No. 18-9285

IN THE

SUPREME COURT OF THE UNITED STATES

DEAN A. SCHWARTZMILLER — PETITIONER
(Your Name)

vs.

THE STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of California
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DEAN A. SCHWARTZMILLER
(Your Name)

R.J. Donovan State Prison, 480 Alta Rd.
(Address)

San Diego, CA. 92179
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Is California Penal Code § 288 void for vagueness and overbreadth and contrary to the First, Sixth, and Fourteenth Asmendments to the United States Constitution on the following basis:

(1) Section 288(a) as interpreted by the Courts of California contains no definitive actus reus, is void for vagueness and overbreadth, and violates the Sixth, and Fourteenth Amendments of the United States Constitution;

(2) The California Supreme Court's addition to Section 288(a) of "any touching" however slight of a minor or child even if the "touching" is an "outwardly innocuous, or inoffensive showing of expression or loving association such as being routinely "cuddled, disrobed, stroked, examined, or groomed" necessary for a healthy upbringing, is subjectively determined by police, prosecutors, judges, or juries to violate Section 288(a) and is a violation of the First, and Fourteenth Amendments of the United States Constitution;

(3) California Penal Code § 288(a) as applied and construed at Petitioner's criminal trial, created a presumption of specific intent that "Actually...is not required", thus, eliminating the mens rea that supposedly flows from the "any touching" act as added to the statute in 1995 by California Supreme Court activism and fiat and is a violation of the Sixth and Fourteenth Amendments to the United States Constitution;

(4) California Penal Code § 288(a) denies equal protection of the laws by creating an arbitrary, capricious, and unreasonable classification of post-pubescent minors, when the pubescent minor is capable of being prosecuted for committing the same "any touching" acts by the State, but then denies evidence that the pubescent minor's aggression and/or consent caused the "any touching" acts to occur in violation of the Sixth and Fourteenth Amendments of the United States Constitution.

SECOND QUESTION

Can California's Legislature after a criminal conviction, simply change a defendant's prior crimes for which he is serving a sentence, from non-violent Section 288(a) to violent Section 288(b), without trial or proof of violence required for the purpose of imposing further, or to avoid the lessening of punishments already imposed, with the stroke of a pen by adding non-violent Penal Code § 288(a) to the penalty enhancement statutes §§ 667.61(c)(7) (1998), and 667.5(c)(6) & (16)

QUESTION(S) PRESENTED (cont.)

(2006), by bill of attainder eliminating the Sixth and Fourteenth Amendments' requirement of proof beyond a reasonable doubt, by violating Article 1, Section 10, Clause 3 of the United States Constitution?

LIST OF PARTIES

[XX] 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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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 D to the petition and is

[ ] reported at 752 F.2d 1341 (9th Cir. 1984); 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 E to the petition and is

[ ] reported at 567 F.Supp. 1371 (D.Id. 1983); 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 A to the petition and is

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

The opinion of the 6th District appellate Court Cal. appears at Appendix B to the petition and is

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

The opinion of the Santa Clara County Superior Court appears at Appendix C to the petition and is
[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was August 10, 1984.

[X] 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).

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

The date on which the highest state court decided my case was March 27, 2019. A copy of that decision appears at Appendix __A____.

[ ] 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

CONSTITUTION AMENDMENTS

AMENDMENT 1: Congress shall make no law respecting...abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition for redress of grievances.

AMENDMENT VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

AMENDMENT XIV: 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal proection of the laws.

STATUTORY PROVISIONS

California Penal Code § 288: (a) Any person who willfully and lewdly commits any lewd or lascivious act...upon or with the body or any part or member thereof of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person, or the child is guilty of a felony....

Idaho Code § 18-6607: Any person who shall willfully and lewdly commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor or child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person, or of such minor or child, shall be guilty of a felony....

STATEMENT OF THE CASE

In 2015, in Johnson v. United States, 135 S.Ct. 2551, 2561, and again in 2018, in Sessions v. Dimaya, 584 U.S. ___, Slip Op. *9 n.3, this Honorable Supreme Court solidified the fact that when reviewing a statute for vagueness or overbreadth, "It seems to us that the dissent's supposed requirement of vagueness in all applications is not a requirement at all, but a tautology": If we hold a statute to be vague, it is vague in all of its applications (and never mind the reality)."

In denying this Petitioner's habeas corpus applications to them, the California Courts, or more specifically, the Superior Court for Santa Clara County, People v. Schwartzmiller, Case No. CC594684 in June, 2006, and in, In re Schwartzmiller, Case No. CC594684, on June 15, 2018, denied Petitioner's request to void ab initio California Penal Code section 288 (lewd and lascivious conduct with a child), because "Petitioner's present sentence is based on his multiple convictions for what he personally and individually did on [those] occasions." Joint Appendix JA C at 3. 1/

1/ The Superior Court of Santa Clara County was the only California Court to even peripherally consider the issues of vagueness and overbreadth of Section 288 of the Penal Code in the state courts. Both the Appellate Court [Joint Appendix JA B], and the Supreme Court [JA A], issued 'postcard denials', completely ignoring both Federal Court decisions in Schwartzmiller v. Gardner, 567 F.Supp. 1371 (D. Id. 1983), reversed in part, 752 F.2d 1341 (9th Cir. 1984), and the void for vagueness legal conclusions contained not only in Johnson and Sessions cited to above, but also, Kolender v. Lawson, 461 U.S. 352, 358 n.8 (1982), a decision telling California it should know better.

