

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Juan C. ORTEGA LAIRA — PETITIONER
(Your Name)

vs.

RAYMOND MADDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United State Court of Appeals For the Ninth Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Juan Carlos Ortega Laira
(Your Name)

Correctional Training Facility
(Address)

P.O. Box 705, Seledne, CA 93960
(City, State, Zip Code)

None.
(Phone Number)

QUESTION(S) PRESENTED

Whether Petitioner missed the Statute of Limitations because of Prison Restrictions or other outside impediments which made it impossible for Petitioner to file on time, but diligent in filing relatively soon after the restrictions ended. See Appendix C.

Whether the Ninth Circuit Court correctly determined that Petitioner had failed to make a sufficient showing of actual innocence, to merit further proceedings.

Whether the Trial Court exercised its independent judgment as to the sufficiency of the evidence to support the Jury's verdict on finding even to the extent of resolving conflicts in the evidence in a manner different from the Jury's implied finding, on the ground that the verdict is contrary to the evidence.

LIST OF PARTIES

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

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- APPENDIX M Petition For Review to the Supreme Court of California Dated: December 22, 2015.
- APPENDIX N In the Supreme Court of Calif. Petition For Review is denied Dated: January 27, 2016.

TABLE OF AUTHORITIES CITED

CASES

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Schlus vs. Delo, 513 U.S. 298. 332
(1996).

In Re Clark, 855 P. 2d 729. 739
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People vs. Backus, 23 Cal. 2d 360
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Cotton vs. Superior Court, 56 Cal.
2d. 459. 462 (1961).

Rideout vs. Superior Court, 67 Cal.
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People vs. Hall, 3 Cal. 3d. 992. 996.
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Lambright vs. Stewart, 220 F. 3d.
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Slack vs. McDaniel, 529 U.S. 473.
484. (2000).

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CASES

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Miller-EL vs. Cockrell. 537 U.S.
322. 123 S ct. 1029 (2003).

People vs. Drin. 13 Cal. 3d 937
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People vs. Superior Court. 60 Cal.
2d 491. 503. 72 Cal. Rptr. 330
446 P. 2d 138 (1968).

People vs. Tenorio. 3 Cal. 89. 94.
89 Cal. Rptr. 249. 473 P. 2d 993 (1970).

People vs. Superior Court. 69 Cal. 2d.
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People vs. Johnson. 113 Cal. App. 4th.
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People vs. Veitchi 128 Cal. App. 3d.
460. 467. 180 Cal. Rptr. 412 (1982).

United States vs. Hernandez, 27
F. 3d 1403 1408 (9th cir 1994).

United States vs. Cuozzo, 962 F.
2d 945, 952-3 (9th cir. 1992).

Osborne vs. United States, 351 F.
2d 111, 118.-19 (8th cir. 1965).

People vs. Sims, 5 Cal. 4th. 405.448
(1993).

STATUTES AND RULES

CAL. PENAL CODE § 269(A)(1)
PARAGRAPH (2) OR (6) OF
SUBDIVISION (A) OF SECTION 261.

CAL. PENAL CODE § 269(A)(1).

CAL. PENAL CODE SECTION 261(A)
SUBDIVISION (A)(2) AND (A)(6).

CAL. PENAL CODE 288 (b)(1).

STATUTES AND RULES

CAL. PENAL CODE 1385.

CAL. PENAL CODE § 1181(6).

OTHER

CALCRIM 1000.

28 USC. 2253 (C)(2).

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 D 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 C to the petition and is

☐ reported at CALIFORNIA SUPREME COURT; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. APPENDIX M, and M.

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 Aug 3, 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Nov 30, 2016.
A copy of that decision appears at Appendix 2, 10, 11.

☐ 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).

No.

IN THE

Supreme Court of the United States

Juan Carlos Ortega Lara Petitioner(s)
v.

Raymond MADON Respondent(s)

On Petition For Writ Of Certiorari
To The U.S. Court of Appeals for
The Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supreme Court held that a procedurally defaulted habeas Petitioner must show that a Constitutional Violation has probably resulted in the conviction of one who is actually innocent, and in order for this claim to be credible, the Petitioner must present reliable evidence to support his contention of innocence. *Schlup vs Delo*, 513, U.S. 298, 332, (1996) AS IN THIS CASE Petitioner submitted Four Affidavits see APPENDIX I.

