REPLY
Lawrence Schwiger #71278
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DISTRICT COURT

CLARK COUNTY, NEVADA

LAWRENCE SCHWIGER Petitioner, vs. WARDEN VARE', et.,al., Respondent.	CASE NO. C 173970 / C 174784 DEPT. NO. XVIII HEARING DATE September 20, 2006

REPLY TO STATE'S OPPOSITION TO DEFENDANT'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION RELIEF)

COMES NOW, the Petitioner, Lawrence Schwiger, in his proper person and hereby submits the attached Points and Authorities in REPLY TO STATE'S OPPOSITION TO DEFENDANT'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION).

This Reply is made and based upon all papers and pleadings on file herein, the attached Points and Authorities in support thereof, and oral argument at the time of hearing deemed necessary by this Honorable Court.

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ARGUMENT

I. COUNSEL DID NOT PROVIDE EFFECTIVE ASSISTANCE THROUGHOUT THE PROCEEDINGS, OR ANY PART THEREOF.

Counsel could not possibly have rendered "reasonably effective assistance" of counsel or their client, the Petitioner, would otherwise not be convicted and imprisoned for alleged crimes which he absolutely DID NOT commit.

Clearly, based upon Petitioner's previous pleadings in this habeas corpus proceeding, counsel's representation fell well below any objective standard of reasonableness. Secondly, there is no question, also based on those pleadings, that the outcome of these proceedings would have been much different - they could not possibly have been the same. This is true for many reasons; One of which is because, had counsel not wrongly advised the Petitioner in regard to his right to appeal pre-plea errors on direct appeal, he would never have entered into a plea agreement and would instead have insisted upon going to trial where the errors by the district court and the violations of his constitutional rights (Due Process and Equal Protection) could have been addressed by the Supreme Court of Nevada and corrected.

In considering whether trial counsel has met this standard, the court should first determine whether counsel made a "sufficient inquiry into the information that is pertinent to his client's case!

Counsels made NO INQUIRY whatsoever into the information that was pertinent to their client's case! Petitioner told counsel from the very begining of their representation that he absolutely had not committed the "alleged" crimes; that the "alleged" victim, her mother and grandmother were lying; and that, he was being set up on the false allegation by the same and the investigating entities involved. Counsels made NO ATTEMPT whatsoever to depose or

interview the "alleged" victim or any of the others whom were also involved in any way. Because these inquiries were never conducted by defense counsel, there is no way in which to know specifically what would have been disclosed, or exposed, concerning Petitioner's fictitious and manufactured charges. However, because the Petitioner DID NOT commit the "alleged" crimes, and thus KNOWS the above individuals are in fact lying about everything, he knows that, had counsel done their jobs by interviewing the above with the right questions, ~~it is~~ highly likely the truth of their corrupt and very illegal conduct would have been exposed. These types of allegations are certainly rather rare and counsel had a duty to go beyond what may be normal in a case in order to get to the bottom of their own client's very serious and very possible assertions. Counsel instead did NOTHING AT ALL to "search for the truth" for their own client.

Further, Petitioner knows that even now, if he were given the opportunity to himself examine those which he knows to have participated in his setup, under oath, he would absolutely expose these rouges in their lies and manifest the ACTUAL truth in this case. Of this he has NO DOUBT WHATSOEVER. Had counsel done their jobs by investigating the truth of Petitioner's claims, he would not be in this position needing to do so himself, and, he should not be made to suffer the prejudice of not investigating by counsel when he had NO CONTROL over what his counsel did or did not do to represent him. Asking this of the Petitioner is tantamount to asking him to prove he could have made a shot in basketball but never having given him the chance to even shoot the shot. How could this be considered "fundamentally fair." Petitioner cannot emphasize enough that, he has consistently and emphatically asserted his