This of course, is obtained from Parker v. Levy's [417 U.S. 733 758 (1974)], "tautology" that "one to whose conduct a statute clearly applies may not successfully challenge it for vagueness." The Superior Court's alluding to Parker obviously rejected the cited opinion of Schwartzmiller v. Gardner at 1382, where the Federal District Court "concludes that the plain language of [the lewd and lascivious statute] is unconstitutionally vague on its face." reversed in part, 752 F.2d 1341, 1346-47 (9th Cir. 1984)(concluding that "The Supreme Court has recognized that a party has standing to challenge a statute facially despite the ordinary rule against facial statutory review, [only], if "no standard of conduct is specified at all... [Parker, supra]...that is, if the statute "is impermissibly vague in all of its applications." JA D at 1346-47.

Thus the Ninth Circuit Court of Appeals rejected this Supreme Court's decision made just one-year earlier in Kolender v. Lawson, 461 U.S. 352, 358 n.8 (1982). Note 8 of Kolender's 7 to 2 decision, concludes:

> However, in the dissent's view one may not confuse vagueness and overbreadth by attacking the enactment as being vague as applied to conduct other than his own...but we have traditionally viewed vagueness and overbreadth as logically related and similar doctrines. No authority cited by the dissent supports its argument about facial challenges in the arbitrary enforcement context. The dissent relies heavily on Parker v. Levy, 417 U.S. 733 (1974), but in that case we deliberately applied a less stringent vagueness analysis "[because] of the factors differentiating military society from civilian society." Id. at 756. Hoffman Estates, supra, also relied upon by the dissent, does not support its position. In addition to reaffirming the validity of facial challenges in situations where free speech or free association are affected..., the Court emphasized that the ordinance in Hoffman Estates, "simply regulates a less strict vagueness test because its subject matter is often more narrow.... Id. at 358.

The Ninth Circuit Court of Appeals in Gardner at 1346-47, cites to the same Hoffman Estates case at the same page, 494, to dispel the above rejection of the dissent's reliance on Parker v. Levy, to reject Petitioner's claim of facial vagueness. It concludes:

> ...it appears that Kolender presented a unique fact situtation and that facial vagueness review may still be appropriate only when "the enactment is impermissibly vague in all of its applications." Hoffman Estates at 495. Kolender expands the availability of facial vagueness review, however, it does so only if the challenger at least demonstrates implication of a "substantial amount of constitutionally protected conduct." Id.at 494.

Again, recently addressing this exact issue, Justice Scalia laid this argument to rest for good by concluding with 5 other Justices, in Johnson v. United States, 135 S.Ct. at 2561, that:

> In all events, although statements in some of our holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp. Id. at 2560-61. (emphasis in original).
>
> Resisting the force of these decisions, the dissent insists that "a statute is void for vagueness only if it is vague in all its applications...It seems to us that the dissents supposed requirement of vagueness in all applications is not a requirement at all, but a tautology: If we hold a statute to be vague, it is vague in all its applications (and never mind the reality). Id. at 2561.

This was directly argued to the California Superior court prior to Petitioner's trial in 2006 [Memorandum in Support at 3, 4, & 5 n.1], and again, in his 2018 Memorandum or Petition for habeas corpus relief after this Court's decisions in Johnson and Dimaya, in combination with Gardner, all of which were rejected, without any comment to them by the Superior or any other state California Court. See, JA A; JA B; and JA C.

The Idaho Lewd and Lascivious conduct statute, § 18-6607, addressed in Gardner, read:

> Any person who shall willfully and lewdly commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor or child under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said person or of such minor or child, shall be guilty of a felony.... Gardner at 1374.

The California Lewd and Lascivious conduct statute, Penal Code § 288 addressed in, In re Schwartzmiller, reads:

> (a) Any person who willfully and lewdly commits any lewd and lascivious act...upon or with the body or any part or member thereof of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person, or the child is guilty of a felony....

In Gardner, Senior District Court Judge, Ray McNichols determined that to judge this statute's vagueness,

> The Court's first inquiry is whether the term "lewd" or "lascivious" have well defined, generally accepted meanings. If these terms have meanings of general import, this court is unaware of what they are. Schwartzmiller v. Gardner, 567 F.Supp. at 1376.

The California Supreme Court also struggling to define this term [lewd], in 1979, in Pryor v. Municple Court of Los Angeles, 23 Cal.3d 238, 247, "observed that all definitions of that term in ordinary usage are subjective dependent upon the speaker's social, moral, and cultural bias'...lewd implies a sexual act." Cf. People Stouter, 142 Cal. 146, 151 (1904)("A person might in law, be guilty of an attempt to commit the crime defined in section 288. A licentious act is not itself a crime under the section."). Cf. In re Smith, 7 Cal.3d 362, 366 (1972).

In 1995, however, this same Supreme Court reconstructed section 288 in its entirety without Legislative input, by observing while including non-sexual conduct within its purview:

> For almost a Century, section 288 has been interpreted to require no particular form of physical contact...The crime occurs...[if] an under age child was "touched" with the requisite sexual intent. People v. Martinez, 11 Cal.4th 434, 438 (1995)(emphasis mine).

But this specific intent requirement alluded to above, also "requires no particular form of physical contact."

The Gardner Court specifically confronted the statute's, or Court's reliance on said "sexual intent" thus:

> The Court is also unpersuaded by the statute's requirement of specific intent. The statute outlaws only such lewd and lascivious acts as are committed with the intent to arouse, appeal, or gratify lust, passions or sexual desires. In Evans, the Idaho Court states, "The forbidden acts and conduct are further limited and defined by the specific intent required by the statute." Evans, 73 Idaho at 57. This statement is misleading at best, begs the question at least, and is not supported by a close reading of the statute. The specific intent language in no way further "defines" the forbidden acts. And while it limits the statute's focus to lewd and lascivious acts committed with the requisite intent, it does not clarify what ACTS are proscribed and does not purport to. It simply adds a necessary element of specific intent. Gardner at 1376-77. (emphasis in original).

