was the ADS Mono 8A, which <u>contained</u> bad chips. It is impossible for a single recorder to simultaneously have bad chips and have no bad chips!
- A recorder can only have one base-line voltage. But there is clear evidence of <u>two</u> base-line voltages at different places in the 78-minute recording.

8. <u>Deputy Ebert carried out several other highly suspicious actions that are consistent with intentional editing.</u>

a. Ebert had placed a "60 Hertz Notch Filter" in the digital toolbox on

the CD that carried the sting recording. The only function of such a filter is to remove the 60 Hertz ENF signal. The only reason for removing this low amplitude 60 Hertz signal would be if there was more than one 60 Hertz signal – indicating editing (see 7.a., page 12, *supra*).

b. Ebert testified that he had "edited" the recording in order to "enhance" petitioner's voice. But no enhancement was done, strongly suggesting that Ebert's sworn testimony was concealing his actual editing.

c. There is clear evidence that Ebert did not use the Band Pass Filter that he claimed he had done.

d. The LASD had an analog mixer in Ebert's work area. Analog mixers are widely used in the entertainment industry for "mixing" various musical and other sound components, i.e., for editing. Analog mixers are only used for editing. Neither Deputy Ebert nor any other declarant for the prosecution provided any explanation why the Sheriff's Tech Crew would have an analog mixer other than for editing recordings.

9. The petitioner may well be entitled to a presumption of spoliation, the intentional destruction of evidence done in bad faith (see Arizona v. Youngblood (1988) 488 U.S. 51, 58).

10. Thus, there is overwhelming evidence of extensive, material, prejudicial, and flagrant editing of the sting meeting recording by Deputy Kurt Ebert of the LASD. (See Exhibits A and B.) The Attorney General did not dispute any of petitioner's expert declarations regarding indicia of editing, but claimed that any alterations had to have been innocent because the police would never fabricate evidence. Deputy Ebert, himself, in his declaration, did not deny the prejudicial editing, which was flagrant misconduct causing substantial prejudice to petitioner and denying him a fair trial

11. In fact, "innocent" alterations cannot be made in digital audio recordings. As opposed to tape recorders (that are "analog") where accidental deletions can occur (remember Rosemary Woods 18½ minutes "accidental" erasure), a digital recording cannot be altered in any way without intentionally converting it first back into an analog format, making the alterations, and then re-converting back to the digital format. Deputy

Ebert maintained that the recording never was converted to analog. The multiple alterations, therefore, could not have been innocently made. The technology of digital recording makes unintentional alterations impossible.

12. The Court of Appeal ruled for the Attorney General and stated: "Such a course of conduct would have required a concerted effort on behalf of law enforcement and simply is not plausible." (Appeal Court Opinion, page 23, 9/5/2013). The appeal court denied petitioner any discovery and they denied an evidentiary hearing stating that holding an evidentiary hearing would be "an idle act." (Appeal Court Opinion, page 20, 9/5/2013) In light of the several recent scandals that have plagued the LASD, resulting in indictments of 21 deputy sheriffs, the recent convictions of 7, the pending ongoing criminal trials of the other 14, and the forced resignation of Sheriff Lee Baca, a claim that the LASD would never do anything illegal is hardly a convincing refutation to the overwhelming evidence that the petitioner has amassed, and that the Attorney General has conceded, and that Deputy Ebert has not denied, that demonstrates outrageous government misconduct.

13. Petitioner deserves an evidentiary hearing or an outright dismissal of his case based on the conceded outrageous government misconduct that was prejudicial to petitioner's due process right to a fair trial. Deputy Ebert's flagrant misconduct satisfies the "shock the conscience" standard.

C. The Applicable Law.

The determination of whether the government engaged in outrageous conduct in violation of petitioner's due process rights requires two steps. The first step involves weighing the evidence to determine factually whether, and to what extent, government misconduct occurred. The second step is whether the government conduct constitutes outrageous conduct in the constitutional sense of violating petitioner's due process rights. This second step is primarily a legal question. The Attorney General concedes Step 1, but maintains Step 2, namely, that Deputy Ebert's conduct was not sufficient to violate petitioner's rights in the constitutional sense. The Court of Appeal accepted this argument in their ruling. Petitioner adamantly disagrees. How can flagrant, prejudicial alteration of critical evidence – the core of the prosecution's case – not be outrageous in

the constitutional sense of depriving petitioner of a fair trial? Is there not a reasonable probability that disclosure of the doctored recording (and the other fabricated evidence) would have engendered a different result from the jury? Since petitioner, an innocent man, has already spent over 8½ years in prison and is now 78 years old, he requests the court to dismiss the case outright "in furtherance of justice."

See Rochin v. California (1952) 342 US 165 [outrageous government misconduct "shocks the conscience of the court" and clearly violates the due process of law as guaranteed by the Fourteenth Amendment]; United States v. Russell, (1973) 411 US 423 [petitioner's conviction was obtained as a result of outrageous government misconduct]; Zahrey v. Coffey (2000) 221 F.3d 342 [petitioner has the "right not to be deprived of liberty as a result of fabrication of evidence"]; Limone v. Condon (2004) 372 F. 3d 39 [petitioner has the "right not to be framed by the government"]; Miller v. Pate (1967) 386 U.S. 1 (1967) [a reversal when "prosecution deliberately misrepresents the truth" and the petitioner is convicted on evidence known to be false]; United States v. King, 227 F. 3d 732 (1999) [grounds for dismissal if prosecutorial misconduct violates petitioner's due process rights]; People v. Uribe (2011) 199 Cal.App.4th 836 [". . . a court [may] impose the extreme sanction of dismissing the criminal proceeding to address egregious prosecutorial misconduct that is prejudicial to the defendant's right to a fair trial."]