complete and ACTUAL INNOCENCE from day one and has never once relented from his protestations. The record could not be any more clear about this fact. Thus, because Petitioner had NO SAY as to what counsel actually did to defend him against his charges, and NO RECOURSE when counsel refused his instructions to investigate, it would be "fundamentally unfair," and just plain wrong, to hold his counsel's indifference toward the Petitioner now. It would not be at all right to require the Petitioner to prove the outcome, thus his innocence, of a investigation which was never conducted; that of which he insisted upon which was ignored by his counsel. This is the specific reason, regarding his Grounds of ACTUAL INNOCENCE and COUNSEL'S FAILURE TO INVESTIGATE, for which he has requested an Evidentiary hearing. Petitioner is requesting an opportunity to examine the participants in his criminal setup under oath where,"if they are not truthful," irrefutable evidence will be presented as to their lies. This would clearly show why counsel was ineffective for not conducting a thorough investigation. How could anyone in their right minds find that NO INVESTIGATION AT ALL be considered a " reasonable strategy decision on how to proceed in their client's case." What kind of, at all competent, formally educated and bar licensed attorney would elect such a "tactical decision" as to do NOTHING AT ALL when their client is consistently and emphatically telling them that he is INNOCENT - HAD ABSOLUTELY NOT COMMITTED THE ALLEGED CRIME, and that HE WAS BEING SET UP BY THE ALLEGED VICTIM'S FAMILY AND THE DETECTIVES INVESTIGATING THE CASE. A "fundamental miscarriage of justice" has most definately occurred in this case, and, if this Honorable Court will provide him the opportunity to to orally argue and present his case, on the record, Petitioner is

very confident he will convince this court of his claims.

As Petitioner argued in his REPLY TO STATE'S RESPONSE TO DEFENDANT'S PETITION, the state is inaccurate in its claim that the Defendant must demonstrate by "strong and convincing proof" that counsel was ineffective. (PG. 4, LNS. 22-26). The state relies on HOMICK, LENZ and DAVIS. Federal Circuits, and now the Supreme Court of Nevada in MEANS v. STATE, 103 P.3d 25 (2004) held," that a habeas petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence. To the extent that our decision today conflicts with the "strong and convincing" language of DAVIS and its predecessors, we expressly overrule those cases." The Court went on to say,"therefore, when a petitioner alleges ineffective-assistance of counsel, he must establish the factual allegations which form the basis for his claim of ineffective assistance by a preponderance of the evidence."

The Petitioner asserts that the state has again intentionally attempted to hoodwink and deceive this Honorable Court; DDA Luzaich is an experienced licensed attorney and is professionally obligated, and responsible for citing current caselaw. The state has no excuse for not knowing about the MEANS decision TWO years after it was decided. This "ommission" on the state's part is no less than an attempt to argue caselaw beneficial to them in the hope that the Petitioner would not be aware of this change in the law, or would not notice. This attempt at trickery and deception by the state further attests to the Petitioner's claims throughout this case of the state's dishonesty in order to simply WIN no matter what, and in spite of the facts or what the state DOES KNOW to be

the truth of this case - Petitioner is innocent and was set up by their own police agents.

The state cites DAWSON, in that, "Strategic choices made by counsel 'after thoroughly investigating the plausible options' are almost unchallengable." This clearly makes the Petitioner's very point. Not only did counsel not 'thoroughly investigate'the very plausible options,(petitioner's consistent and emphatic claims that he was being set up on false allegations), counsel conducted NO INVESTIGATION WHATSOEVER, into anything. When a client tells his counsels over and over that he did not sexually abuse ANYONE, and that he is being set up by those involved, to include the detectives investigating the case and their accomplices, there can be no such thing as a "strategic tactical decision" to do nothing at all to find out if it is true, and what may really be going on in the case. Counsel were well aware that their client and his wife had separated and at odds with each other. And that they had separated only TWO months prior to his arrest. Counsel were well aware that the "alleged" victim had claimed there to have been an actual eyewitness to ALL of the "alleged" misconduct who had consistently and emphatically asserted that NO SUCH conduct had ever occurred. Counsels were well aware that the "alleged" victim had confessed to having LIED and MAKING THE ENTIRE STORY UP. Counsel were well aware that the person the alleged victim had "allegedly" first disclosed the "alleged" misconduct to (grandma), had LIED - that she could not get her "story" straight about where her grandaughter "allegedly" first disclosed the "alleged" misconduct to her, and that she did not even know what date she had "allegedly" done so. Petitioner wonders how it could even be possible for a grandmother to "forget" such

things.

The decision not to conduct any investigation whatsoever cannot possibly considered a "strategic" or "tactical" one, and clearly cannot be considered "unchallengable." In fact, under the particular circumstances of this case and emphatic protestations by their client, an "UNPARALLELED" investigation should have been conducted. Further, counsel can make NO DECISION at all for their client, strategic, tactical or otherwise. Decisions can ONLY BE MADE BY THE CLIENT HIMSELF; the client is the one who faces, in this case, the rest of his natural life behind bars, or due to the nature of these particular charges (alleged child molestation), very likely a terrible death at the hands of other prison inmates. Counsel is not required to foot the bill for bad strategic or tactical decisions. Thus, counsels' job is to advise their client ONLY, so that THE CLIENT HIMSELF can make an informed choice as to how to proceed in the case. This Petitioner's strategic decision was for counsel to conduct whatever investigation necessary to uncover the truth in the case and their client's innocence. Petitioner instructed his counsels to conduct such an investigation and told them where to focus it. The record is abundantly clear that absolutely NO INVESTIGATION into Petitioner's claims was ever conducted by counsel or their investigator. How can the outcome of this case be considered the least bit reliable under such circumstances. There can be NO CONFIDENCE in the outcome under these conditions.

