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Shirley S. Pangina
CLERK

1 SUPPL
Lawrence Schwiger #71278
2 Lovelock Correction Center
PO Box 359
3 Lovelock, Nevada 89419
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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 LAWRENCE SCHWIGER

8 Petitioner,

CASE NO. C 173970 / C 174784

9 -vs-

DEPT NO. 18

10 WARDEN VARE', et. al.,

Date of Hearing: _____

11 Respondents.)

Time of Hearing: _____

12
13 SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
14 (POST-CONVICTION RELIEF)

15 Petitioner filed his "original" PETITION FOR WRIT OF HABEAS
16 CORPUS on August 22, 2005. Petitioner respectfully requests this
17 Honorable Court to grant him LEAVE TO FILE HIS SUPPLEMENTAL
18 PETITION FOR WRIT OF HABEAS CORPUS. Petitioner is currently, in
19 this case, proceeding in his Proper Person and, due to his illegal
20 incarceration, has been hampered in his ability and opportunity to
21 include all issues/grounds in his "original" Petition. Petitioner
22 wishes to include these additional grounds for the purpose of his
23 case, and so that they may be exhausted in the event he is requir-
24 ed to proceed to the Supreme Court of Nevada and potentially the
25 Federal Court as well.

26 Respectfully Submitted,

L. E. Schwiger

27 Lawrence Schwiger
28

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SUPPLEMENT TO GROUND FIVE

I ALLEGE MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL IN VIOLATION OF MY SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL, BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES.

IN FURTHERANCE OF THE GROUNDS PRESENTED IN PETITIONER'S ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

I. Counsel was Constitutionally Ineffective when he failed to investigate the evidence and witnesses dealing with the sexual abuse allegation, specifically, counsel failed to properly investigate and interview the witnesses mentioned in GROUND FIVE in Petitioner's "original" Petition for Writ of Habeas Corpus.

A. Petitioner's wife at the time, now ex, LISA N. SCHWIGER;

1. Petitioner has only recently become aware that his wife was the genesis of the fabrication of the false sexual allegation itself, and of the surreptitious and criminal manufacturing of the charges which followed.

2. Petitioner's wife, through her influential instrumentalities (to be disclosed at evidentiary), were in some manner able to induce the "allegd" victim's mother and grandmother, Wendy Ann Shelton and Linda Shelton-Simione respectfully, to coerce, manipulate and pressure their daughter/granddaughter to make the false allegation and cooperate with their criminal ruse.

B. Investigating Detectives in this case, Jay Roberts and Vince Ramirez, and other LVMPD law enforcement employees.

1. Detectives Roberts and Ramirez, Petitioner now knows and can now prove, were induced to orchestrate and manufacture the entire sexual case against the Petitioner, for inducements which are unknown to Petitioner at this time. Petitioner firmly believes this information can be "flushed-out" at a proper evidentiary proceeding and after a proper investigation has been done for this

1 purpose.

2 2. These detectives premeditatedly orchestrated and coached
3 the "allegd" victim's mother and/or grandmother as to what they
4 would need to get the "allegd" victim (5½ year-old) to say and how
5 to proceed with the Petitioner's set up.

6 3. Detectives also worked with Petitioner's wife, Lisa N.
7 Schwiger, to cajole him into believing she supported his innocence
8 so that Lisa could later attempt to plant evidence in this case -
9 to frame the Petitioner - to ensure his conviction. Lisa and these
10 detectives were unsuccessful in their evidence plant attempt, how-
11 ever, the Petitioner can easily and clearly prove she did try and
12 that these detectives assisted her in setting up this attempt.

13 4. Petitioner avers, there are others (private citizens
14 and state employees) who assisted Petitioner's wife and these
15 corrupt detectives with the orchestration and manufacturing of the
16 fictitious sexual case against the Petitioner in this case. Peti-
17 tioner is unwilling at this time to disclose more detail concerning
18 his serious allegations, as this would potentially permit involved
19 parties, and the state, to develop cover stories or destroy the
20 exculpatory evidence in an effort to ensconce their surreptitious
21 and criminal actions in this case. However, Petitioner, if this
22 court wishes to know "the truth" in this case by providing him the
23 resources, would be willing to disclose the entirety of evidence
24 and circumstances in support of his allegations at an evidentiary
25 hearing where, by subpoena, the truth of Petitioner's claims can be
26 manifested via a proper examination of those alleged to be legally
27 culpable.