In doing so, the Martinez Court rejected the long-standing and correct view that no statutory violation occurs unless the [undefined] act is both sexually motivated [lewdly committed], and a lewd or lascivious sexual act. Cf. United States v. Arvin, 900 F.2d 1385 (9th Cir. 1990)("Lascivious is no different in its meaning than "lewd", both mean sexually explicit conduct."). And,

> It is a familiar 'maxim that a statutory term is generally presumed to have its common law meaning...'. Or, as Justice Frankfurter advised, "if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." F. Frankfurter, Reflections On The Reading Of Statutes, 47 Col.Law Rev. 527-537 (1967). United States v. Evans, 504 U.S. 255, 260 and n.3 (1990).

But yet, on the substantive side, no one who had looked, had specifically defined exactly what ACTS these two aforementioned

criminal statutes carrying life in prison sentences were, or are, most importantly neither the California, nor Idaho Legislatures. See, Gardner, 567 F.Supp. at 1379 (referring to 18 U.S.C. §§ 2253).

The most basic of due process's customary practice is the demand of fair notice. Connally v. General Const. Co., 269 U.S. 383, 391 (1926). But all of the California rulings above from its various courts, admit that section 288 prohibits only "subjective". not objective, or substantive sexual acts that are undefined not only for its administration by judges, prosecutors, police and juries, but also, the defendant. Contra, Sessions v. Dimaya, supra Slip Op. at * 5 & 6, n.1 (Gorsuch, J. Concurring). In fact, the California Supreme Court has declared that the "perpetrator must possess a subjectively sexual intent, but need not engage in an objectively sexual act.", People v. Murphy, 25 Cal.4th 136, 143 (20-01)(Penal Code § 288 includes as possible violations the routine "cuddl[ing], disrob[ing], strok[ing], examin[ing], and groom[ing], of any child within its scope, even if some observers might disagree."). Martinez, at 450; Lopez at 290-91; Murphy at 146.

> For example, a lewdly intended embrace innocently and warmly received by a child might violate section 288...if a normal person would not unhesitatingly find the embrace irritating or disturbing. Physical affection among relatives generally considered acceptable conduct, nonetheless could satisfy the "any touching" aspect of section 288 subdivision (a), and violate that section if accompanied by the requisite lewd intent. People v. Lopez, 19 Cal.4th 281, 290-91 (1998).

As if this First Amendment violation of expression and/or association were not enough, the California Courts and Legislature then used this ruling to overturn old, or write new, rules of evidence procedure that "undermine[d] the fundamental fairness of

[section 288 trials and sentences] 'that seriously diminished the likelihood of obtaining [an] accurate conviction[s]." Teague v. Lane, 489 U.S. 288, 312-13 (1989), such as:

1. Allowing unsimilar propensity evidence from unsimilar alleged victims from more than 40 years ago at trials that need be proved by a simple preponderence of evidence burden of proof; but see, Federal Evi. Code 414(d);

2. Pleading no dates or facts or circumstances certain of alleged crimes by removing all alibi defenses from any defendant, People v. Jones, 51 Cal.3d 292 (1990); but see, Sessions v. Dimaya, Slip Op. at 1-19 (Gorsuch Concurring) (April 17, 2018)(plurality opinion).

3. Using multiple testimonial hearsay evidence cumulatively at all section 288 trials where no physical, psychological, or medical evidence is available for use by it, Cal. Evidence Code § 1236, declared void in 1969 in People v. Washington, 71 Cal.2d 1063; accord, Crawford v. Washington, 541 U.S. 36 (2004);

4. Using 'pretext' or control phone calls initiated by police without warrant or other authority to also transcribe and use at trial as non-hearsay testimony in the State's case-in-chief, but see, Cal. Penal Codes §§ 630 et.seq, section 632 subdivisions (a), (b) and (d); and see, 18 U.S.C. §§ 2511 and 2516;

5. Allowing "comfort" dogs and victim "advocates" to sit by the alleged victims while testifying and walking around the courthouse in the jury's view solely to evoke undue empathy (and accompanying prejudice) for alleged victims and provide a fundamentally unfair criminal trial for defendant; Contra 14th Amendment U.S. Const.

Such procedural rules are highlighted by cases such as People v. Jones, supra, where the California Supreme Court broke all Due Process Clause precedent by relying on a defendant's ability to make a Motion to Elect when it concluded that section 288 defendants do not need to know what date(s) each individual count charged is supposed to have occurred on, generic is okay. But when this Petitioner made a Motion to Elect, the trial court simply ignored it.

By just pleading "any touching", also generic, of the Child, or what the facts or circumstances of the "any touching" acts were

composed of that allegedly violated the statute, the state provides no Notice to anyone. This way, no one knew ahead of time what anyone was going to say it was that you had done and it could be changed or altered during trial at will. No dates, no alibi defense, no facts and circumstances, no prepared defense with physical, psychological, or medical evidence is possible while the People are allowed to prove its case with corroboration from an uninhibited multitude of testimonial and cumulative hearsay evidence.

In 1994, the same California Supreme Court in People v. Scott, 9 Cal.4th 331, determined that one continuous same time, same victim, same place, act could result in numerous separate counts of section 288(a) "any touching" crime(s) by simply moving your hand, or mouth from one area to another, to another, then the Court instructs that "The People have presented evidence of more than one act to prove that the defendant committed these offenses." CALCRIM 3501, JA I, which of course is a more than ludicrous assertion, for adding more counts to any indictment or information proves nothing, except the prosecutor is probably vindictive.[1/]

But most importantly of all, California by jury instruction has eliminated the necessity of proving two (2) essential elements of the crime: 1) That any lewdly committed lewd or lascivious or sex act was committed by any defendant, or proving an actus reus outside of "any touching" of a minor has occurred, CALCRIM 1110, JA G; then, 2) ultimately eliminated having to prove any specific intent included in the statute after having instructed the jury that it is a necessary element for proof to find guilt, but CALCRIM 1110

then uninstructs the jury, by telling it "Actually, arousing, appealing to, or gratifying the lust, passions, or sexual desires of the perpetrator or the child is not required for lewd or lascivious conduct." Id. Thereby eliminating the mens rea requirement from having to be proved by the People along with no proof of a lewd or lascivious act being "lewdly" not just "willfully" committed, See JA G.