II. PETITIONER'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A FAIR TRIAL, AND HIS RIGHT UNDER PENAL CODE SECTION 1473 WERE VIOLATED BY THE PROSECUTION'S RELIANCE ON PERJURED TESTIMONY FROM DEPUTY SHERIFF EBERT AND FROM THE COMPLAINING WITNESS.

Evidence used to convict petitioner was obtained by means of perjured testimony from Deputy Kurt Ebert of the Los Angeles Sheriff's Department and from the alleged victim, Y. The prosecutor knowingly used perjured testimony to obtain a conviction in direct violation of petitioner's Constitutional rights. See Napue v. Illinois (1959) 360 U.S. 264.

A. Summary of Facts.

1. Petitioner has acquired compelling evidence to support the contention that every piece of damaging evidence used against him at his trial had been fabricated. The prosecution's case had three prongs: 1) Y's testimony alleging abuse; 2) damaging email exchanges between Y and petitioner; and 3) the sting meeting recording where petitioner's "confession" was used as the core of the prosecution's case.

2. The evidence establishing how Deputy Kurt Ebert of the LASD materially and prejudicially edited the sting meeting recording was described in Ground 1, *supra*. (See Exhibits A and B, pages 34 and 35.) Ebert's testimony that the sting recording was authentic and accurate was clearly perjury. (This contention is set forth in the original state habeas corpus petition at pp. 8-53 with Exhibits A-M, O, S, W.) Ebert in his declaration in the Attorney General's Return (8/1/12) did not deny his prejudicial editing.

3. Y's testimony was perjury-plagued. She was forced to acknowledge, or new evidence has established, material "mis-statements" 39 times during her testimony, including mis-statements about herself (8 examples), about events (15 examples), and about evidence (16 examples). (This contention is set forth in the original state habeas corpus petition at pp. 53-60.)

4. The two most serious incidents of perjury by Y were: (This contention is set forth in the original habeas corpus petition at pp 60-61, with Exhibit V.)

a. Her testimony that the sting meeting recording was accurate. [RT 1684: 16-19] The blatant alterations in the sting recording are discussed in Ground 1, *supra*.

b. Her testimony that she sent the four disputed emails to petitioner. [RT 3130: 23] Substantial evidence obtained by petitioner provides convincing data that those four disputed emails (the only damaging emails from Y in the case) were never sent and probably were written just before petitioner's trial (the prosecutors told the judge that they never saw these emails until just before the trial). Petitioner attempted to add a new claim to the habeas corpus petition that it was IAC for trial counsel to fail to investigate the authenticity of the four disputed emails. This request was denied "given minimal likelihood of success on this issue" [Appeal Court denial, filed December 18, 2012]. This evidence is delineated in Ground 3, *infra*.

B. The Perjured Testimony.

1. Y's testimony was perjury-plagued. Several examples of her material misstatements follow: (This contention was set forth in the original state habeas corpus petition at pp. 53-61.)

a. Perjury relating to herself:

- She testified that she never kept a journal, but on cross-examination, when confronted with the evidence, she admitted that she kept a very active journal. [RT 1818: 11-14, 1819-1820, 1825: 2-7]
- In order to explain away inconsistencies in her testimony, she insisted (at different times) that she knew nothing about lawyers, was confused by computers, and was bad at math. In fact, she was very experienced with lawyers, was known as a computer nerd in high school, and was recognized as the smartest math student in her school by the math faculty. [RT 1828: 3-6, 1830: 8-19, 1830: 27-1831: 18]
- She told the police social worker, Leah Smith: "I'm a teenager, of course I lie." [RT 2466: 11-12]

b. Perjury relating to events:

- She testified that petitioner let her drive his car everywhere, including on the 110 freeway before she took her high school Driver's Ed class. That was not true. Before the course, she could not drive at all, much less on the freeway. [RT 1537: 4-8, 4636: 24-4637: 10]
- She testified that her mother knew nothing about karate and that petitioner did not want her mother present during her private karate lessons. In fact, her mother was an advanced belt in karate herself, and participated in most of the private lessons. Y's mother even had a key to petitioner's house so that she could come in at any time (and did). [RT 1927: 12-15, 1928: 19-21, 4551: 17-24]
- She testified repeatedly that she was not prepped in any way for her trial testimony by the prosecution. [RT 1847: 8-27]

c. Perjury related to evidence:

- She testified that she read comic books during the alleged abuse and that "there were comic books fairly littered around the house." In fact, testimony from others estab-

lished that there were never any comic books in petitioner's home. [RT 2243: 27-28, 2244: 4-22]

- She testified that she never claimed that petitioner's abuse always occurred in his car. In fact, her own emails and the testimony of her friend, AL, documented that she did. [RT 2461: 22-26, 2463: 5-8]
- After spending a month with the civil law firm, Jones Day, she told a consistent story. She had previously tried out various stories on various people. Y's rendition of the molestation accusation appears to have been a changeable and evolving scenario in which she tried a certain version out on a friend, AL, (that all abuse occurred in a car), abandoned it, then tried out a different version on school counselor, Janet Waldron, yet another version on her friend, EZ, and finally established her final "story" after spending a month with a civil lawyer. [RT 1856: 6-11, 1857: 28-1858: 3, 1861: 14-17, 1862: 4-6, 1862: 24-27, 1872: 9-12, 1874: 20-24, 1875: 21-26, 1884: 23-25]
- She testified that from November, 2003, through February, 2004, she was "eaten up inside" because of emotional turmoil from the alleged sexual abuse. In fact, Y sent petitioner a very friendly apologetic email on February 7, 2004, when she once again recanted her false charges, but trial counsel never used this email for unknown reasons (see Ground 3, *infra*). [RT 1668: 4-15]
- She testified on direct examination that petitioner had weighed her naked. But on cross examination she admitted that this was not true:

  Q: Isn't it true that you would go in Dr. Anderson's bathroom and close the door and weigh yourself and then come downstairs and tell Kathy Anderson and French Anderson how much you weighed?

