No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

COREY E. JOHNSON — PETITIONER
(Your Name)

vs.

J. KISER, WARDEN ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

COREY E. JOHNSON
(Your Name)

RED ONION STATE PRISON
(Address)
P. O. BOX 970
POUND, VA. 24279
(City, State, Zip Code)

PRISON IDENTIFICATION #1061522
(Phone Number)

QUESTION(S) PRESENTED

1) IS THERE HELP FOR A LONE PETITIONER AND OTHERS SIMILARLY SITUATED; "DENIED" THE WRIT OF HABEAS CORPUS DUE TO NO FAULT OF HIS OWN, ABANDONED BY A DC LAW FIRM WITH A PROVEN TRACK RECORD OF SELLING OUT THE INTEREST OF CLIENTS WHICH HAS COST THE DC BAR $500,000. WHERE THE LOWER COURT "MISCALCULATES THE STATUTE OF LIMITATIONS", NOT ONLY REFUSING TO CORRECT IT'S ERROR, REFUSING TO GRANT PETITIONER RELIEF SOUGHT, ONLY TO BE GRANTED IN A CASE OTHER THAN HIS OWN.

THE APPEALS COURT HAS SANCTIONED SUCH A DEPARTURE, CONSISTENTLY REFERRING APPEALS TO A (2012) PETITION. (I.E. THE CURRENT CERTIORARI BEFORE THIS COURT IS BROUGHT FROM A (2017) FILING). THE PER CURIAM OPINION (APPENDIX A) IS ADDRESSED TO A (2012) FILING AS BEING "SUCCESSIVE".

2). PETITIONERS INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM IS AN INITIAL-REVIEW CLAIM. THIS MAY JUSTIFY AN EXCEPTION TO THE CONSTITUTIONAL RULE THAT THERE IS NO RIGHT COUNSEL IN COLLATERAL PROCEEDINGS. IS THIS THE CASE TO RESOLVE WHETHER THAT EXCEPTION EXIST AS A CONSTITUTIONAL MATTER?

3). WITH NO INTENTION OF OPENING A FLOODGATE OR PLACING A SIGNIFICANT STRAIN ON STATE RESOURCES, PETITIONER SEEKS DUE PROCESS, EQUAL PROTECTION AND A FAIR TRAIL?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA
900 E. MAIN ST.
RICHMOND, VA. 23219

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED
(ATTACHMENT)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ? ; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was FEBRUARY 27, 2018.

[ ] No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: MARCH 27, 2018, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including AUGUST 24, 2018 (date) on JUNE 22, 2018 (date) in Application No. 17 A 1388.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA).

2244(D)

2254(B)(i)

CONSTITUTION OF VIRGINIA.

ART. I § 9 HABEAS CORPUS.

UNITED STATES CONSTITUTION.

ART. I § 9 HABEAS CORPUS.

5TH AMENDMENT, DUE PROCESS.

6 AMENDMENT, TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM, COMPULSORY PROCESS, TO HAVE ASSISTANCE OF COUNSEL FOR DEFENSE.

14TH AMENDMENT, DUE PROCESS.

STATEMENT OF THE CASE

THOMAS DAISY, CLERK, U.S. DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA -(RICHMOND), SAYS IN REFERENCE TO HABEAS FILING 3:07-CV-00731-RLW, "THE FILING WAS A FLUKE."

DOCKET TEXT #1 FOR CASE # 3:17-CV-00033-HEH-RCY, WAS A "MOTION TO APPOINT COUNSEL" TO CORRECT A "FLUKE" FILING. FILED 1-18-2017.

DOCUMENT #16 MEMORANDUM ORDER (DIRECTING PETITIONER TO FILE ON THE STANDARDIZED FORM) FOR CASE #3:17-CV-00033-HEH-RCY, FILED 8-2-2017 SAYS, "IT WAS UNCLEAR WHAT SORT OF ACTION JOHNSON SOUGHT TO INITIATE." "IN HIS SUBMISSIONS, JOHNSON COMPLAINED EXTENSIVELY ABOUT THE REPRESENTATION HE RECEIVED DURING HIS INITIAL FEDERAL HABEAS PROCEEDINGS."

THE COURT CONTINUES, "BY MEMORANDUM ORDER ENTERED FEBRUARY 2, 2017, THE COURT CONDITIONALLY DOCKETED THE ACTION AS A REGULAR CIVIL ACTION .... AND SENT HIM THE DOCUMENTS FOR OBTAINING LEAVE TO PROCEED IN FORMA PAUPERIS."

JOHNSON, A LAYMAN PROCEEDING PRO SE, RECEIVED THE CIVIL DOCKET FOR CASE #3:17CV33HEH-RCY, ACKNOWLEDGED THAT THE COURT CONDITIONALLY DOCKETED THE ACTION AS A REGULAR CIVIL ACTION, HABEAS CORPUS AND WAS UNDER THE IMPRESSION THE COURT WAS TAKING INTO CONSIDERATION "THE MOTION FOR APPOINTMENT OF COUNSEL", AS WELL INVOKING EQUITABLE POWERS, ALLOWING PETITIONER THE GREAT WRIT OF HABEAS CORPUS. (ECF NO. 1).

HENCE, "JOHNSON COMPLAINED EXTENSIVELY ABOUT THE REPRESENTATION HE RECEIVED DURING HIS INITIAL FEDERAL HABEAS PROCEEDINGS."

THE COURT CONCLUDES DOCUMENT #16 @ 3., "JOHNSON MOVES FOR THE APPOINTMENT OF COUNSEL". (ECF NO. 2) "NO CONSTITUTIONAL RIGHT TO HAVE APPOINTED COUNSEL IN POST-CONVICTION PROCEEDINGS EXIST."

CONFUSING TO PETITIONER, A LAYMAN, THE CIVIL DOCKET FOR CASE #3:17-CV-00033-HEH-RCY LIST DOCKET TEXT #1 AS "PETITION FOR A WRIT OF HABEAS CORPUS" AND DOCKET TEXT #2 AS "MOTION TO APPOINT COUNSEL".

PETITIONER RECEIVED (ECF NO.3) THE DOCUMENTS FOR OBTAINING LEAVE TO PROCEED IN FORM PAUPERIS WELL AFTER THE CIVIL DOCKET WHEREIN HE DID UNKNOWINGLY CLARIFY SEEKING TO BRING "HABEAS CORPUS" AND TO MY RECOLLECTION "APPOINTMENT OF COUNSEL".

THE LOWER COURT, ALL THE WHILE KNOWING, AT THIS JUNCTURE, HABEAS CORPUS **NOT** THE PROPER REMEDY.

THE FOURTH CIRCUIT COURT OF APPEALS SAY'S IN THE PER CURIAM OPINION, "COREY E. JOHNSON SEEKS TO APPEAL THE DISTRICT COURT'S ORDER DISMISSING HIS 28 U.S.C. § 2254 (**2012**) PETITION AS SUCCESSIVE." SEE. II. D. 2. ALL 4TH CIR. APPEAL PER CURIAM OPINIONS MAKE REFERENCE (**2012**) PETITION.

HERE, DUE TO THE NUMEROUS AND COMPLEX ISSUES INVOLVED, PETITIONER WILL PRESENT THE FACT IN THE FOLLOWING:

ALSO EXHIBITS WHICH SHOW: (DOCKET TEXT #1 CASE #3:17-CV-00033)

EXHIBIT A. RETAINER. THE BUTLER FIRM RETAINED NEARLY A FULL YEAR IN ADVANCE OF THE HABEAS FILING DEADLINE. ACKNOWLEDGEMENT, "MAY REQUIRE EXHAUSTION IN THE STATE COURTS".

• EXHIBIT B DISTRICT OF COLUMBIA COURT OF APPEALS BOARD ON PROFESSIONAL RESPONSIBILITY HEARING COMMITTEE NUMBER 4 FOUR. IN MATTER OF JAMES Q. BUTLER. IN RE: BUTLER; 2007-D 311 ET AL.

• EXHIBIT C CLIENT INFORMATION: IN RE BUTLER; 2007-D311 ET AL.

• EXHIBIT D IN RE: JAMES Q. BUTLER, DC BAR # 490019. JULY 8, 2009. THE DC COURT OF APPEALS SUSPENDED BUTLER ON AN INTERIM BASIS, EFFECTIVE IMMEDIATELY, BASED ON THE GROUNDS THAT HE APPEARS TO POSE A SUBSTANIAL THREAT OF SERIOUS HARM TO THE PUBLIC.

• EXHIBIT E JAMES Q. BUTLER, ESQ., EXPECTED TO COST DC BAR # 500K IN CLAIMS.

• EXHIBIT F VIRGINIA STATE BAR FOURTH DISTRICT COMMITTEE, SECTION I. RE: IN THE MATTER OF BRYAN J. WALDRON, ESQ., # 71530, VSB DOCKET NO. 09-041-079322.

• EXHIBIT G LETTER OF INTRODUCTION FROM BRYAN J. WALDRON, ESQ., AS NEW VIRGINIA ATTORNEY AT BUTLER LEGAL. THIS INTRODUCTION COMES 3 MONTHS AND 9 DAYS AFTER WALDRON, ESQ., APPEARS AS UNDERSIGNED ATTORNEY REPRESENTING PETITIONERS LEGAL INTEREST.

• EXHIBIT H LETTER OF INTRODUCTION FROM ELIZABETH LAGIER, ESQ., # 73124, AS NEW VIRGINIA ATTORNEY AT BUTLER LEGAL. THIS INTRODUCTION COMES 21 DAYS AFTER WALDRON, ESQ., ALLEGEDLY FILED THE HABEAS PETITION ON PETITIONERS BEHALF.

• EXHIBIT I CIVIL COVER SHEET. LAGIER, ESQ., FRAUDULENTLY PURPORTS THE CIVIL COVER SHEET TO REFLECT 11-17-07. CHANGED FROM 11-30-17 AND INITIALED BY LAGIER, ESQ., TO REFLECT SHE WAS THE ATTORNEY OF RECORD, WHEN NOT.

I. INTRODUCTION

PETITIONER JOHNSON RETAINED JAMES Q. BUTLER, ESQ., # 490014, AND HIS BUTLER LEGAL GROUP (NOW DISBARRED AND NOW CLOSED DUE TO A PROVEN SYSTEMATIC PATTERN OF UNETHICAL CONDUCT) TO FILE A STATE HABEAS CORPUS PETITION ON HIS BEHALF IN STATE COURT. AS EXPLAINED, SET OUT AND UNDERSTOOD IN THE RETAINER LETTER. EXHIBIT A.

UNKNOWN TO PETITIONER JOHNSON AT THE TIME OF HABEAS FILING 3:07-CV-00731-RLW, THE BUTLER FIRM ETAL, ENGAGED IN A PATTERN OF UNETHICAL MISCONDUCT WHICH INCLUDED FRAUD, DISHONESTY, DECEIT, MISREPRESENTATION, SELLING OUT THE INTEREST OF CLIENTS, INTENTIONAL FAILURE TO PURSUE CLIENTS LAWFUL INTEREST, NEGLECTING CLIENT MATTERS, FILING IMPROPER DOCUMENTS ON BEHALF OF CLIENTS, FAILURE TO FILE CLIENT DOCUMENTS, FAILURE TO MAKE PROMISED STEPS ON BEHALF OF CLIENTS AND OTHERWISE FAILURE TO PROTECT CLIENT INTEREST. SEE. EXHIBIT B PAGE 3.

II. HABEAS FILING 3:07-CV-00731-RLW

ALTHOUGH THE BUTLER LEGAL GROUP WAS RETAINED NEARLY A YEAR INADVANCE OF THE FILING DEADLINE TO FILE JOHNSON'S HABEAS PETITION IN STATE COURT, THE PETITION WAS INTENTIONALLY MISFILED (BASED ON CLEAR AND CONVINCING EVIDENCE) IN THE FEDERAL DISTRICT COURT, NOT EXHAUSTING STATE REMEDIES.

THE HABEAS PETITION FILED ON JOHNSONS' BEHALF WAS A MIXED PETITION CONTAINING ONE EXHAUSTED AND ONE NON EXHAUSTED CLAIM.

JOHNSONS' INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM WAS NOT EXHAUSTED IN THE STATES HIGHEST COURT. SEE. DOCKET TEXT #1 FOR CASE # 3:07-CV-00731-RLW. U.S. DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA-(RICHMOND). DISCUSSION TO FOLLOW @ INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM. PAGE 13.

THE PETITION WAS ALSO FILED IN THE (11TH) ELEVENTH HOUR,

LEAVING NO ROOM FOR CORRECTIVE MEASURES. THE HABEAS PETITION WAS REQUIRED TO BE FILED ON 11-17-07, A SATURDAY.

THE PETITION WAS PROPERLY FILED ON MONDAY NOVEMBER 19, 2007. DISCUSSION TO FOLLOW @ <u>THE LOWER COURT MISCALCULATES THE STATUE OF LIMITATIONS</u>. PAGE 23 .