Petitioner respectfully submits there are more actually innocent section 288(a) offenders imprisoned by California than there are innocent prisoners in all other 49 states. Why? Because in 1996, when all of this commenced along with sexually violent predator acts that do not require a repeat, or violent, or predatory offender, or even in California, a "sexual offender", the Antiterrorism and Effective Death Penalty Act (AEDPA) was enacted by Congress and signed by President Clinton, that immediately stopped most State court prisoner Federal Habeas Corpus litigation from being entertained by the Federal Courts. Once California State Courts figured this out, they used, and are using AEDPA literally as a license to kill and keep the huge prison complexes (36 of them in California alone), full. Brown v. Plata, 131 S.Ct. 1910 (2011), affirmed, 134 S.Ct. 1 (2013).

In Califonria, if charged with a section 288(a) violation, you are presumed guilty until you submit proof beyond a reasonable doubt you are truly innocent, and even then, this may not result in a finding of innocence. Penal Code Section 288(a):

> Belongs to that class of offenses of which it has aften been said that the charge is easy to make and hard to disprove. In such cases jurors are sometimes moved by abhorance of the offense to

> convict upon slight evidence, and on appeal, a court will look closely into the conduct of the trial, and to see that there was some substantial evidence to warrant a verdict of guilty. People v. Stouter, 142 Cal. 146, 147 (1904).

In summation of this Case Statement, perhaps this Honorable Supreme Court would rather consider a Grant of this prayed for Certiorari, Vacating the judgments below, and Remanding this matter to either the Ninth Circuit Court of Appeals, or the California Supreme Court, for reconsideration in light of Johnson v. United States, 135 S.Ct. 2551, 2561 (2015), or Sessions v. Dimaya, 584 U.S. ___, Slip Op. at *9 n.3, or Schwartzmiller v. Gardner, 567 F.Supp. 1371 (D.Idl 1983), reversed in part, affirmed in part, 752 F.2d 1341 (9th Cir. 1984), overruled by Johnson and Sessions.

See, Tatum v. Arizona, 137 S.Ct. 11 (2016)(Grant, Vacate & Remand).

Penal Code § 288(a) is void for vagueness and overbreadth:

> The statute's downfall is its absolute failure to list any of the acts which will subject one to its punishment. Rather, it vaguely hints of sexual overtones and terms "lewd" and "Lascivious" simply lack such well accepted, commonly understood definitions to give "sufficient warning that men may conduct themselves so as to avoid that which is forbidden". Rose v. Locke, 423 U.S. 48, 50, 46 L.Ed.2d 185, 96 S.Ct. 243 (1975). Neither is this a case where the offending language is rendered more explicit because it is combined with some other more precisely defined word ["any touching"]. The Court thus concludes that the plain language of [§ 288(a)] is insufficiently definite to inform persons of ordinary intelligence what is outlawed and to provide law officers, judges, and juries legally fixed standards to guide enforcement. Gardner, supra at 1376.

1/ 3501. Uninanimity: When Generic Testimony of Offense Presented. The defendant is charged with Oral Copulation/Sexual Penetration with a child 13 years or Younger in Counts [1-10]...sometime during the Period of December 9, 1992 and May 22, 2005.

The People have presented evidence of more than one act to prove that the defendant committed these offenses. You may not find the defendant guilty unless:

> 1. You all agree that the people have proved that the defendant committed one of these acts and you all agree on which act he committed for each offense charged;....

REASONS FOR GRANTING THE PETITION

It is respectfully submitted that Penal Code Section 288 is void for vagueness and overbreadth as currently construed by the California Supreme Court. This criminal provision as being used has resulted in the conviction of innumerable innocent men, women and children (yes children) in California. Cf. In re Randy S., 76 Cal.App.4th 400 (1999)(11 year-old boy may, and did, manifest the intent to commit Section 288(a) sexual act(s) to find guilt.); People v. Pitts, 223 Cal.App.3d 110 (1990)(the drinking of urine by boys is a lewd act, no touching of the boys was necessary because urine came from their bodies.). But see, Pitts v. Kern County, 17 Cal.4th 340, 346 (1998)(All testimony by the boys was recanted because the State prosecutor and State psychologists had coerced their testimony.).

Penal Code § 288 is an anachronism from 1901 [stats. 1901, C. 204, p. 630, sec. 1], that the California Supreme Court does not know why, or to what purpose, has been amended by the Legislature, People v. Scott, 9 Cal.4th 331, 347 (1994)("Statute has remained largely unchanged since its enactment over a Century ago", Baxter, J.); and compare, People v. Martinez, 11 Cal.4th 434 (1995)("Section 288 has been amended more than 10 times since enacted in 1901 ...several significant changes have been made....", Baxter, J.) (emphasis supplied). However, prior to this decision in 1995, other than clarifying the wording of "in part 1 of this code" in 1933, and adding 14 and 15 year-old alleged victims in 1986 (Subdivision (c)),

no other significant changes had been made.

In the 1980's, 1990's and 2000's, California imprisoned more citizens including children, and for longer periods of time, than any other State in the Union. It has done so with Section 288(a) non-violent offenders by declaring them to be violent/non-violent criminals prone to high recidivism rates when nothing could be further from the truth, and when Section 288 subdivision (b) specifically defines a violent offender for the statute's purposes, and sex offenders are not prone to recidivism as found by California Courts and Legislature, Doe v. Snyder, 834 F.3d 696 (6th Cir. 2016) (Circuit Court finds scientific evidence that refutes moralized judgments about sex offenders, specifically that they pose a unique and substantial risk of recidivism.). Cf. State v. Wein, 417 P.3d 787 (Ariz. 2018)(questioning the U.S. Supreme Court's decision in McCune v. Lyle, 536 U.S. 24 (2002).