28 / / /

1 PREJUDICE

2 Had counsel conducted the proper investigation into Petitioner's
3 claims, which were made known in theory to counsel by Petitioner
4 (petitioner simply had not figured out the details and responsible
5 parties), it would have been determined that Mr. Schwiger, the
6 Petitioner, had not committed the charged crimes he was wrongly
7 arrested on and these outrageous charges would have had to be dis-
8 missed with prejudice. Mr. Schwiger absolutely would not be in his
9 current position; illegally and wrongfully convicted of crimes he
10 did not commit.

11 CONCLUSION

12 Petitioner, for all of the above reasons, requests this Honor-
13 able Court hold an Evidentiary Hearing in the interest of justice,
14 wherein the "manifest injustice" which has occurred in this case
15 may be righted. Petitioner additionally requests proper competent
16 counsel to assist him with manifesting "the truth" underlying this
17 egregiously corrupt case.

18 Petitioner alleges, these allegations can only be considered as
19 "naked" due to the state's withholding of exculpatory evidence and
20 because he is indigent and incarcerated. These two conditions make
21 it literally impossible for Petitioner to, himself, conduct the
22 necessary investigation and to obtain the needed documentation to
23 enable him to present clear proof of his claims in this Petition.
24 If this Court would be gracious enough to grant him the opportunity
25 Petitioner is confident he could provide this court with clear and
26 abundant evidence of his claims, and probable cause to warrant a
27 criminal investigation by the District Attorney of Clark County.

28 Counsel was Constitutionally Ineffective for failing to pursue

1 the above mentioned investigation and, therefore, Petitioner should
2 be granted "all relief to which he may be entitled" by this Court.

3 Petitioner is specifically requesting his conviction and
4 sentence be vacated and that he be released from his illegal and
5 wrongful imprisonment.

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2 SUPPLEMENT TO GROUND SEVEN

3 I ALLEGE MY STATE COURT CONVICTION AND/OR SENTENCE ARE
4 UNCONSTITUTIONAL IN VIOLATION OF MY SIXTH AND FOURTEENTH
5 AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, BASED
6 UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

7 I. Counsel was Constitutionally Ineffective in failing to
8 challenge and seek a remedy from the denial of Petition-
9 er's Pre-trial Writ of Habeas Corpus.

10 IN FURTHERANCE OF GROUNDS PRESENTED IN "ORIGINAL" PETITION:

11 A. Further manifesting Counsel's Ineffectiveness, the BRADY
12 violations raised within Petitioner's Pre-trial Writ of Habeas
13 Corpus were meritorious in law; That is;

14 1. The intentional "bad faith" loss/destruction of the
15 known exculpatory evidence by the state was clear and uncontro-
16 verted concerning the Petitioner's daughter's CPS conducted inter-
17 view tape (audio).

18 a) The State simply contended in their RETURN to the
19 Writ that the CPS interviewer, Paula Hammack, was not an employee,
20 a part of the prosecution team, of the police department or the
21 District Attorney's office, and was therefore not responsible for
22 the evidence (apparently ONLY exculpatory evidence) resulting from
23 her role (without which there was no case) in the state's invest-
24 igation and case against Mr. Schwiger. This contention is ABSURD!

25 b) The state's ONLY "alleged" evidence against Petition-
26 er was the coerced statement of the "alleged" victim, Alexis
27 Ashford, to CPS by the very same Paula Hammack (the transcript of
28 this CPS interview manifests clear and incontrovertible evidence
of Ms. Hammack giving Alexis "head-signals" to get her to answer
her questions in such manner that would support the prosecution of
the Petitioner. If Ms. Hammack would manipulate the "alleged"

1 victim in her interview to assist the state, clearly she would
2 also destroy the exculpatory interview of an "alleged" eyewitness
3 to the "alleged" crime when the eyewitness was claiming that no
4 such thing had ever occurred.