The Supreme Court has also recognized the importance of preventing the execution or long-term incarceration of an innocent individual AS IN THIS CASE. *In re Clark*, 855, P. 2d 729, 739 (CAL. 1993). The Requirements in California seem to be NARROWER than the Federal Requirements because "the Court have signaled that newly discovered evidence will NOT WARRANT habeas relief unless it thoroughly undermines the entire structure of the Prosecution's case. And such evidence undermines the Prosecution's case, if it is conclusive and points unerringly to innocence AS IN THIS CASE.

Argument

The Prosecution Failed to Present

Sufficient evidence of the Petitioner's involvement in the crimes. The evidence presented at the Preliminary hearing failed to establish Probable cause to believe that the Petitioner committed the crimes. If the evidence fails to establish Probable cause to believe that a defendant committed a crime, the information must be dismissed. *People vs. Backus*, 23 Cal. 2d 360, 387 (1979); *Cotton vs. Superior Court* 56 Cal. 2d. 459, 462, (1961).

"Probable Cause is shown if a man of Ordinary Caution or Prudence would be led to believe and conscientiously entertain a strong suspicion of the guilt of the Accused." *Rideout vs. Superior Court*, 67 Cal. 2d. 471, 474, (1967).

"An information will not be set aside on a prosecution thereof prohibited if there is some rational ground for assuming the possibility that an offense has been committed and the Accused is guilty of it." *Rideout, supra* at p. 474; *People vs Hall*, 3 Cal. 3d. 992, 996, (1971).

The Victims in this case accused the Petitioner of numerous sexual assaults and incidents over a long period of time. The victim states that she previously indicated that the Rape would occur bi-weekly over a span of two years. However; the State failed to provide any forensic or DNA evidence substantiating this claim. Surely, had a mold adult man continuously and repeatedly engaged in penile penetration with a child so young and frail, some form of forensic proof would have been present and discoverable.

Testimony at the Preliminary hearing also noted that the victims stated that adults were present in the residences while some of the incidences occurred. The doors likely remained open as in fact theoretically speaking. The notion of the victim entering the Petitioner's bedroom after being summoned and drawn in would have increase the attention to all parties present in the residences. Therefore; to hold the Petitioner to answer on all counts and even Rape by Force or Fear given that there was no proof of forensic evidence supporting the assertion that any Penetrations had occurred, is insufficient evidence.

California Penal Code § 269 (A) (1). States:

" (A) ANY PERSON WHO COMMITS ANY OF THE FOLLOWING ACTS UPON A CHILD WHO IS UNDER 14 YEARS OF AGE AND SEVEN OR MORE YEARS YOUNGER THAN THE PERSON IS GUILTY OF AGGRAVATED SEXUAL ASSAULT OF A CHILD:

(1) RAPE, IN VIOLATION OF PARAGRAPH (2) OR (6) OF SUBDIVISION (A) OF SECTION 261." CAL. PENAL CODE § 269 (A) (1). PENAL CODE SECTION 261 (A) DEFINE RAPE,

" RAPE IS AN ACT OF SEXUAL INTERCOURSE "

CAL. PENAL CODE § 261 (A). SUBDIVISION (A) (2) AND (A) (6) EXPLAIN THE FORCE, AND DEGREE, ELEMENT, WHETHER IMMEDIATE OR IN THE FUTURE. " SEXUAL INTERCOURSE MEANS ANY PENETRATION, NO MATTER HOW SLIGHT OF THE VAGINA OR GENITALIA BY THE PENIS (EJACULATION IS NOT REQUIRED) 1-1000 CALIFIM 1000.

IN THE INSTANT CASE, THERE IS INSUFFICIENT EVIDENCE TO CONCLUDE THAT THE PETITIONER HAD SEXUAL INTERCOURSE WITH THE ALLEGED VICTIMS ON THE DATES CHARGED AND THEREFORE ALL RELATED COUNTS MUST BE DISMISSED.

In fact during testimony one of the victims acknowledged that no medical exam or evaluation had been conducted to detect any sexual abuse.