In 2016, California voters revealed their objection to such practices by passing Proposition 57 telling the custody officials that such offenders should be paroled or at least considered for it. Article 1, Section 32, Cal. Constitution.

Times have changed considerably since 1901, but still California classifies all the same and as equally harmed by non-violent sexual acts, Lesbian, gay, bisexual, transgender, heterosexual, or queer, post pubescents or "tweens", even pre-pubescent children alike regardless of their precociousness, are judged to be harmed equally and life in prison is warranted for all, as plainly exhibited in this case.

In California, politics are king at anyone's expense. From 1997 to 2007, the California Sex Offender Management Board conducted a study of 3,577 sex offenders released from its prisons, of which only 3.8% were returned to custody due to a new sexual offense. At about the same time, 1994 to 1997, the United States Justice Department also conducted a study of 9,691 sex offenders released in 15 States and followed them for 3 years which revealed a reconviction rate of only 3.5%, with some States as low as 2.8%[2/].

In 1995, the California Supreme Court went to work obliterating almost one-hundred years of clear legal precedent as related to non-violent Section 288(a) criminal conduct. People v. Martinez, 11 Cal. 4th 434; People v. Lopez, 19 Cal.4th 290 (1998); and, People v. Murphy, 25 Cal.4th 136 (2001). These Courts actually adopted a split Court of Appeal's opinion that Section 288(a) included "constructive", or no, touching of any child to violate the statute, People v. Austin, 111 Cal.3d 110 (1980). The result was the altering of the range of conduct and class of persons that Section 288(a) and (b) were intended to punish. Welch v. United States, 136 S.Ct. 1257,1266 (2016).

2/ Despite these facts and figures, the following pre-ballot propaganda were circulated to the votersin 2006: "a) Proposition 83, the Sexual Predator Punishment and Control Act, "Jessica's Law". "Sex offenders have a very high recidivism rate. According to a 1998 report by the United States Justice Department (the same study referred to above), sex offenders are the least likely to be cured (cured of what), and the most likely to reoffend...."

b) "SB 1128, Alquist Sex Offender Punishment, Control and Containment Act of 2006. P.C. § 290.3(a)(1)-(a)...enhance public safety and reduce the risk of recidivism. (1) Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment and the protection of the public...is of paramount interest."

THE HISTORY OF PENAL CODE § 288

California has taken its prosecution of alleged non-violent "child molestation" charges to the absurd in a Country that proclaims equal justice for all citizens. Its politically inspired objectively aimed Supreme Court judicial fiats and activism in reconstructing Section 288(a), have resulted in numerous violations of the United States Constitution and the conviction and prosecution of innumerable innocent men, women, and children (yes children) upon the vague overly broad, and amorphous Section 288(a)(This "broad and amorphous language is legislatively deliberate", Martinez at 443), that now requires only "any touching" to find guilt and proof of the statute's intent requirement is not "actually" required [CALCRIM 1110]. JA G.

Thus, Petitioner's legal discussion will commence with this Court's admonition to California that:

> In making its second argument, which denies the existence of significant reliance interests, the dissent ignores the potentially lengthy period of time...during which the accused lacked notice that he would be prosecuted and during which he was unaware, for example, of any need to preserve evidence of innocence...Such problems can plague child abuse cases where recollections after so many years may be uncertain, and recovered memories faulty, but may nonetheless lead to prosecutions that destroy families. Regardless, a Constitutional principle must apply not only in child abuse cases, but in every Criminal case....
>
> Unfair, seems to us a fair characterization. Stogner v. California, 539 U.S. 607, 631-32 (2003).'

In reviewing previous California criminal statutes, this Supreme Court has opined:

> ...where a statute imposes criminal penalties, the standard of certainty [of statute language] is higher...we have traditionally viewed vagueness and overbreadth as logically related and similar doctrines. Kolender v. Lawson, 461 U.S. 352, 358-59 n. 8 (1983).

To avoid this facial vagueness and overbreadth challenge to Section 288(a), the statute must clearly: 1) Define the criminal conduct with sufficient definiteness so that people can understand exactly what conduct it prohibits. Schwartzmiller v. Gardner, 567 F.Supp. at 1379. But see, Martinez at 452 ("...the touching should not escape punishment simply because it might not be considered a means of sexual gratification by members of the mainstream population."); and 2) establish standards to permit police, prosecutors, judges and juries to enforce the law in a non-arbitrary, non-discriminatory manner, Kolender at 357, that "any touching" does not do.

The above quote from Martinez aside, this Supreme Court has held that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine--the requirement that a legislature establish minimal guidelines to govern law enforcement." Smith v. Gougen, 415 U.S. 566, 574 (1974); Johnson v. United States, 135 S.Ct. 2552, 2560-61 (2015).

This Court has said it must conduct its facial vagueness analysis by examining statutory language as narrowed by State court decisions. Wainwright v. Stone, 414 U.S. 21, 23 (1973). A preliminary distinction between overbreadth and vagueness is necessary here because some discussions of overbreadth confuse these two concepts. A statute is vague if "men of common intelligence must necessarily guess at its meaning and differ to its application." Connally v.

General Const. Co., 269 U.S. 385, 391 (1926).

A citizen contemplating engaging in certain activity should be provided fair notice of what conduct is prohibited so he or she can avoid unwittingly engaging in criminality, Cf. City of Chicago v. Morales, 527 U.S. 41, 58 (1999)(holding municipal gang ordinance vague). Without effective limits on government officials, the state can and is running roughshod over individuals in the name of this indistinct law currently contained in the California Penal Code, Section 288(a). As construed by the Court in Martinez, the absence of any ascertainable standard of guilt in any given legal circumstances, give police officers, prosecutors, and the trier of fact unlimited discretion to apply the law arbitrarily and discriminately, and capriciously enforce it. Smith v. Gougen, supra at 574.