5 c) Clearly, since Ms. Hammack's interview of the "alleged"
6 victim was the ONLY inculpatory evidence, if truthful, the
7 state possessed, and since this CPS Specialist was clearly working
8 ONLY at the behest of the police and prosecutor (not in search for
9 "the truth"), and in an effort to support the state's prosecution,
10 there can be NO DOUBT whatsoever that Ms. Hammack was an intrinsic
11 part of the police and prosecution team. Further manifesting this
12 fact is that Ms. Hammack actually destroyed the "extremely exculp-
13 atory" interview tape of THE ONLY "alleged" eyewitness to the
14 "alleged" crime in question. Ms. Hammack testified, "had the tape
15 of this interview supported the state's prosecution of the Petit-
16 ioner, she would still have this audio tape." Ms. Hammack also
17 testified that, this "alleged" eyewitness had confirmed "NONE,
18 NONE" of the "alleged" victim's story. Combined with the clearly
19 incontrovertible evidence of manipulating Alexis' statement with
20 "head-signals," there can be absolutely no doubt about the fact
21 that Paula Hammack was working "directly" for the prosecution and
22 police team. Additionally, Ms. Hammack's salary is paid by the
23 State of Nevada, the same as the prosecutor and police. Despite
24 the fact Ms. Hammack may not be directly "assigned" to or employed
25 by the Las Vegas Metro Police Dept. or the Clark County District
26 Attorney's office, her "state-paid" work product and motives in
27 this particular case, which are clear, make her a direct employee
28 of the law enforcement team by definition, thereby making the

1 state responsible for her actions.

2 d) The State of Nevada cannot have it both ways; they
3 cannot benefit from Ms. Hammack's actions when they support the
4 state's prosecution, and then disavow any connections to them, or
5 distance her, when she engages in intentional "bad faith" actions
6 to harm or prejudice the Petitioner. Clearly, the Pre-trial Writ
7 of Habeas Corpus should have been granted and the charges should
8 have been dismissed with prejudice.

9 2. Additionally, Ms. Hammack had the "alleged" victim make
10 two drawings of what (ARGUENDO) the Petitioner made her touch (re-
11 ferring to his penis). Ms. Hammack said she did not maintain the
12 drawings because "they were just scribble." However, later in the
13 proceedings, the district attorney produced the drawings - which
14 were just scribble - in defense of Petitioner's Pre-trial Writ,
15 claiming that Ms. Hammack had somehow magically "found" the lost
16 drawings; drawings Ms. Hammack swore under oath were not in her
17 file of this case, and that there was NO OTHER file on this case.

18 The Petitioner has now become aware of the fact that, Paula
19 Hammack had, herself, and in her own hand, reproduced the drawings
20 from memory to remove them as a factor, the only remaining factor
21 in the state's view, concerning the Petitioner's Pre-trial Writ of
22 Habeas Corpus. Of course, the Petitioner is unaware to this day
23 of why the district court - Judge Bonaventure or Judge Loehrer,
24 depending upon which contradictory version one chooses to believe -
25 actually denied the Petitioner's Pre-trial Writ; the Order denying
26 the Writ contained NO "Findings of Fact" or "Conclusions of Law,"
27 which are required to make the adverse determination susceptible to
28 review by a higher court.

PREJUDICE

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2 Clearly, Mr. Schwiger's Pre-trial Writ of Habeas Corpus
3 should have been granted as a matter of law. Had this been the
4 case, Mr. Schwiger's fictitious criminal charges would have been
5 dismissed with prejudice. Further, Mr. Schwiger would not have
6 then been in the Clark County Detention Center and in a position to
7 have been "set up" or "entrapped" on the also fictitious sollicita-
8 tion case and then indicted without being permitted to "appear and
9 testify" on his own behalf, which is his state constitutional and
10 statutory right. Had Mr. Schwiger's initial sexual charges been
11 dismissed as they should have been, and because he did not commit
12 the alleged crime, he would not today be illegally and wrongfully
13 imprisoned, and his 5½ year-old daughter would not have suffered
14 the egregious loss of the love and companionship of her father.