A. <u>THE PETITION CONTAINS "A NUMBER OF DEFECTS"</u>

DOCKET TEXT #4 FOR CASE #3:07-CV-00731-RLW, U.S. DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA -(RICHMOND), READS, "THE PETITION CONTAINS A NUMBER OF DEFECTS." WHICH INCLUDE:

- "FIRST, THE RESPONDENT IS IDENTIFIED AS THE UNITED STATES OF AMERICA."
- THE PETITION IS NOT SIGNED UNDER PENALTY OF PERJURY BY PETITIONER."
- "ADDITIONALLY, IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, THE PETITION FOR A WRIT OF HABEAS CORPUS MUST BE FILED ON A SET OF STANDARDIZED FORMS."
- "THE CURRENT PETITION LACKS THE PROCEDURAL HISTORY OF THE PETITIONERS CLAIM THAT IS DEMANDED ON THE STANDARDIZED FORMS".

B.1. <u>ATTORNEY DISCUSSION</u> #1

AN INQUIRY WAS FILED BY PETITIONER JOHNSON WITH THE VIRGINIA STATE BAR ON BRYAN J. WALDRON, ESQ., #71530. THE VIRGINIA ATTORNEY AT THE BUTLER FIRM WHO APPEARS AS UNDERSIGNED ATTORNEY REPRESENTING JOHNSON'S LEGAL INTEREST.

AFTER (18) EIGHTEEN MONTHS, THE VIRGINIA STATE BAR (4TH) FOURTH DISTRICT COMMITTEE, SECTION (1) ONE, REVEALED:

- WALDRON, ESQ., ACCUSES THE BUTLER LEGAL GROUP OF FRAUD AND INSIST "I DID NOT FILE THE PETITION."
- WALDRON, ESQ., SAY'S "THE FIRM USED HIS SIGNATURE BLOCK

WITHOUT HIS KNOWLEDGE OR AUTHORIZATION."

• ACCORDING TO WALDRON, ESQ., AND OTHER INDIVIDUALS, "THE BUTLER FIRM WAS A DYSFUNCTIONAL ENVIRONMENT." SEE. EXHIBIT F.

ON 2-26-08, 3 MONTHS AND 9 DAYS AFTER WALDRON, ESQ., ALLEGEDLY FILED PETITIONER'S HABEAS, JOHNSON RECEIVED A LETTER OF INTRODUCTION FROM WALDRON, ESQ., AS HIS NEW VIRGINIA ATTORNEY. EXHIBIT G.

PETITIONER JOHNSON HAD NO ATTORNEY REPRESENTING HIS LEGAL INTEREST AT THE 11-17-07 FILING DEADLINE.

IN FACT, MOST OF THE ARGUMENT FILED ON MY BEHALF, PETITIONER SENT THE BUTLER FIRM IN A SAMPLE HABEAS. AT THE DATE OF THIS WRITING, THE PETITIONER HAS NEVER SPOKEN WITH WALDRON, ESQ..

• IN JULY 2007, PETITIONER CALLED THE FIRM AND INQUIRED, "IF THE FIRM NEEDED ANYTHING IN REFERENCE TO THE HABEAS FILING? TOLD "EVERYTHING IS BEING TAKEN CARE OF."

• ON MONDAY OCTOBER 29TH, 2007, PETITIONER CALLED THE FIRM, RAISING CONCERNS ABOUT 1-YEAR STATUTE OF LIMITATIONS. ASSURED BY FIRM OWNER, BUTLER, ESQ., "THE 1-YEAR FEDERAL DEADLINE BEGINS AFTER THE STATE DEADLINE HAS BEEN SATISFIED."

• ON FRIDAY NOVEMBER 9TH, 2007, BUTLER, ESQ., SENT PETITIONER A DRAFT OF THE HABEAS PETITION TO BE FILED ON HIS BEHALF. UNACCEPTABLE AND INCOMPLETE. THE DRAFT LISTED ONLY (2) TWO OF THE (4) FOUR CLAIMS PREVIOUSLY REVEALED IN THE CASE EVALUATION.

IMMEDIATELY CALLED BUTLER LEGAL. "THE DRAFT TO BE FILED ON MY BEHALF, NOT SATISFACTORY." FOR THE NEXT (4) FOUR DAYS PETITIONER WENT BACK AND FORTH IN DISCUSSION WITH ALICIA BATTLE, A PARALEGAL WHO PETITIONER WAS LED TO BELIEVE WAS AN ATTORNEY.

• ON MONDAY NOVEMBER 19TH, 2007, HABEAS PETITION FILED WITH THE FEDERAL DISTRICT COURT. THE FOLLOWING DAY, TUESDAY THE 20TH, PETITIONER RECEIVED A COPY OF PETITION FILED ON HIS BEHALF.

ONCE AGAIN IMMEDIATELY CALLED BUTLER LEGAL. FIRM OWNER JAMES Q. BUTLER, ESQ., DC BAR #490014, NOT AVAILABLE. TO MY SURPRISE, ALICIA BATTLE, WHO NOW IDENTIFIES HERSELF AS A PARALEGAL, NOW STATES "I CAN'T DISCUSS LEGAL ISSUES WITH YOU."

B.2. ATTORNEY DISCUSSION # 2

ON 12-07-07, 21 DAYS AFTER PETITIONERS ORIGINAL HABEAS FILING, PETITIONER RECEIVED A LETTER OF INTRODUCTION FROM ELIZABETH LAGIER, ESQ., #73124, AS PETITIONERS NEW VIRGINIA ATTORNEY AT BUTLER LEGAL. EXHIBIT H.

LAGIER, ESQ., SAYS IN THE INTRODUCTION LETTER, "THE PETITION WAS FILED ADEQUATELY."

HOWEVER, ALONG WITH "A NUMBER OF DEFECTS" SET OUT IN DOCKET TEXT #4 FOR CASE # 3:07-CV-00731, THAT ORIGINAL HABEAS FILING (DOCKET TEXT #1), WAS A MIXED PETITION CONTAINING AN UN-EXHAUSTED CLAIM.

AS A REMINDER, AT THIS POINT I STILL HAVE NOT RECEIVED A LETTER OF INTRODUCTION FROM BRYAN J. WALDRON, ESQ., AS MY ATTORNEY. RECEIVED 2-26-08, 3 MONTHS AND 9 DAYS AFTER HABEAS FILING.

I WAS ALSO JUST INFORMED BY ALICIA BATTLE, A PARALEGAL I THOUGHT WAS COUNSEL, "I CANT DISCUSS LEGAL ISSUES WITH YOU!"

THEREFOR UPON RECEIVING THE LETTER OF INTRODUCTION FROM LAGIER, ESQ., 21 DAYS AFTER THE HABEAS FILED, I WAS ENTHUSED.

I IMMEDIATELY CALLED LAGIER, ESQ., AND INQUIRED ABOUT THE FILING AS WELL AS ISSUES NOT PRESENTED TO THE COURT FOR REVIEW.

LAGIER, ESQ., STATED "SHE WOULD CORRECT THE DEFECTS SET OUT IN DOCKET TEXT #4" AND IN ADDITION "AMEND THE PETITION."

PETITIONERS INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM WAS DEFAULTED IN THE ORIGINAL HABEAS FILING DOCKET TEXT #1 DOCUMENT #1, AS WELL AS THE AMENDED HABEAS FILING DOCUMENT #6, FOR FAILURE TO EXHAUST STATE REMEDIES. SEE INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM PAGE 13

LAGIER, ESQ., IN AN ATTEMPT TO EXCUSE THE EXHAUSTION REQUIREMENT, REASONS ON PAGE 18 OF DOCUMENT #6:

"GROUND 2 (INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL) CAN BYPASS THE STATE HABEAS LEVEL BECAUSE IT FALLS UNDER THE SCOPE OF 2254 (b)(i), CIRCUMSTANCES EXIST THAT RENDER PROCESS INEFFECTIVE TO PROTECT THE RIGHT OF APPLICANT."

HOWEVER AS OFFICERS OF THE COURT, ALL ATTORNEY'S HAVE A CONTINUING OBLIGATION TO DISCLOSE TO THE COURT VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT.

LAGIER, ESQ., TO THE CONTRARY, INSTEAD OF INFORMING THE FEDERAL DISTRICT COURT AS WELL AS PETITIONER JOHNSON HIMSELF OF THE BUTLER LEGAL ENVIRONMENT, "THE BUTLER GROUP WAS A DYSFUNCTIONAL ENVIRONMENT", CHOSE HERSELF TO ADD TO THIS DYSFUNCTION (ET AL) AND COMMIT FRAUD UPON THE COURT.

LAGIER, ESQ., FRAUDULENTLY PURPORTS THE CIVIL COVER SHEET TO REFLECT THAT SHE WAS THE ATTORNEY OF RECORD ON 11-17-07, WHEN SHE WAS NOT. SEE. EXHIBIT I.

AS PREVIOUSLY STATED, OPTIMISTIC AND ENTHUSED I WAS FINALLY DISCUSSING MY CASE WITH AN ATTORNEY ON THE PHONE, LAGIER, SAY'S IN OUR FIRST TELEPHONE CONVERSATION, "GIVE ME A FEW DAYS TO FAMILIARIZE MYSELF/LOOK OVER YOUR PAPERWORK." AS SHE MAKES CLEAR IN THE LETTER OF INTRODUCTION, "AS FILED BY BY BRYAN WALDRON". SEE. EXHIBIT H.

LAGIER, ESQ., MOTIONS THE COURT FOR LEAVE TO SUBSTITUTE ATTORNEY ON 11-30-07. SEE DOCUMENT #2. MOTION TO SUBSTITUTE COUNSEL IS GRANTED 12-18-07. WELL AFTER THE 11-17-07 HABEAS FILING DATE. SEE. CIVIL DOCKET FOR CASE #3:07-CV-00731-RLW.

LAGIER, ESQ., AMENDS JOHNSON'S PETITION ON JANUARY 17, 2008 (DOCUMENT #6), NOT ON NOVEMBER 17, 2007, AS SHE FRAUDULENTLY PURPORTS ON THE CIVIL COVER SHEET. IN ADDITION

SHE FRAUDULENTLY FORGES THE ENTERED DATE. SHE CHANGES IT FROM 11-30-07 (THE DATE MOTION TO SUBSTITUTE ATTORNEY IS MADE DOCUMENT #2), TO 11-17-07 THE DATE ORIGINAL HABEAS CONTAINING "A NUMBER OF DEFECTS FILED." (DOCUMENT #1)). ALTHOUGH MOTION TO SUBSTITUTE GRANTED 12-08-07 SEE. DOCUMENT #4. AND SHE AMENDS JANUARY 17, 2008.

LAGIER, ESQ., VARIFIES THIS FRAUDULENT CHANGE BY INITIALING HER INITIALS. SEE. EXHIBIT I

AGAIN, PETITIONER JOHNSON HAD NO ATTORNEY REPRESENTING HIS LEGAL INTEREST AT THE 11-17-07 FILING DEADLINE. PETITIONER HAD NO FUNCTIONING ATTORNEY OF RECORD. PETITIONER HAD ATTORNEY IN NAME ONLY.

B3. ORDER, "OBTAIN LOCAL COUNSEL", NEVER SATISFIED.

IT APPEARS THE BUTLER FIRM NEVER SATISFIED MEMORANDUM ORDER DOCKET TEXT #16 FOR CASE #3:07-CV-00731 WHICH READS:

> "COUNSEL FOR PETITIONER IS NOT ADMITTED TO PRACTICE IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. COUNSEL FOR PETITIONER IS DIRECT TO OBTAIN LOCAL COUNSEL AND CLARIFY THAT HE HAS DONE SO WITHIN (11) ELEVEN DAYS OF THE DATE OF ENTRY HEREOF."

JOHNSON, A LAYMAN, BELIEVES THE MEMORANDUM ORDER WAS NOT SATISFIED BECAUSE WITH ALL OTHER MEMORANDUM ORDERS, THERE IS A DOCUMENT AN OR ORDER STATING SO.

BRYAN J. WALDRON, ESQ., WHO IS SUBSTITUTED AS COUNSEL FOR PETITIONER (DOCKET TEXTS #10 AND #11) IS THE ATTORNEY WHEN DOCKET TEXT #16 IS ORDERED. WALDRON, ESQ., IS ALSO THE ATTORNEY WHO APPEARS AS UNDERSIGNED ATTORNEY REPRESENTING JOHNSON'S LEGAL INTEREST FOR (DOCKET TEXT #1, DOCUMENT #1), THE ORIGINAL FILING.

MORE, IF LAGIER, ESQ., WAS THE ATTORNEY WHEN MEMORANDUM ORDER DOCKET TEXT #16. THEN WHERE DOES THAT LEAVE THE AMENDED PETITION (DOCKET TEXT #6), FILED ON MY BEHALF?

C. INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM

THE HABEAS PETITION FILED ON PETITIONER JOHNSON'S BEHALF WAS A MIXED PETITION CONTAINING ONE EXHAUSTED AND ONE NON-EXHAUSTED CLAIM.

THE INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM IS NOT EXHAUSTED IN THE STATES HIGHEST COURT.

THE INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM IS AN **INITIAL-REVIEW** CLAIM, WHICH MEANS IN STATES SUCH AS VIRGINIA, HABEAS CORPUS IS THE **FIRST OCCASION** TO RAISE THIS CLAIM.