Overbreadth on the other hand, protects against a statute that does not aim specifically at the evils within the allowable area of State control but sweeps within its ambit other constitutionally protected activities, Cf. Thornhill v. Alabama, 310 U.S. 88, 97 (1939). This of course would include First Amendment conduct such as the "cuddl[ing], disrob[ing], strok[ing], examin[ing, or groom[ing] of a child". Martinez at 450; Lopez at 290-91; and Murphy at 146, (emphasis supplied).

Recognizing the fact that Section 288(a)'s terms "lewdly commit any lewd or lascivious act" itself is broadly indefinite, several California Courts had undertaken the task of determining just what does the term "lewdly commit any lewd or lascivious act" really mean? In 1904, just 3 years after it was enacted, the California Supreme

Court concluded that to violate Section 288, there must be committed not only a lewd or lascivious sexual act, but it must be committed on the body of the child as in the case then before it, "lewdly insert in vagina of said child a finger of him...with the intent of ...etc.", People v. Stouter, 142 Cal. 146, 147 (1904).

Perhaps most telling in construing the "lewdly commit any lewd or lascivious act" language, comes from California Court opinions before the Martinez decision, of what is NOT a lewdly committed lewd sexual act. Stouter, supra; People v. Webb, 158 Cal.App.2d 537 (1958); People v. Jones, (Jones 2), 225 Cal.App.2d 598 (1964); In re Smith, 225 Cal.3d 362 (1972); and, Pryor v. Los Angeles Municiple Court, 25 Cal.3d 238 (1979). With these above cited cases, the term "lewdly committed lewd or lascivious act" became firmly embedded in California law as requiring "sexual activity for purposes of sexual arousal, gratification, or affront." Id. Cf. United States v. Arvin, 900 F.2d 1385 (9th Cir. 1990)("Lascivious is no different in its meaning than 'lewd', both mean 'sexually explicit conduct.'").

In 1979, the California Supreme Court while it still was one, again was called upon to define the term lewd as used in Penal Code § 647 in Pryor, supra. Therein, the Court firmly and candidly,

> Observed that all definitions of that term in ordinary usage are subjective dependant upon the speaker's social, moral, and cultural bias'...lewd implies a sexual act. Id. at 247.

After this preliminary and correct conclusion, the Court undertook to constitutionally construe the statute so as not to offend the Due Process Clause(s) of the Federal and State Constitutions, and again correctly concluded:

> ...we hold the terms "lewd" and "disolute"are synonymous (citation omitted), and refer to sexually motivated conduct. Id. at 255.

But now the Pryor Court knew that this was not the end to constitutionally construing a criminal statute:

> The final step is to define specifically the sexually motivated conduct proscribed by the statute. Id. at 255.
>
> Clearly, the statute cannot be construed to ban all sexually motivated conduct, for such a sweeping prohibition would encompass much innocent and inoffensive behavior. A constitutionally specific definition must be limited to conduct of a type likely to offend. Although the varieties of sexual expression are almost infinite, virtually all such offensive conduct will involve the touching of the genitals, buttocks, or female breast for purposes of sexual arousal, gratification, or affront. (citing to In re Smith, 25 Cal. 3d at 366). Pryor at 256 (emphasis supplied)
>
> Under the construction we have established in this opinion, (the lewd in the statute) prohibits only the solicitation or commission of a sexual touching, done with specific intent...It does not impose vague and far reaching standards under which the criminality of an act depends upon the moral view of the judge or jury, does not prohibit solicitation of lawful acts and does not invite discriminatory enforcement, Id. at 257 (emphasis mine).

Today, Penal Code Section 288(a) encompasses all four of these above listed constitutional no-nos.

The Pryor case is irreconcilable with the totally result oriented and activist opinions in Martinez, Lopez and Murphy, where not one Federal case is cited as support for these opinions, while Pryor cites to 14 Federal Court opinions supporting its conclusions made therein.

THE POLITICIZING OF CRIMINALITY IN CALIFORNIA

The political razing of a constitutionally astute Supreme Court in California by initiative in 1986, with a voter's brochure

containing false and misleading facts and circumstances, created vacancies on the Court that empowered four consecutive Republican governors (including Grey Davis an impeached Democrat in name only), to appoint ultra-conservative, reactionary judges in their stead. This resulted in an extremely radical and progressive court that has greatly contributed to California's $13-14 Billion dollar per-year corrections budget that has left the State's education and infrastructure systems in a shambles and distress.

At the forefront of all the regressive laws enacted in California during this period, were those affecting non-violent alleged "child molesters" and public stigma attached thereto, an easy target not just in California, but also Nationally. In this State it was accomplished with judicial activism and fiat construction of existing statutes and rules by the newly appointed, polarized members of its Supreme Court, especially as related to Section 288, all sections as concerns non-violent alleged child abuse, and the rules and procedures used to prosecute these crimes. In doing so, the Federal Constitution was laid to rest, and anything and everything to assure conviction of all such charged defendants, were written by the Legislature, and approved, or added to, by its reactionary courts. See, People v. Frazer, 21 Cal.4th 737, 744 (1999)("Young victims often delay reporting sexual offenses because they are easily manipulated by offenders in positions of authority and trust, and because children have difficulty remembering the crime or facing the trauma it can cause."). Frazer was discussing Penal Code § 803(g) that allowed prosecutions for crimes committed 50 years before its enactment, that

was voided by this Supreme Court in Stogner v. California, 539 U.S. 607 (2003).