15 This Writ of Habeas Corpus therefore should be granted and
16 Mr. Schwiger, the Petitioner, should have his conviction and
17 sentence vacated and he should be released from his illegal and
18 unjust incarceration. Alternatively, this Honorable Court should
19 grant "all relief to which Petitioner may be entitled."
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GROUND EIGHT SUPPLEMENT

I ALLEGE MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL IN VIOLATION OF MY SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES

IN FURTHERANCE OF THE GROUNDS PRESENTED IN PETITIONER'S ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS.

I. Counsel was Constitutionally Ineffective when he failed to seek a pre-trial remedy to the denial of defense Motion for an Independant Psychological Evaluation of the "Alleged Child Victim. Counsel had either remedy of a Pre-trial Writ or Petition for Extraordinary Relief (Mandamus or Prohibition) available to him. An Interlocutory Appeal was appropriate in this case.

A. Petitioner suffered greivous prejudice as a result because, the defense Motion was meritorious and counsel would have prevailed had he pursued one of the above-mentioned remedies.

B. The burden for receiving a Independant Psychological Evaluation of an Alleged Victim, which in this case was not a victim through any actions by the Petitioner, is that there must be some reasonable cause to call into question the veracity of the alleged victim. In this case, particularly, there is, and was, "clear and abundant" reason to believe this particular "alleged" victim was in fact lying, and had made up the entire story.¹

1. On January 25, 2001, Detectives Jay Roberts and Vince Ramirez interviewed Alexis Ashford, the "alleged" victim at Doris Hancock Elementary School at 1345 hours.

a) During this interview, Det. Ramirez asked Alexis, "Now besides your mommy giving you a bath or, or a shower, have you ever

¹ Petitioner has palpable reason to believe and, emphatically asserts and alleges that, in fact, Alexis Ashford did not herself actually concoct the false allegation. Petitioner claims that Alexis' mother, Wendy Shelton, and grandmother, Linda Shelton-Simione, coerced and manipulated this child into going along with the plan they were induced into by the detectives and Petitioner's wife at the time, Lisa Nazee Schwiger.

1 had a problem with somebody touching you in those places?" (Det.
2 Ramirez had just gone over all the "places," private areas of the
3 body, others should not be touching). Alexis responded, that no
4 one had, according to the Detective. SEE INTERVIEW TRANSCRIPT, PG. 8

5 b) Also in this interview, Det. Ramirez asked Alexis,
6 "Does he [Petitioner] ever do anything like we said here?" (refer-
7 ring to touching Alexis' private parts) Again, according to the
8 Detective, Alexis responded that the Petitioner had not done this.

9 2) Also on January 25, 2001, at the Sexual Assault Detail
10 office between 1500 and 1600 hours, Detectives Roberts and Ramirez
11 conducted "Voluntary" statements with both Wendy Shelton and Linda
12 Simione. During both of these "Voluntary" statements, Wendy and her
13 mother, Linda Simione, both stated that Alexis had on several occa-
14 sions admitted to having lied, and having made the entire story up.

15 3) Also within these "Voluntary" statements (and in the inter-
16 view of Alexis by CPS' Paula Hammack on February 2, 2001), it was
17 "alleged" that the Petitioner's own daughter, Chelsea Elizabeth
18 Schwiger, had actually eyewitnessed and participated in ALL of the
19 "alleged" sexual misconduct in question.

20 a) Mrs. Simione and/or Ms. Shelton "alleged" this was what
21 Alexis had told them.²

22 b) Alexis claimed in her February 2, 2001 CPS interview
23 (wherein there is clear and incontrovertable evidence in the tran-
24 script of Ms. Hammack giving Alexis "head-signals" to get her to

25 ² Petitioner alleges, and claims to know as a fact that, Alexis did
26 not actually disclose any such conduct to her mother or grand-
27 mother. Wendy Shelton and Linda Simione were lying about all of
28 this at the behest of Petitioner's wife, Lisa N. Schwiger, and
detectives, to assist her with removing Petitioner from her life,
and as a factor in the custody of their daughter Chelsea.

1 respond to the questions in the manner she "needed" her to) that,
2 Chelsea was only present, "standing behind," (not participating)
3 for ALL of the "alleged" misconduct. Alexis also claimed that, ALL
4 of the "alleged" misconduct had taken place in Chelsea's bedroom,
5 the room which was wall-to-wall toys.