PETITIONER'S INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM WAS DEFAULTED IN THE ORIGINAL HABEAS FILING (DOCUMENT #1) AND THE AMENDED HABEAS FILING DOCUMENT #6

IN FACT, **ALL CLAIMS** IN JOHNSON'S HABEAS PETITION REST ON AND ARE INCORPORATED INTO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

THE MEMORANDUM OPINION DOCUMENT #11, FOR CASE #3:07-CV-00731-RLW DENYING AND DISMISSING THE PETITION READS:

"PETITIONER CONTENDS THAT THE INEFFECTIVE ASSISTANCE OF COUNSEL, WHICH IS SET FORTH IN CLAIM 2, CONSTITUTE CAUSE TO EXCUSE HIS DEFAULT. AS EXPLAINED BELOW, BECAUSE PETITIONERS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IS ALSO DEFAULTED, IT CANNOT SERVE AS CAUSE TO EXCUSE HIS DEFAULT."

"ACCORDINGLY CLAIM 1 AND 3 WILL BE DISMISSED."

"PETITIONER NEVER PRESENTED CLAIMS 2 AND 4 TO THE SUPREME COURT OF VIRGINIA." "THUS CLAIMS 2 AND 4 ARE DEFAULTED."

(CLAIMS AND INCORPORATION EXPLANATION TO FOLLOW).

C.1 STRICKLAND V. WASHINGTON

TRAIL COUNSEL MADE ERRORS SO SERIOUS THAT COUNSEL WAS NOT FUNCTIONING AS THE "COUNSEL" GUARANTEED THE DEFENDANT BY THE SIXTH AMENDMENT. STRICKLAND V. WASHINGTON 466 U.S. 668 (1984).

INVESTIGATED THE CASE; SUPPRESSED MATERIAL EVIDENCE IN PROSECUTOR HANDS

THERE IS MORE THAN A REASONABLE PROBABILITY THAT THERE WOULD HAVE BEEN NO CONVICTION HAD TRAIL COUNSEL EFFECTIVELY INVESTIGATED THE CASE AND SUPRESSED MATERIAL EVIDENCE IN THE HAND OF THE PROSE-CUTOR, AND ADEQUATELY PRESERVED ISSUES FOR APPEAL.

TRAIL COUNSEL NEVER OBTAINED A COPY OF THE EUROPEAN MARKET VIDEO SURVEILLANCE TAPE IN THE POSSESSION OF THE PROSECUTOR THAT CAPTURED THE ASSAILANT AT THE TIME OF THE CRIME. FAILURE TO INVESTIGATE MAT-ERIAL EVIDENCE IN THE HAND OF PROSECUTION AND LAW ENFORCEMENT CONSTITUTED DEFICIENT PERFORMANCE AND THIS DEFICIENT PERFORMAN-CE PREJUDICED THE DEFENSE SO AS TO DEPRIVE THE DEFENDANT OF A FAIR TRAIL WITH A RELIABLE RESULT.

TRAIL COUNSEL MUST CONDUCT APPROPRIATE INVESTIGATIONS, BOTH FACTUALLY AND LEGALLY, TO DETERMINE WHAT MATTERS OF DEFENSE CAN BE DEVELOPED. THIS INVESTIGATION SHOULD ALWAYS INCLUDE EFFORTS TO SECURE INFORMATION IN THE HANDS OR POSSESSION OF THE PROSECUTOR AND LAW ENFORCEMENT AUTHORITIES. (D.C. CIR. 1973) U.S. V. DECOSTES 487 F.2D 1197.

THE POLICE INTERVIEW CONDUCTED BETWEEN PETITIONER AND DETECTIVES C. JACKSON AND LT. VENUTI, OF THE RICHMOND POLICE DEPARTMENT STATES, "BESIDES THAT, THAT'S ONE CAMERA, THERE WAS ANOTHER CAMERA ON THE EUROPEAN MARKET PARKING LOT CAPTURED YOU COMING THROUGH THE PARKING LOT AND PASSING SOME PEOPLE". (PG.2).

ALSO PAGE(4) FOUR OF THE POLICE INTERVIEW STATES, "AND THAT'S JUST ONE VIDEO CAMERA, YOUR CAPTURED ON THE BP STATION CAM-ERA AND THEN YOU ARE CAPTURED ON THE EUROPEAN MARKET CAM-ERA." "ITS ONE CONTINUOS ACT. YOU ARE RUNNING ACROSS MEADOW STREET, THROUGH THE ALLEY, COMING THROUGH THE PARKING AND ALL THAT'S ON VIDEO."

PAGE (9) NINE OF THE POLICE INTERVIEN, DETECTIVE C. JACKSON SAYS IN REFERENCE TO THE EUROPEAN MARKET VIDEO, "BUT TO CAPTURE THAT YOU RUNNING ON THE PARKING LOT WHICH IS FACING THE CAMERA". "THE

CAMERA RIGHT THERE CAPTURES YOU COMING PAST AND A COUPLE PUTTING THEIR GROCERIES IN THE CAR".

THIS UNINVESTIGATED EVIDENCE SPEAKS DIRECTLY TO THE WEAK RELIABILITY AND CREDIBILITY OF THE PROSECUTION WITNESS. THE EVIDENCE IS MATERIAL FOR IMPEACHMENT PURPOSES WHICH THE DEFENSE COULD HAVE USED TO CONDUCT AN EFFECTIVE DEFENSE AND CROSS-EXAMINATION. U.S. V. BAGLEY 473 U.S. 667.

IF TRAIL COUNSEL HAD MADE A PROPER INVESTIGATION PRIOR TO TRAIL OR IF HE PAID SUFFICIENT ATTENTION TO THE POLICE REPORTS THAT WERE TURNED OVER TO HIM, HE WOULD HAVE BEEN ABLE TO EFFECTIVELY CROSS-EXAMINE THE WITNESS IN REGARD TO CLOTHING WORN BY THE ASSAILANT, FACIAL FEATURES, AND RELIABILITY AND CREDIBILITY OF THE PROSECUTION WITHESSS.

PROSECUTION WITNESS OTIS HUFF'S TESTIMONY LACKS RELIABILITY UNDER THE TOTALITY OF THE CIRCUMSTANCES REQUIRED IN NEIL V. BIGGERS 409 U.S. 188 (1972).

MR. HUFF WAS UNABLE TO IDENTIFY ANY OF THE FACIAL FEATURES OR CLOTHING WORN BY THE ASSAILANT. (TR. 90, 99).

OTIS HUFF (HEREINAFTER "HUFF") TESTIFIED THAT HE SAW A GENTLEMAN RUNNING AFTER THE SHOOTING. (TR. 78). HUFF SAID WHEN HE HEARD THE SHOTS HE PUT HIS HEAD DOWN, AND THEN HE LOOKED UP AND SAW SOMEONE RUNNING. (TR. 79). HUFF THEN TESTIFIED THAT HE SAW THE PERSON RUNNING FROM THE TELEPHONE BOOTH INTO THE ALLEY. (TR. 79). HUFF'S TESTIMONY OFFERS NO EVIDENCE AS TO THE PHONE BOOTHS PROXIMITY TO THE SCENE OF THE CRIME. (TR. 83).

HUFF TESTIFIED THAT HE DID NOT SEE JOHNSON AS THE SHOOTING WAS GOING ON, AND THAT THE ASSAILANT DID NOT LOOK OVER TO WHERE HUFF WAS STANDING. (TR. 89).

HUFF DID NOT SEE A WEAPON IN THE ASSAILANTS HAND. (TR. 89). HUFF TESTIFIED THAT HE DID NOT SEE JOHNSON AS THE SHOOTING WAS GOING ON, AND THAT THE ASSAILANT DID NOT LOOK OVER TO WHERE ~~JOHNSON~~ HUFF WAS STANDING. (TR. 89).

HUFF THEN CONTRADICTS HIMSELF ON THE MOST IMPORTANT AND CRUCIAL FACT IN ISSUE: WHETHER OR NOT HUFF ACTUALLY SAW JOHNSON SHOOT A WEAPON. HUFF TESTIFIED THAT HE SAW JOHNSON FIRE A SHOT. (TR. 90). HUFF THEN TESTIFIED HE DID NOT SEE THE SHOOTER UNTIL AFTER THE SHOTS WERE FIRED. (TR. 90).

HUFF WEARS EYE GLASSES AND HE WAS DRINKING ON THE DAY IN QUESTION. (TR. 92). HUFF'S CONTRADICTORY TESTIMONY, BAD EYESIGHT, AND ALCOHOL CONSUMPTION ARE FACTORS WHICH INDICATE THAT HUFF IS CONFUSED ABOUT THE SEQUENCE OF EVENTS IN QUESTION, AND THE IDENTITY OF THE ASSAILANT.

WHEN ASKED ABOUT HOW HE WAS ABLE TO IDENTIFY THE APPELLANT, HUFF SAID HE "SAW HIS PICTURE IN THE NEWSPAPER". (TR. 79). DETECTIVES SHOWED HUFF A PHOTOGRAPH OF JOHNSON AFTER HE SAW JOHNSON'S PICTURE IN THE PAPER. (TR. 98).

PRIOR TO BEING SHOWN THE PHOTOGRAPHS, HUFF KNEW THAT JOHNSON HAD BEEN ARRESTED FOR THE CRIME. (TR. 98) HUFF TESTIFIED THAT PRIOR TO VIEWING THE PHOTOGRAPHS, "HE KNEW IN HIS HEART OF HEARTS" THAT JOHNSON'S PHOTOGRAPH WOULD BE IN THE PHOTOGRAPH LINE-UP. (TR. 99).

HUFF TESTIFIED THAT AS A RESULT, HE PICKED JOHNSON'S PHOTOGRAPH OUT AS THE PERSON WHO COMMITTED THE CRIME IN QUESTION. (TR. 99).

THE EVIDENCE PLAINLY SUGGEST HUFF HAD A PRECONCEIVED NOTION (KNEW ABOUT THE PROGRESS OF INVESTIGATION OF THE DEFENDANT), THAT JOHNSON COMMITTED THE OFFENSE IN QUESTION BECAUSE HE SAW JOHNSON'S PICTURE IN THE NEWSPAPER, HE KNEW JOHNSON WAS A SUSPECT IN THE CRIME, AND HE KNEW JOHNSON HAD BEEN ARRESTED FOR THE CRIME.

WITH FOREKNOWLEDGE OF JOHNSON'S ARREST, THE PHOTOGRAPHS OF THE APPELLANT WHICH WERE SHOWN TO HUFF WERE UNDULY SUGGESTIVE AS TO THE ACTUAL IDENTITY OF THE ASSAILANT.

AS STATED, THE CRITERIA FOR DETERMINING WHETHER A PAR -

TICULAR IDENTIFICATION IS RELIABLE WERE LISTED BY THIS SUPREME COURT IN NEIL V. BIGGERS 409 U.S. 188 (1972):

THE FACTORS TO BE CONSIDERED IN EVALUATING THE LIKELIHOOD OF MISIDENTIFICATION INCLUDE THE OPPORTUNITY OF THE WITNESS TO VIEW THE SUSPECT AT THE TIME OF THE CRIME, THE WITNESS'S DEGREE OF ATTENTION, THE ACCURACY OF THE WITNESS'S DESCRIPTION OF THE CRIMINAL, THE LEVEL OF CERTAINTY DEMONSTRATED BY THE WITNESS AT THE CONFRONTATION, AND THE LENGTH OF TIME BETWEEN THE CRIME AND THE CONFRONTATION.

GIVEN THE TOTALITY OF THE CIRCUMSTANCES INVOLVED, HUFF'S TESTIMONY CREATES A REASONABLE DOUBT AS TO THE ACTUAL IDENTITY OF THE ASSAILANT.

TRAIL COUNSEL'S INEFFECTIVENESS DENED THE PETITIONER DUE PROCESS. EQUAL PROTECTION AND A FAIR TRAIL AS GUARANTEED BY THE U.S. CONSTITUTION.

PRESERVE ISSUES FOR APPEAL

THIS CASE INVOLVES A CRIME CAPTURED ON SURVEILLANCE VIDEO TAPE.

THE GOVERNMENT INTRODUCED INTO EVIDENCE, ON DIRECT EXAMINATION OF THE GOVERNMENT WITNESS, THE SURVEILLANCE VIDEO TAPE EVIDENCE AS COMMONWEALTH EXHIBIT #2.

THE SURVEILLANCE VIDEO TAPE EVIDENCE INTRODUCED AS COMMONWEALTH EXHIBIT #2, WAS PLAYED FOR THE JURY, THE SOLE TRIER OF FACTS AND CREDIBILITY.

THE PROSECUTION WITNESS, DARYL SIMM'S, TESTIFIED TO EVENTS IN QUESTION CONTAINED WITHIN THIS SURVEILLANCE VIDEO TAPE EVIDENCE.

ON CROSS-EXAMINATION, DEFENSE COUNSEL STATED AT TRAIL THAT HE SOUGHT TO PLAY THIS SURVEILLANCE VIDEO TAPE EVIDENCE, PREVIOUSLY INTRODUCED INTO EVIDENCE AS COMMONWEALTH'S EXHIBIT #2, IN ORDER TO IMPEACH WITNESS TESTIMONY.

THE ATTEMPTED CROSS-EXAMINATION WAS CONCERNED WITH MATTERS ELICITED ON EXAMINATION IN CHIEF AND IS RELATED TO MATTERS

PUT IN ISSUE BY THE WITNESS'S DIRECT TESTIMONY, ON MATTERS RELEVANT TO THE CASE.