There is also insufficient evidence to hold Petitioner on all counts of Penal Code 288 (b)(1), Lewd and Lascivious Acts conduct because the victims testimony and the medical evidence makes it unlikely that any physical touching or inappropriate or lewd conduct occurred.

California Penal Code 288 (b)(1). States:

" That a person is guilty of the charge if they willfully commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 14 years, by the use of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the child with specific intent of arousing, appealing to, or gratifying the lust of sexual desires of that child or the person.

Testimony has shown that both victims recanted their accusations and lied to investigators about the supposed sexual abuse.

In Fact, Victim # 2 states that she came up with the idea to help her Cousin, Victim # 1 and used CSI television material as a basis for her lies. As noted in the testimony, both Victim recanted their allegations and explained to the Court the motive behind their Fact of False Accusations.

In Fact, even when the investigating Officer explained the Victims' statements, they were vague, illogical and unreasonable given the living arrangement and timelines each reported. Furthermore, during examination of the officer, he testified that the victims was never checked-out by a doctor or administered a Physical by the Authorities upon notification that the victims were making these accusations. Also, it was discovered that when the Petitioner was left alone and in charge of the Accuser's Petitioner's Girlfriend and other family members were also in the residence.

STATEMENT OF THE CASE

Petitioner was charged by way of the Complaint. Following a brief Preliminary hearing. Petitioner was held to answer on all charges. On Sept. 05, 2013, the Prosecution Filed an information, as shown in the following memorandum. There was insufficient evidence presented at the Preliminary hearing to sustain a holding order on the counts related to Rape, Kidnap, and Lewd and Lascivious Conduct with the minor victims.

Statement of Facts

The Petitioner, Victim #1 and Victim #2 are Related Parties whom over time had lived together with other family members. In the months of December 2012, the Victim informed their Parents that Sexual molestation had occurred with the Petitioner and the information was properly related to the Local Arresting Authorities.

Victim #1 is an Adult and Victim #2 was a minor and both provided information to law enforcement officials about the allegations and incidents that occurred from 2002, to 2003 and from 2006, to 2007.

REASONS FOR GRANTING THE PETITION

Due to the legal standard for issuance of a Certificate of Appealability (COA), the Petitioner must make a "substantial showing" of the denial of a Constitutional right, (28 USC 2253(c)(2)). However, the Petitioner need not show that he should prevail on the merits. Lambright vs. Stewart 220 F.3d 1022, 1025 (9th Cir. 2000). ("obviously the Petitioner need not show that he should prevail on the merits. He has already failed in that endeavor.").

Rather, the Petitioner is merely required to make modest showing that "reasonable jurist would find the District Court assessment of the Constitutional claims debatable on grounds" Stack vs. McDaniel 529 U.S. 473, 484 (2000). Also Lambright, supra. At 1025. As explained by the Ninth Circuit Court in Jennings vs. Woodford 290 F.3d 1006 (9th Cir. 2002), the substantial showing standard required for a COA is "relatively low." (Id. at 1011 citing Stack supra). Hence, a COA must issue if any of the following apply:

- (1) The issues are debatable among reasonable jurists;
- (2) Another court could resolve the issues differently;
- (3) The questions raised are adequate enough to encourage the Petitioner to proceed further.

Finally this Court must resolve doubts about the propriety of a COA in Petitioner's favor. *Jennings*, *Supra* Citing *Lambright* *Supra*, at 1025.

In *Miller-El vs. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Court clarified the standards for issuance of a Certificate of Appealability (hereafter COA):

..... A Prisoner seeking a COA need only demonstrate a "substantial showing" of a denial of a Constitutional right. A Petitioner satisfies this standard by demonstrating that Jurists of Reason could disagree with the district Court's Resolution of his Constitutional claims or that Jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.... We do not require Petitioner to prove, before the issuance of a COA, that some Jurists would grant the Petition for habeas corpus. Indeed, a claim can be debatable even though every Jurist of Reason might agree, after the COA has been granted and the case has received full consideration, that Petitioner will not prevail. *Id.* 123 S.Ct. at 1034. Citing *Slack vs. McDaniel*, 529 U.S. 473, 484, (2000).