B. Counsel was clearly ineffective for neglecting to investigate their client's emphatic claims of being set up by corrupt detectives, and his innocence.

As stated above, under the circumstances, and the information provided to them by the Petitioner, counsel should clearly have

conducted an extremely thorough and unparalleled investigation.

In the Petitioner's Supplemental petition, he is not attempting to remedy the "alleged" deficiencies argued in the state's original Response filed on October 7, 2005 and again on October 11, 2005. In Petitioner's original petition, he reserved the right to further develope this and other grounds because he had not enough time to complete those particular grounds by the time he needed to file his petition. In addition, Petitioner has been waiting patiently for the state to provide him with the "exculpatory" discovery/evidence he has been requesting now for years - since this case began. His counsels were also ineffective for not compelling the state to turn this exculpatory evidence over to the defense. This evidence alone would prove the Petitioner's innocence.

Petitioner avers that, at the time of his set up by police and of his arrest, up until the time of sentencing - when his wife, Lisa Nazee Schwiger, smiled at him sarcastically and mouthed the words at him, "I did this to you,"— he was unaware that his wife was behind his setup and played such an intrinsic role in the entire ruse. In fact, the Petitioner, with the cooperation of this Honorable Court, can prove that, Lisa Schwiger did attempt to plant the Petitioner's semen in their own daughter's bed in an attempt to cinch his conviction by attempting to corroborate the "alleged" victim's concocted statement to CPS' Paula Hammack as to where the the "alleged" misconduct had taken place. Only by the grace of GOD himself did Lisa and the detectives fail at their attempt to plant this evidence in this case. Nonetheless, Petitioner has absolutely NO DOUBT whatsoever that, if he or appointed counsel are permitted to examine Lisa Schwiger and these detectives on the witness stand

under oath, he will clearly prove this attempted evidence plant and that the investigating detectives, Jay Roberts and Vince Ramirez, were complicit in this attempt and had prior knowledge of Lisa's planned criminal act. The Petitioner has reported this criminal conduct by his wife and these detectives to the Clark County Sheriff LVMPD Internal Affairs; the Citizens Review Board; District Attorney Stewart Bell and David Roger; the Attorney General's office, and many others, but NONE of the above have chosen to even interview me to determine whether the Petitioner has proof of his allegations or not. Petitioner firmly believes, because the DA's office know this to be true, specifically DDA Luzaich, "someone" in that office has thwarted his attempts to report this criminal conduct. Petitioner has the proof of his allegations and has told each and every one of the above the same. Petitioner can prove his claims if permitted a "fair opportunity" to do so by this Honorable Court. Clearly, if Petitioner's claims can be shown to be true, and he emphatically submits that they are, this is evidence which could not be considered impeachment of the state's "alleged" witnesses, and should have been discovered had a proper and thorough investigation been conducted by counsel. If the Petitioner was able to discover the proof of his claims, surely experienced professionals in the legal field should have been able to discover it - had they even bothered to look.

The state claims, " A Defendant who contends that his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Defendant fails to allege any <u>specific</u> facts whatsoever to support his bare allegation that his counsel

failed to conduct a full investigation in this case." (STATE'S OPPS PG. 6, LNS. 4-8) Above, the Petitioner asserts only a small portion of specific facts in support of his claims that detectives and his wife did in fact conspire against him by attempting to plant evidence, and more, and that counsel had an obligation to investigate and expose this criminal conduct. These and other specific facts which form the basis of this claim, even though most of which are not proffered within his pleadings, will be adduced at a full-blown Evidentiary hearing and proven by a "preponderance of the evidence." The Petitioner should not be held accountable for discovering ANY EVIDENCE which would prove his claim when he had NO CONTROL over counsel not doing so. PETITIONER IS ACTUALLY INNOCENT. He cannot and will not believe that this court would want to see Petitioner remain in prison if this is true, regardless of how and why he came to be in his unfortunate situation. Certainly not for things the Petitioner is not at fault for. Counsel did NOTHING their client instructed them to do in this case.

