

Case No. 19-8441

IN THE  
UNITED STATES SUPREME COURT

---

Richard John Vieira,  
Petitioner:

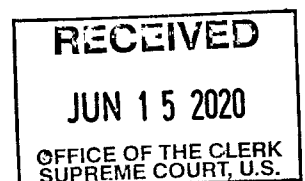
v.

State of California,  
Respondents:

---

Supplemental Brief  
pursuant to U.S. Supreme Court Rule 15.  
Newly Discovered Evidence

Richard John Vieira (H-31000)  
San Quentin State Prison  
San Quentin, CA 94974



Petitioner respectfully submits this "supplemental brief" in accordance with United States Supreme Court Rule (Rule 15) to present Newly Discovered Evidence and Facts relevant to this Case.

United States Supreme Court (Rule 15) clarifies:

Any Party may file a supplemental brief at any time while a petition for certiorari is pending, calling attention to new cases, new legislation, or other intervening matters not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter". . .

Petitioner submits New Facts that have only come to Petitioner's attention in early May of 2020. It has also been brought to Petitioner's attention that, This Honorable Court has also been presented these New Facts as well by Another Party in another case, about the same time in Late April to Early May of 2020.

These Facts are as follows: (Title 28 U.S.C. §2261 through §2266) clarify the requirements and directives for States to qualify for Federal Review under (A.E.D.P.A.) Antiterrorism Effective Death Penalty Act. (Title 28 U.S.C. §2261) clearly states:

- (a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.
- (b)(1) The Attorney General of the United States certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265,

Petitioner has just become aware that the United States Attorney General has "NEVER" certified the State of California to qualify for these Statutes (Title 28 U.S.C. §2261 - §2266) and (A.E.D.P.A.) Federal Review.

In this present case, California's Attorney General and Deputy Attorney Catherine Chatman have presented and filed "false and fraudulent" pleadings to the United States District Court and Ninth Circuit Court of Appeals advocating

for review and enforcement of these Statutes California is NOT certified for.

Petitioner Reported these Facts with Evidence as Crimes to the Ninth Circuit Appellate Commissioner Peter Shaw as soon as possible and the circumstances allowed.

- (i) Petitioner first presented these Facts as Legal Notice to Appellate Commissioner Peter Shaw and Deputy Attorney Catherine Chatman on May 10, 2020, with ALL supporting evidence , [See EXHIBIT 1].
- (ii) Petitioner allowed (21 days) to pass, and allow Deputy Attorney Catherine Chatman to respond, deny or withdraw Her Pleadings. Deputy Attorney Catherine Chatman or Attorney General Xavier Becerra chose to take NO Action or respond. Upon the expiration of (21 days), Petitioner Filed a Motion for Sanctions pursuant to (Federal Rules of Civil Procedure Rule 11(c) ) to the Ninth Circuit Court's Appellate Commissioner Peter Shaw to "Strike" all of the pleadings presented by the State's Attorney Generals Office, in Petitioner's Case and Appeals. [See EXHIBIT 2].

The State's pleadings Filed to the U.S, District Court and Ninth Circuit Court of Appeals violated the Federal Rules of Civil Procedure Rule 11(b) as well as Other Criminal Statutes. Petitioner submits, the Law is Clear, that not only does the Reviewing Court have to Strike the Pleadings of California Deputy Attorney General Catherine Chatman's pleadings in Petitioner's Case and Appeals, But the Legal Standing of the Attorney Generals Office is in question- forfeited until the legally demanded corrections are implemented to correct the State's False and Fraudulent pleadings to this State's Federal Courts .


AT THIS POINT, Petitioner respectfully gives Legal Notice to this Honorable Court, related to the docketing order in this case for Respondents to File a

Reply to the Petition (19-8441) by June 11, 2020, When there is a Legal Question to the State's Legal Standing and pattern of practice of presenting False-Untruthful, Fraudulent Pleading to the United States Courts.

This Supplemental Brief is presented in good faith, and supported with credible evidence to certify all claims beyond any reasonable doubt .

Petitioner Richard John Vieira declares under the penalty of perjury that all of the foregoing is true and correct to the best of My knowledge pursuant to 28 U.S.C. §1746 .

Respectfully submitted this 31st. day of May, 2020.

A handwritten signature in black ink, appearing to read "Richard J. Vieira", written over a horizontal line.

Richard John Vieira

EXHIBIT.

1.

Richard John Vieira (H-31000)  
San Quentin State Prison  
San Quentin, CA. 94974

May 10, 2020

Page 1 of 5

To: United States Court of Appeals  
Appellate Commissioner Peter Shaw  
James R Browning Courthouse  
94 Seventh Street  
San Francisco, CA. 94119-3939

In re: LEGAL NOTICE of False - Fraudulent Pleadings submitted by  
California's Attorney General, Deputy Attorney Catherine  
Chatman to the United States District Court and the Ninth  
Circuit Court of Appeals in cases-  
Richard J. Vieira v Kevin Chappell, No 1:05-CV-01492 AWI-SAB  
Richard J. Vieira v Ron Davis, No 15-99003

Dear Mr. Shaw,

I am respectfully contacting You to Report Actual Crimes that were committed by California's Attorney General, et. al Deputy Attorney Catherine Chatman. These Crimes were committed durring the State's litigation to Affirm and Carry Out Appellant's Capital Sentence, which is by legal definition of law-an-act to commit first degree murder. ALL OF THE FACTS are undisputable, proven beyond ALL Doubt with The State's Attorney Generals Own written pleadings to the U.S. District Court and Ninth Circuit Court of Appeals, and even to "You" Directly Mr. Shaw.