Please take notice that the following Petition For writ of Certiorari would be based on :

- (1) INNOCENCE
- (2) INSUFFICIENT EVIDENCE TO SUPPORT A CONVICTION:
- (3) ERROR IN LAW DURING THE TRIAL AND ERROR BY THE COURT IN ALLOWING THE JURY ACCESS TO TRANSCRIPTED INTERVIEWS TO ALLOWED THE JURY TO CONVICT AN INNOCENT MAN.

BACKGROUND

Procedural

The Petitioner. was charged by WAY OF A COMPLAINT AND INFORMATION WAS FILED ALLEGING SEVERAL COUNTS OF AGGRAVATED SEXUAL ASSAULT OF A CHILD. LEAD ACTS WITH FORCE, VIOLENCE OR DURESS AND KIDNAP TO COMMIT RAPE FOR ACTS. UPON COMPLETION OF THE PRELIMINARY HEARING. THE STATE PROCEEDED WITH THEIR CASE AGAINST PETITIONER AND AFTER A TRIAL AND TWO DAYS OF DELIBERATION PETITIONER WAS CONVICTED.

FACTUAL BACKGROUND OF THE CASE

1 In December of 2012, Victim Cou-
2 sins informed their Parents that over a
3 decade earlier, their Uncle and Mother's
4 Brother, Petitioner had Sexually abused
5 them while he had lived with them over a
6 period of time. The Parents quickly Re-
7 ported the incidents to the Riverside
8 Police Department and solely based on
9 the Audio and Video Recorded interviews
10 of the Cousins. Petitioner was arrested
11 shortly after Petitioner's arrest but
12 prior to the Preliminary hearing the Vic-
13 tim Cousins recanted their stories and
14 attempted to explain to the Prosecution
15 and investigators that they had fabri-
16 cated the story as a means to hurt their
17 mother/aunt due to her continuous
18 infidelity in her marriage.

19 Within the discovery were several
20 at length interviews with immediate
21 and distant family members, friends and
22 ex-boyfriend of one of the victims. There
23 was not a single report detailing the in-
24 cident wherein the Cousins physically
25 went down to the District Attorney's
26 office explaining the reasoning for
27 their fabrication, more importantly,
28 there was no physical medical or

1 Forensic evidence or explanation
2 as to how the supposed continuous
3 rape of a child by an adult man went
4 unnoticed or unreported. In fact, one
5 of the accusers initially stated she was
6 raped up to three times a week for
7 over a year by Petitioner.

8 During trial the Victim Cousins
9 took the stand and when examined ex-
10 plained and answered their motives for
11 fabricating these accusations to the Pro-
12 secutor. The Cousins never denied
13 making these initial recorded accusa-
14 tions to investigators.

15 At issue in this argument that
16 the insufficiency of the evidence to
17 sustain a conviction. The Court allow-
18 ing the Prejudicial videotaped interview
19 into evidence, and lastly, providing the
20 jury with Transcripts that had never
21 been introduced or admitted into
22 evidence during deliberations.

23 Furthermore the State Failed to
24 offer medical or Forensic evidence
25 that would corroborate the lengthy
26 continuous and significant sexual
27 abuse that supposedly occurred be-
28 tween these victim Cousins and their

1 Adult Uncle. In fact the testimony of F.
2 Fred includes a timeline over the past
3 dozen or so years where Petitioner co-
4 habited with the girls and several other
5 extended and direct family members, were
6 shocking, were the accusations that Pe-
7 titioner engaged in sexual intercourse
8 with the girls when other family members,
9 including the girls' parent, were in the
10 home or had just arrived from shopping.
11 Testimony further included accounts by
12 family members where they detailed
13 the living situation and sleeping quarters
14 where Petitioner lived with his girlfriend
15 and son across the hall from the victim's
16 room or even in the parlor at times.
17 Yet still managed to apparently lure
18 his nieces into his sleeping quarters for
19 the sexual abuse.

20 During examination, the victim's
21 cousins testified that they intended to
22 either hunt or pay their mother and Aunt
23 back for the extra marital affairs she
24 had on her husband. The uncle and fa-
25 ther of the accusers and garnered more
26 positive attention from their parents
27 as they both felt they were mistreated
28 and neglected.