The state says, "Interestingly, Defendant still fails to specify how he 'knows he can prove' that the officers (and his wife) were induced to 'orchestrate and manufacture' the entire sexual case against the Petitioner." Petitioner is not at all surprised that the state would wish him to divulge this information while it still has time to concoct a cover story for the officer's (and his wife's) criminal conduct in this case.

Petitioner would first suggest that the state, if it really "cares" whether this criminal conduct by their own officers has actually occurred, should conduct their own interrogation of these officers and Petitioner's wife, in addition to Wendy Shelton and

Linda Simione. Secondly, because there is already proof in the record of the fact that the state will do anything to cover up the truth in this case (they have destroyed and withheld relevant and exculpatory evidence of the truth, and still continues to do so), the Petitioner is unwilling, as he stated in his first REPLY and his Supplemental petition, to disclose " how he knows he can prove it," because, he has already been shown by the state what they are willing to do to cover up the actions of and protect "their own," and to maintain their ill-gotten conviction. If Petitioner were to explain all of the evidence and circumstances " on paper " which would satisfy the state's curiosity, for one, it would require several hundred pages to do so, and second, the state would then simply take this information and find a way to manipulate and/or destroy any and all evidence in support of Petitioner's claims, which they have not already destroyed. Therefore, Petitioner again asserts, he can prove the evidence underlying his claim of ineffective-assistance of counsel with this Court's cooperation in a "fair" and "full" Evidentiary hearing with the assistance of competent and loyal counsel. Petitioner does not wish to reveal his hole-cards to the state and allow them to rehearse and concoct a defense to his claims. If the "participants" have done nothing wrong and are simply going to testify truthfully, they should need no advanced warning as to what they will be asked. Ms. Luzaich wishes to protect these detectives and her case/reputation; she certainly does not want to be the DDA handling the case wherein something like this is exposed. If the state truly wishes to see "justice" done in ANY case, as their own press would have us believe, they should welcome "the truth" coming out in the end, whether it causes the state to admit an egregious

mistake was made in this case or not. If only to put the Petitioner's serious allegations to rest, one would think if the state truly wished justice to be served in the end, they would encourage this Court to permit the Petitioner all of the latitude he needs and requests. The state won't do that because they know the truth.

The state claims, "A Defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations which, if true, would entitle him to relief unless the factual allegations are repelled by the record." The Petitioner HAS made specific allegations which are fact; He was set up by corrupt police detectives with the assistance of his wife, the "alleged" victim and her family, and others, and counsel failed to investigate and expose this criminal conduct. A factual allegation is still an allegation. Petitioner's opportunity to prove these factual allegations lies in the evidentiary process, to be proven by a "preponderance of the evidence. Clearly, if true, relief would certainly be warranted. Petitioner's factual allegations are in no way repelled by the record of this case. In fact, the Petitioner wrote numerous letters to the court from the start, complaining that he had been set up and was innocent of these charges. These letters were made a part of the record in this case by Judge Bonaventure and on direct appeal by counsel in that appeal. Further, the only way the factual allegations can be repelled by the record would be if the record could somehow prove them to be untrue. Clearly, the record proves no such thing. The record would have to prove that the Petitioner was not set up on these sexual charges by police, his wife, and alleged victim and her family. Because the Petitioner knows he was in fact set up by the above, unless the state cheats even more, he knows

there is no way they can prove this.

The factual allegations underlying Petitioner's claim of ineffective assistance for counsel's failure to investigate can be proven by more than a preponderance of the evidence with the cooperation of the court as above and with the use of the court's subpoena powers so the Petitioner can conduct a "search for the truth" as to whether counsel should have investigated the case. The factual allegations which form the basis underlying Petitioner's ineffective assistance claim must only be proven by a "preponderance of the evidence." MEANS v. STATE, 103 P.3d 25 (Nev. 2004).

C. Counsel was in fact Ineffective for neglecting to challenge the district court's denial of the Defendant's Pre-trial Writ of Habeas Corpus.

The state claims that Petitioner's conviction was the result of an Alford plea which thereby precludes him from raising this claim of Ineffective Assistance of Counsel (his right to make the instant argument). This is ABSURD. Petitioner has every right to raise this Ineffective Assistance claim. Further, this and other grounds in this petition are challenges to the "Constitutionality" of the sentence and conviction in this case. This is the specific purpose of the Writ of Habeas Corpus. Whatever waiver of appellate rights which may or may not be part of Petitioner's plea agreement, do not apply to a Petition for Writ of Habeas Corpus, which is not an appeal. Waiver of appellate rights in a plea agreement apply only to a direct appeal. This ground is not a challenge to the district court's denial of the Pre-trial Writ, it is a challenge to counsel's failure to challenge the denial at the time it was denied and is quite appropriate for this petition.