6 c) However, during direct examination at Petitioner's
7 Preliminary Hearing on March 13, 2001 before the Honorable Jennifer
8 Togliotti, Alexis testified under oath that Chelsea had now also
9 been an actual participant in the "alleged" misconduct and that it
10 had now taken place in Petitioner's bedroom, the room completely
11 devoid of any toys whatsoever. It can be truthfully said that,
12 Alexis' testimony at the Preliminary was wholly inconsistent with
13 her CPS interview with CPS Specialist Paula Hammack. Petitioner
14 submits that the egregious nature of these inconsistencies clearly
15 manifest untruthfulness on the part of this "alleged" victim.

16 d) For no apparent reason, and without any justification,
17 Petitioner's daughter, Chelsea Elizabeth Schwiger, whom had not at
18 that time been ("officially at least") alleged to have been in any
19 way involved in the "alleged" conduct, was interviewed by Detective
20 Roberts and Ramirez also on January 25, 2001 at Doris Hancock
21 Elementary School.³ Chelsea was also interviewed by the very same
22 CPS Specialist, Paula Hammack, and a co-worker, Natalie Guessman,
23 immediately following Ms. Hammack's interview with Alexis,⁴ and
24 while freshly armed with Alexis' allegations.

25 ³ Petitioner would like this court to take note of the fact that,
26 at the time these detectives interviewed Petitioner's daughter,
27 they had no "official" information which would have led them to
28 believe that Chelsea had been in anyway involved in the "alleged"
misconduct. This erroneous information was not "officially"
disclosed to them until later that afternoon by Wendy and Linda.

1 4 It should be noted that Ms. Hammack conducted her interview with
2 Alexis in complete privacy, without benefit of witnesses or a
3 video-taped record of the interview "tactics." Petitioner
submits this was done to hide her actions and enable Hammack to
manipulate Alexis' answers with "head-signals."

4
5 e) At the detective's January 25, 2001 interview with the
6 Petitioner's daughter Chelsea, she denied there had ever been any
7 "touching (sexual) problems" by her father [the Petitioner] whatso-
8 ever.

9 f) Although the interview tape of Chelsea by Paula Hammack
10 and Natalie Guessman has never been produced by the state (Ms.
11 Hammack destroyed Chelsea's exculpatory interview tape in "bad-
12 faith" on behalf of the investigating detectives - a clear BRADY
13 violation - because Chelsea's audio-taped interview did not support
14 the state's prosecution), Ms. Hammack admitted under oath at the
15 Preliminary Hearing that, in her interview, Chelsea had confirmed
16 "NONE, NONE" of Alexis' story. To this day, Chelsea denies witness-
17 ing or participating in any such "alleged" sexual misconduct by
18 her father with herself or Alexis. An Affidavit submitted to the
19 Family Court in Petitioner's ongoing Custody/Visitation case by his
20 now deceased father, C. Edward Schwiger, avers that, during a brief
21 conversation between the Petitioner and his daughter on June 20,
22 2003 while Chelsea was in Florida visiting her grandparents,
23 Chelsea told her father that, "Alexis and Wendy lied, and they're
24 bad people." This conversation with his beloved daughter in June
25 2003 is the ONLY contact the Petitioner has had with his daughter,
26 and she with him.

27 4) In light of the above, and the conditions in which Alexis'
28 interview was conducted by Paula Hammack, specifically in light of

1 the clear evidence of Hammack's fraudulent and dishonest interview
2 clearly, this ONLY piece of "allegedly" inculpatory evidence (Alex
3 is' CPS interview) possessed by the state in this case, CANNOT be
4 relied upon of having any indicia of trustworthiness whatsoever.