The Legal Facts are as follows: In Review of (Title 28 U.S.C. §§2261 et.seq.); (28 U.S.C. §2261) clearly states: Prisoners in State Custody subject to Capital Sentence:

- (a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied:
- (b) (1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in post-conviction proceedings as provided in section 2265;

Richard John Vieira (H-31000)  
Legal Notice to Appellate Commissioner  
Peter Shaw  
May 10, 2020  
page 2 of 5

Mr. Shaw, I have just become aware of New Facts-Evidence related to My Appeals in the United States District Court and the Ninth Circuit Court of Appeals, which IS, "The United States Attorney General has NEVER CERTIFIED the State of California to apply these Statutes- in re ((A.E.D.P.A.) Antiterrorism Effective Death Penalty Act. Not Only, has the U.S. Attorney NEVER Certified the State of California for application of these Statutes, But the U.S. Attorney General-Solicitor General have provided written Notice to All of California's U.S. District Courts that "California does not qualify - IS NOT CERTIFIED".

Now Review the Evidence, Clarifying How these Statutes (A.E.D.P.A.) were applied to My Case and Appeal by Directive and litigation requests by California's Attorney General, Deputy Attorney Catherine Chatman, (CERTIFIED in Attached APPENDIXS" 1 through 7).

(APPENDIX 1) Catherin Chatman's ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS: (pages Cover, ix, 19) clearly litigating, "As a threshold matter, Respondent affirmatively alleges that 28 U.S.C. §2254 (the Antiterrorism and Effective Death Penalty Act of 1996, or A.E.D.P.A., controls the disposition of this case".

(APPENDIX 2) United States District Court's DENIAL of Habeas Corpus: (pages Cover and 7): Clearly Stating; "On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A.), which applies to all petitions for writ of habeas corpus filed after its enactment. The instant petition was filed after the enactment of the A.E.D.P.A. and therefore governed by its provisions."

(APPENDIX 3) Appellee's Answering Brief: (pages Cover, xvi, 96): clearly litigating, "In habeas cases, like this one, a federal court's discretion to order stay and abeyance is circumscribed by the Antiterrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A.), and its aim to "reduce delays in the execution of state and federal criminal sentences, particularly in capital cases".

Richard John Vieira (H-31000)  
Legal Notice to Appellate Commissioner  
Peter Shaw  
May 10, 2020  
page 3 of 5

(APPENDIX 4) "Attorney General's Opposition to Appellant's Motion for Remand (w) Instructions to Stay Proceedings".

(pages Cover, 27, 28 ) clearly litigating,

"Staying a federal habeas petition frustrates A.E.D.P.A.'s objective of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings".

(APPENDIX 5) "ORDER by Appellate Commissioner Peter Shaw"

"Petitioner's opposed Motion for Remand With Instructions To Stay Proceedings is granted in part. -

This appeal is stayed pending the California Supreme Court's disposition of In re Vieira, S227944."

(APPENDIX 6i) "Appellee's Motion for Reconsideration of the Appellate Commissioner's ORDER STAYING THE APPEAL".

(pages Cover, 2) clearly litigating:

"The Warden respectfully submits that reconsideration is warranted because the Appellate Commissioner has overlooked or misunderstood the importance of a requirement for obtaining a stay that is unique to federal habeas cases. In habeas cases, like this one, a federal court's discretion is circumscribed by the Antiterrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A.), and it's aim to "reduce delays in the execution of state and federal criminal sentences, particularly in capital cases".

(APPENDIX 6ii) "Reply to Appellant's Opposition to Appellee's Motion for Reconsideration of the Appellate Commissioner's Order Staying the Appeal".

(pages Cover, i, 8 ) clearly litigating,

"The Appellate Commissioner's order granting a stay may have overlooked that a federal court's authority to grant a stay in habeas cases is circumscribed by the goal of the Antiterrorism and Effective Death Penalty Act of 1996 (A.E.D.P.A.) to "reduce delays in the execution of state and federal criminal sentences, particularly in capital cases".



Richard John Vieira (H-31000)  
Legal Notice to Appellate Commissioner  
Peter Shaw  
May 10, 2020  
page 4 of 5-

(APPENDIX 7) "ORDER by Appellate Commissioner Peter Shaw" [REVERSING Himself]:  
"Respondent moves for reconsideration of the February 11, 2016 order staying the appeal. The opposed motion for reconsideration (Docket Entry No. 22) is granted without prejudice to Petitioner raising in the opening brief his request that federal proceedings be stayed. The February 11, 2016 order IS VACATED".

Mr. Shaw, it is clearly and concisely proven with My presented Facts and Evidence (see Title 18 U.S.C. §04), That the U.S. District Court, The Ninth Circuit Court of Appeals and You specifically were defrauded to create invalid-illegal rulings for the State, due to California's Attorney General and Deputy Attorney Catherine Chatman fraudulent pleadings litigating application of (A.E.D.P.A.)- (Title 28 U.S.C. §§2261 et. seq). The alternative to this conclusion is that Our U.S. Courts in California "accept" and "support" these pleadings in violation of the Constitution and Laws of the United States.

Mr. Shaw, "You Reversed Yourself" in an Order (Appendix 7) because Deputy Attorney Catherine Chatman falsely litigated (A.E.D.P.A.) requirements to You. Do You agree with Her Demands of enforcing (A.E.D.P.A.) requirements to a State NOT CERTIFIED? Or were You misled with fraudulent pleadings?

This Question will soon be asked of Many U.S. Judges in California who have went along with California's Attorney General, et. al. Deputies fraudulent pleadings. However, The Question will be asked by the U.S. Senate Judiciary Committee. Where Our U.S. Attorney, Solicitor General will be seeking impeachments and prosecution of Judges who have displayed the most blatant disregard for the Laws.

