(NOT UNDER ARREST)

I, Desiree Shaw, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make know to Officer Mathews.

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 38 years of age, and I live at 407 Birdsong.

I was in the bathroom for a shower because I was sick. I heard a noise and came out of the bathroom and heard water pouring. The noise sounded like something like a tree hit the house and it was thundering. In the dark I asked Royce what was that noise and his mose was bleeding. I took the towel off my hair to clean his nose, while trying to talk to him Then I felt wet all over his arm and by his chant and I scream for Candy for help, to go to Johnnie's and get help Then I told her to take the kids and I was calling 911 for an ambulance. I applied pressure to his neck because when I turned the lamp on I saw neck was swollen and his gun was by him. He was clammy and didn't answer me.

I have read each page of this statement consisting of 1 page's, each page of which bears my signature, and corrections, if any, bear my initials, and certify that the facts contained herein are true and correct.

Date at 407 Birdsong 2:18 A.M., this 11 day of August 19__

WITNESS [signature]

WITNESS

x Desiree Shaw
Signature of person giving
VOLUNTARY STATEMENT.

STATE OF TEXAS
CORYELL COUNTY

AFFIDAVIT

Clear and Convincing Evidence of Innocence

Texas Miscarriage of Justice

During a loud thunderstorm early Sunday morning August 11, 1996, Eddie Royce Shaw, Sr. shot himself under the influence of alcohol and prescription vicodin, and his gun fell per gravity with a pair of white cotton briefs.

My name is Desiree Ann Shaw, and I called 9-1-1 from our home at 407 Birdsong in Diboll, Angelina County, Texas. My husband Royce was unresponsive in hemorrhagic shock-like condition dependent on Emergency Medical Services (E.M.S.) for his survivability.

Diboll Police secured the scene and seemingly rescued my Basic Life Support measures. Months later I would discover that a patrolmen stopped B.L.S., while Royce bled to death, without ensuring E.M.S. in that first golden hour, and informed official Lufkin E.M.S. that no services were needed because a patrolmen "presumed" Royce was dead.

The Diboll Police Investigator, Charlie Harris, defended police action or omission by sarcastically saying Royce would have died anyway.

After I challenged the delay of E.M.S., Harris implicated that Royce and I argued, I shot him, and "wrapped" his gun to look like something other than a homicide or suicide, targeting me without probable cause based on bias.

Angelina County District Attorney passed on prosecuting me for lack of evidence.

Harris pursued charges against me knowing they had no reasonable basis to believe I killed my husband or touched his gun.

The prosecution and witnesses relied on Harris' summary of events without further inquiry into important issues.

The state witnesses were observed frequently discussing their notes and testimony in the hallway during trial and were coached by the prosecution during sworn testimony.

A photo was discovered during trial showing the gun beside Royce at 09:49a.m. Which was remarkable because I was forcefully removed from the scene before 07:00a.m. The gun was examined and empty cartridge removed and bagged at 08:35a.m. (No. 19, 058 State vs. Shaw).

The court reporter informed counsel the photo was missing soon after trial, January 1996.

On the second day of the four-day trial, counsel informed me he needed the balance of his fee despite a contract for payments and I was flat broke, so my brother borrowed the money to pay him half and my mother paid the remaining balance the next morning.

On the third day of the trial, minutes after the state rested, counsel closed without a case-in-chief, contrary to my expressed consent! I was convicted of murder and sentenced to thirty-two years in T.D.C. December 05, 1996.

The questionable circumstances surrounding the sequence of photographs and timeline infer a biased bathtub conspiracy to conceal misconduct and negligence.

The veracity of Harris' testimony during trial, coached by the prosecution, is undermined by facts, evidence, experts, and witnesses that were undisclosed or suppressed from the jury.

Harris was not forth coming at trial about the sequence he photographed the scene where various conflicting statements cannot be true, and defies imagination for the reliability of the hyper-sensitive "wrapped" gun theory he seemed obsessed with.

October 17, 1996 a district judge's son, an assistant prosecutor, joined Harris to obtain a local judge's arrest order anticipating a victory in his father's court. The young prosecutor had earned world awards in oral argument and brief writing and zealously played "hide the ball" from the defense as the "Devil's Advocate."

Years later witnesses recall that Harris poisoned the community broadcasting his suspicions at the scene and throughout the community to "anyone who asked" with a presumption of guilt, and the prosecution did not supervise his actions or behavior.