5 PREJUDICE

6 Clearly, the above facts and circumstances, which counsel was
7 made aware of, demonstrate that Petitioner's Motion for Independent
8 Psychological Evaluation of the Alleged Victim should have been
9 granted, and therefore, counsel clearly should have sought a remedy
10 from it's denial by one of the above referenced means or by way of
11 Interlocutory Appeal. Thus, counsel was Constitutionally Ineffect-
12 ive for not having done so. Had counsel sought a remedy to this
13 error by the district court, the outcome of the proceedings would
14 clearly been much different; For had counsel done so, an Indepen-
15 dant Psychological Evaluation would have manifested Alexis Ashford
16 to have been coerced and manipulated by her mother, grandmother,
17 and possibly others, to cooperate with detectives and CPS Special-
18 ist Paula Hammack in the criminal "manufacturing" of Petitioner's
19 fictitious charges of a sexual nature. Petitioner knows this to be
20 an absolute fact because, he knows the "allegd" conduct did not
21 occur and thus there can be no other reasonable explanation for the
22 false allegation to have been made. The Petitioner himself first
23 contacted police concerning the false allegation; certainly not the
24 act of a man whom had actually committed such a crime.

25 CONCLUSION

26 Counsel was Constitutionally Ineffective based upon the above,
27 and thus, Petitioner's Conviction and Sentence should be vacated
28 and Petitioner should be released from his imprisonment.

GROUND NINE SUPPLEMENT

I ALLEGE MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL IN VIOLATION OF MY FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION RIGHT TO DUE PROCESS, BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES.

IN FURTHERANCE OF GROUNDS PRESENTED IN PETITIONER'S ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS.

I. The Petitioner is actually innocent of the alleged crimes he was illegally convicted of, in particular, the sexual abuse charges, but is also actually innocent of the alleged Solicitation charges as well.

A. Petitioner alleges and solemnly swears that, he has been criminally, corruptly, and surreptitiously set up on the sexual abuse allegations by the "alleged" victim's mother and grandmother, the two or more detectives conducting the investigation and their boss, Sgt. Ron Williams, and others, and by and at the behest of the Petitioner's wife at the time, Lisa Nazee Schwiger.

1. Petitioner alleges he was unable, at the time, to defend against the sexual abuse allegation and to prove his above claim due to Ineffective counsel's refusal and neglect in investigating Petitioner's above assertions, and due to the state's continuing withholding and/or destruction of exculpatory evidence in violation of BRADY, which would prove the Petitioner's claim of "actual innocence."

2. Petitioner alleges that, with the above withheld exculpatory evidence, and with several court-issued subpoenas to compel certain witnesses (to be disclosed at evidentiary) to testify, the evidence necessary to prove Petitioner's claim of "actual innocence" would be adduced at an Evidentiary proceeding, if this court would be gracious enough to grant Petitioner the opportunity to prove his claim in this Habeas Corpus proceeding.

1 3. Petitioner avers, he cannot disclose the several aspect
2 of the underlying instant claim, as it would alert the state and
3 those potential witnesses as to how the Petitioner would expose the
4 corruption and criminal misconduct in this case (the truth in this
5 fictitious case), which would then permit the state and those
6 involved to develop a cover story in order to ensconce the truth
7 in this case.

8 4. The Petitioner emphatically alleges that, with the
9 evidence within the record of this case (much of which is not
10 easily visible with a perfunctory examination), and by skilled and
11 carefully crafted questioning of the state and the above mentioned
12 witnesses, the Petitioner knows for certain that he and competent
13 counsel will be able to trap these unscrupulous participants in
14 their lies, and leave them no other choice but to confess to what
15 they have done in this case; Admit they lied about the fabricated
16 sexual allegation itself, and that with the corrupt assistance of
17 the detectives above, they will also confess the formal charges to
18 have been criminally and surreptitiously manufactured against this
19 Petitioner.

20 5. Petitioner, in order to manifest all of the above, will
21 require the "loyal" and "competent" services of appointed counsel
22 and a qualified investigator. These professionals, after thorough
23 investigation, would then be able to structure questions for these
24 witnesses which would manifest "the truth" of the underlying false
25 charges. The Petitioner, for the past 5 plus years, has been able
26 to analyze the record in this case (transcripts, voluntary state-
27 ments, etc.), in addition to circumstances and actions by those
28 involved in his corrupt set up, and knows exactly how to prove what

1 is so clear to him, also to this court; His complete and absolute
2 INNOCENCE; and that a "manifest injustice" has occurred in this
3 case. AMADEO v. ZANT, 108 S.Ct. 1771, 486 U.S. 214 (
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6 PREJUDICE