Mr. Shaw, If You were misled-defrauded by California's Deputy Attorney Catherine Chatman. I am looking forward to seeing what actions You Take to correct Her violations of the Laws and My Constitutional Rights. Or You can do and or say Nothing and I will - am going to pass this on to the U.S. Attorney for Him to utilize in His Case against California.

Richard John Vieira (H-31000)  
Legal Notice to Appellate Commissioner  
Peter Shaw  
May 10, 2020  
page 5 of 5

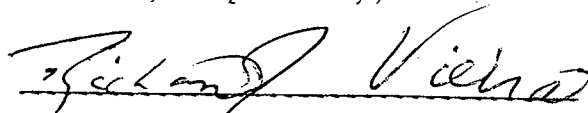
The Facts and Evidence are Undisputable. I sincerely hope to hear from You soon and see some corrective actions as well.

It should also be noted, That My Appointed Counsel condoned and supported these acts as well. They should be Questioned as well. I have made several complaints against My Appointed Counsel in the State and Federal Courts, Claiming incompetence, and conflict of interest, and I still cannot get any relief.

Will This do it? They should have presented these facts for Me.

I look forward to hearing from You.

Sincerely Respectfully,



Richard John Vieira

---

Legal Copy and Service of this Pleading  
was Served Upon:

Office of the Attorney General  
1300 I Street, suite 125  
Sacramento, CA. 94244-2550  
Attn. Catherine Chatman

Office of the Federal Defender  
801 I Street, 3rd Floor  
Sacramento, CA. 95814  
Attn Lissa Joy Gardner

# Appendix

1.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EDMUND G. BROWN JR., State Bar No. 37100  
Attorney General of California  
MICHAEL P. FARRELL, State Bar No. 183566  
Senior Assistant Attorney General  
WARD A. CAMPBELL, State Bar No. 88555  
Supervising Deputy Attorney General  
CATHERINE CHATMAN, State Bar No. 213493  
Supervising Deputy Attorney General  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 324-5364  
Fax: (916) 324-2960  
E-mail: Catherine.Chatman@doj.ca.gov  
*Attorneys for Respondent*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**RICHARD JOHN VIEIRA,**  
  
Petitioner,  
  
v.  
  
**ROBERT K. WONG, ACTING WARDEN,**  
  
Respondent.

1:05-CV-01492 OWW (DP)

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**

**TABLE OF AUTHORITIES**  
(continued)

		<u>Page</u>
1		
2		
3	<i>Wood v. Hall</i>	
4	130 F.3d 373 (9th Cir. 1997).....	15
5	<i>Ylst v. Nunnemaker</i>	
6	501 U.S. 797 (1991).....	11, 22
7	STATUTES	
8	28 United States Code	
9	§ 2244(d).....	14
10	§ 2244(d)(1)(D).....	15
11	§ 2254.....	19
12	§ 2254(a).....	29, 31, 32, 44
13	§ 2254(b)(1)(A).....	19
14	§ 2254(d).....	15
15	§ 2254(d)(2).....	2
16	§ 2254(e)(1).....	2
17	§ 2255.....	15
18	California Penal Code	
19	§ 128.....	23
20	§ 190.2.....	43, 45
21	§ 190.3.....	36
22	§ 190.4(e).....	41
23	Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) .....	15, 19
24	CONSTITUTIONS	
25	United States Constitution	
26	Eighth Amendment.....	43
27	Fourteenth Amendment.....	43
28	COURT RULES	
	Federal Rules of Civil Procedure	
	Rule 60(b).....	15
	California Rules of Court	
	Rule 4.551(g).....	17

1 stated in strong terms the requirement that a habeas petition be timely filed. Those decisions also  
2 explained in detail how a petitioner should show good cause for substantial delay if filing outside  
3 the generous presumptively timely period. California's timeliness standard is an independent and  
4 adequate state procedural rule, and it is a bar to federal review for each claim in which it was  
5 imposed.

### 6 EXHAUSTION

7 One of the purposes of this answer is to determine whether the claims presented in the  
8 federal petition for writ of habeas corpus are exhausted.

9 A prisoner may not seek federal habeas review without first giving the state courts full and  
10 fair opportunity to consider all of his claims of federal constitutional error. *Rhines v. Weber*, 544  
11 U.S. 269, 273-74 (2005); *Picard v. Connor*, 404 U.S. 270, 275 (1971); *Hiivala v. Wood*, 195 F.3d  
12 1098, 1106 (9th Cir. 1999). This principle is codified as follows: "An application for a writ of  
13 habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not  
14 be granted unless it appears that . . . the applicant has exhausted the remedies available in the  
15 courts of the State. . . ." 28 U.S.C. § 2254(b)(1)(A). All claims in a federal habeas petition must  
16 be exhausted before a federal court can act on it. *Jackson v. Roe*, 425 F.3d 654, 658 (9th Cir.  
17 2005).

18 In order to exhaust his claims, a California petitioner must present his claims to the  
19 California Supreme Court. *Gatlin v. Madding*, 189 F.3d 882, 888 (9th Cir. 1999). To fairly  
20 present a claim to the state court, and thereby fulfill the exhaustion requirement, a state petition  
21 for habeas relief must present the same claim that is brought to federal court. *Picard*, 404 U.S. at  
22 276.