  A: I did weigh myself on his suggestion, not mine. And I did tell him how much I weighed. I don't remember telling Kathy Anderson. [RT 1529: 11-13, 2227: 11-15, 2228: 3-8]
- Despite this definitive testimony, the Attorney General and the Court of Appeal continuously claimed that petitioner "weighed the victim naked."

2. Finally, Y herself altered evidence in direct violation of a Court Order. [RT 1808: 12-17, 1907: 5-13]

- Y was informed that a Court Order was issued on October 24, 2004, for her not to alter any case-related material on her computer because the court might rule to allow the defense access to it.
- Detective Fortier, in a later court-ordered report of Y's computer, found that significant case-related material had been removed, altered, and replaced on November 2, 2004, just one week after Y received the Court Order.
- Trial judge ruled against giving the defense access to Y's computer. Nothing was ever done concerning Detective Fortier's report.

3. All of this evidence demonstrates that Deputy Ebert and the alleged victim, Y, committed significant and prejudicial perjury.

C. The Applicable Law

The prosecution knowingly used perjured testimony, thereby flagrantly violating petitioner's due process and constitutional right to a fair trial. People v. Uribe, *supra*: "When such prosecutorial misconduct impairs a defendant's constitutional right to a fair trial, it may constitute outrageous government conduct warranting dismissal."

Penal Code Section 1473 provides that:

(a) Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration;

See, Napue v. Illinois (1959) 360 U.S. 264 [the prosecutor knowingly used perjured testimony to obtain a conviction; the testimony was false and prejudice resulted]; Pyle v. Kansas (1942) 317 U.S. 213 [use of perjured testimony is a deprivation of rights]; Mooney v. Holohan (1935) 294 U.S.103 [the prosecution has a Constitutional obligation not to use perjured testimony]; Berger v. United States (1935) 295 U.S. 78 [the prosecutor's mis-statement of material facts was used to obtain petitioner's conviction. "Prose-

cutors are held to a higher standard because their obligation is to serve the cause of justice"]; United States v. Mandujano (1976) 425 U.S. 564, 576 ["Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings."]; People v. Uribe, *supra*.

III. PETITIONER WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BY COUNSEL'S FAILURE TO CONDUCT A REASONABLE PRE-TRIAL INVESTIGATION INTO THE AUTHENTICITY OF THE STING MEETING RECORDING AND THE FOUR DISPUTED EMAILS.

Petitioner's counsel was ineffective in failing to conduct a reasonable pre-trial investigation in violation of petitioner's rights under the Sixth and Fourteenth Amendments. Specifically, he failed to investigate the sting meeting recording and to present expert testimony to demonstrate that the four disputed emails were not, in fact, sent by Y. See Wiggins v. Smith (2003) 539 U.S. 510.

A. Summary of Facts.

1. Petitioner's trial attorney failed to investigate either the sting meeting recording or the four disputed emails from the alleged victim, Y. This refusal was despite the fact that the petitioner, from the first moment he heard it, insisted that the sting meeting recording was significantly altered from the actual conversation, and insisted, from the first moment that he saw the four disputed emails, that he had never received nor seen them. (This contention is set forth in the original state habeas corpus petition at pp. 8-61, 87-93, with Exhibits A, I, N, P, T-V.)

2. Furthermore, the one expert that trial counsel did employ urged that the sting meeting recording should be investigated for lack of authenticity, but counsel refused. (This contention is set forth in the original state habeas corpus petition at pages 8-27, with Exhibits A, O.)

B. The Evidence of Ineffective Assistance of Counsel.

1. Failure to investigate the authenticity and accuracy of the sting meeting recording.

a. In light of the profound and prejudicial editing of the sting meeting recording by Deputy Kurt Ebert of the LASD that was uncovered by petitioner's former habe-

as attorney (see Ground 1, *supra;* see Exhibits A and B on pages 34 and 35), trial counsel's refusal to investigate the authenticity and accuracy of the sting recording is particularly reprehensible. Trial counsel claimed at the time that law-enforcement-only audio recordings "could not be edited" by the police, and, therefore, investigating the recording would be a waste of time and money. Petitioner's ongoing pleas over the next two years from his arrest to trial fell on deaf ears.

b. In addition, trial counsel demanded that petitioner not even hint that there might be a problem with the sting recording during his trial testimony. When petitioner challenged this, trial counsel threatened to "fire" the petitioner and withdraw from the case. Petitioner was forced to acquiesce.

c. When petitioner's wife wanted to question the recording during her testimony, trial counsel also forbade her from questioning the accuracy of the recording.

d. Trial counsel's refusal to recognize the many anomalies in the recording that were obvious prior to the trial remains a mystery. (This contention is set forth in the original habeas corpus petition at pp. 85-93, with Exhibits I, N, P-R, T, U.)