Even before Martinez and Lopez, in 1990, the newly constructed Supreme Court went to work, first deciding People v. Jones, 51 Cal. 3d 294 (1990), where it decided that in cases prosecuting Section 288(a) crimes, the State no longer had to plead or prove any facts or circumstances constituting the specific type of conduct alleged or provide any dates certain of its alleged commission, thereby eliminating the constutionally required Notice, or to be informed of the nature and cause of the accusations, see, JA J (Information filed in Petitioner's case, no dates certain, no alleged sexual acts). At the same time eliminating the right to prepare a defense with certifiable alibi evidence because no certain dates for the commission of any of the alleged counts were provided by the People, no date, no alibi defense. But see, Sessions v. Dimaya, 584 U.S. ___, Slip Op. *1-19, concurring opinion (April 17, 2018).

This was accomplished by a majority of the Court over a vigorous dissent by Justices Mosk and Broussard who reminded the rest:

> ...lewd or lascivious conduct as defined in Penal Code § 288 subdivision (a) criminalizes at present only specific acts. The statute is quite clear about this, making punishable (only) any person who shall wilfully and lewdly commit any lewd or lascivious act. Jones supra (Jones 1), at 326.

But Jones 1 was only a precursor to what was about to come: First, was People v. Scott, 9 Cal.4th 331, 346 (1994)(one continuous act with one victim may result in the State's stacking of several arbitrarily contrived separate counts of "any touching" without any date or facts alleged that violate the statute, just exactly as

accomplished in this Petitioner's case. Then, as also occurred here, consecutive sentences of "life" imprisonment for de minimis non-violent conduct.

Then came Martinez, discussed infra; then Lopez at 289-91 ("any touching does not have to be "lewd or lascivious" touching, or offensive touching, and most misdemeanor sexually related acts were incorporated by fiat into Section 288(a), including all attempts, but see People v. Stouter, supra, 142 Cal. at 151 ("a person might in law, be guilty of an attempt to commit the crime defined in Section 288, Penal Code. A mere licentious act is not itself a crime under the section. There must be such an act committed upon the body of a child under 14 years old, and there could be an attempt to commit such an act without accomplishing it.").

And then, came People v. Murphy, 25 Cal.4th at 145-46 ("The [288] perpetrator must possess a subjectively sexual intent, but need not engage in any objectively sexual act").

In all of the cases alluded to above, the California Supreme Court did not, strictly speaking, construe Section 288(a) in the sense of defining the meaning of the word "lewdly", or the phrase "lewd or lascivious act", but instead, merely recharacterized what it wanted to be the practical effect of the statute into "any touching". Because of this, no Federal Court is bound by these opinions and it "may form its own judgment as to Penal Code § 288's operative effect." Wisconsin v. Mitchell, 508 U.S. 476, 478 (1993).

THE MARTINEZ FACTS AND LAW

The Martinez Court specifically concluded from out of the blue:

> For almost a Century, section 288 has been interpreted to require no particular form of physical contact...the crime occurs (if) an underage child was 'touched' with the requisite intent. Id. at 438.

Ipso facto, the California Courts and prosecutors will determine ad hoc if "any touching" violates Section 288 subdivision (a).

Continuing, the Court further determined that Penal Code § 288's "broad and amorphous language" was legislatively deliberate (Id. at 443), and included no particular type of act for its violation; only a person's thoughts were necessary, along with perhaps, the "cuddl-[ing], disrob[ing], strok[ing], examin[ing], or groom[ing] of a child .", Id. at 450. This, if the observer of this innocuous and inoffensive conduct subjectively thinks you may have a sexual intent.

> The general principle that mere intention of the accused to commit a crime or his belief that he is committing a crime does not give rise to liability. Apart from the mens rea there must be some act or conduct in violation of law which itself is socially harmful. See, Perkins and Bagse, Criminal Law (3rd Ed.1982) pp. 830-31; 1 Witkin Cal. Criminal Law (2nd Ed. 1988), sec. 114, p. 135; People v. Wallace, 11 Cal.App.4th 568, 580 (1990), overruled by Martinez.

In other words, what the California Supreme Court said in Martinez is: That its "any touching" of a child language [that need not be a lewd or lascivious or sexual act], is limited and further defined by the specific intent of the statute", Murphy at 143 n.2, but "Actually...[it] is not required for lewd or lascivious conduct", CALCRIM 1110 [JA G], that eliminated both actus reus and mens rea requirements from Section 288(a) that should be decided by the jury.

The State of Idaho's lewd and lascivious statute copied from California's statute was held void for vagueness on its face by the

Federal Court in Schwartzmiller v. Gardner, 567 F.Supp. 1371 (D.Id. 1983), affirmed in part, reversed in part, 752 F.2d 1341 (9th Cir. 1984), where the court found:

> The Court is also unpersuaded by the statute's requirement of specific intent. The statute outlaws only such lewd and lascivious acts as are committed with the intent to arouse, appeal to, or gratify lust, passions, or sexual desires. In Evans [73 Idhao 50 (1952)], the Idaho Court state "the forbidden acts and conduct are further limited and defined by the specific intent required by the statute." (citation omitted). This statement is misleading at best, begs the question at least, and is not supported by a close reading of the statute. The specific intent language in no way further "defines" the forbidden acts. And, while it limits the statut's focus to lewd and lascivious acts committed with the requisite intent, it does not clarify what ACTS are proscribed and does not purport to. It simply adds a constitutionally necessary element of specific intent. Schwartzmiller at 1376-77 (emphasis in original).

Without a specifically defined actus reus, the specific intent clause of Section 288 the California Court relies on, describes nothing. Cf. Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir. 1997); accord Walters v. Maass, 45 F.3d 1355 (9th Cir. 1995)(no actus reus, no conviction).

The Martinez Court facetiously granted "review for the limited purpose of determining the acts necessary to sustain a conviction under Penal Code section 288." Id. at 438. This was regardless of the fact that California Courts had been construing the statute for almost a Century as requiring that "any person who...lewdly commits" any "lewd or lascivious act" as a sexual act upon "or with the body or part or member thereof of a child under the age of 14 years", with the "actual" specific intent to arouse or gratify either party, may be found guilty. Cf. People v. Webb, 158 Cal.App.2d 537 (1958).