23 All of the claims in the federal petition, to the extent interpreted by Respondent, are  
24 exhausted.

### 25 CLAIMS FOR RELIEF

26 As a threshold matter, Respondent affirmatively alleges that 28 U.S.C. § 2254 (the  
27 Antiterrorism and Effective Death Penalty Act of 1996, or AEDPA) controls the disposition of  
28 this case.

Appendix

2.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THIS SIDE ONLY

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RICHARD J. VIEIRA,

Petitioner,

v.

KEVIN CHAPPELL, Warden,

Respondent.

Case No. 1:05-CV-01492-AWI-SAB

DEATH PENALTY CASE

MEMORANDUM AND ORDER (1)  
DENYING PETITION FOR WRIT OF  
HABEAS CORPUS, and (2) ISSUING  
CERTIFICATE OF APPEALABILITY FOR  
CLAIMS 2 AND 6  
(ECF No. 37)

ORDER DENYING MOTION FOR  
EVIDENTIARY HEARING AND  
EXPANSION OF THE RECORD  
(ECF No. 107)

CLERK TO SUBSTITUTE RON DAVIS AS  
RESPONDENT AND ENTER JUDGMENT

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He is represented in this action by Wesley A. Van Winkle, Esq., of the Law Offices of Wesley A. Van Winkle, and Lissa J. Gardner Esq., of the Office of the Federal Defender. Respondent Kevin Chappell<sup>1</sup> is named as the Action Warden of San Quentin State Prison. He is represented in this action by Catherine Chatman, Esq., and Ward Campbell, Esq.,

<sup>1</sup> Pursuant to Fed. R. Civ. Proc. 25(d), Ron Davis is substituted as Respondent in this matter, as he is the current Acting Warden of San Quentin State Prison.



**JURISDICTION**

Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant to the judgment of a state court if the custody is in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 529 U.S. 362, 375 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by the U.S. Constitution. The challenged conviction arises out of Stanislaus County Superior Court, which is located within the jurisdiction of this Court. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(d).

On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which applies to all petitions for writ of habeas corpus filed after its enactment. Lindh v. Murphy, 521 U.S. 320, 327 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (en banc). The instant petition was filed after the enactment of the AEDPA and is therefore governed by its provisions.

**IV.**

**STANDARD OF REVIEW**

Under the AEDPA, relitigation of any claim adjudicated on the merits in state court is barred unless a petitioner can show that the state court's adjudication of his claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d); Harrington v. Richter, \_\_\_ U.S. \_\_\_, \_\_\_, 131 S. Ct. 770, 784 (2011); Lockyer v. Andrade, 538 U.S. 63, 70-71 (2003); Williams, 529 U.S. at 413.

As a threshold matter, this Court must "first decide what constitutes 'clearly established Federal law, as determined by the Supreme Court of the United States.'" Lockyer, 538 U.S. at 71 (quoting 28 U.S.C. § 2254(d)(1)). In ascertaining what is "clearly established Federal law" this Court must look to the "holdings, as opposed to the dicta, of [the Supreme Court's] decisions as of the time of the relevant state-court decision." Williams, 529 U.S. at 412. "In other words,

THIS SIDE ONLY

AG

9th Cir

Appendix

3.

15-99003

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**RICHARD J. VIEIRA,**

Petitioner-Appellant,

**CAPITAL CASE**

v.

**RON DAVIS, Warden,**

Respondent-Appellee.

On Appeal from the United States District Court  
for the Eastern District of California

No. 1:05-cv-01492-AWI-SAB  
The Honorable Anthony W. Ishii, Judge

**APPELLEE'S ANSWERING BRIEF**

XAVIER BECERRA  
Attorney General of California  
MICHAEL P. FARRELL  
Senior Assistant Attorney General  
KENNETH N. SOKOLER  
Supervising Deputy Attorney General  
CATHERINE CHATMAN  
Supervising Deputy Attorney General  
State Bar No. 213493  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 210-7699  
Fax: (916) 324-2960  
Email:  
Catherine.Chatman@doj.ca.gov  
*Attorneys for Respondent-Appellee*

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>Williams v. Taylor</i> 529 U.S. 362 (2000).....	64
<i>Woods v. Etherton</i> 136 S. Ct. 1149 (2016).....	65, 94
<i>Wright v. Van Patten</i> 552 U.S. 120 (2008).....	11, 82
<i>Wright v. West</i> 505 U.S. 277 (1992).....	10
<i>Yarborough v. Gentry</i> 540 U.S. 1 (2003).....	38
<i>Yee v. Duncan</i> 463 F.3d 893 (9th Cir. 2006).....	9
<b>STATUTES</b>	
<b>28 U.S.C.</b>	
§ 1291 .....	1
§ 2244(d)(1)(D) .....	119
§ 2253 .....	1
§ 2254 .....	1, 9, 12
§ 2254(a).....	9
§ 2254(d).....	87, 89
§ 2254(d)(1).....	10, 11, 12
§ 2254(d)(2).....	4, 12
§ 2254(e)(1).....	4
<b>Antiterrorism and Effective Death Penalty Act of 1996</b> <b>(AEDPA) .....</b>	<b>96, 119</b>

prejudice to Petitioner raising in the opening brief his request that federal proceedings be stayed.” (Doc. 28.) A new briefing schedule was issued on May 6, 2016. (Doc. 28.) Vieira’s opening brief was filed on September 13, 2017. (Doc. 57.) He still wants this Court to remand the entire case to the district court and instruct it to stay all federal proceedings pending the California Supreme Court’s resolution of the successive state habeas petition. (AOB 66-76.)