DEFENSE COUNSEL STATED HE WAS GOING TO SHOW THE VIDEO TAPE IN ORDER TO ADDRESS DESCREPENCIES AND INCONSISTENCIES IN THIS TESTIMONY. (TR. 132).

THE COMMONWEALTH OBJECTED TO DEFENSE COUNSEL PLAYING THE SURVEILLANCE VIDEO TAPE EVIDENCE, PREVIOUSLY INTRODUCED INTO EVIDENCE BY THE COMMONWEALTH AS COMMONWEALTHS EXHIBIT #2, AS WELL AS PUT IN ISSUE ON DIRECT EXAMINATION OF THE PROSECUTION WITNESS ON CROSS-EXAMINATION.

GOOD CAUSE EXCEPTION TO VIRGINIA SUPREME COURT RULE 5A:18 SHOWN

ON DIRECT APPEAL, THE VIRGINIA COURT OF APPEALS MISREPRESENTS THE EVENTS AT TRAIL. THE COURT SAYS IN MEMORANDUM OPINION RECORD NO. 1975-05-02, FOR CIRCUIT COURT NOS. CR05-563-F, CR05-565-F AND CR05-569-F:

"COUNSEL THEN ATTEMPTS TO 'ADMIT' A VIDEO INTO EVIDENCE."

THIS IS A MISLEADING ASCERTION AND IS NOT IN ACCORD WITH THE FACTS. THE FACTS ARE THAT THE DEFENSE DID NOT ATTEMPT TO 'ADMIT' THE SURVEILLANCE VIDEO INTO EVIDENCE. THE GOVERNMENT INTRODUCED THE VIDEO INTO EVIDENCE AS WELL AS PUT INTO ISSUE ON DIRECT EXAMINATION OF THE PROSECUTION WITNESS. (TR. 47).

THE OPINION GOES ON TO READ, "BECAUSE THE RECORD FAILS TO CONTAIN A PROFFER, RULE 5A:18 BARS OUR CONSIDERATION."

FIRST AND FOREMOST, THE COMMONWEALTH WAIVED THE OPPORTUNITY TO OBJECT TO THE USE OF THIS EVIDENCE ON CROSS-EXAMINATION, BY OFFERING THE SURVEILLANCE VIDEO TAPE EVIDENCE ITSELF ON DIRECT EXAMINATION OF THE PROSECUTION WITNESS. SEE. THE LAW OF EVIDENCE BY C. FRIEND. C OBJECTION-WAIVER § 8-4:

THE GENERAL RULE IS "THAT WHEN A PARTY OBJECTS TO EVIDENCE HE CONSIDERS IMPROPER BUT INTRODUCES ON HIS OWN BEHALF EVIDENCE OF THE SAME CHARACTER. HE WAIVES HIS OBJECTION WHEN THE PARTY MAKING THE OBJECTION LATER INTRODUCES THE SAME EVIDENCE". "IT IS PROPERLY AND LOGICALLY APPLICABLE IN ANY CASE, REGARDLESS OF THE ORDER

OF INTRODUCTION OF THE PARTY WHO HAS BROUGHT OUT THE EVIDENCE IN QUESTION OR WHO HAS PERMITTED IT TO BE BROUGHT OUT, IT CAN FAIRLY BE RESPONSIBLE FOR IT'S PRESENCE IN THE CASE".

THE LAW OF EVIDENCE IN VIRGINIA @ CROSSEXAMINATION § 3-8 BY C. FRIEND, THE RIGHT OF CROSS-EXAMINATION IS AN ESSENTIAL PART OF THE TRAIL PROCESS. "IT IS ONE OF THE MOST ZEALOUSLY GUARDED RIGHTS IN THE ADMINISTRATION OF JUSTICE". IT'S PURPOSE IS TO BRING OUT THE TRUTH. IT IS THE ACID TEST TO BE APPLIED TO A RECALCITRANT WITNESS, AND IS ALSO PROPERLY ALLOWED TO TEST WITNESS CREDIBILITY. IN CRIMINAL CASES, IT IS REQUIRED BY THE CONSTITUTION PROVISION GUARANTEEING THE RIGHT OF CONFRONTATION. THE RIGHT ALSO EXIST IN CIVIL CASES. THE JUSTIFICATION FOR THAT RIGHT IS THAT A CONVERSE RULE WOULD BE PREJUDICIAL TO THE PARTY DENIED THE RIGHT OF CROSS-EXAMINATION.

THE U.S. SUPREME COURT HELD, "STATE COURTS MAY NOT AVOID DECIDING FEDERAL ISSUES BY INVOKING PROCEDURAL RULES THAT DO NOT APPLY. HAWTHORN V. LAVORN 457 U.S. 255 (1982). OTHERWISE STATECOURTS WOULD BE ABLE TO ENGAGE IN AN ARBITRARY APPLICATION OF STATE PROCEDURAL RULES TO THWART FEDERAL HABEAS REVIEW OF CONSTITUTIONAL ISSUES THAT THE ADEQUACY REQUIREMENT WAS DESIGNED TO PREVENT.

ALSO, "A BASIS OF A DECISION APPLIED INFREQUENTLY, UNEXPECTEDLY, OR FREAKISHLY MAY BE INADEQUATE, FOR THE LACK OF NOTICE AND CONSISTENCY MAY SHOW THAT THE STATE IS DESCRIMINATING AGAINST THE FEDERAL RIGHT. JOHNSON V. MISSISSIPPI 486 U.S. 578. (1985).

IN NEELY V. COMMONWEALTH 17 VA. APP. 349 (1993), THE VIRGINIA APPEALS COURT HELD." THAT THE RIGHTS COMPULSORY PROCESS, CONFRONTATION AND DUE PROCESS, GIVE THE DEFENDANT A CONSTITUTIONAL RIGHT TO PRESENT RELEVANT EVIDENCE"

THE GOVERNMENT CONSISTENTLY REFERS TO THE VIDEO TAPE EVIDENCE IN-ORDER TO CONVINCE THE JURY TO FIND THE COMMONWEALTH'S VERSON OF EVENTS MORE CREDIBLE. (TR. 179). AS WELL AS VOUCHING FOR THE CREDIBILITY OF THE WITNESS. (TR. 181).

A DEFENDANT CANNOT BE DEPRIVED OF THE OPPORTUNITY TO PUT HIS EVIDEN-

CE AND VERSION OF THE FACTS BEFORE THE JURY SO AS TO DEPRIVE A CRIMINAL DEFENDANT OF HIS SIXTH AMENDMENT RIGHT TO CONFRONT AND CROSS-EXAMINE HIS ACCUSE OR SIMPLY BECAUSE THE TRAIL COURT FINDS THE PROSECUTRIX VERSION OF EVENTS MORE CREDIBLE THAN THE DEFENDANT.

THE COMMONWEALTH SAYS ON PAGE 181 OF THE TRANSCRIPT, "NONE OF WHAT DARYL SIMM'S SAYS IS CONTRADICTORY TO WHAT WE HAVE IN THIS VIDEO", AND "EVERYTHING THAT DARYL SIMM'S SAYS IS CONSISTENT WITH WHAT WE HAVE IN THE VIDEO".

THE U.S. SUPREME COURT STATES THAT A PROSECUTOR VOUCHING FOR THE CREDIBILITY OF THE WITNESS ... POSES TWO DANGERS. SUCH COMMENTS CAN CONVEY THE IMPRESSION THAT EVIDENCE NOT PRESENTED TO THE JURY, BUT KNOWN TO THE PROSECUTOR SUPPORTS THE CHARGES AGAINST THE DEFENDDENT AND CAN THUS JEOPARDIZE THE DEFENDENTS RIGHT TO BE TRIED SOLELY ON THE BASIS OF THE EVIDENCE PRESENTED TO THE JURY, AND THE PROSECUTOR'S OPINION CARRIES WITH IT THE IMPRIMATUR OF THE GOVERNMENT AND MAY INDUCE THE JURY TO TRUST THE GOVERNMENT'S JUDGEMENT RATHER THAN IT'S OWN VIEW OF THE EVIDENCE. U.S. V. YOUNG 470 U.S. 1 (1985).

DEFENSE COUNSEL'S FAILURE TO PRESERVE THE ISSUE FOR APPEAL AND OR GIVE THE TRAIL COURT THE OPPORTUNITY TO CORRECT AND RESOLVE THE ISSUE AT TRAIL, WAS FAVORABLE TO THE PROSECUTION AND DAMAGING TO PETITIONER, AFFECTING THE TRAIL WITH ERRORS OF A CONSTITUTIONAL MAGNITUDE.

DENIAL OF RIGHTS UNDER THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT

RULES OF EVIDENCE RULE 611 (B) SCOPE OF CROSS-EXAMINATION, CROSS-EXAMINATION SHOULD BE LIMITED TO THE SUBJECT MATTER OF DIRECT EXAMINATION AND MATTERS AFFECTING THE CREDIBILITY OF THE WITNESS.

IT IS PROVIDED THAT "A PARTY CALLED TO TESTIFY FOR ANOTHER, HAVING AN ADVERSE INTREST, MAY BE EXAMINED BY SUCH OTHER PARTY ACCORDING TO THE RULES OF CROSS-EXAMINATION. CONSTITUTION OF VIRGINIA.

THE UNITED STATES CONSTITUTION PROVIDE SUCH SAFEGUARDS FOR THE PROTECTION OF INDIVIDUAL RIGHTS. THESE RIGHTS AND REQUIREMENTS HAVE

BEEN EXPANDED BY SUPREME COURT DECISIONS AND INCLUDE THE **OPPORTUNITY TO CONFRONT ACCUSERS** AND TO **PRESENT EVIDENCE ON ONES OWN BEHALF.**

THE RIGHTS TO COMPULSORY PROCESS, CONFRONTATION AND DUE PROCESS, GIVE THE DEFENDANT A CONSTITUTIONAL RIGHT TO PRESENT RELEVANT EVIDENCE.

MODERN SUPREME COURT CASE LAW HAS DEFINED THE CONFRONTATION CLAUSES VERY MISSION AS "PROMOTING THE ACCURACY OF THE TRUTH- DETERMINING PROCESS IN CRIMINAL TRAILS", AND LABELING CROSS-EXAMINATION, "THE GREATEST LEGAL ENGINE EVER INVENTED FOR THE DISCOVERY OF THE TRUTH." KENTUCKY V. STINCER 482 U.S. 783 (1987).

IN A LONG LINE OF CASES THAT INCLUDE : POWELL V. ALABAMA 287 U.S. 45 (1932), JOHNSON V. ZERBST 304 U.S. 458 (1938) AND GIDEON V. WAINWRIGHT 372 U.S. 335 (1963), THE COURT HAS RECOGNIZED THAT THE SIXTH AMENDMENT RIGHT TO COUNSEL EXIST, AND IS NEEDED, IN ORDER TO PROTECT THE FUNDAMENTAL RIGHT TO A FAIR TRAIL.

COUNSEL CAN DEPRIVE A DEFENDANT OF THE RIGHT TO EFFECTIVE ASSISTANCE, BY FAILING TO RENDER "ADEQUATE LEGAL ASSISTANCE". CUYLER V. SULLIVAN 446 U.S. 344.

THE U.S. CONSTITUTION GUARANTEES A FAIR TRAIL THROUGH THE **DUE PROCESS CLAUSE**, BUT IT DEFINES THE BASIC ELEMENTS OF A FAIR TRAIL LARGELY THROUGH THE SEVERAL PROVISIONS OF THE SIXTH AMENDMENT, INCLDING THE COUNSEL CLAUSE :

"IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO ... **BE CONFRONTED** WITH THE WITNESS AGAINST HIM, TO HAVE **COMPULSORY PROCESS** FOR OBTAINING WITNESS IN HIS FAVOR, AND TO HAVE **ASSISTANCE OF COUNSEL** IN HIS DEFENSE!"

THE SIXTH AMENDMENTS CONFRONTATION CLAUSE PROVIDES A CRIMINAL DEFENDANT THE RIGHT TO DIRECTLY ENCOUNTER ADVERE WITNESS AND THE RIGHT TO CROSS-EXAMINE ADVERSE WITNESS'S. BY GUARANTEEING THESE RIGHTS, THE CONFRONTATION CLAUSE SERVES TO "ENSURE THE RELIABILITY OF THE EVIDENCE AGAINST THE CRIMINAL DEFENDANT BY SUBJECTING IT TO RIGOROUSE TESTING" IN AN ADVERSARIAL PROCEEDING.

THE RIGHT TO CROSS-EXAMINE, PROTECTED BY THE CONFRONTATION CLAUSE

IS ESSENTIALLY A FUNCTIONAL DESIGNED RIGHT TO PROMOTE RELIABILITY IN THE TRUTH FINDING FUNCTION OF A CRIMINAL TRAIL, NOT AN EMPTY PROCEDURE. KENTUCKY V. STINCER

A DEFENDANT IN A STATE COURT PROCEEDING HAS A RIGHT, GUARANTEED BY THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION, "TO BE CONFRONTED WITH THE WITNESS AGAINST HIM". POINTER V. TEXAS 380 U.S. 400 (1965).