This type of ad hoc conduct by the California Legislature and

Courts is exactly the reason this part of the void for vagueness doctrine developed more than 140 years ago when the High Court stated:

> It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could rightfully be detained and who should be set at large. This would to some extent, substitute the judicial for the legislative department of government. United States v. Reese, 2 U.S. 214, 221 (1875). Kolender v. Lawson, 461 U.S. at 358 n.7.

With Section 288(a) as currently construed, if you just think of sexual activity while touching a minor or a child, you have violated Section 288(a). The Martinez' Court's "any touching" was:

> ...Allowing the Legislature to hand off the job of lawmaking [that] risks substituting this design for one where legislation is made easy with a mere handful of unelected judges and prosecutors free to condem[n] all that [they] personally disapprove and for no better reason than [they] disapprove it. (citation omitted). Nor do judges and prosecutors act in the open and accountable forum of a legislature but in the comparatively obscure confines of cases and controversies. See, e.g., Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics 151 (1962)("A vague statute delegates to administrators, prosecutors, juries and judges the authority of ad hoc decision, which is in its nature difficult if not impossible to hold to account, because of its narrow impact."). For just these reasons, Hamilton warned, while "liberty can have nothing to fear from the judiciary alone, "it has everything to fear from" the union of the judicial and legislative powers. the federalist No. 78 at 466. No doubt too, for reasons like these this court has held "that the more important aspect of vagueness doctrine "is not actual notice, but... the requirement that a legislature establish minimal guidelines to govern law enforcement" and keep the separate branches within their proper spheres. Kolender v. Lawson, supra at 358. Sessions v. Dimaya, 584 U.S. ___, Slip Op. at 9 (Gorsuch, J. concurring).

Vague penal statutes that have been reconstrued by both the legislature and the Courts like Penal Code § 288(a), defines a criminal offense and its punishment with insufficient definiteness so that ordinary people can understand what conduct is prohibited and what punishments prescribed, but more importantly, they encourage

and encompass like a glove, arbitrary and discriminatory enforcement by police, prosecutors, judges, and juries. Village of Hoffman Estates v. Flipside, 455 U.S. 489 (1982):

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to police, judges, and juries for resolution on an ad hoc subjective basis, with the attendant danger of arbitrary and discriminatory applications. (footnote omitted). Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972). Schwartzmiller v. Gardner, 567 F.Supp. at 1372-73.

It is respectfully submitted, that this Honorable Court should declare Penal Code § 288(a) void:

> This criminal provision is vague not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather, in the sense that no standard of conduct is specified at all. (citation omitted). Such a provision simply has no core. This absence of any ascertainable standard for inclusion and exclusion is precisely what offends the Due Process Clause. Smith v. Gougen, 415 U.S. 566, 578 (1974). See also, Papchristou v. City of Jacksonville, 405 U.S. 156, 158 (1972)("The statute draws no distinction between conduct that is calculated to harm and that which is essentially innocent.").

The voiding of Penal Code § 288(a) will not in any way interfere with California's prosecution of such legitimate crimes one iota; for as the California Supreme Court has admitted:

> The broad and amorphous language [of § 288(a)] was deliberate and that this statute differs markedly from California's constitutionally defined sex statutes "which are clearly specified acts against non-consenting victims of any age...and each such provision describes the criminal act in precise and clinical terms, Martinez at 443 (emphasis added).

The Sixth and Fourteenth Amendments of the Constitution of the

United States still "requires criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime beyond a reasonable doubt." United States v. Gaudin, 515 U.S. 506, 509-10 (1995); Mulaney v. Wilbur, 421 U.S. 684, 698 (1975); In re Winship, 397 U.S. 358, 363-365 (1970). Which Amendments do not allow for a state to recharacterize the elements of its crimes in order to be able to find guilt and/or violence in 99.9 percent of all the prosecutions, then provide life in prison sentences for those unfortunately convicted.

CONCLUSION

After the California Supreme Court had recharacterized the meaning of a lewdly committed lewd or lascivious sexual act in 1995, to just "any touching" however slight, as intended, everything changed. The California Courts, not Legislature, had changed the meaning of violence into any touching of a minor or child. In 1990, the Court had altered the Rules of Evidence so that no dates of the commission of any alleged crime is provided to a defendant so he can make no alibi defenses to any charges, and then the State provides by information or Indictment no circumstances of the charges being made.

Then, as was done in this matter, the People request, and the trial Court instructs the jury that "the touching need not be done in a lewd or sexual manner", CALCRIM 1110. This same instruction provides that for the crime of Lewd or Lascivious Act with a Child under 14 years of age "the People must prove that: the defendant committed the act with the intent of arousing, appealing to, or

gratifying the lust, passions or sexual desires of himself or the child", but then informs that: "Actually, arousing, appealing to, or gratifying the lust, passions, or sexual desires of the perpetrator or the child is not required for lewd or lascivious conduct." JA G, CALCRIM 1110. (emphasis supplied).

The People were allowed to join non-cumulative alleged sexual acts in one information not only to show guilt of one as proof of the other, but that were "presented [as] evidence of more than one act to prove that the defendant committed these offenses", CALCRIM 3501. Is this the real reason the People presented 11 counts of sexual misconduct to the jury? Not hardly !

How has any of this been accomplished? Easy. With not only the vague and overbroad language contained in Penal Code § 288(a), but also, the surely more vague and overbroad language of "any touching" that had been inserted into it in 1995 by the Martinez Court, defining absolutely nothing that alluded to or required any altruistic morally corrupt sexual act or acts committed with a child.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dean A. Schwartzmiller
Petitioner pro se

DATED this 28th day of April, 2019.