- The original sting recording that Detective Jester gave to Deputy Ebert was 85 minutes long, but the recording was only 78 minutes in length. What happened to the other 7 minutes?
- Y opened the actual conversation by loudly proclaiming "You ruined my life!" as heard by the surrounding deputies, but that exclamation appears nowhere in the recording that Ebert gave to the court.
- The sting meeting took place on a grassy slope outside the local public library. Yet, Y can clearly be heard taking several steps on concrete before, and two steps on concrete after, saying "Hey", at the beginning of the sting conversation on the recording given to the court. There was no concrete within 20 feet of the meeting site. Y's "Hey" could not have been said to petitioner (see Ground 1, *supra*, for details).

e. Trial counsel ignored these and other clear indications of editing (see Ground 1, *supra*). The sting meeting recording was the core of the prosecution's case. Powerful new technology (the forensic digital recording software, DC8) that only became available three years ago provides compelling new evidence that absolutely proves

that the sting meeting recording was significantly edited. The Attorney General has conceded this evidence.

2. Failure to investigate the authenticity of the four disputed emails.

a. Likewise, trial counsel refused to investigate the four disputed emails claimed to have been sent by Y. It would have been simple to have raised strong objections to the authenticity of these emails by pointing out that they were found by Hotmail in Y's Draft Folder and not in her Sent Folder (see below). Therefore, the four disputed emails were never sent to petitioner.

b. The evidence establishing that the four disputed emails were never sent to petitioner, and probably came into existence just before petitioner's trial, can be summarized as follows: (This contention is set forth in the original state habeas corpus petition at pp. 60-61, with Exhibit V.)

(1) Evidence from Y's email provider, Hotmail:

- Emails placed in a Draft Folder by a user of Hotmail are not dated by the Hotmail software. Therefore, unless there is a date in the email itself, there is no way to know when it was written or filed.
- The four disputed emails were found by Hotmail (under subpoena) only in Y's Draft Folder. Hotmail's software requires that any email in a Draft Folder which is sent is automatically removed from the Draft Folder and transferred to the Sent Folder. Since the four disputed emails were found in Y's Draft Folder, not in her Sent Folder, they were never sent.
- Y never told police about the disputed emails and only told the prosecution just before petitioner's trial. Consequently, petitioner and his attorney only learned of the disputed emails after the trial was already underway. Since none of the four disputed emails had a date, there is no way to know when they were written and placed in Y's Draft Folder
- No intact copy of any of the four disputed emails has ever been found. Emails in Draft Folders are not intact, but rather have machine code (computer symbols) interspersed among all the wording. Since there is no evidence that an intact copy of any of these emails ever existed, this is further support for the contention that none of the

four disputed emails were ever sent.

- Those machine code symbols can, however, be interpreted by experts. Petitioner's former habeas attorney engaged one of the top computer experts in the country, Dr. Fred Cohen, to translate the computer codes into English. Dr. Cohen wrote in his Declaration that none of the "handshake" codes that identify an email that was sent were present in any of the four disputed emails. Furthermore, a "handshake" would have occurred between emails that were responsive to sent emails. Thus, the four disputed emails could not have been sent and the prosecution's assertion that petitioner's alleged responses were directed to these emails was false.

(2) Other evidence that the four disputed emails were not sent:

- Both petitioner and his wife (who read Y's emails as they came) testified that they had never seen any email remotely resembling the four disputed ones, and if they had, they would have immediately shown them to Y's mother.
- Petitioner's testimony is bolstered by the fact that the police could find no fragments of any of the four disputed emails on either petitioner's or Y's computers. "Fragments" are pieces of documents left over after a document is deleted. The four disputed emails were sufficiently lengthy that, if they had ever been present and then deleted, it is highly likely that fragments of the original emails would have been found. The absence of any fragments on both petitioner's and Y's computers strongly indicates that these emails had never been present on either computer at the time the police examined petitioner's and Y's computer hard drives.

c. Y's own testimony on cross-examination documented that she, herself, admitted that she might never have sent them:

> Q: And showing you this draft, did you copy and paste this draft to an email and send it?
>
> A: I'm not sure but I don't think so. [RT 2410: 22-27]
>
> Q: Did you send these four drafts to anybody?
>
> A: I don't know. I'm not sure. [RT 2418: 3-6]

d. A reasonable, though speculative, explanation of the origin of the four disputed emails is as follows: As petitioner's trial approached, Y's family might

have become aware that the prosecution was concerned about the strength of the case: the sting meeting recording might not be admitted as evidence due to lack of authentication, none of Y's emails contained anything damaging, and Y's testimony might very well be unconvincing. The whole motivation for Y's false accusations appears to have been revenge and an extortion attempt by Y's mother who was a very disgruntled former business partner of petitioner (see Ground 4, *infra*). Y's father is a professional computer programmer who would have known how the Hotmail software worked. The four disputed emails, containing strong sexual allegations, could have been composed and placed in Y's Hotmail Draft Folder at any time. Petitioner's trial attorney never investigated the disputed emails, and so the carefully-crafted undated, unsent disputed emails suddenly came into the trial as very damaging evidence. The appeal court emphasized in their denial that "Emails…. corroborated her testimony" (Appeal Court Opinion, page 2, 9/5/2013).

e. Trial counsel's failure to investigate was highly damaging and prejudicial. It resulted in ineffective assistance of counsel that violated petitioner's Sixth Amendment constitutional rights.

3. Since the trial attorney carried out no investigation and discovered none of the critical evidence, no evidence of innocence was presented to the judge and jury.