My trial lawyer was a well-known criminal defense expert, but he was very ill with a burdensome caseload including a capital murder case.

Counsel was not present for my voir dire, but sent his brother, who slept through it.

Lufkin Daily News and Diboll Free Press quoted counsel insisting there was NO EVIDENCE pointing to guilt and a strategic plan for aggressive innocence defense to hold the state to its duty to prove elements of crime beyond reasonable doubt. The prosecution's linchpin was the "wrapped" gun theory, instructing the jury that Royce "possibly" was paralyzed and "probably" couldn't have "wrapped" his gun after shooting himself.

The jury decided on my guilt by what the prosecution told them to believe, rather than considering whether the prosecution met its burden of proof beyond doubt.

The prosecutor told the jury that Royce wanted a divorce and declared he had an appointment with a divorce attorney on Monday, August 12, 1996, which has never been authenticated.

Counsel instructed me to sit politely before the court no matter how ridiculous the charges or accusations, and take notes in preparation for our "turn" to be heard and present evidence.

Counsel informed me the trial would take weeks so there would be "plenty of time" for witnesses to arrange leaves from work, childcare, etc. The prosecution withheld witness statements until they were called, and counsel complained to the judge that he could not read, listen, concentrate, and marshal the facts while they testified.

The state has ignored reasonable discovery requests for over ten years implying concealment or something to hide, especially after proper notification of new evidence.

A large percentage of the jury selection pool was directly or indirectly related to the case exceeding any coincidence, including my civil attorney; a girlfriend of a patrolman at the scene; the police dispatcher; a deputy sheriff; a sister of a state witness, who worked at a local law firm known for getting her sister's employees excused from jury duty; neighbors and associates of officials; employees from Royce's job and the hospital where I worked; compounding a bizarre presumption-of-guilt chatter of conversations overhead during voir dire.

Harris had spoke to several of the jury pool, or agents, who later reported that he assured them he had scientific evidence to cement his suspicions. Harris implied immoral behavior using ethnic stereotyping related to my gender, previous divorce from a county commissioner, and my advocacy for indigent and minority health care, including AIDS patients.

I had reported Harris for interfering with emergency ambulance transport that had risked the lives of at least two people, for non-medical reasons, before August 11, 1996.

1975-1987, I was married to the abusive county commissioner who boasted of his undue influence over elected trail officials' budget, salary, and expenses, claiming he had his life long friend, the trail judge, in his "pocket," with his ability to "fix" the outcome of the trail.

I divorced the commissioner after twelve years of sadistic abuse, and he vowed to get even and subsequently harassed and humiliated Royce at every opportunity, without provocation from 1989-1996.

Through the commissioner's persuasion over trial officials the case was prejudiced before trial began with jury selection; then deciding who testified and what testimony was allowed; determining what and when statements were disclosed; what was introduced into evidence; affecting which objections were allowed or overruled; with a presumption of guilt inferred to everyone.

The trial judge imposed his prosecutorial bias, by overwhelmingly ruling in favor of the state, displaying obvious body language and gestures with an exaggerated "purveyor of truth" attitude before the jury, superficially appearing to be impartial and dignified instructing the jury and a visiting high school tour, how they should apply the facts he permitted them to hear, to the detriment of my "turn" to be heard or present evidence.

The commissioner told my daughters the judge would charge them with perjury if they testified or recanted the 1993 statements he forced them to sign concerning a non-adjudicated incident accusing me of recklessness.

The prosecution withheld exculpatory evidence of Royce's known habits of sleeping with his gun when alone, of handling and storing all his guns with cotton briefs or t-shirts, and other pertinent information supporting recommendations for psychological autopsy the defense investigator was prepared to present.

August 10, 1996, the last person to spend time with Royce, before coming home intoxicated, was Terrance Marshall when they went to a bar while I was preschool shopping with four of our five children.

Marshall, a well-known alcoholic, estranged from his family, was not forth coming about their activities the night before Royce's death from 10:30p.m. until 2:30a.m., and trial counsel did not contact him.

Reportedly, the hearsay prosecution presented to the jury was based on Royce's and friends drunken jokes and abstract conversations about Marshall's divorce and single life.

After-conviction discovery of new evidence and favorable evidence that was not considered by the jury makes it more likely than not that I would have been acquitted but for constitutional violations.

For example, fifty or more witnesses who corroborate my defense provided sworn affidavits that they were prepared to testify but were never contacted by my trial counsel contrary to his

statements to my family and me. Experts and witnesses approached trial counsel before and during the trial, and he promised to call them "later."