1 MEMORANDUM OF POINTS AND
2 AUTHORITIES.
3

4 The Court had the Authority under
5 Penal Code 1385 to dismiss a Prosecution
6 in the Furtherance of Justice at anytime
7 including after Trial. "Dismissals under
8 Section 1385 MAY have been proper be-
9 fore, during and after trial." People vs
10 Drain, 12 Cal. 3d 937, 946, 120 Cal. Rptr.
11 6, 533 P. 2d 193 (1975). As the Supreme
12 Court has stated in People vs. Superior
13 Court, 60 Cal. 2d 491, 503, 72 Cal. Rptr.
14 330, 446, P. 2d 138, (1968).

15 It would seem that, if anything
16 a Court should have broader discretion
17 to dismiss in Furtherance of Justice after
18 the verdict than it should have during trial
19 after the verdict. The Judge has heard the
20 evidence of the Prosecution; whereas
21 prior to the conclusion of that trial
22 there is always the possibility that in
23 the absence of dismissal more evidence
24 may be received.

25 The Trial Judge who has heard the evi-
26 dence as in the instant case is in a ex-
27 cellent position to determine whether
28 a retrial would further the interest of

Justice the Legislature has given the trial
Court the Power to dismiss under the broad
Standard of Justice, and in view of the
high caliber of our trial Judges and their
Responsibility to the electorate we believe
that recognizing abuse but to the Court
may believe that the due exercise of the
Power to dismiss in proper cases of
conflicting evidence will further Justice
People vs Superior Court, 69 Cal. 2d 491.
584, 72 Cal. Rptr. 320, 446, P. 2d 138 (1968).

The Courts Power to Dismiss is Unaffected by the Prosecutions Objection

The Power invested in the Court by Penal
Code 1385 is a discretionary Power that
rests solely with the Court. As the Court stated
in People vs Tamm, 3 Cal. 89, 94, 89, Cal.
Rptr. 249, 473, P. 2d 993, (1970). The Judicial
Power is compromised when a Judge who
believes that a charge should be dismissed
in the interests of Justice wishes to ex-
ercise the Power to dismiss but finds
that before he can do so he must bargain
to dismiss with the Prosecutor. A Judicial
Power must be independent and a Judge

Should never be required to pay for its exercise.

The California Supreme Court has held that the discretion of the Judge (under Section 1385) is absolute except where the Legislature has specifically limited it "People vs Superior Court, 69 Cal. 2d. 491, 502, 72 Cal. Rptr. 330, 441 P. 2d. 138 (1968).

Penal Code § 1181 (6). "Authorizes the trial court to exercise its independent judgment as to the sufficiency of the evidence to support the jury's verdict on finding even to the extent of resolving conflicts in the evidence in a manner different from the jury's implicit findings. It authorized the trial court to reweigh the evidence." People vs Johnson, 113 Cal. App. 4th. 1299, 1307, 7 Cal. Rptr. 2d. 161 (1982).

As the court held in People vs Veitel 128, Cal. App. 3d. 460, 467, 180 Cal. Rptr. 912 (1982), in considering a new trial under Section 1181 subdivision (6), on the ground that the verdict is contrary to the evidence.

11

11

1 The Trial Court is not bound by the
2 Jury's decision as to conflicts in the
3 evidence or inferences to be drawn
4 therefrom. It is under the duty to give
5 the defendant the benefit of its in-
6 dependence conclusions as to the lack
7 of insufficient evidence presented
8 to sustain a guilty verdict at trial.
9 The Accusers testified that they had
10 indeed fabricated their accusations
11 for reasons that may have seemed
12 illogical to the Prosecution. During the
13 trial the Jurors were shown video re-
14 cordings of the initial interview and
15 follow up interviews of the Accusers prior
16 to them recanting their accusations.

17 The Basis for the Conviction
18 appears to be the simple fact that the
19 Jury did not believe that the Accusers
20 had indeed fabricated these accusations
21 and that somehow the Family or some
22 other influencing forces encouraged
23 them to retract their stories. Remember
24 it was the Family who took them to the
25 Police Department to make the report.