C. The Applicable Law.

See Wiggins v. Smith, 539 U.S. 510 (2003) [petitioner's counsel was ineffective in failing to conduct a reasonable pre-trial investigation]; Strickland v. Washington, (1984) 466 U.S. 668 [legal standard for analyzing IAC claims]; In re Cordero, 45 Cal.3d 88 (1988) [lawyers who fail to obtain, consult, and use necessary experts deprive their clients of the effective assistance of counsel]; and People v. Ledesma, 43 Cal.3d 171 (1987) [counsel's first duty is to investigate the facts of his client's case].

IV. PETITIONER IS ENTITLED TO HABEAS CORPUS RELIEF BECAUSE OF NEWLY-DISCOVERED EVIDENCE THAT DEMONSTRATES HIS ACTUAL INNOCENCE.

Petitioner maintains that there is new evidence to prove that every piece of damaging evidence used against him at trial had been fabricated. He further asserts that he

has led an exemplary life with no hint of any wrongdoing and his medical research (pioneering the field of gene therapy) has been a major benefit to society. The totality of evidence "points unerringly to innocence." In re Richards, 55 Cal. 4th 948 (2012).

A. Summary of Facts

1. There is compelling evidence that every piece of damaging evidence used against petitioner in his trial had been fabricated either by the alleged victim Y, and her family, or by the police. (See Grounds 1 and 2, *supra*.) Since the trial attorney carried out no investigation and discovered none of this critical evidence, no evidence of innocence was presented to the judge or jury. (See Ground 3, *supra*.) Petitioner has adamantly maintained his innocence from the moment of his arrest. See the original state habeas corpus petition at page 3.

2. The trial evidence from petitioner's colleagues and mentees established that petitioner has lived a life of integrity and kindness towards others. The rock-solid belief in his innocence by his wife of 53 years and the belief in his innocence by his many friends and colleagues (some going back to grade school days) stand as validation of the moral life that he has lived. His 70 plus years of demonstrated good character and moral behavior stand as affirmation of his fundamental decency.

3. Petitioner has led a very humanitarian life. He is a physician who cared for, and developed new treatments for serious genetic diseases in, children. Petitioner has won a large number of national and international awards for his research and humanitarian efforts, including membership in prestigious medical and scientific societies as well as five honorary doctorates. He is known as the Father of Gene Therapy for his pioneering work in creating the new field of using DNA to treat lethal genetic diseases. Thus, he has lived a life of great value to society and could do so again once he is released from prison.

4. The prosecution could not produce any corroborating physical evidence apart from the disputed recording and emails. The Sheriffs searched Anderson's home and computers, but found no pornography or incriminating evidence of any type. Nothing supported Y's accusations, and items that would likely be found in his home, if her story were true, were conspicuously absent. No physical or forensic evidence was found.

No third party (even her twin sister) or other witness was ever discovered who could corroborate any incriminating information provided by Y.

5. After petitioner was arrested, the LASD sent agents all over the country interviewing every young person they could find that petitioner had worked with. All of them insisted that petitioner had to be innocent.

6. But if petitioner is indeed actually innocent, what motivated the teenage girl to make the charges of abuse? New evidence has now answered that question. The person behind the charges was Y's mother, a very disgruntled former business and research partner of petitioner, who became enraged at petitioner when their very promising new biotech company failed. The mother made clear to many people that she wanted revenge. The trial judge would only allow a limited amount of this information into the trial, but new evidence provides substantial additional documentation of the mother's activities. She manipulated her socially awkward daughter into making the false charges. Each time Y recanted or tried to withdraw, new pressure was exerted on her by her mother. As a teenage sex abuse counselor with Teenline, the telephone counselling service for troubled teenagers run by UCLA, Y was very familiar with sex abuse scenarios. (Ironically, it was petitioner, himself, who encouraged Y to join TeenLine and who sponsored her.) Initially, the family attempted to entrap petitioner by emails. When that failed, they spent a month with a major civil law firm, Jones Day, and then attempted to entrap him by means of the sting meeting. (Jones Day actively represented Y and her family throughout the pretrial hearings and the trial, itself. This was despite the fact that Jones Day represented the petitioner in his business conflict with Y's mother, thereby producing an undisclosed concurrent representation.) When that effort was not successful, the prosecutorial team, for its own reasons (see Item 8, below), manipulated the sting meeting recording in order to convict him. All these contentions are now fully documented and can be laid out at an evidentiary hearing.

7. Thus, the motivation behind the false accusations is known.

8. But since there was no physical evidence that corroborated the accusations, and since the complaining witness had recanted her accusations on two separate occasions to the police, why would the prosecution team fabricate evidence in order to arrest

petitioner? As the Court of Appeal wrote in their Opinion denying the habeas: "Such a course of conduct would have required a concerted effort on behalf of law enforcement and simply is not plausible." (Court of Appeal Opinion, page 23, 9/5/2013) What motivated law enforcement? The motivation: Petitioner was a high-profile "trophy" case. He was a professor at a major medical school, who had an international reputation, along with many awards and honors. He was reported to be a finalist for the Nobel Prize in Medicine for his development of gene therapy. His arrest made front page headlines in newspapers around the world. His arrest brought enormous publicity to the Los Angeles County District Attorney's Office.

The objective indicia that petitioner's case was prosecuted for public relations reasons, independent of the purported evidence, are:

(1) Sergeant Boyett's grand jury testimony when he testified: "We knew that Anderson was a famous person. We knew that this case could get phenomenal coverage by the media . . ." (And, it did, with 100% of the press interviews coming from the District Attorney's Office, itself.)

(2) For one of the only times in the history of Los Angeles, the District Attorney's Office held a televised press conference simultaneously with having petitioner ambush-arrested as he drove to work. The world was informed that the Los Angeles Sheriff had caught a dangerous criminal.