THE U.S. SUPREME COURT HELD THE OPPORTUNITY TO PRESENT A COMPETENT DEFENSE "WOULD BE AN EMPTY ONE IF THE STATE WERE PERMITTED TO EXCLUDE COMPETENT, RELIABLE EVIDENCE BEARING ON CREDIBILITY, WHEN SUCH EVIDENCE IS ESSENTIAL TO DEFENDING CLAIM OF INNOCENCE". CRANE V. KENTUCKY 476 U.S. 683 (1986).

"THE ESSENTIAL PURPOSE OF CONFRONTATION IS TO SECURE FOR THE OPPONENT THE OPPORTUNITY TO CROSS-EXAMINE WITNESS'S". DELAWARE V. VAN ARSDALL 475 U.S. 673 (1986). "IF A DEFENDANT IS PREVENTED FROM DOING SO HE STATES A VIOLATION OF THE CONFRONTATION CLAUSE".

PETITIONER HAS SHOWN THAT COUNSELS PERFORMANCE WAS DEFICIENT. COUNSEL MADE ERROR'S SO SERIOUS THAT COUNSEL WAS **NOT FUNCTIONING** AS THE COUNSEL GUARANTEED THE DEFENDANT BY THE SIXTH AMENDMENT. STRICKLAND. TRAIL COUNSEL'S INEFFECTIVENESS DENIED THE PETITIONER OF DUE PROCESS, EQUAL PROTECTION AND A FAIR TRAIL GUARANTEED BY THE U.S. CONSTITUTION.

THE CONFRONTATION CLAUSE ENABLES THE DEFENDANT NOT MERELY TO HEAR THE WITNESS STORY BUT TO DIRECTLY QUESTION AND CROSS-EXAMINE IT - TO SHOW THE JURY AND THE PUBLIC WHERE HOLES ARE AND TO INVITE THE WITNESS TO SUPPLEMENT OR CLARIFY OR REVISE THE STORY, SO THAT THE JURY CAN HEAR THE WHOLE TRUTH.

THE CONFRONTATION CLAUSE SAYS THAT THE ACCUSED HAS A RIGHT TO OBSERVE AND CROSS-EXAMINE THE GOVERNMENTS WITNESS'S, BUT SURELY THE ACCUSED MUST HAVE A RIGHT TO OBSERVE THE GOVERNMENTS PHYSICAL EVIDENCE.

WE MUST PROPERLY READ THE WORD WITNESS'S TO ENCOMPASS **VIDEO TAPES**, TRANSCRIPS, DEPOSITIONS AND AFFADAVIDS WHEN PREPARED FOR THE COURTS USE AND **INTRODUCED AS EVIDENCE**.

LOWER COURT MISCALCULATES THE STATUTE OF LIMITATIONS

PETITIONERS HABEAS REQUIRED FILED ON 11-17-07, A SATURDAY. PETITION TIMELY FILED ON 11-19-07, MONDAY. THE LOWER COURT MISCALCULATED THE STATUTE OF LIMITATIONS. MEMORANDUM OPINION, DOCUMENT #12 PAGE 4, FOOTNOTE #4, INCORRECTLY SAY'S, "AS PREVIOUSLY NOTED, FINAL JUDGEMENT WAS IMPOSED BY THE COURT ON MAY 23, 2005 AND PETITIONERS DIRECT APPEAL CONCLUDED ON AUGUST 29, 2006. THUS, ANY STATE PETITION FOR A WRIT OF HABEAS CORPUS WAS REQUIRED TO BE FILED BY AUGUST 29, 2007."

THIS DOES NOT TAKE INTO EFFECT THE REHEARING IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON FRIDAY THE 17TH DAY OF NOVEMBER, 2006. RECORD NO. 060908. COURT OF APPEAL NO. 1975-05-2.

RESPONDENT STILL LISTED AS "UNITED STATES OF AMERICA"

ALL INFORMAL BRIEFS FILED IN THE 4TH CIRCUIT COURT OF APPEALS FROM CASE #3:07-CV-00731-RLW, STILL LIST RESPONDENT AS "UNITED STATES OF AMERICA". (I.E. 17-6215, 16-7521, AS FAR BACK AS NO. 13-6778)

HOWEVER, DOCKET TEXT #4 FOR CASE #3:07-CV-731, "THE PETITION CONTAINS A NUMBER OF DEFECTS". SAYS, "FIRST, THE RESPONDENT IS IDENTIFIED AS THE UNITED STATES OF AMERICA".

IF LAGIER, ESQ., AMENDED THE PETITION (DOCUMENT #6) TO CORRECT ERRORS, WHY NOT CORRECTED? UNLESS DOCUMENT #16 (ORDER) "OBTAIN LOCAL COUNSEL" NEVER SATISFIED, AND HER AMENDMENT LACKED LEGAL AUTHORITY.

4TH CIRCUIT APPEAL COURT PER CURIAM OPINIONS REFERENCE 2012 PETITION

INFORMAL BRIEF PER CURIAM OPINIONS READ, "COREY E. JOHNSON .... DENY-RELIEF ON HIS 28 U.S.C. § 2254 (2012) PETITION".

THIS CURRENT MATTER 3:17-CV-00033-HEH-RCY SAY'S, "COREY E. JOHNSON SEEKS TO APPEAL .... HIS 28 U.S.C § 2254 (2012) PETITION AS SUCCESSIVE."

3:17-CV-00033, CLEARLY A PETITION FILED IN (2017) AS "SUCCESSIVE".

NEVERTHELESS, PETITIONER HAS MADE KNOWN TO THE COURT ON NUMEROUS OCCASIONS HE SEEKS RECONSIDERATION (2007) NOT (2012) PETITION. TO NO AVAIL. PETITIONER DID IN FACT FILE AN UNAUTHORIZED PETITION 3:12-CV-00608 IN (2012).

THE PETITIONER A LAYMAN STRONGLY BELIEVES THE COURT REFERENCES THE (2012) PETITION AS JOHNSON'S FIRST FILING BECAUSE THE FIRST FILING 3:07-CV-731 - IS JUST AS DESCRIBED BY A CLERK OF THE COURT. "A FLUKE".

REASONS FOR GRANTING THE PETITION

THE UNITED STATES SUPREME COURT HAS MADE CLEAR THAT OFTEN THE "EXERCISE OF A COURTS EQUITY POWERS ... MUST BE MADE ON A CASE BY CASE BASIS." IN EMPHASIZING THE NEED FOR "FLEXIBILITY" FOR AVOIDING "MACHANICAL RULES", WE HAVE FOLLOWED A TRADITION IN WHICH COURT OF EQUITY HAVE SOUGHT TO "RELIEVE HARDSHIPS WHICH, FROM TIME TO TIME, ARISE FROM A FAST AND HARD ADHERENCE" TO MORE ABSOLUTE LEGAL RULES, WHICH, IF STRICKLY APPLIED, THREATEN THE "EVILS OF ARCHAIC RIGIDITY." THE "FLEXIBILITY" INHERENT IN "EQUITABLE PROCEDURE" ENABLE COURTS "TO MEET NEW SITUATIONS THAT DEMAND EQUITABLE INTERVENTION, AND TO ACCORD ALL THE RELIEF NECESSARY TO CORRECT PARTICULAR INJUSTICES." (PERMITTING POST-DEADLINE FILING OF BILL OF REVIEW). COURTS OF EQUITY CAN AND DO DRAW UPON DECISIONS MADE IN SIMILIAR CASE FOR GUIDANCE, EXCERCISING JUDGEMENT IN LIGHT OF PRIOR PRECEDENT, BUT WITH AWARENESS OF THE FACT THAT SPECIFIC CIRCUMSTANCES, OFTEN HARD TO PREDICT IN ADVIANCE, COULD WARRANT SPECIAL TREATMENT IN AN APPROPRIATE CASE.

THIS IS A JUDGEMENT WHICH OUGHT NOT, IN EQUITY AND GOOD CONSCIENCE, TO BE ENFORCED, WITH A GOOD DEFENSE TO THE ALLEGED CAUSE OF ACTION ON WHICH THE JUDGEMENT IS FOUNDED.

THE DAY TO DAY OPERATIONS AT THE BUTLER LEGAL FIRM WAS A TRICK. A DELIBERATE SCHEME TO DIRECTLY SUBVERT THE JUDICIAL PROCESS. WITH A PROVEN SHOWING OF CONCIOUS WRONGDOING AND ARTIFICE. CLEVER AND ARTFULL SKILL AND STRATAGEN, WITH FALSE AND INSINCERE BEHAVIOR, TOWARD CLIENTS.

BUTLER, ESQ., HAS KNOWINGLY AND VOLUNTARILY ACKNOWLEDGED THE TRUTH OF THE STIPULATED MATERIAL FACTS AND MISCONDUCT. SEE. EXHIBIT B.

JAMES Q. BUTLER, ESQ., AND HIS LEGAL FIRM ET AL ; EXHIBITED CONDUCT THAT INVOLVED " ISSUES OF GREAT PUBLIC MOMENT." THE DC COURT OF APPEALS SAY'S BUTLER, ESQ., "APPEARS TO POSE A SUBSTANTIAL THREAT OF SERIOUS HARM TO THE PUBLIC." EXHIBIT D .

PETITIONER JOHNSON WAS DENIED THE GREAT WRIT OF HABEAS CORPUS DUE TO NO FAULT OF HIS OWN . DISMISSAL OF A FIRST FEDERAL HABEAS PETITION IS A PARTICULARLY SERIOUS MATTER , FOR THAT DISMISSAL DENIES THE PETITIONER THE PROTECTIONS OF THE GREAT WRIT ENTIRELY , RISKING INJURY TO AN IMPORTANT INTEREST IN HUMAN LIBERTY.

THE HABEAS PETITION FILED ON PETITIONER JOHNSON'S BEHALF WAS A MIXED PETITION CONTAING EXHAUSTED AND NON EXHAUSED CLAIMS, IN BOTH THE ORIGINIAL FILING (DOCUMENT # 1) AND AMENDED HABEAS FILING (DOCUMENT # 6).

THE INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM IS AN **INITIAL-REVIEW CLAIM** , WHICH MEANS IN STATES SUCH AS VIRGINIA, HABEAS CORPUS IS THE **FIRST OCCASSION** TO RAISE THIS CLAIM.

ALL CLAIMS IN JOHNSON'S HABEAS PETITION REST ON AND ARE INCORPORATED INTO THE INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM.

THE BUTLER FIRM ET AL CAUSED PETITIONER JOHNSON TO LOSE WHAT WAS LIKELY HIS SINGLE OPPORTUNITY FOR FEDERAL HABEAS REVIEW OF THE LAWFULNESS OF HIS IMPRISONMENT.

COMMON SENSE DICTATES THAT A LITIGANT CANNOT BE HELD RESPONSIBLE FOR THE CONDUCT OF AN ATTORNEY , BUTLER, ESQ., ET AL , NOT OPERATING AS JOHNSON'S AGENT, BUT WITH INTENT TO SELL OUT HIS LEGAL INTEREST.

A HABEAS LAWYER DOES NOT ACT AS CLIENTS AGENT WHEN HE TAKES A FEE TO FILE A CASE AND **THEN DELIBERATELY FAILS TO DO SO** . DEPRIVING HIS CLIENT OF AN OPPORTUNITY TO BE HEARD.

WHEN A JUDGEMENT IS OBTAINED IN THIS MANNER, A PARTY, THROUGH NO FAULT OF HIS OWN HAS HAD NO OPPORTUNITY TO PRENT AN OTHERWISE MERITORIOUS CLAIM OR DEFENSE, WHICH PETITIONER JOHNSON HAD AND MAY HAVE PREVAILED.

"WHEN AN ATTORNEY CEASES ALTOGETHER TO SERVE THE INTEREST OF HIS CLIENT. THE LAW OF AGENCY IS CLEAR THAT THE ATTORNEY ACTS ALONE."
BALDAQUE V. U.S 338 F.3D 145

EXTENDING THIS RULE TO THE HABEAS CONTENT, "IT HAS BEEN SUGGESTED THAN WHEN AN ATTORNEY'S CONDUCT IS SO EGREGIOUS IT AMOUNTS TO A DEFACTO TERMINATION OF REPRESENTATION, IT WOULD BE IMPROPER TO HOLD THE CLIENT TO THE ACTIONS OF HIS AGENT."

PETITIONER JOHNSON NEVER RECEIVED A COPY OF RESPONDENTS MOTION TO DISMISS AND RULE 5 ANSWER, AS SET OUT IN THE RULES GOVERNING 2254.

THERE WAS ALSO NO REBUTTLE OR TRAVERSE, TO THE MOTION TO DISMISS, FILED ON PETITIONERS BEHALF.

FINALLY MY MOTHER UNEXPECTEDLY MADE A TRIP TO THE LAW OFFICE OF THE BUTLER FIRM IN WASHINGTON, DC.

UNTIL THIS TIME PETITIONER HAD NO CONCLUSIVE REASON FOR NOT BELIEVING THE REPRESENTATION OF THE BUTLER FIRM.

LATE APRIL, PETITIONER JOHNSON FILED AN INQUIRY WITH THE VIRGINIA STATE BAR ON BRYAN J. WALDRON, ESQ., #71530, THE VIRGINIA ATTORNEY AT BUTLER LEGAL ALLEGEDLY REPRESENTING MY HABEAS INTEREST.