7 Based upon the foregoing allegations, if true, prejudice is
8 clear and presumed. Obviously, if the Petitioner's emphatic and
9 consistent allegations of rampant corruption/misconduct and his
10 actual innocence are true, the prejudice suffered by him has been,
11 and is still, immense without doubt. If the Petitioner did not
12 commit the originally alleged sexual crime, and was actually cons-
13 pired against by the above mentioned instrumentalities, the
14 Petitioner should have clearly never suffered his arrest, the loss
15 of his freedom, and the love, affection and companionship of his
16 beloved ONLY child, and should not have had to endure five long
17 years incarcerated with some of the most repugnant of society. It
18 is clear that the Petitioner should not have been subjected to the
19 deceitful and unscrupulous actions of criminal "state agents,"
20 wherein he put his freedom at risk in a "state agent's" contrived
21 plot in order to protect the very lives, he believed, of his child
22 and his wife (whom Petitioner had not yet realized was the genesis
23 of the sexual set up).

24 The most egregious injustice known to society and within the
25 sometimes blind inner-workings of the criminal "just-us" system is
26 for a defendant to be sentenced to "life" in prison as an actually
27 innocent man - having committed NO CRIME whatsoever. If true, can
28 there be any doubt whatsoever of the prejudice which has been now

1 suffered by the Petitioner and his child.

2
3 CONCLUSION

4 The United States Supreme Court held in BLACKLEDGE v. ALLISON,
5 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2nd 136 (1977) that "a prisoner
6 in custody after pleading guilty, no less than one tried and con-
7 victed by a jury, is entitled to avail himself of the Writ [of
8 Habeas Corpus] in challenging the constitutionality of his custody.
9 Id. at 72, 97 S.Ct. 1621. The Court explained that "no procedural
10 device for the taking of guilty pleas is so perfect in design as to
11 warrant a per se rule rendering it uniformly invulnerable to sub-
12 sequent challenge." Id. at 73, 97 S.Ct. 1621 (emphasis added).

13 The Petitioner must believe, and he is hopeful that this court
14 also feels that, what is absolutely essential in this or any case,
15 and what justice and the law requires is, that "the truth" should
16 always ultimately be permitted to manifest itself in a case and
17 errors should be corrected and justice prevail in the end. If this
18 Honorable Court still believes that "justice" and "the truth" must
19 prevail, and this Petitioner believes this to be true, certainly
20 this Court would in good conscience have no other alternative but
21 to provide the Petitioner an opportunity to present his case and
22 prove his very serious allegations. Too much is at stake and has
23 already been lost by this Petitioner if he is in fact an innocent
24 man. Too much suffering by this Petitioner and his also innocent
25 daughter has already occurred for this court not to allow him the
26 opportunity to prove his assertions. Justice requires that these
27 allegations of police corruption and case manufacturing not remain
28 unanswered. Justice requires that "the truth" concerning this

1 Petitioner's allegations be "flushed-out" once and for all, and an
2 Evidentiary Hearing should be granted for this purpose as well.

3 Petitioner's Writ of Habeas Corpus should be granted, and this
4 Petitioner's conviction and sentence should be vacated and he should
5 be released from his illegal imprisonment. In the alternative,
6 this Honorable Court should grant "all relief to which Petitioner
7 is entitled."

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GROUND TEN

I ALLEGE MY STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL IN VIOLATION OF MY FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS, BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCE.

IN FURTHERANCE OF THE GROUNDS PRESENTED IN GROUND TWO IN ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS, AND ALSO RAISED AS ITS OWN GROUND.

I. The Petitioner's plea of guilty pursuant to ALFORD was not entered into "KNOWINGLY" and/or "INTELLIGENTLY," thus rendering Mr. Schwiger's plea "INVOLUNTARY" by law.

II. The Petitioner was made a promise by the prosecutor which amounted to less than "the state" agreeing to a "conditional plea," and which must be fulfilled.

A. Petitioner contends that the "prosecution" made an Oral promise, never incorporated into his ALFORD plea agreement, that he could "conditionally" plead retaining the right to appeal any and all adverse "Constitutional" pre-plea rulings in this case. These were the very "Constitutional" issues which were raised on direct appeal, which the state then argued were waived by signing the plea agreement the "prosecutor" promised "necessarily written into the plea agreement itself" were preserved.