(3) Extensive ongoing prosecutor-initiated press stories were produced regularly by Deputy District Attorney Cathryn Brougham for the two years between the arrest and the trial.

(4) The sentencing portion of petitioner's trial was televised with reporters, news photographers, and TV crews crowding the courtroom

(5) Each year, the District Attorney's Office submits an Annual Report and Budget Justification to the County Board of Supervisors. With all the murders, rapes, robberies, gang activity, and drug dealings to choose from, the 2007 Annual Report highlighted petitioner's con-

viction as their number one case of the year!

9. Thus, the motivation behind the fabrication of evidence by the prosecutorial team is known.

10. In summary, there is no unadulterated evidence of guilt in this case, but there is 70 years of circumstantial evidence of innocence.

11. Although the U.S. Supreme Court has indicated that a claim of actual innocence is not itself a Constitutional claim (Herrara v. Collins (1993) 506 U.S. 390), McQuiggen v. Perkins (2013) 113 S. Ct. 1924, left the door open for a free-standing claim of actual innocence. Petitioner understands that the actual innocence standard is very high and requires "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial…"

12. The Attorney General has conceded the validity of the factual evidence presented in this petition and Deputy Ebert has not denied his prejudicial editing. Thus, petitioner is ready to meet the strict standard by which the claims presented in this petition and in the predecessor petition of actual innocence are to be measured, namely that, taking into account all the evidence, "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence."

B. The Applicable Law

This case represents a "fundamental miscarriage of justice."

In re Richards, 55 Cal 4th 948 (2012) [the new evidence must "point unerringly to innocence"]; Herrara v. Collins, *supra* [the claim of actual innocence is not itself a Constitutional claim]; House v. Bell, 126 SCt 2064 (2006) [reiterates Herrara that the threshold for a successful claim of innocence is "extraordinarily high"]; and McQuiggen v. Perkins, *supra* [actual innocence can be a gateway to a federal habeas even when there is a procedural error].

V. THE STATE COURTS' DENIAL OF HABEAS CORPUS WAS BASED ON UNREASONABLE DETERMINATION OF THE FACTS.

Based on the material and prejudicial nature of the copious new evidence that was provided to the state courts, it was an unreasonable determination of the facts for the appeal court to deny any discovery and to deny an evidentiary hearing, and for the Califor-

nia Supreme Court to affirm the appeal court with a summary denial. These rulings deprive petitioner of his liberty in violation of his Fifth and Fourteenth Amendment rights. (District Attorney's Office v. Osborne, (2009) 557 U.S. 52).

A. Summary of Facts

1. Petitioner provided convincing evidence of outrageous government misconduct by the flagrant alteration of the sting meeting recording by Deputy Kurt Ebert (see Ground 1, *supra*), the use of perjured testimony by the prosecution (see Ground 2, *supra*), and the ineffective assistance of trial counsel in his refusal to investigate these issues (see Ground 3, *supra*). To have ignored all this evidence in their denial was an unreasonable determination of the facts.

2. The discovery that was denied was three subpoena duces teca and the addition of an ineffective assistance of counsel claim for failure to investigate the four disputed emails.

3. Denial of an evidentiary hearing, claiming that such an action would be "an idle act," was in direct violation of the supporting cases listed below.

4. The Appeal Court based its ruling, in part, on falsified material evidence provided by the Attorney General. The fact that the Attorney General "deliberately misrepresents the truth" (Miller v Pate, *supra*) is, itself, potential grounds for reversal.

a. Adulterated email

- **Deleted exonerating sentences**. On page 2 of Presiding Judge Joan Dempsey Klein's habeas denial ruling (June 17, 2013) is a summary quoting directly from their appeal denial of July 26, 2012 (2012 Cal.App LEXIS 840). To support their claim that "Emails Anderson sent to her . . . corroborated her testimony" (Appeal Court ruling of July 26, 2012, page 7), they quoted (Appeal Court ruling of July 26, 2012, page 10) one of petitioner's emails advising Y not to be talking about sexual abuse because emails could easily be hacked into. But the wording provided to the Appeal Court intentionally deleted the critical exculpatory sentences: "Sleaze reporters would be all over South Pasadena High School interviewing all your classmates and team mates looking for dirt; likewise all over USC. They would find no dirt because neither of us has ever done anything, but it would not stop the lies being told."

Without that crucial wording, that email could be (and was) interpreted by the Appeal Court as "corroborat[ing] her testimony." But with those exonerating sentences, that email strongly suggests innocence. Thus, the Appeal Court unknowingly relied on an adulterated email which had deleted those exonerating sentences in their quoting of the email in their ruling.

- **Deleted critical quotation marks**. In another part of that same pivotal email, quotation marks around the key word "confessions" were deleted. A confession is an admission of guilt, while a "confession" is a clear indication that there was no actual confession. Removing the quotation marks was another intentional alteration of a critical piece of evidence that the Appeal Court relied heavily on.

b. Other examples of misinformation that the Appeal Court relied on in their ruling of July 26, 2012, denying the appeal:

- On page 16: "On July 9, 2004, . . . after service of a search warrant at his house, a detective secretly recorded a 45-minute interview with Anderson and then arrested him." Every part of that sentence is false. Petitioner had <u>requested</u> that the police interview him; there was no search warrant; there was no arrest.
- On page 18, and again on page 19: "Anderson knew Y told a school counselor about the abuse." But petitioner did not know, and there was no way that he could have known about Y's allegations the previous year. There was never any suggestion by anyone that "Anderson knew Y told…. . . ."
- On page 22: "The jury knew Anderson was arrested soon afterwards [after the sting meeting]. Thus, there was no evidentiary gap." Petitioner was not arrested until a <u>month</u> later, thus creating a huge evidentiary gap.

c. Ghost Emails

- Quoting from the Appeal Court denial of a requested new ineffective of assistance of counsel claim relating to the disputed emails (12/18/12): "However, assuming Anderson is correct [that he never received the four disputed emails], this does not exclude the possibility the victim sent the drafts after further editing." This creative justification for denial flies in the face of all other evidence, specifically Y's testimony that she sent the four disputed emails, <u>not</u> some other version of them.

d. Thus, the Appeal Court was provided critical misinformation from the Attorney General, thereby misleading the Court.