SOON AFTER, JAMES A. DEVITA, ESQ., #46230, SEEKS A CERTIFICATE OF APPEALABILITY ON MY BEHALF IN THE FOURTH CIRCUIT COURT OF APPEALS. INFORMAL PRELIMINARY BRIEFING ORDER 08-8081.

THEREAFTER, PETITIONER JOHNSON A LAYMAN PROCEEDING PRO SE, FILED A SERIES OF UNSUCCESSFUL 60(B) MOTIONS.

FROM THE BEGINNING, PETITIONER JOHNSON PURSUED DUE PROCESS DILIGENTLY.

ON NOVEMBER 27, 2009, PETITIONER JOHNSON FIRST MOTIONED THE FEDERAL DISTRICT FOR APPOINTMENT OF COUNSEL. INFORMING THE COURT: "CURRENTLY AN INQUIRY TO THE VIRGINIA STATE BAR IS STILL UNDER INVESTIGATION". HOWEVER:

1). "MY ATTORNEY INCORRECTLY FILED MY STATE HABEAS IN THIS FEDERAL DISTRICT COURT." NOT EXHAUSTING STATE REMEDIES.

2). "MY ATTORNEY FILED THE PETITION WITHOUT JOHNSON'S KNOWLEDGE, SIGNATURE NOR AUTHORIZATION."

3). "ATTORNEY WALDRON, TELLS THE BAR, "I DID NOT FILE THE PETITION". ACCUSES BUTLER, ESQ., FIRM OWNER OF FRAUD. (INQUIRY STATEMENTS PRIOR TO (4TH) FOURTH DISTRICT COMMITTEE, SECTION 1, FINDINGS).

PETITIONER JOHNSON, IN THE MOTION FOR APPOINTMENT OF COUNSEL, REASON'S, MCLAUGHLIN V. LEE NO. 5:99 HC-436 (E.D.N.C. OCT. 17, 2000), "THE COURT CONCLUDED THAT MCLAUGHLINS ATTORNEY PLACED HIM IN THE EXTRAORDINARY SITUATION OF BELIEVING THAT HE HAD COUNSEL, WHEN IN FACT HE HAD COUNSEL IN NAME ONLY."

THE MOTION'S WERE DENIED. SEE CIVIL ACTION NOS. 3:09-CV-369 AND 3:09-CV-515.

PRIOR TO THE (4TH) FOURTH DISTRICT COMMITTEE, SECTION 1, (VIRGINIA STATE BAR) FINDINGS PETITIONER JOHNSON RETAINED BRENT A. JACKSON, ESQ., AND ASSOCIATES TO INVESTIGATE THE MATTER BASED ON THE INFORMATION PROVIDED IN BAR INQUIRIES.

JACKSON, ESQ., STATED, "HE WOULD GET AN AFFADAVID FROM WALDRON, ESQ., AND PURSUE A WRIT OF HABEAS CORPUS."

ON OCTOBER 22, 210, (18) EIGHTEEN MONTHS AFTER PETITIONER JOHNSON FILED AN INQUIRY WITH THE VIRGINIA STATE BAR, THE (4TH) FOURTH DISTRICT COMMITTEE. SECTION 1 ONE REVEALED ITS FINDING. SEE. EXHIBIT F. SEE. ALSO. II HABEAS FILING © ATTORNEY DISCUS

ONCE BRENT. A, JACKSON, ESQ., SPEAKS WITH THE FEDERAL DISTRICT COURT, GIVES ME A COMPLETE COPY OF MY CASE MATERIALS FOR CASE # 3:07-CV-00731-RLW FROM THE LOWER COURT, IS INFORMED OLAUN A. SIMMONS, ESQ., MY APPEAL (DIRECT) ATTORNEY, WAS EMPLOYED BY JACKSON, ESQ., AND ASSOCIATES BEFORE LEAVING FOR NICHOLS, ZAUZIG AND SANDLER, PC. IN WOODBRIDGE, VA., AND SOON AS THE (4TH) FOURTH DISTRICT COMMITTEE REVEALED THEIR FINDINGS, PETITIONER JOHNSON RECEIVED A LETTER FROM JACKSON, ESQ., IN WHICH HE SAY'S, "IF I COULD HAVE GOTTEN SOMETHING POSITIVE FROM SAID VENTURE". "I WOULD HAVE ATTEMPTED TO PURSUE A WRIT OF HABEAS CORPUS". HAVE A COPY OF LETTER DATED JUNE 13, 2011.

BLOOMBERG LAW, THE BLT : THE BLOG OF LEGAL TIMES, ISSUED A BLOG ON APRIL 08, 2011, IN WHICH MY MOTHER ROZ JOHNSON DISCOVERED ON MAY 28, 2012, AT 11:15 PM. EXHIBIT E.

THE BLOG REVEALED AMONG OTHER THINGS, JAMES Q. BUTLER, ESQ., # 490-014, DISBARRED ON NOVEMBER 09, 2009.

NOTE: THE EGREGIOUS SUBVERSON OF THE LEGAL PROCESS, NOT MERE NEGLECT, EXHIBITED BY JAMES Q. BUTLER, ESQ., WAS NOT EXPOSED BY THE NORMAL ADVERSARY PROCESS AND COULD NOT HAVE BEEN EXPOSED WITHIN THE 1-YEAR WINDOW TO FILE A 60(B)(3) MOTION.

AT THIS JUNCTURE, PETITIONER JOHNSON TAKES THE ADVICE OF BRENT A. JACKSON, ESQ., "I WOULD HAVE ATTEMPTED TO PURSUE A WRIT OF HABEAS CORPUS".

PETITIONER JOHNSON FILED A STATE HABEAS IN STATE COURT. RECORD NO. 121231. AWARE HOLLAND V. FLORIDA 560 U.S. (2010) HELD: SECTION 2244(D). THE (AEDPA) STATUTE OF LIMITATIONS. IS SUBJECT TO EQUITABLE TOLLING IN APPROPRIATE CASES, PETITIONER JOHNSON MAKES THE ARGUMENT (A SPLIT IN THE CIRCUITS) WHERE, STILLMAN V. LAMARQUE 319 F. 3D 1199 (9TH CIR. 2003), HELD: EXTRAORDINARY CIRCUMSTANCES PERMITTED EQUITABLE TOLLING OF LIMITATIONS PERIOD FOR STATE PRISONERS TO FILE

STATE HABEAS.

PETITIONER JOHNSON ONCE AGAIN MOTIONED THE COURT TO APPOINT COUNSEL AND ASSIST HIM WITH THE "FLUKE" HABEAS FILING.

TOLD, "THE COURT WENT TO CHAMBERS". HOWEVER CASE # 3:12-CV-00608-JRS DISMISSED ON 11-20-12. FILED 8-21-2012.

ON MAY 9, 2014 PETITIONER JOHNSON FILED A "MOTION IN EQUITY." NOVEMBER 7, 2014, THE LOWER COURT DENIED THE MOTION, "JOHNSON HOWEVER FAILED TO IDENTIFY A RULE OR STATUE ..." (ECF NO. 63).

ON NOVEMBER 17, 2014, PETITIONER FOLLOWED UP AND FILED "AN AMENDMENT OF JUDGEMENT 59(D)", (WHICH EXPLAINS "ON COURTS INITIATIVE; NOTICE; SPECIFYING GROUND.")

PETITIONER SOUGHT A CERTIFICATE OF APPEALABILITY WITH THE FOURTH CIRCUIT COURT OF APPEALS. NO. 15-6803.

INTERESTING ENOUGH, THE COURT OPINES, "JOHNSON SEEKS TO APPEAL THE DISTRICT COURT ORDER DENYING HIS MOST RECENT FED. R. CIV. P. 60(B) MOTION."

WHEN DID THIS BECOME A FED. R. CIV. P. 60(B) MOTION?

THIS JUDGEMENT SHOULD BE 'VOID' BECAUSE THE COURT HAS ACTED IN A MANNER INCONSISTENT WITH DUE PROCESS.

THE LOWER COURT NEVER CONSTRUED THE "MOTION IN EQUITY" AS A FED. R. CIV. P. 60(B) MOTION. IF SO:

THE COURT WOULD HAVE IDENTIFIED THE SUBSECTION AND ALSO OPINED AS TO WHY THE MOTION FAILS, AS IS CUSTOMARY.

FROM THE BEGINNING 11-27-2009 PETITIONER HAS SOUGHT TO CORRECT THE "FLUKE" HABEAS FILING 3:07-CV-00731-RLW.

ALTHOUGH UNKNOWN TO PETITIONER JOHNSON AT THAT TIME, A FEW WEEKS PRIOR, JAMES Q. BUTLER, ESQ., #490014 DC BAR, WAS DISBARRED FOR EGREGIOUS SUBVERSION OF THE LEGAL PROCESS, NOT MERE NEGLECT, NOT EXPOSED WITHIN THE ONE-YEAR WINDOW. HABEAS PETITION "DENIED AND DISMISSED". AUGUST 08, 2008. AT

THAT TIME THE COURT CONCLUDES, "PETITIONES VAGUE, UNSUPPORTED ARGUMENT THAT THE COURT SHOULD OVERLOOK HIS DEFAULT IS REJECTED." DOCKET TEXT #11 FOR CASE # 3:07-CV-00731. U.S. DISTRICT COURT. EASTERN DISRICT OF VIRGINIA -(RICHMOND).

AS IN PHELPS V. ALAMEIDA 569 F.3D (9TH CIR.), THE POSITIONS ADVANCE BY PETITIONER JOHNSON WERE UNSETTLED WITH RESPECT TO THE PROCEDURAL HURDLES, ONLY TO BE ADOPTED IN A CASE(S) OTHER THAN HIS OWN. (I.E.):

MAPLES V. THOMAS 132 S.CT. 912. HOLDING, CAUSE EXISTED FOR PROCEDURAL DEFAULT OF HABEAS CLAIM.

MARTINEZ V. RYAN 132 S.CT. 1309. HOLDING, (1) INADEQUATE ASSISTANCE OF COUNSEL INITIAL-REVIEW COLLATERAL PROCEEDINGS MAY ESTABLISH CAUSE FOR A PRISONERS PROCEDURAL DEFAULT OF A CLAIM OF INEFFECTIVE ASSISTANCE AT TRIAL; (2) ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT (AEDPA) DID NOT BAR PETITIONER FROM USING INEFFECTIVENESS OF HIS POSTCONVICTION ATTORNEY TO ESTABLISH "CAUSE" FOR HIS PROCEDURAL DEFAULT: AND (3) REMAND WAS REQUIRED TO DETERMINE WHETHER PETITIONERS ATTORNEY IN HIS FIRST STATE COLLATERAL PROCEEDING WAS INEFFECT, INHETHER UNDERLYING INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM WAS SUBSTANTIAL, AND WHETHER PETITIONER WAS PREJUDICED.

AFTER TRAIL AND ERROR, PETITIONER JOHNSON, A LAYMAN PROCEED - PRO SE, AND DESPERATELY LEARNING LAW, CONTINUED TO SEEK DUE PROCESS.

ALTHOUGH HIS 60(B) MOTIONS ARE "UNSUCCESSFUL", "UNLIKE PETITIONERS PREVIOUS MOTION THE CURRENT MOTION FOCUSES ONLY ON THE COURTS APPLICATION OF A PROCEDURAL BAR, AND IS NOT A SUCCESSIVE PETITION." GONZALEZ V. CROSBY 545 U.S. 524 (2005)

FINALLY, PETITIONER JOHNSON MAKES TWO FINAL FILINGS. A 60(B)(6) (ECF NO. 77) AND A "FRAUD UPON THE COURT" FILING (ECF NO. 78). TWO SEPERATE FILINGS FILED AT TWO DIFFERENT TIMES. HOWEVER,

ANSWERED ONE MEMORANDUM OPINION, AND ADDRESSING, FOR THE MOST PART, "TIMELINESS". THE COURT OPINES, "A PARTY SEEKING RELIEF UNDER FED. R. CIV. P. 60(B) MUST MAKE A THRESHOLD SHOWING OF TIMELINESS..." THE COURT SAY'S UNDER FED. R. CIV. P. 60 (C)(1) HE WAS REQUIRED TO FILE HIS MOTION WITHIN A REASONABLE TIME..." THE COURT CONTINUES. "A MOTION UNDER RULE 60(B) MUST BE MADE WITHIN A REASONABLE TIME AND FOR REASONS (1), (2), AND (3) NO MORE THAN A YEAR AFTER THE ENTRY OF THE JUDGEMENT"..

SKILLFULLY, THE COURT DOESN'T ADDRESS "FRAUD UPON THE COURT." WHICH IS **EXTRINSIC** IN NATURE, **AFTER-DISCOVERED**, AS COULD NOT HAVE BEEN DISCOVERED WITHIN THE ONE-YEAR WINDOW.

I WILL REVISIT BOTH FILINGS (ECF. NO. 77) 60(B)(6) AND (ECF NO. 78) "FRAUD UPON THE COURT", RESPECTIVELY:

60(B)(6) (ECF NO. 77)

RULE 60(B)(6) WHICH PERMITS RELIEF FROM JUDGEMENT FOR "ANY OTHER REASON JUSTIFYING RELIEF FROM THE OPERATION OF JUDGEMENT."