A survey of our civil attorney and local lawyers ruled out Royce's alleged appointment with a divorce lawyer that has not been authenticated for ten years.

Hundreds of family, friends and community members unanimously deny that Royce acted, behaved, or mentioned wanting a divorce.

In 1998 Texas Department of Health, Emergency Management Bureau investigated the delay and denial of services revealing reprehensible police misconduct worthy of moral outrage, however, T.D.H. does not have jurisdiction over law enforcement or volunteer first responders. Official Lufkin E.M.S. was prepared to respond within fourteen minutes, but were informed no services were needed by patrolmen and no medical consultation was sought.

April 6, 1999, the U.S. Surgeon General referred a former Texas E.M.S. director to me regarding my challenge to E.M.S. negligence, who confirmed that Royce should have been transferred to a trauma facility immediately, but could not conclusively determine the probability of his survival without more information.

During the 1998-1999 E.M.S. investigation serious new evidence was discovered that Harris' camera did not work and he sent for another one, but he concealed that evidence.

New evidence revealed how Harris "re-staged" the scene, when the second camera arrived, for pictorial purposes, finally explaining the photo with the gun beside Royce at 09:49a.m. and Harris' consistent insistence that the gun was "wrapped" because he contaminated the scene!

The 9th District of Appeals affirmed my conviction while the justices noted the circumstantial evidence and circuitous nature of the negative residue test of my hands, but the brief did not point them to any evidence in my favor, March 11, 1998.

The Court of Appeals clerk provided the exhibits the state presented and the photo of Royce and the gun with 09:49 on the bedside clock had been replaced with an earlier still photo of the scene. The state claimed trial counsel was confused and mislabeled the exhibit without addressing the discrepancy of time on record.

A mentally ill transient informant provided sworn affidavits, after resuming psychiatric treatment, recanting his grand jury testimony and crime stoppers claim, to report he was coerced to testify in fear of his safety and Medicaid benefits and promised legal assistance with personal matters.

In 2001, five years post-conviction, an attorney who authored a prison legal handbook article acted upon my desperate request to obtain discovery and immediately recieved Royce's autopsy and crime lab reports.

The preliminary autopsy report still listed toxicology "pending" and did not mention Royce's recent major surgeries or clinical history, which is inconclusive, although pertinent.

The crime lab report listed a higher alcohol concentration than presented to experts or the jury, even though the state's California crime scene expert testified a higher level would have changed his opinion to include accident or suicide, material to the outcome of the case!

Forensic science experts and established studies conclude that a vitreous alcohol concentration is more indicative of one's level at the time of death.

I have presented expert affidavits to dispute the state's abstract conjectures with scientific factual evidence capable of judicial notice but the record remains uncorrected or reviewed.

The crime lab report also revealed a negative drug screen prompting further investigation and discovery.

At 9:50a.m., April 15, 2001, Texas Department of Public Safety, Kathy Urwin and Eddie Padilla, alcohol experts confirmed that it was the submitter (Harris') duty to report complete history, known and suspected drug use or drugs found and examined in Royce's possession

to alert lab to perform more expensive and comprehensive testing that a general essay might miss. The specimen was destroyed before I knew it existed, without opportunity to request analysis or discover the investigator's errors.

Recently, D.P.S. legal counsel has agreed to provide discovery with proof of active litigation and court orders.

Motions for discovery, appointment of counsel, and evidentiary hearing has been denied at every level of litigation.

Royce's gun had a written recall caution and notice, known by the state and the defense but not disclosed to the jury.

November 26, 2004, defense expert investigator was located, after an eight year search, retired, teaching criminal justice at a Central Texas university, and reports he was prepared to criticize investigative techniques and strongly recommended a psychological autopsy of complex issues concerning Royce, and will testify in support of my petition for relief.

April 1998 my family sacrificed their livelihood to retain a writ attorney who carelessly abandoned preparation and presentation or continuity of the writ process for three years, breaching the AEDPA statutory limitation, despite State Bar Client Attorney Assistance Program interventions from 1998-2001, due to crack cocaine addiction and related problems.

The Texas Court of Criminal Appeals granted an extension of time to file a supplement to the Petition for Discretionary for Review until May 11, 1998, but the writ counsel refused to augment someone else's work and said he would file a state unit within six months.