5. The Attorney General conceded the factual evidence in this case in their Answer to Petition for Rehearing, page 4, fn.1 (see Ground 1, B.1., *supra*), and Deputy Ebert, in his declaration (Exhibit 3), did not deny his editing. But since the Attorney General concedes the evidence of editing of the sting recording, thereby maintaining that an evidentiary hearing was not necessary, the Attorney General is basically conceding that the case against petitioner should be dismissed and he should be set free. Either that, or the Attorney General's position is that it is not outrageous government misconduct for the police to flagrantly alter critical evidence in a criminal trial.

B. The Applicable Law

District Attorney's Office v. Osborne, (2009) 557 U.S. 52: Due process affords a habeas corpus petitioner the right to a fair opportunity in state court to discover and present potentially exculpatory evidence that was not contained in the record on direct appeal.

Nunes v. Mueller, 350 F.3d 1045 (9th Cir., 2003): Where petitioner makes out a *prima facie* case under Strickland, state court's summary denial of IAC claim without an evidentiary hearing amounts to unreasonable determination of the facts.

Taylor v. Maddox, 366 F.3d 992 (9th Cir., 2004): It is unreasonable determination of the facts when the state court has made finding against a petitioner based on credible disputed issues of material fact without holding an evidentiary hearing.

Hurler v. Ryan, 706 F.3d 1021 (9th Cir., 2013): State's purported determination of the facts without a fair opportunity for petitioner to present evidence violates AEDPA.

C. Response to California Supreme Court Denial.

The California Supreme Court summarily denied this essentially identical habeas petition on November 12, 2014, by citing one case: In re Clark, 5 Cal.4th 757, 767-769 (1993), maintaining that this petition, petitioner's second habeas, was procedurally barred because it was successive and/or untimely. However, Clark, in fact, supports petitioner's habeas. Quoting directly from the Conclusion of Clark at page 797:

"Although we conclude here that it should not be inflexible, the general rule is

still that, absent justification for the failure to present all known claims in a single, timely petition for writ of habeas corpus, successive and/or untimely petitions will be summarily denied. The only exception to this rule are petitions which allege facts which, if proven, would establish that a fundamental miscarriage of justice occurred as a result of the proceedings leading to conviction and/or sentence. . . . Thus, for purposes of the exception to the procedural bar against successive or untimely petitions, a "fundamental miscarriage of justice" will have occurred in any proceeding in which it can be demonstrated: (1) that error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner; (2) that the petitioner is actually innocent of the crime or crimes of which the petitioner was convicted."

This petition provides compelling evidence that:

(1) Errors of constitution magnitude led to a trial that was fundamentally unfair (see Grounds 1, 2, and 3, *supra*);

(2) The petitioner is actually innocent (see Ground 4, *supra*).

Thus, the federal court has jurisdiction because the California Supreme Court decision was arbitrary and capricious since, as shown by Clark, they failed to follow their own substantive law. California Constitution, Article VI, Section 14 ["decisions of supreme court and courts of appeal that determine causes must be in writing with reasons stated"]; Lucido v. Superior Court, 51 Cal.3d 335 (1990) ["the doctrine of collateral estoppel applies only if the following threshold requirements are met . . ." -- NOTE: None of the five requirements were met]; Sanders v. United States, 373 U.S. 1 (1963) ["Held: The Court should have granted a hearing on the section motion."]; In re Clark, *supra*.