26 Making the Accusers initial ac-
27 cusations as true, it is illogical and
28 absurd to further the notion that a

1 oldest man. Living with numerous
2 family member in a bedroom across
3 the entire house or in the GARAGE. who
4 was shamefully employed and worked a
5 full time job would be able to per-
6 petrate this abuse on the victims three
7 times a week for over a year without
8 detection as noted. The state failed
9 to provide ANY physical, medical or
10 forensic evidence that would cor-
11 roborate these outlandish claims.

12
13 ERRORS OF LAW Occurred During
14 the Trial as the Court allowed audio
15 and videotaped interview of the
16 testifying witnesses to be pre-
17 sented During Trial

18
19 the case law recognizes that certain
20 circumstances call for the exclusion of
21 evidence which is of unquestioned re-
22 levance. These circumstances entail risks
23 which stand all the way from inducing
24 decision on a purely emotional basis.
25 At one extreme, to nothing more harmful
26 than merely wasting time. At the other
27 extreme, situations in this area call for
28 balancing the Probative Value of such

1 also for the same - should the law
2 likely to result from its admission. It's
3 noted. The mutual videotaped interviews
4 of the Cousins' Accusations against Sgt.
5 France apparently weighed heavily in this
6 case. These lengthy recordings were filled
7 with hearsay and sensation accusations
8 levied at Politicians from the viewpoint
9 of two attention seeking, teenage group
10 members. In fact, the recordings cover
11 every wide range of topics from
12 Politician's brutally mistreating his
13 children, his girlfriend's children and
14 other relatives who lived cross state to
15 his propensity to hang out at neighborhood
16 hood parties to watch children play. Had
17 the State and the Court nationalized
18 the introduction of these recordings
19 into evidence to impeach the Cousins,
20 defense counsel would have no objection
21 based on well established case law and
22 the rules of evidence. However, the
23 introduction of these recordings into
24 evidence is erroneous as the Accusers
25 put themselves before the Court via actual
26 testimony and never once denied making
27 the videotaped statements. Thus, the
28 Court erred in allowing these videotapes

1 indicated in the evidence as they clearly
 2 have the judicial power to hear and
 3 direct public officials in the territory and
 4 substantial territorial governments.

5 About all this the Court was cautious
 6 in following the States' arguments of
 7 fact and judicial authority of test-
 8 ifying witnesses for judicial review
 9 by the July 10 Court. When the defendant
 10 argues that providing the complete facts
 11 of it fairly with the records of the
 12 witness statements to the July 10 is the
 13 judicial effect by circumstances the test-
 14 facts of the transcripts.

15 the July review of testimony
 16 on other evidence during deliberations
 17 must be treated very carefully where there
 18 is a very high risk that jurors may give
 19 undue emphasis to any portion of test-
 20 imony on evidence of that United States
 21 v. Hernandez, 27 F.3d 1403, 1108 (94).

22 Cal. 1994). (Reviewing after finding abuse
 23 of discretion where Court allowed
 24 jury to review transcripts of testimony
 25 during deliberations.) (Considerable
 26 undue emphasis places undue stress
 27 the alleged to listen to evidence as
 28 occurred time. See United States v. Carter

1 962. F. 2d, 945. 952-3 (9th Cir. 1992).
2 (Affirming Trial Court's Ruling denying
3 Review of Transcripts of Testimony dur-
4 ing deliberations). Osborne vs United
5 States. 351 F. 2d 111, 118-19 (8th Cir. 1965).
6 (Reversing where Jury allowed to Re-
7 view exhibit not introduced nor received
8 into evidence during deliberations).
9 Hearing the evidence and seeing the
10 evidence doubly impacts the minds of
11 the Jurors. it is clear that a Jury may
12 view and review all items of evidence
13 presented and admitted during a trial
14 except depositions. Here, the Recording
15 of the Victims' Cousins' Statements were
16 admitted into evidence and not the tran-
17 scripts as such. Allowing the Jury to
18 review and use the transcripts was Pre-
19 Judicial see. People vs. Sims. 5 Cal. 4th
20 405. 448 (1993). And Penal Code § 1137.

21 22 Conclusion

23
24 The Petition for a writ of Certiorari
25 should be granted.

26 Respectfully Submitted

27
28 Date: 10/8/2018 1:11 Juan Lara