A RULE 60(B) MOVEANT MUST SHOW THAT HIS LAWYER AGREED TO PROSECUTE A HABEAS PETITIONERS CASE, **ABANDONED IT**, AND CONSEQUENTLY DEPRIVED THE PETITIONER OF ANY OPPORTUNITY TO BE HEARD AT ALL. HARRIS V. U.S. 367 F.3D 74 (2ND. CIR. 2004).

- PETITIONER JOHNSON HAD NO FUNCTIONING ATTORNEY OF RECORD REPRESENTING HIS INTEREST AT THE 11-17-07 HABEAS FILING.
- 2-26-08, 3 MONTHS AND 9 DAY'S AFTER WALDRON, ESQ., ALLEGEDLY FILED PETITIONERS HABEAS, PETITIONER RECEIVED A LETTER OF INTRODUCTION FROM WALDRON, ESQ., AS NEW VIRGINIA ATTORNEY AT BUTLER LEGAL. EXHIBIT G.
- WALDRON, ESQ., SAY'S IN INQUIRY FILED WITH THE VIRGINIA STATE BAR, "I DID NOT FILE THE PETITION". EXHIBIT F.
- 12-7-07, 21 DAY'S AFTER PETITIONERS HABEAS FILING, PETITIONER RECEIVED A LETTER OF INTRODUCTION FROM LAGIER, ESQ., AS NEW VIRGINIA ATTORNEY AT BUTLER LEGAL. EXHIBIT H.

° JAMES Q. BUTLER, ESQ., AND HIS LEGAL FIRM ET AL, "A DYS-FUNCTIONAL ENVIRONMENT", EXHIBITED CONDUCT THAT INVOLVED "ISSUES OF GREAT PUBLIC MOMENT." THE DC COURT OF APPEALS SAY'S BUTLER, ESQ., "APPEARS TO POSE A SUBSTANTIAL THREAT OF SERIOUS HARM TO THE PUBLIC." EXHIBIT D.

RULE 60(B)(6) HAS BEEN NARROWLY INTERPRETED AND COURTS HAVE STRESSED THAT SUCH MOTIONS SHALL ONLY BE RAISED IN EXCEPTIONAL CIRCUMSTANCES OR EXTRAORDINARY CIRCUMSTANCES.

A PARTY SEEKING RELIEF UNDER FED. R. CIV. P. 60(B) MUST MAKE A THRESHOLD SHOWING OF "TIMELINESS, A MERITORIOUS DEFENSE, A LACK OF UNFAIR PREJUDICE TO OPPOSING PARTY, EXCEPTIONAL CIRCUMSTANCES

"TIMELINESS"

A REASONABLE TIME IN WHICH 60(B)(6) MOTIONS FOR RELIEF FROM JUDGEMENT MUST BE MADE DEPENDS ON THE FACTUAL CIRCUMSTANCES OF EACH CASE.

IN ACKERMAN V. U.S. 390 U.S. 193. PETITIONER DOWELL MADE A "VOLUNTARY, DELIBERATE, FREE AND UNTRAMMELED CHOICE NOT TO APPEAL THE DECISION." BY NO STRETCH OF IMAGINATION CAN THE VOLUNTARY, DELIBERATE AND FREE UNTRAMMELED CHOICE OF PETITIONER NOT TO APPEAL COMPARE WITH THE KLAPPROTT SITUATION.

IN KLAPPROTT FOR EXAMPLE, THE PETITIONER HAD BEEN EFFECTIVELY PREVENTED FROM TAKING A TIMELY APPEAL OF JUDGEMENT.

FOUR YEARS AFTER A DEFAULT JUDGEMENT HAD BEEN ENTERED AGAINST HIM. HE SOUGHT TO REOPEN THE MATTER UNDER RULE 60(B), AND WAS PERMITTED TO DO SO.

FROM THE BEGINNING, 11-27-09, PETITIONER JOHNSON HAS SOUGHT DUE PROCESS. A FEW WEEKS PRIOR 11-09-09, JAMES Q. BUTLER, ESQ., FIRM OWNER, WAS DISBARRED ALTHOUGH IT WAS UNKNOWN TO PETITIONER AT THE TIME HE FIRST INFORMED THE LOWER COURT OF THE CIRCUMSTANCES SURROUNDING HIS HABEAS FILING.

"A MERITORIOUS DEFENSE"

SEE. STATEMENT OF THE CASE. PAGE 4.
SEE ALSO. REASON FOR GRANTING THE PETITION. PAGE 24.

"LACK OF UNFAIR PREJUDICE TO THE OPPOSING PARTY"

THE COURT SHOULD IN EVERY CASE GIVE SOME, THOUGH NOT CONTROLLING, CONSIDERATION TO THE QUESTION WHETHER THE PARTY IN WHOSE FAVOR JUDGEMENT HAS BEEN ENTERED WILL BE PREJUDICED BY THE VACATION OF HIS JUDGEMENT.

"EXCEPTIONAL CIRCUMSTANCES"

FEDERAL RULES OF CIVIL PROCEDURE WHICH INVEST FEDERAL COURTS WITH POWER IN CERTAIN RESTRICTIVE CIRCUMSTANCES TO VACATE JUDGEMENTS WHENEVER SUCH ACTION IS APPROPRIATE TO ACCOMPLISH JUSTICE IS EXTRAORDINARY AND IS ONLY TO BE INVOKED UPON A SHOWING OF EXCEPTIONAL CIRCUMSTANCES AND IN DETERMINING WHETHER TO EXERCISE POWER TO RELIEVE AGAINST A JUDGEMENT, COURTS MUST ENGAGE IN DELICATE BALANCING OF THE SANCTITY OF FINAL JUDGEMENTS, EXPRESSED IN DOCTRINE OF RES JUDICATA AND COMMAND OF IT'S CONSCIENCE THAT JUSTICE BE DONE IN LIGHT OF THE FACTS.

A MOTION FILED PURSUANT TO RULE 60 (B)(6) MAY BE GRANTED IN CASES OF "EXTREME HARDSHIP" WHERE RELIEF COULD NOT BE AVAILABLE UNDER ANY OF THE OTHER PROVISIONS OF RULE 60(B).

THE CATCH-ALL PROVISION OF RULE PROVIDING GROUNDS FOR RELIEF FROM A FINAL JUDGEMENT OR PROCEEDING IS A GRAND RESEVOIR OF EQUITABLE POWER AND IT AFFORDS COURTS THE DISCRETION AND POWER TO VACATE JUDGEMENTS WHEREVER SWIFT ACTION IS APPROPRIATE TO ACCOMPLISH JUSTICE. F.R.C.P. RULE 60(B)(6) 28 USCA.

THIS IS A JUDGEMENT WHICH OUGHT NOT, IN EQUITY AND GOOD CONSCIENCE, TO BE ENFORCED, WITH A GOOD DEFENSE TO THE ALLEGED CAUSE OF ACTION ON WHICH THE JUDGEMENT IS FOUNDED.

FRAUD UPON THE COURT
(ECF NO . 78)

ALTHOUGH 60(B)(3) SEEMS TO COVER FRAUD, IT ONLY CONCERNS FRAUD OF AN ADVERSE PARTY.

RULE 60(B)(6) ON THE OTHER HAND HAS VERY BROAD LANGUAGE : "ANY OTHER REASON JUSTIFYING RELIEF FROM THE OPERATION OF THE JUDGEMENT."

THIS PROVISION HAS BEEN CALLED A "RESERVOIR OF EQUITABLE POWER" TO DO JUSTICE IN A PARTICULAR CASE.

THEREFORE, FRAUD OF AN ADVERSE PARTY IS NOT ACTIONABLE UNDER 60(B)(6). A SUB-SPECIES OF 60(B)(6), **FRAUD UPON THE COURT**, IS SUBSUMED IN THE BROAD LANGUAGE OF 60(B)(6).

ALTHOUGH 60(B)(3) SEEMS TO COVER FRAUD, IT ONLY CONCERNS FRAUD OF AN ADVERSE PARTY.

PETITIONER JOHNSON PROCEEDED UNDER THE SAVINGS CLAUSE OF RULE 60(B), AND THE RULE EXPRESSLY DOES NOT LIMIT THE POWER OF THE COURT, WHEN FRAUD HAS BEEN PERPETRATED UPON IT, TO GIVE RELIEF UNDER THE SAVINGS CLAUSE.

JOHNSON MAKES MADE IT CLEARLY KNOWN TO THE COURT, THAT A MOTION MADE UNDER SUBSECTION (3) UNDER THE RULE, SHALL NOT BE MADE MORE THAN (1) ONE YEAR AFTER THE JUDGEMENT WAS ENTERED.

PETITIONER JOHNSON FOLLOWS THE **EXTRINSIC FRAUD** DISTINCTION DESCRIBED IN U.S. V. THROCKMORTON 98 U.S. 61 (1878).

TURNING TO THE QUESTION OF THE NATURE OF THE FRAUD COMPLAINED OF AS A GROUND FOR RELIEF. IT IS THE **RULE** THAT FRAUD IS **EXTRINSIC** OR COLLATERAL WITHIN THE MEANING OF THE RULE WHEN ITS EFFECT IS TO PREVENT AN UNSUCCESSFUL PARTY FROM **FULLY REPRESENTING HIS CASE**, AS FOR INSTANCE WHEN AN **ATTORNEY CONNIVES AT HIS DEFEAT** OR **SELLS OUT HIS INTEREST**. U.S. V. THROCKMORTON.

THE FRAUD COMPLAINED OF IS EXTRINSIC IN NATURE, AN EGREGIOUS SUBVERSION OF THE LEGAL PROCESS, WHICH IS AFTER-DISCO-

VERED AS COULD NOT HAVE BEEN EXPOSED WITHIN THE (1) ONE-YEAR WINDOW.

FROM THE BEGINNING THERE HAS EXISTED ALONGSIDE THE RULE A RULE OF EQUITY TO THE EFFECT THAT UNDER CERTAIN CIRCUMSTANCES, ONE OF WHICH IS AFTER-DISCOVERED FRAUD, RELIEF WILL BE GRANTED AGAINST JUDGEMENTS REGARDLESS OF THE TERM OF THEIR ENTRY. MARSHALL V. HOLMES 141 U.S. 589.

EQUITABLE RELIEF FROM FINAL JUDGEMENT HAS LONG BEEN GRANTED "WHERE AN ATTORNEY FRAUDULENTLY OR WITHOUT AUTHORITY ASSUMES TO REPRESENT A PARTY AND CONNIVES AT HIS DEFEAT, OR WHERE THE ATTORNEY REGULARLY EMPLOYED CORRUPTLY SELLS OUT HIS CLIENTS INTEREST TO THE OTHER SIDE".

WHEN A JUDGEMENT IS OBTAINED IN THIS MANNER, A PARTY, THROUGH NO FAULT OF HIS OWN, HAS HAD NO OPPORTUNITY TO PRESENT AN OTHERWISE MERITORIOUS CLAIM OR DEFENSE. SEE RESTATEMENT OF JUDGEMENTS SS 118, 121, 122 (1942).

IN NO ATTEMPT TO PLACE BLAME ON THE COMMONWEALTH OF VIRGINIA, NOR TO BRING ACCUSATIONS NOT TRIED AND PROVEN AGAINST BUTLER, ESQ., BUT WHO'S TO SAY HE DIDN'T SELL OUT MY INTEREST LITERALLY.

NEVERTHELESS, AN ATTORNEY MIGHT COMMIT FRAUD UPON THE COURT BY INSTITUTING AN ACTION "TO WHICH HE KNEW THERE WAS A COMPLETE DEFENSE". "SINCE ATTORNEYS ARE OFFICERS OF THE COURT, THEIR CONDUCT IS DISHONEST, WOULD CONSTITUTE FRAUD UPON THE COURT." KUPFERMAN V. CONSOLIDATED RESEARCH AND MFG. CORP. 459 F.2D 1072 (2ND CIR. 1972)

JOHNSON REASONS HAD THE FEDERAL DISTRICT COURT KNOW THE ORDER OF OPERATION AT BUTLER LEGAL (FRAUD, DISHONESTY, DECEIT AND MISREPRESENTATION SELLING OUT THE INTEREST OF CLIENTS) **EXHIBIT B**; THEY WOULD HAVE TREATED THE HABEAS PETITION FILED ON PETITIONER JOHNSON'S BEHALF; IN THE (11TH) ELEVENTH HOUR, WITH THE FEDERAL DISTRICT COURT; NOT EXHAUSTING STATE REMEDIES; NAMELY /

THE INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL CLAIM ; (AN INITIAL-REVIEW CLAIM WHICH MEANS IN STATES SUCH AS VIRGINIA ; HABEAS CORPUS IS THE FIRST OCCASION TO RAISE THIS CLAIM); WITHOUT PETITIONER JOHNSON'S KNOWLEDGE, APPROVAL OR SIGNATURE "UNDER PENALTY OF PERJURY" AND CONTAINING "A NUMBER OF DEFECTS", AS EXPLAINED IN DOCUMENT # 4, DIFFERENTLY, AS IM SURE THIS COURT WILL AGREE.