Amazingly, the state continues to claim that the Petitioner has somehow " Solemnly admitted in open court that he is in fact guilty of the offense with which he is charged," which thereby makes him somehow subject to the TOLLETT doctrine. The state cannot take very specific and clear words, add the word doctrine to them, and then claim that these words mean something they do not. The Petitioner challenges the state to cite even one single instance in this case where Petitioner "'solemnly' admitted 'in open court' that he is in fact guilty of the offense with which he was charged." SOLEMNLY means: Deeply earnest, serious, and sober; Somberly or gravely impressive; Performed with full ceremony. (American Heritage College Dictionary) Further, this had to be done (admit guilt to offense) "in open court." Apparently Ms. Luzaich attended a different class in English than the rest of us. Perhaps this is simply another attempt by " the state " to manipulate the law and this case in the name of their insane pursuit of WINNING AT ALL COSTS and regardless of the facts and evidence of the case. Petitioner has never "solemnly admitted in open court that he is in fact guilty of the offense with which he was charged. In fact, the record of this case clearly reveals the opposite to be true. The words in TOLLETT have only one very clear meaning. TOLLETT DOES NOT SAY, When a Defendant accepts an Alford plea and maintains his complete and actual innocence, and expressly REFUSES to "solemnly admit in open court that he is in fact guilty of the offense with which he is charged [BECAUSE HE IS NOT], that he may then not thereafter raise independant claims relating to the deprivation of constitutional rights that occurred prior to the entry of the plea. The state cannot FORCE these very clear and specific words in TOLLETT to mean whatever they wish them

to mean so that they can attempt to defeat Petitioner's claim. The state cannot put words into the mouth of the United States Supreme Court, nor can they remove the ones which are there in TOLLETT.

Additionally, if the language in TOLLETT is correct, though it DOES NOT APPLY here for the reasons stated above, then the written plea agreement itself is in direct conflict - the plea agreement expressly preserves pre-plea issues which are of reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings. TOLLETT would also be in direct conflict with the "promise" Ms. Luzaich herself made on July 19, 2001. It was promised that, " What the plea agreement says, you waive your rights to appeal except for issues of constitutional nature, then necessarily written in the plea agreements you can still appeal those." TRANS DATED July 19, 2001, PG. 9, LNS, 3-7. These are the words of Ms. Luzaich herself. The Court thereafter clarifies the same, "Petitioner has no idea why the Supreme Court of Nevada did not address the issues in his direct appeal, all of which were of constitutional magnitude. In the Order of Affirmance, it did not say they were not constitutional, it simply said these issues were waived by signing the plea. Appearingly, constitutional issues are never able to be raised at all after signing a plea of any kind. Clearly then, the state made a promise in the plea, and orally, it had no intention of ever keeping. This alone is sufficient grounds for the grant of relief in this case.

Clearly, there is a severe problem with a case when a Defendant enters a plea agreement wherein it is written in the plea itself that the Defendant may appeal pre-plea issues if based on "reasonable constitutional, jurisdictional or other grounds that challenge

the legality of the proceedings," and then be told by the state and the Supreme Court that ALL pre-plea issues, regardless of their nature, were waived by entering the very plea which preserved them. This breaches the agreement/contract the state entered with the Petitioner, which was entered by the state in order to "induce" him into pleading guilty. What will be the point of entering into any agreements with the state in the future if the state has no intention of honoring their agreements. Apparently, this is what they mean when they speak of "fundamental fairness" and "justice."

The state very proudly proclaims, "Regardless of Defendant's denials that he committed the crimes to which he pled guilty [he did not plead guilty - he pled ALFORD, maintaining his complete and actual innocence or so he believed], it should be noted that in its Order of Affirmance the Nevada Supreme Court concluded that Defendant's plea was freely, knowingly and voluntarily entered." The Court stated, in pertinent part:

> " Based on a totality of the circumstances, we conclude that Schwiger's guilty plea was entered voluntarily, knowingly, and intelligently."