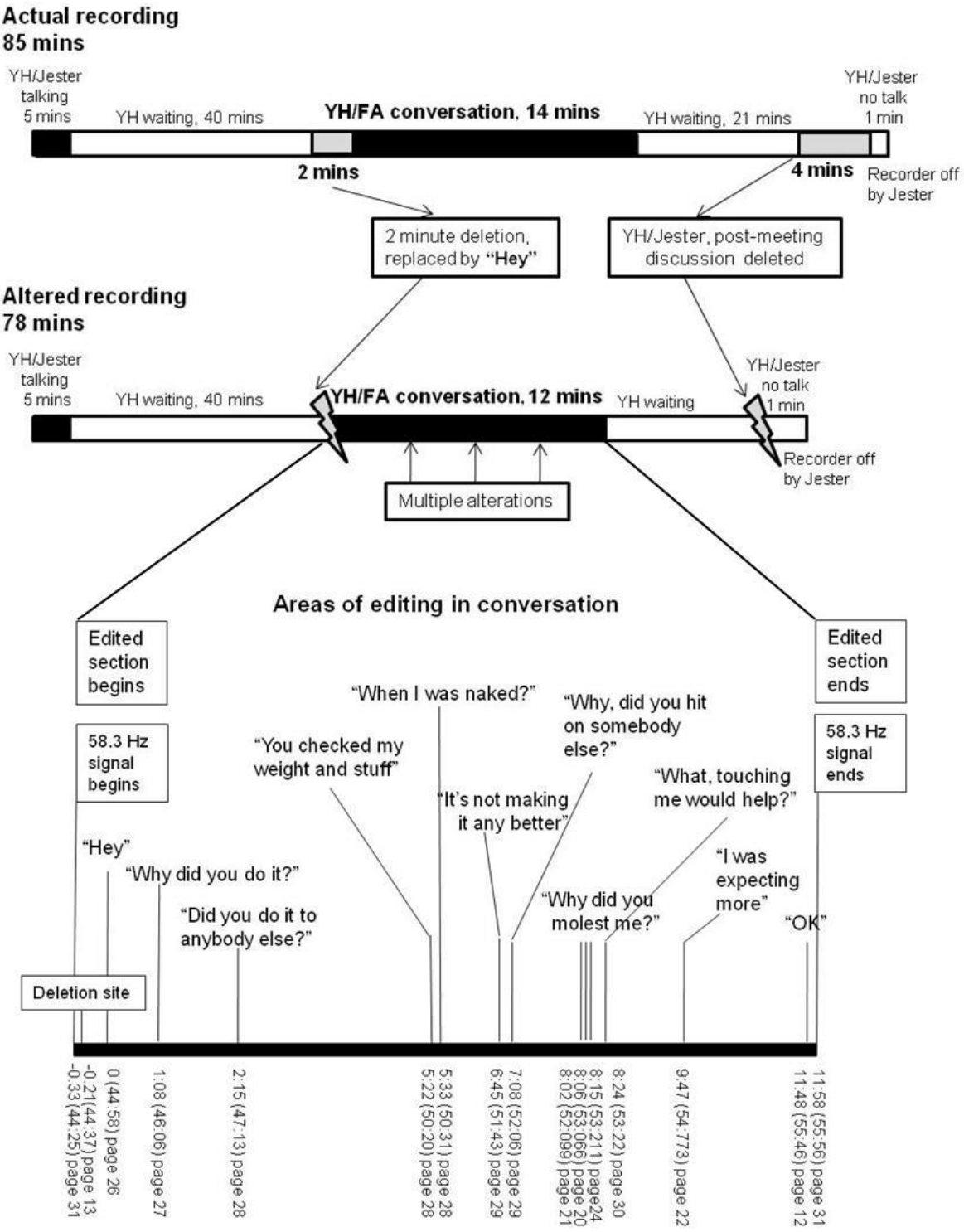
CONCLUSION

WHEREFORE, for the foregoing reasons, petitioner respectfully requests that this Court dismiss the case outright due to conceded outrageous government misconduct that was substantially prejudicial to petitioner's constitutional right to a fair trial as well as strongly compelling new evidence that "point[s] unerringly to innocence."

DATED:

WILLIAM FRENCH ANDERSON

Petitioner in Pro Per



Timeline of edited conversation (and in total 78 min. recording)

EXHIBIT A

Jester's Log of Timeline versus Timeline of Recording Submitted in Court

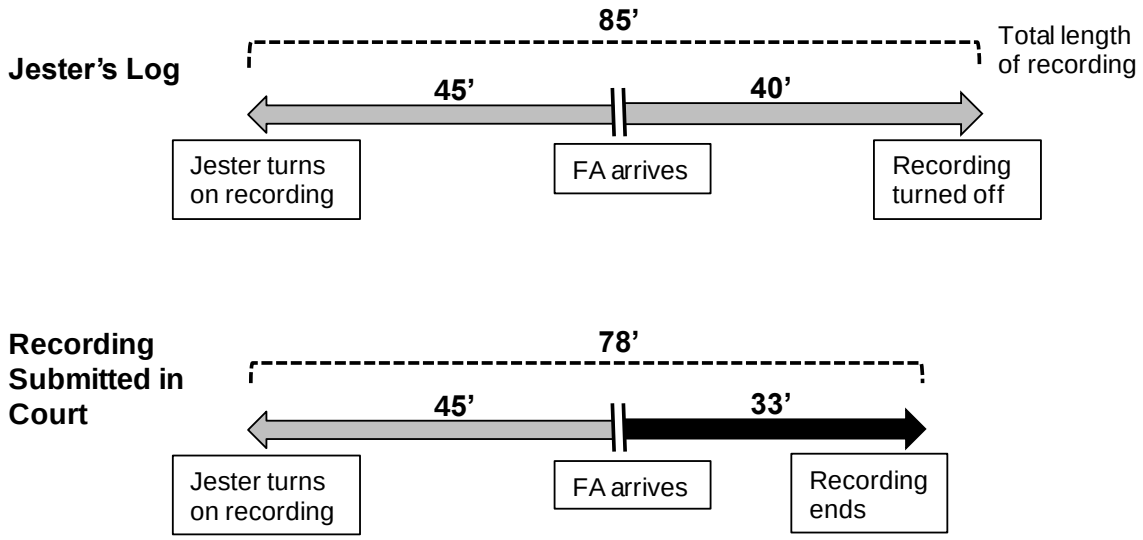


EXHIBIT B

DECLARATION OF SERVICE

I, _____, am over the age of 18 years, am not a party to the within entitled cause. I maintain my business address at 111 W. Ocean Blvd., Suite 1900, Long Beach, CA 90802. On _____, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** on the following individuals/entities by placing a true and correct copy of the document in a sealed envelope with postage thereon fully prepaid, in the United States mail at Long Beach, California, addressed as follows:

Attorney General
300 S. Spring Street
Los Angeles, CA 90013

District Attorney
210 W. Temple Street
Los Angeles, CA 90012

Clerk, Superior Court
210 W. Temple Street
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California and the United States of America that this declaration was executed on _____, 2014, at Long Beach, California.

_____