LAGIER, ESQ., IN AN ATTEMPT TO EXCUSE THE EXHAUSTION REQUIREMENT, SAY'S ON PAGE 18 OF DOCUMENT # 6 OF THE AMENDED HABEAS PETITION FOR CASE # 3:07-CV-00731-RLW:

"GROUND 2 (INEFFECTIVE ASSISTANCE OF TRAIL COUNSEL, WHICH ALL OTHER CLAIMS ARE INCORPORATED INTO) CAN BYPASS THE STATE HABEAS LEVEL BECAUSE IT FALLS UNDER THE SCOPE OF 2254(B)(i), CIRCUMSTANCES EXIST THAT RENDER PROCESS INEFFECTIVE TO PROTECT THE RIGHT OF APPLICANT."

NOT, "ACCORDING TO WALDRON, ESQ., AND OTHER INDIVIDUALS, THE BUTLER GROUP WAS A DYSFUNCTIONAL ENVIRONMENT". EXHIBIT F.

AS OFFICERS OF THE COURT, ALL ATTORNEY'S HAVE A CONTINUING OBLIGATION TO DISCLOSE TO THE COURT VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT. SEE. RULES OF PROFESSIONAL CONDUCT. VIRGINIA RULES ANNOTATED PART 6 SECTION II. @ RULE 8-4 MISCONDUCT. IN ADDITION, THE BUTLER GROUP ET AL, HAS VIOLATED SEVERAL RULES OF PROFESSIONAL CONDUCT:

- RULE 1.1 COMPETENCE (LEGAL KNOWLEDGE, SKILL, THOROUGHNESS). WALDRON, ESQ., SAY'S IN BAR INQUIRY, "FIRST TIME AS ATTORNEY I HAD BEEN ASSIGNED TO WORK ON A HABEAS." ALTHOUGH HIS PROFILE SAY'S. "HE SPECIALIZES IN POST-CONVICTION APPELLATE ADVOCACY". SEE. HABEAS FILING @ ATTORNEY DISCUSSION # 2 PAGE .
- RULE 1.2 SCOPE OF REPRESENTATION
- RULE 1.3 DILIGENCE
- RULE 1.4 COMMUNICATION AT THE DATE OF THIS WRITING, PETITION-HAS NEVER SPOKEN WITH WALDRON, ESQ., NEVER RECEIVED A COPY OF RESPONDENTS MOTION TO DISMISS AND RULE 5 ANSWER. NO REBUTTAL FILED.

IN CONCLUSION, THE LOWER DISTRICT COURT CONCLUDES, "PETITIONERS, UNSUPPORTED ARGUMENT THAT THE COURT SHOULD OVER-

LOOK HIS DEFAULT IS REJECTED". SEE. DOCKET TEXT # 17 FOR CASE # 3:07-CV-00731-RLW. U.S. DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA-(RICHMOND).

DOCKET TEXT # 18, "THE PETITION IS DENIED" AND "THE ACTION IS DISMISSED".

THE 4TH CIRCUIT COURT OF APPEALS HAS DEFINED FRAUD UPON THE COURT AS FRAUD PERPETRATED BY OFFICERS OF THE COURT SO THAT THE JUDICIAL MACHINARY CAN NOT PERFORM IN THE USUAL MANNER ITS IMPARTIAL TASK OF ADJUDGING CASES THAT ARE PRESENTED FOR ADJUDICATION, AND DOES NOT LIMIT THE POWER OF THE COURT TO GIVE RELIEF UNDER THE SAVINGS CLAUSE. GREAT COASTAL EXPRESS INC. V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS 675 F.3D 1349 (4TH 1982)

WHERE FRAUDULENT REPRESENTATION SET UP A GROUND FOR VACATING A JUDGEMENT CONSTITUTED EXTRINSIC FRAUD, THE DISTRICT COULD DECIDE ISSUES PRESENTED BY MOTION, EVENTHOUGH THE TIME LIMIT FOR THE MOTION HAD ELAPSED SINCE ENTRY OF THE JUDGEMENT. FISKE V. BUDER 125 F.2D 841 (1942)

THE LOWER FEDERAL DISTRICT COURT WAS PARTIAL TOWARD PETITIONER JOHNSON. PARTIAL IN THE SENCE THEY ADJUCATED THE PETITION NOT KNOWING OR BEING INFORMED OF THE DAY TO DAY OPERATION OF BUTLER LEGAL, WHICH WAS PROVEN BY CLEAR AND CONVINCING EVIDENCE. WHICH WAS DELIBERATE SCHEMES TO DIRECTLY SUBVERT THE JUDICIAL PROCESS.

THIS IS A JUDGEMENT WHICH OUGHT NOT, IN EQUITY AND GOOD CONSCIENCE TO BE ENFORCED, THAT THERE IS A GOOD DEFENSE TO THE ALLEGED CAUSE OF ACTION ON WHICH THE JUDGEMENT IS FOUNDED, FRAUD PREVENTED THE DEFENDANT IN THE JUDGEMENT FROM OBTAINING THE BENEFIT OF HIS DEFENSE, THE ABSENCE OF FAULT OR NEGLIGENCE ON THE PART OF DEFENDANT AND THE ABSENCE OF ANY ADEQUATE REMEDY OF LAW.

THE MEMORANDUM OPINION FOR (ECF NOS. 77 AND 78) WERE DECIDED ON 3-25-16. HOWEVER THE LOWER COURT NEVER SENT

PETITIONER A COPY OF THE ORDER. THINKING THAT THE TWO FILINGS WERE STILL UNDER CONSIDERATION, PETITIONER CALLED AND INQUIRED.

THE COURT INFORMED PETITIONER THAT THE MEMORANDUM ORDER WAS RETURNED TO THE COURT "**UNDELIVERABLE**".

THE LOWER COURT WENT ON TO SEND THE OPINION AND NOTICE OF APPEAL, WHICH PETITIONER FILED WITH THE APPEAL COURT. THE FOURTH CIRCUIT COURT OF APPEALS SENT PETITIONER THE INFORMAL PRELIMINARY BRIEFING ORDER AND INFORMAL OPENING BRIEF DUE DATE OF 11-28-16, FOR CASE # 16-7521.

THE UNPUBLISHED PER CURIUM FOR NO. 16-7521 (3:07-CV-00731), READS, "COREY E. JOHNSON SEEKS TO APPEAL THE DISTRICT COURT'S ORDER DENYING MOTIONS FOR RECONSIDERATION OF THE DISTRICT COURTS ORDER DENYING RELIEF ON HIS 28 U.S.C. 2254 (**2012**) PETITION. WE DISMISS THE APPEAL FOR LACK OF JURISDICTION BECAUSE THE NOTICE OF APPEAL WAS NOT TIMELY FILED."

IN THE REHEARING EN BANC FILED WITH THE APPEALS COURT, I PETITIONER JOHNSON INFORMED THE COURT WHY THE NOTICE OF APPEAL WAS NOT TIMELY FILED, "UNDELIVERABLE". IN ADDITION TO THE FACT THAT PRISON LEGAL LOGS SHOW I NEVER RECEIVED ANY LEGAL MAIL AT THAT TIME.

I ALSO EXPLAINED TO THE COURT ONCE AGAIN THAT ALL PER CURIUM OPINIONS ISSUED BY THE COURT REFERENCE A (**2012**) PETITION.

FOR A COMPLETE DISCUSSION OF (2012) V. (2007) PETITION. SEE. <u>FOURTH CIRCUIT COURT OF APPEAL PER CURIUM OPINIONS REFERENCE (**2012**) PETITION</u> PAGE 23. & <u>STATEMENT OF THE CASE</u>

BRIEFLY FOR THE RECORD, THIS IS THE ONLY COURT DEADLINE EVER MISSED, AND IT WAS NOT MY FAULT. IN ADDITION TO THE HABEAS FILING WHICH WAS DUE TO NO FAULT OF MY OWN.

ALMOST FORGOT, MISSED A CERTIORARI TO THIS U.S. SUPREME COURT. WAS TEMPORARILY TRANSFERRED TO ANOTHER FACILITY AND ALL LEGAL MATERIALS WERE STORED @ THAT FACILITY (INCLUDING RULES OF THE COURT) THEREFORE DID NOT KNOW TO FILE FOR AN EXTEND THE CERT FILING (10) TEN DAYS PRIOR TO FILING DEADLINE. SEE. NO. 16 M 4.

"DUE COURSE OF LAW" OR "LAW OF THE LAND", IS SYNONYMOUS WITH "DUE PROCESS OF LAW". THE PHRASE MEANS THAT NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, PROPERTY OR OF ANY RIGHT GRANTET HIM BY STATUE, UNLESS MATTER INVOLVED FIRST SHALL HAVE BEEN ADJUCATED AGAINST HIM UPON TRAIL CONDUCTED ACCORDING TO ESTABLISHED RULES REGULATING JUDICIAL PROCEEDINGS, AND IT FORBIDS CONDEMNATION WITHOUT A HEARING.

WHERE A PETITIONER ESTABLISHES A COLORABLE CLAIM FOR RELIEF AND HAS NEVER BEEN AFFORDED A STATE OR FEDERAL HEARING ON HIS CLAIM, AN APPEALS COURT MUST REMAND TO THE DISTRICT COURT FOR AN EVIDENTIARY HEARING. IN OTHER WORDS, A HEARING IS REQUIRED IF (1) THE PETITIONER HAS ALLEGED FACTS THAT, IF PROVEN, WOULD ENTITLE HIM TO HABEAS RELIEF AND (2) HE DID NOT RECEIVE A FULL AND FAIR OPPORTUNITY TO DEVELOPE THE FACTS. EARP V. ORONSKY 431 F. 3D 1158 (9TH CIR. 2005)

ASIDE FROM ALL ELSE, "DUE PROCESS" MEANS FUNDAMENTAL FAIRNESS AND SUBSTANTIAL JUSTICE. PROCEDURAL DUE PROCESS GUARANTEES A PERSON FAIR PROCEDURES, ALL RIGHTS WHICH ARE OF SUCH FUNDAMENTAL IMPORTANCE AS TO REQUIRE COMPLIANCE WITH DUE PROCESS STANDARDS OF FAIRNESS AND JUSTICE.

TWO SUCH CLAUSES ARE FOUND IN THE U.S. CONSTITUTION, ONE IN THE 5TH AMENDMENT PERTAINING TO THE FEDERAL GOVERNMENT, THE OTHER IN THE 14TH AMENDMENT WHICH PROTECTS PERSONS FROM STATE ACTIONS.

THERE ARE TWO ASPECTS: PROCEDURAL, IN WHICH A PERSON IS GUARANTEED FAIR PROCEDURES AND SUBSTANTIVE WHICH PROTECTS A PERSON FROM UNFAIR GOVERNMENT INTERFERENCE.

A DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING IF HE CAN SHOW: (1) THE MERITS OF THE FACTUAL DISPUTE WERE NOT RESOLVED IN THE STATE HEARING, (2) THE FACTUAL DETERMINATION IS NOT FAIRLY SUPPORTED BY THE RECORD AS A WHOLE, (3) THE FACT FINDING PROCEDURE EMPLOYED BY THE STATE COURT WAS NOT ADEQUATE TO AFFORD A FULL AND FAIR HEARING, (4) THE IS A SUBSTANTIAL ALLEGATION OF NEWLY DISCOVERED EVI-

DENCE, (5) THE MATERIAL FACTS WERE NOT ADEQUATLY DEVELOPED AT THE STATE COURT HEARING, (6) FOR ANY REASON IT APPEARS THAT THE STATE TRIER OF FACT DID NOT AFFORD THE APPLICANT A FULL AND FAIR FACT HEARING. IF THE PETITIONER CAN ESTABLISH ANY ONE OF THESE CIRCUMSTANCES, THEN THE STATE COURT DECISION WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS, AND THE FEDERAL COURT CAN INDEPENDENLY REVIEW THE MERITS OF THE DECISION BY CONDUCTING AN EVIDENTIARY HEARING. TOWNSEND V. SAIN 372 U.S. 293 (1963)

EMBODIED IN THE DUE PROCESS CONCEPT ARE THE BASIC RIGHTS OF A DEFENDANT IN CRIMINAL PROCEEDINGS AND THE REQUISITES FOR A FAIR TRAIL. THESE RIGHTS AND REQUIREMENTS HAVE BEEN EXPANDED BY SUPREME COURT DECISIONS AND INCLUDE THE OPPORTUNITY TO CONFRONT ACCUSERS AND TO PRESENT EVIDENCE ON ONES OWN BEHALF.

THE UNITED STATES CONSTITUTION RECOGNIZES THE WRIT OF HABEAS CORPUS. SEE. U.S. CONSTITUTION, ART. 1 § 9.

THE BUTLER LAW FIRM ET AL CAUSED PETITIONER JOHNSON TO LOSE WHAT WAS LIKELY HIS SINGLE OPPORTUNITY FOR STATE OR FEDERAL HABEAS REVIEW OF THE LAWFULNESS OF HIS IMPRISONMENT. A PARTICULARLY SERIOUS MATTER, FOR THAT DISMISSAL DENIED THE PETITIONER THE PROTECTIONS OF THE GREAT WRIT ENTIRELY, RISKING INJURY TO AN IMPORTANT INTEREST IN HUMAN LIBERTY.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,
COREY E. JOHNSON #1061522
DATE: 7-20-18