July 1998, the P.D.R. was denied, and writ counsel promised to get to work on my case when contacted by the Bar but informed my mother that AEDPA only applied to death row prisoners.

August 1998, I filed a §1983 to ask the court to require the state to remove the impediments depriving me of adequate, effective, and meaningful access to court and to redress my grievances, which is in abeyance, citing Heck.

The state Bar could not force the writ attorney to perform his duty or return the fee, while he disputed his negligence and intentions despite years of NO purposeful action.

The Angelina County District Clerk refused to acknowledge my prose correspondence from 1996-2001 despite certified mail request, motions, and petitions.

February 2002, the district clerk was subsequently investigated according to Lufkin Daily News and Diboll Free Press for years of failure to file or take action in local government affairs, missing or lost case files, appeals not being filed in a timely manner, or not in clerk's file.

September 26, 2002 the Texas Court of Criminal Appeals granted an extraordinary writ holding that I presented a colorable claim that deserved timely resolution of my claims after the trail officials ignored six years of discovery requests and the district clerk ignored prose petitions confirmed by prison officials certified to the clerk utilizing the federal mailbox rules. (NO. 53, 448-01) CCA.

Trial officials presented findings of fact and conclusions of law to the Texas Court of Criminal Appeals on April 17, 2003 but did not provide me with a timely copy, requiring a second mandamus to require process, but it was too late- the court dismissed without a hearing based on presumption of state's findings.

May 13, 2003, a New York attorney, who was a Stephen F. Austin State University law student aid during my trial, discovered the state's arbitrary statements, not backed up by proof, and immediately sacrificed his time to prepare a fifty page affidavit in response to the state's F.O.F. It was emailed to the court without success, although his affidavit was supported by evidence contained in exhibits and record.

The attorney expert witness clearly stated what trial counsel and the state failed to do and submitted documentary evidence to show what an effective lawyer would have done and what due process required.

My twelve hundred page record contains affidavits of experts and witnesses, who were prepared to testify at trial, and those providing affidavits post-conviction, set forth what facts and witnesses would have testified to had they been brought to court by trial counsel or considered by reviewing court, proving there is NO EVIDENCE I committed a crime.

I filed a second state habeas to attempt to resolve disputed issues without success.

The trial court accused me of multiple filings which was probably the result of finding unfilled documents in the former district clerk's office because copies were resubmitted,when he denied receiving them despite prison officials intervention.

April 17, 2003, the Angelina County District Courts volumous finding of fact and conclusions of law omitted from its discussion of my claims, specific facts, which supported by evidence, might entitle me to relief. They presented an unreasonable determination of facts and converted conjecture, while denying errors or prejudice infecting the process with yet more errors, fraud, perjury and non-authenticated hearsay, in a vicious cycle of continued harm.

January 2005, I filed a federal writ after exhaustion of state court remedies and requested an evidentiary hearing.

May 2005, the United States District Court for the Eastern District, Lufkin Division ordered Respondent to answer.

October 26, 2005, Texas Attorney General's office of Criminal Litigation, denied that my state writ stopped the AEDPA clock from running, or that the time was suspended while my case proceeded up the state ladder, and recommended dismissal of my petition as time barred unreasonably, ignoring the Texas Court of Criminal Appeals mandate removing the state impediment.

I have written all three branches of government several times per year for over a decade, to seek attention appropriate to their jurisdiction, respectively, with factual allegations of new and previously undisclosed evidence supporting my innocence, but the government has no incentive to respond to an indigent non-death row prisoner who does not have DNA evidence or legal representation.

The district court dismissed my habeas petition, denying all motions and certificate of appealibilty without a hearing as time-barred.

The United States Supreme Court denied my certiorari writ March 19, 2007 without published opinion, and I am seeking authorization for a successive petition.

The established cruel and unusual deficiencies in the Texas criminal justice system and complex invalid AEDPA applications are all too common, inherent in an obvious miscarriage of justice, indicative of our country's general attitude of indifference to actually innocent prisoners, as our children and communities are victimized bystanders of wrongful convictions, forced to languish in prison, or be executed, without adequate remedy, lost in the presumption of legitimate government interest.

The ineptitude of a few officials acting in bad faith has deprived me of my guaranteed right of due process law and harmed my children as bystanders, and if you could help us we would be sincerely grateful. Evidence and witnesses support all claims.

I declare under the penalty of perjury that the forgoing is true and correct and offer my permission for correction or any editing as needed.

April 07, 2007

Desiree Shaw #769352 TDC