**B. Governing Law: Vieira Must Show Potentially Meritorious Claims That He Could Not Have Presented Earlier and the Absence of Intentional Delay**

In-habeas cases, like this one, a federal court’s discretion to order stay and abeyance is circumscribed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and its aim to “reduce delays in the execution of state and federal criminal sentences, particularly in capital cases.” *Rhines*, 544 U.S. at 276; *see id.* at 277-78 (recognizing that “capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death”).

For the state prisoner seeking relief on federal habeas corpus, then, a stay is available “only in limited circumstances.” *Rhines*, 544 U.S. 277. Vieira has to do more than file a successive pleading in state court. He has to show that he has unexhausted claims that are potentially meritorious, that

Appendix

4.

15-99003

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**RICHARD J. VIEIRA,**

Petitioner-Appellant,

v.

**RON DAVIS, Warden,**

Respondent-Appellee.

**CAPITAL CASE**

On Appeal from the United States District Court  
for the Eastern District of California

No. 1:05-cv-01492-AWI-SAB  
The Honorable Anthony W. Ishii, Judge

**OPPOSITION TO APPELLANT'S MOTION  
FOR REMAND WITH INSTRUCTIONS TO  
STAY PROCEEDINGS**

KAMALA D. HARRIS  
Attorney General of California  
MICHAEL P. FARRELL  
Senior Assistant Attorney General  
RYAN B. MCCARROLL  
Deputy Attorney General  
CATHERINE CHATMAN  
Supervising Deputy Attorney General  
State Bar No. 213493  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 324-5364  
Fax: (916) 324-2960  
Email: Catherine.Chatman@doj.ca.gov  
*Attorneys for Respondent-Appellee*

self-serving. His jury heard about his accomplices' roles and concluded that death was the appropriate sentence.

**E. Conclusion**

“Staying a federal habeas petition frustrates AEDPA’s objective of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings.” *Rhines v. Weber*, 544 U.S. at 277. “In particular, capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death.” *Id.* at 277-78. Stay and abeyance is available in cases on federal habeas review only if the petitioner demonstrates that he has potentially meritorious claims that are unexhausted. *Id.* at 278. And then, a stay cannot be indefinite. *Id.*

///

///

///



As discussed, Vieira's request for an indeterminate stay for indeterminate purposes fails on multiple fronts. Vieira's motion should be denied and the briefing schedule should be reinstated immediately.

Dated: January 21, 2016

Respectfully Submitted,

KAMALA D. HARRIS  
Attorney General of California  
MICHAEL P. FARRELL  
Senior Assistant Attorney General  
RYAN B. MCCARROLL  
Deputy Attorney General

*/s/ CATHERINE CHATMAN*

CATHERINE CHATMAN  
Supervising Deputy Attorney General  
*Attorneys for Respondent-Appellee*

SA2015102429  
32352713.doc

# Appendix

# 5.

# Appendix

6i

6ii

15-99003

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**RICHARD J. VIEIRA,**

Petitioner-Appellant,

v.

**RON DAVIS, Warden,**

Respondent-Appellee.

**CAPITAL CASE**

**APPELLEE'S MOTION  
FOR  
RECONSIDERATION  
OF THE APPELLATE  
COMMISSIONER'S  
ORDER STAYING THE  
APPEAL**

On Appeal from the United States District Court  
for the Eastern District of California

No. 1:05-cv-01492-AWI-SAB  
The Honorable Anthony W. Ishii, Judge

**APPELLEE'S MOTION FOR RECONSIDERATION OF THE  
APPELLATE COMMISSIONER'S ORDER STAYING THE APPEAL**

KAMALA D. HARRIS  
Attorney General of California  
MICHAEL P. FARRELL  
Senior Assistant Attorney General  
KENNETH N. SOKOLER  
Supervising Deputy Attorney General  
CATHERINE CHATMAN  
Supervising Deputy Attorney General  
State Bar No. 213493  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 324-5364  
Fax: (916) 324-2960  
Email: Catherine.Chatman@doj.ca.gov  
*Attorneys for Respondent-Appellee*

C.V. 5

court with instructions to stay the proceedings. (Doc. 11.) The Warden opposed the motion. (Doc. 16.)

In an order filed by the Appellate Commissioner, this Court granted Vieira's motion in part, directing that "This appeal is stayed pending the California Supreme Court's disposition of *In re Vieira*, No. S227944." (Doc. 19.)

### **B. Legal Argument**

The Warden respectfully submits that reconsideration is warranted because the Appellate Commissioner has overlooked or misunderstood the importance of a requirement for obtaining a stay that is unique to federal habeas cases. In habeas cases, like this one, a federal court's discretion is circumscribed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and its aim to "reduce delays in the execution of state and federal criminal sentences, particularly in capital cases." [Citation.] *Rhines v. Weber*, 544 U.S. 269, 276 (2005); *see id.* at 277-78 (recognizing that "capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death").

For the state prisoner seeking relief on federal habeas corpus, then, a stay is available "only in limited circumstances." *Rhines v. Weber*, 544 U.S.

15-99003

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**RICHARD J. VIEIRA,**

Petitioner-Appellant,

v.

**RON DAVIS, Warden,**

Respondent-Appellee.

**CAPITAL CASE**

On Appeal from the United States District Court  
for the Eastern District of California

No. 1:05-cv-01492-AWI-SAB

The Honorable Anthony W. Ishii, Judge

**REPLY TO APPELLANT'S OPPOSITION TO APPELLEE'S  
MOTION FOR RECONSIDERATION OF THE APPELLATE  
COMMISSIONER'S ORDER STAYING THE APPEAL**

KAMALA D. HARRIS  
Attorney General of California  
MICHAEL P. FARRELL  
Senior Assistant Attorney General  
KENNETH N. SOKOLER  
Supervising Deputy Attorney General  
CATHERINE CHATMAN  
Supervising Deputy Attorney General  
State Bar No. 213493  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 324-5364  
Fax: (916) 324-2960  
Email:  
Catherine.Chatman@doj.ca.gov  
*Attorneys for Respondent-Appellee*

C.V.S.