This conclusion by the Court, although the Petitioner very much disagrees with, was based on circumstances which are completely different than they are now. It was this very Order of Affirmance which has given rise to the Petitioner's instant claim that his plea was Involuntarily entered. This is true because, it was not until the Supreme Court rendered its decision that Petitioner became aware that his counsel's advice was egregiously wrong, rendering ineffective assistance and making his plea UNKNOWINGLY and UNINTELLIGENTLY entered. This is because of his belief, "in his mind," that he could appeal those pre-plea issues as advised by counsel on the

record on July 19, 2001 and at their visit that evening, which was wrong. TAYLOR v. WARDEN, 96 Nev. 272, 274 (1980)(the focus of the voluntariness inquiry is upon the frame of mind of the defendant when he decides to plead). Counsels' assurances were supported, clarified, and compounded by the state and the court itself at the July 19, 2001 proceeding. Petitioner does not know how this could be made any more clear. At the time Petitioner decided to plead, he absolutely believed in his mind that he would not be waiving these pre-plea issues. GROUNDS I and II of Petitioner's original petition makes this point abundantly clear.

The state goes on to proudly assert that, "As such, it is of " No consequence " that Defendant continues to allege he was the victim of a conspiracy by his wife, the victim's family, the police or anyone else." This unequivocably proves what Petitioner has been alleging all along - The Petitioner's innocence has never been of ANY CONSEQUENCE to the state of Nevada since this fictitious case began. It therefore does not at all surprise the Petitioner that the state would make such an INDIFFERENT and OBTUSE statement here. Once an arrest takes place, any "search for the truth" completely ends; it then becomes nothing more than a concentrated pursuit to protect that arrest by obtaining a conviction at all costs. This Petitioner has been claiming all along that this case has NEVER once been a "search for the truth," and now the state has admitted it. As is clearly evidenced by this statement, the state could care less whether they send innocent people to prison or whether they keep them there when that person emphatically claims the state has made an egregious mistake. The state does not care what they do or say in their insane attempt to protect their case and corrupt detectives.

It is due to this attitude by the state and their past destruction and withholding of exculpatory, even exonerating evidence in this case that precludes the Petitioner from proffering the evidence and circumstances, in this petition, which will prove his corruption and conspiracy allegations. There is already proof in the record of this case of the state's willingness and, even eagerness, to destroy exculpatory evidence in this case. The Petitioner has therefore already knows what the state would do with the information he would otherwise submit within his pleadings; if provided this advance notice (information), the state would then destroy or "lose" (wink-wink), whatever remains of the proof of his claims. However, the Petitioner again assures this Court that, as he has asserted many times within his pleadings, if provided with the items requested in his REQUEST FOR DISCOVERY and is permitted to use the court's power to subpoena witnesses to testify under oath, and for certain documents; provided the assistance of counsel of his choice and with ample time to prepare, he will absolutely "flush-out" the truth in this case and prove to this Court his allegations of corruption and conspiracy by police and others in this case, It is in fact true. The state KNOWS this, and is the very reason they are fighting so hard to keep the Petitioner from presenting his evidence to prove it. This is also why the state does not care whether an innocent man remains wrongfully imprisoned; they would rather that than to admit their mistake and lose face. The state believes it to be acceptable to knowingly convict an innocent man as long as they do it within the rules, or outside the rules and the law provided they don't get caught at it.

" A free society can exist only to the extent that those

charged with enforcing the law respect it themselves. 'There is no more cruel tyranny than that which is exercised under cover of the law, and with the colors of justice.'" U.S. v. JANNOTTI, 673 F.2d 578, 614.

> Dissenting in OLMSTEAD v. UNITED STATES, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed 944 (1928), Justice Brandeis stated:
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> If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means-to declare that the Government may commit crimes in order to secure the conviction of a private citizen-would bring terrible retribution.

Finally, the state contends that, "the fact that Defendant's guilty plea was by way of the ALFORD decision, is of no consequence. The state claims, " A plea of guilty pursuant to ALFORD dictates that courts may constitutionally accept guilty pleas from defendants who simultaneously protest their innocence when the defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of guilt.

Here, the state continues to make knowingly false statements of "alleged" facts and false presumptions of which there is no factual basis to support. To begin with, the Petitioner did not enter this ALFORD plea "knowingly or intelligently" because his counsels completely misrepresented to him, obviously, what rights he would be waiving (evidenced by the Supreme Court's ruling on direct appeal) and, the record before the judge contained nothing resembling " strong evidence of guilt." In fact, the exact opposite is true; there was absolutely NO EVIDENCE of actual guilt in this case whatsoever, and there still is not. The ONLY so-called evid-