1. In U.S. v. WHITE, 366 F.3d 291 (4th Cir. 2004)(It is well established "that when a plea rests in any significant degree on a promise . . . of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled" Citing SANTOBELLO v. NEW YORK, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2nd 427 (1971)). Hence, as the government properly conceded at oral argument, if a government representative orally promised [Schwiger] that he could conditionally plead, [Schwiger] "would be entitled to the relief he's asking for" despite his attorney's failure to preserve this right in the written plea agreement. Proof

1 of the government's refusal to abide by such an oral promise would
2 clearly constitute evidence of "government overreaching" or "fraud
3 in the inducement," admissible without running afoul of the parole
4 evidence rule. UNITED STATES v. GARCIA, 956 F.2d 41, 44 & n. 4
5 (4th Cir. 1992); see also UNITED STATES v. HARVEY, 891 F.2d 294,
6 300-01 (4th Cir. 1986) Id. at 295.

7 On July 19, 2001, during discussions surrounding a possible
8 plea agreement, specifically the preservation of appellate rights,
9 the prosecutor, Ms. Luzaich, made an Oral promise, on the record,
10 to the Petitioner and his counsel that he could in fact appeal pre-
11 plea issues which were "Constitutional in nature," which was then
12 confirmed and reinforced by the court:

13 MS. LUZAICH: As far as preserving rights, the DA's policy is
14 we'll never agree in a guilty plea that rights
15 can be preserved. What the guilty plea agree-
16 ment says, you waive your rights to appeal except
for issues of constitutional nature, then neces-
sarily written in the guilty plea agreement you
can still appeal those. . .

17 THE COURT: The DA is not going to deviate from the policy,
18 pursuant to the ALFORD decision and he's [Mr.
19 Schwiger] going to waive anything except
constitutional rights. . .

20 MR. PARRIS: Again, Your Honor, I've done some preliminary
21 research concerning certain appeal issues we
have and they do appear to be constitutional
22 in nature, just for the court's awareness at
this juncture.

23 THE COURT: . . .He's preserving those rights according to
your research, that he could make appealable
24 issues on these constitutional rights.

25 Clearly, Ms Luzaich told Mr. Schwiger, his counsel and the
26 court, which the court clarified and the plea agreement confirms,
27 that Mr. Schwiger could in fact raise on appeal, among others
28 (reasonable jurisdictional, constitutional, or grounds which other-

1 wise challenge the legality of the proceedings), pre-plea issues
2 which are "constitutional in nature." Nonetheless, when Mr. Schw-
3 iger raised these very "constitutional" and "legality of proceeding
4 issues on direct appeal, which Mr. Parris, co-counsel to Schwiger,
5 stated to the court were in fact "constitutional in nature," the
6 state then argued in their ANSWERING Brief on direct appeal that,
7 ALL pre-plea issues, regardless of their constitutionality, could
8 not be later complained of, citing TOLLETT v. HENDERSON and STATE v
9 WEBB. See State's ANSWERING Brief.

10 The State of Nevada cannot agree that Mr. Schwiger CAN IN
11 FACT appeal constitutional pre-plea issues in order to induce him
12 to plead and then argue that he CANNOT appeal them, in order to
13 preclude his constitutional issues from being addressed on their
14 merits by the Supreme Court of Nevada. These are the exact condi-
15 tions the High Court spoke of in SANTOBELLO.

16 The above record could not be more clear: Mr. Schwiger's
17 plea "rested in a significant degree on the promise. . . of the
18 prosecutor. In fact, it rested entirely upon that and of Counsel's
19 Constitutionally Ineffective advice. Additionally, it is absolute-
20 ly self-evident that this promise by the prosecutor, and the court,
21 was the major part of the inducement or consideration in agreeing
22 to the ALFORD plea by Mr. Schwiger. In fact, the entire and
23 express purpose for accepting the plea, as stated in GROUNDS I & II
24 in the "original" Petition now before this court, was ONLY for the
25 purpose of appealing these above-mentioned pre-plea issues in his
26 direct appeal to the Supreme Court of Nevada. The issues raised in
27 Mr. Schwiger's OPENING BRIEF on direct were, exactly based upon
28 these challenges.