## TABLE OF CONTENTS

	<b>Page</b>
A. Vieira failed to show that reconsideration of all of his already-rejected claims will reveal any meritorious claims .....	1
B. Vieira's new eighth amendment claim fails under controlling California and Ninth Circuit precedent .....	7
C. A stay in this case will frustrate the purpose of AEDPA.....	8
D. Conclusion and request for relief.....	9

California Supreme Court has already rejected the same claim based on the same district court case. *People v. Seumanu*, 61 Cal. 4th 1293, 1368-75 (2015), *cert. denied* \_\_ U.S. \_\_, 2016 WL 110508 (U.S. Mar. 21, 2016) (No. 15-7689). While it is true that Vieira presents his claim on habeas rather than direct appeal, his additional arguments or “evidence” are obviously meritless. (See Doc. 22 at 5-8 & n.2.) And this Court has already held that the “novel constitutional rule” that Vieira would have this Court apply is barred by *Teague*, 489 U.S. 288. *Jones*, 806 F.3d at 541; *see id.* at 552.<sup>4</sup>

**C. A Stay in This Case Will Frustrate the Purpose of AEDPA**

The Appellate Commissioner’s order granting a stay may have overlooked that a federal court’s authority to grant a stay in habeas cases is circumscribed by the goal of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) to “reduce delays in the execution of state and federal criminal sentences, particularly in capital cases.” [Citation.]” *Rhines*, 544 U.S. at 276. It is an abuse of discretion to grant a stay in a federal habeas case where, as here, the claims are “plainly meritless.” *Id.* at 277.

---

<sup>4</sup> Vieira implies that the Warden has not challenged various aspects of his claims and allegations. (See Doc. 26 at 4, 7.) It suffices to say that the People have opposed the successive petition in state court on every ground advanced, and the Warden has not had the opportunity to fully oppose all the claims Vieira vaguely offers this Court.



# Appendix

# 7

FILED

UNITED STATES COURT OF APPEALS

MAY 06 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

RICHARD J. VIEIRA,

Petitioner - Appellant,

v.

RON DAVIS, Warden,

Respondent - Appellee.

No. 15-99003

D.C. No. 1:05-cv-01492-AWI-SAB  
Eastern District of California,  
Fresno

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

Respondent moves for reconsideration of the February 11, 2016 order staying the appeal. The opposed motion for reconsideration (Docket Entry No. 22) is granted without prejudice to Petitioner raising in the opening brief his request that federal proceedings be stayed. The February 11, 2016 order (Docket Entry No. 19) is vacated. The briefing schedule is reset as follows. The opening brief is due July 12, 2016. The answering brief is due September 13, 2016. The reply brief is due within 21 days after service of the answering brief.

C. 1-6 \*

**EXHIBIT**

**2.**

Richard J. Vieira (H-31000)  
San Quentin State Prison  
San Quentin, CA. 94974

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Richard John Vieira,  
Appellant:

v.

Ron Davis,  
Appellees:

Case No. 15-99003

Dist. Ct. No. 1:05-cv-01492 AWI-SAB

Motion for Rule 11 Sanctions Due to  
Appellees False-Fraudulent Pleadings  
To This Honorable Court and the U.S.  
District Court in the Cases Listed.  
(See also Title 18 U.S.C. §04).

Appellant respectfully Moves this Honorable Court to exercise it's Invoked Duty to the Rule of Law and Constitutional Authority, To impose Legal Sanctions against the Appellees, The California Attorney General, Deputy Attorney General Catherine Chatman as prescribed by Law in the (Federal Rules of Civil Proceedure: Rule 11(c) ).

This Motion is presented in good faith, based upon the Legal Facts Served upon this Court and The Office of the Attorney General on May 10, 2020. The Statement of Facts are as follows:

On May 10, 2020 Appellant Served this Court's Honorable Appellate Commissioner Peter Shaw with Legal Notice pursuant to (U.S. Criminal Statute 18 U.S.C. §04), That the California Attorney General and Deputy Attorney General Catherine Chatman have violated the Laws, Constitution and Appellant's Constitutional Rights while acted under color of vested authority. These Crimes were committed durring the States litigation to Affirm and Carry Out Appellant's Capital Sentence, which

IS by legal definition of Law an act to commit first degree murder. All of the Facts are undisputable and proven beyond All Doubt with the State Attorney Generals Own written pleadings to the U.S. District Court, the Ninth Circuit Court of Appeals and to the Appellate Commissioner Peter Shaw. ALL of the Relevant parts of the State's pleadings to prove Appellant's allegations were Served to the Court.

The Legal Facts to establish the State's Criminal Violations of Law are as follows: Review (Title 28 U.S.C. §2261 through §2266). (28 U.S.C. §2261) clearly states, Prisoners in State Custody, subject to Capital Sentences:

- (a) This chapter shall apply to cases arising under section 2254 brought by prisoners in state custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied:
- (b) (1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in post-conviction proceedings as provided in section 2265.

On May 10, 2020 Appellant presented New Facts and Evidence as soon as Appellant became aware of them as they are related to Appellant's Appeals in the U.S. District Court and the Ninth Circuit Court of Appeals. These Facts Are, "The United States Attorney General has NEVER CERTIFIED the State of California pursuant to (28 U.S.C. §2261(b)(1)) in re. (A.E.D.P.A.) Antiterrorism Effective Death Penalty Act. Not Only, has the U.S. Attorney NEVER Certified the State of California for application of these Statutes, But the U.S. Attorney General-Solicitor General have provided written notice to ALL of California's U.S. District Courts that "California does NOT qualify -IS NOT CERTIFIED".

Now Review the Evidence, Clarifying How these Statutes (A.E.D.P.A.) were applied to My Case and Appeals by Directive and Litigation requests made by the Appellees the California Attorney General and Deputy Attorney Catherine Chatman; (CERTIFIED in Appendixes' 1 through 7). Appellant SERVED the Appellees, The Office of the Attorney General and Deputy Attorney Catherine Chatman, with the Same Facts

at the Same Time Appellant Served this Honorable Court. As of this 1st day June, 2020, The Attorney General, Deputy Attorney General Catherine Chatman HAVE NOT RESPONDED, Denied the Allegations, or Withdrawn Their Pleadings. AT THIS POINT, The Court's Legal Duty is Invoked as a Matter of Law.

Legal Argument:

The Legal Authority of this Court are Directed in the (Federal Rules of Civil Procedure, Rule 11(b) and Rule 11(c)):

F.R.C.P. Rule 11(b): Representations to the Court:

By presenting to the court a pleading, written motion, or other paper- whether by signing, filing, submitting, or later advocating it- an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after inquiry reasonable under the circumstances;

- (1 ) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the costs of litigation,
- (2.) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law,
- (3 ) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery,

F.R.C.P. Rule 11(c): SANCTIONS:

- (1 ) In General: If, after notice and a reasonable opportunity to respond, the court determines that (Rule 11(b)) has been violated, the court may impose an appropriate Sanction on Any Attorney, Law Firm, or Party that violated the rule or is responsible for the violation. Absent of exceptional circumstances, a Law Firm MUST BE held jointly responsible for a violation committed by its partner, associate, or employee,

(2 ) Motion for Sanctions:

A Motion for Sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates (Rule 11(b)). The Motion must be served under Rule 5, but it must not be filed or be presented to the Court if the challenged paper, claim, defense, contention, or denial is WITHDRAWN or app-

ropriately corrected within (21 days) after service or within another time the court sets. If warranted the court may award to the prevailing party the reasonable expenses, including attorneys fees, incurred for the motion.

Since it's original promulgation, (Rule 11) has provided for the "Striking" of pleadings and the imposition of disciplinary Sanctions to check abuses in the signing of pleadings. It's provisions have always applied to motions and other papers by virtue of incorporation by reference in (Rule 7(b)(2)). The Amendment and addition of Rule 7(b)(3) expressly confirms this applicability. (Rule 7(b)) relates to pleadings of nongovernment attorneys. So are California's Government Attorneys Who are Vested with Authority by Oath and Constitutional Duties not Held to a "Higher Standard" of Compliance?

In this present case, it is clearly beyond any legal dispute that the Appellees, The Attorney General and Deputy Attorney Catherine Chatman submitted false-fraudulent pleadings to the United States District Court (No. 1:05-cv-01492 AWI-SAB) and the Ninth Circuit Court of Appeals (No. 15-99003). These pleadings were submitted to receive favorable review from the Courts as described in the Statement of Facts. These actions pleadings clearly violate (F.R.C.P. Rule 11(b)) as well as Other Criminal Statutes and Constitutional Rights of Appellant, Appellant submits, He is entitled to relief and corrections provided by (F.R.C.P. Rule 11(c)).

Appellant submits that "MORE than 21 Days" have passed since the Appellees false-fraudulent pleadings were filed to the courts, as well as from the time Appellant Filed This Legal Notice to the Court and Appellees on (May 10, 2020), providing More than enough time to withdraw their pleadings; This Honorable Court's Duties are Invoked,

Appellant submits, "The Vested Authority" bestowed upon the Attorney General and ALL of His Deputy Attorneys-Catherine Chatman comes from (Calif. Const. Art. V. §13); Which Demands Compliance to the Laws, Demands Enforcement of the Laws,

Demands Prosecution of ALL Who Violate the Laws. The Attorney General and ALL of His Deputies eg. Catherine Chatman "Take An Oath" to this command of Their Constitutional Duties. Therefore, there can be no mistake the Appellees actions, Violations of law and Appellant's Constitutional Rights were intentional. They violated the laws, Constitutional Mandates and perpetrated Fraud upon the Courts. ALL of the Appellees pleadings related to Appellant's Case and Appeals Must be Stricken as a matter of law prescribes, as well as the Legal Standing of the Office of the Attorney General until ALL of the Legal Corrections are implemented as the Law prescribes.

There can be NO DEFENSE of the State's Actions-Violations by the Appellees. This Honorable Court has already Adjudicated in a written Order that, "The California Attorney General, Deputies and State Prosecutors have flagrantly displayed a "pattern of practice" of committing perjury, suborning perjury, manufacturing evidence and so on durring Their prosecutions, and boldly demand for the Courts to Accept" (See Baca v. Adams, Ninth Cir. No. 13-56132, Dist. Ct. No. CV-08-0688-MMM-PJW [ATTACHED as Exhibit 2];),

This Honorable Court adjudicated it's knowledge of "criminal violations of the laws" by California's Government Agents acting Under Color of Law-Vested Authority. Then, Took NO Action, Made NO Orders, Implemented NO Corrections or Investigation and Prosecutions of the Violations of Laws committed by Government Agents. NOW, Here We are Again, Right before Your eyes in Your Court. This time with premeditated intent to commit murder of Appellant.

**Relief Requested:**

Appellent seeks an Order by this Honorable Court Declaring the Appellees Violated the Laws, submitted fraudulent-false pleadings and Strike ALL of the Appellees pleadings related to Appellant's Case and Appeals.

Appellant seeks an Order by this Honorable Court to Terminate the Legal Standing of the California Attorney General's Office, until ALL of the appropri-




ate, Legally Demanded corrections can be implemented which terminates the Appellees and Deputy Attorneys violations of the Laws, and Appoint a Reciever designated by this Court to watch over and participate in the implementation of these Legally Required Corrections

Appellant has been incarcerated for "28 Years" subjected to this State's criminal actions and violations of His Constitutional Rights as stated herein. Appellant seeks an Order by this Court Granting Any Other Relief the Law prescribes, and is required to uphold justice and the Laws.

I, Richard John Vieira declare under the penalty of perjury that all of the foregoing is true and correct to the best of My knowledge pursuant to 28 U.S.C. §1746.

Respectfully submitted this 1st day of June, 2020.



Richard J. Vieira pro se

EXHIBITS ATTACHED IN SUPPORT:

- 1 Appellant's Original Legal Notice of these violations submitted on May 10, 2020
2. Ninth Circuit Case describing Violations of Law by State Attorney General, in re. Baca v. Adams, Ninth Cir. Case No. 13-56132;  
U.S. Dist. Ct. No. CV-08-0688 MMM PJW

Proof of Service by Mail.

I, Richard John Vieira am the Appellant in the below captioned case and cause. On the date of execution below, I Served the following Legal Documents on the following Persons-Persons Office, by placing them into the Mail pursuant to the Outgoing Legal Mail Policies of San Quentin State Prison on the 31st. day of May, 2020.

Documents Served: Motion for Rule 11(c) Sanctions in the Matter of:

Richard John Vieira v, Ron Davis, 9th. Cir. No. 15-99003

U.S. Dist. Ct. No. 1:05-cv-01492-AWI, SAB

Person(s) Served:

Office of the Attorney General  
1300 I Street, suite 125  
Sacramento, CA. 94244-2550  
Attn. Catherine Chatman

Office of the Federal Defender  
801 I Street, 3rd. Floor  
Sacramento, CA. 95814  
Attn. Lissa Joy Gardner

I, Richard John Vieira declare under the penalty of perjury that all of the foregoing is true and correct pursuant to 28 U.S.C. §1746 .

Respectfully submitted this 31st. day of May, 2020 .

  
Richard John Vieira

## U.S. judges see 'epidemic' of prosecutorial misconduct in state

By MAURA DOLAN

JANUARY 21, 2015, 7:20 PM

**T**he hearing seemed largely routine until a state prosecutor approached the lectern.

Deputy Atty. Gen. Kevin R. Vienna was there to urge three judges on the U.S. 9th Circuit Court of Appeals to uphold murder convictions against Johnny Baca for two 1995 killings in Riverside County. Other courts had already determined that prosecutors had presented false evidence in Baca's trial but upheld the verdicts anyway.

Vienna had barely started his argument when the pummeling began.

**ESSENTIAL CALIFORNIA NEWSLETTER >> Get great stories delivered to your inbox**

Judge Alex Kozinski asked Vienna if his boss, Atty. Gen. Kamala D. Harris, wanted to defend a conviction "obtained by lying prosecutors." If Harris did not back off the case, Kozinski warned, the court would "name names" in a ruling that would not be "very pretty."

Judge Kim Wardlaw wanted to know why Riverside County prosecutors presented a murder-for-hire case against the killer but did not charge the man they said had arranged the killings.

"It looks terrible," said Judge William Fletcher.

The January hearing in Pasadena, posted online under new 9th Circuit policies, provided a rare and critical examination of a murder case in which prosecutors presented false evidence but were never investigated or disciplined.

The low-profile case probably would have gone unnoticed if not for the video, which attorneys emailed to other attorneys and debated on blogs.

In a series of searing questions, the three judges expressed frustration and anger that California state judges were not cracking down on prosecutorial misconduct. By law, federal judges are supposed to defer to the decisions of state court judges.

Prosecutors "got caught this time, but they are going to keep doing it because they have state judges who are willing to look the other way," Kozinski said.

Santa Clara University law professor Gerald Uelmen said the judges' questions and tone showed they had lost patience with California courts. State judges are supposed to refer errant lawyers, including prosecutors, to the state bar for discipline, but they rarely do, Uelmen said.

"It is a cumulative type thing," Uelmen said. "The 9th Circuit keeps seeing this misconduct over and over again. This is one way they can really call attention to it."

A 2010 report by the Northern California Innocence Project cited 707 cases in which state courts found prosecutorial misconduct over 11 years. Only six of the prosecutors were disciplined, and the courts upheld 80% of the convictions in spite of the improprieties, the study found.

The case that sparked the court's recent outrage involved the killing of John Adair and his live-in partner, John Mix, two decades ago. Baca, a friend of Adair's adopted son, was working as a houseboy for the couple.

A jailhouse informant testified that Baca had confided the son planned the killing. The two were going to split Adair's inheritance, the informant said. Other witnesses testified that Adair was planning to disinherit his son, who was never charged in the case.

Baca was tried twice and found guilty both times. A state appeals court overturned the first verdict. The second withstood an appeal, even though the state court found the informant and a Riverside County prosecutor had given false testimony.

The informant falsely testified he had asked for and received no favors. The prosecutor falsely corroborated that on the stand, according to court records. Baca was sentenced to 70 years to life.

Patrick J. Hennessey Jr., who has represented Baca on appeal for nearly two decades, said he had never seen such an "egregious" case of prosecutorial misconduct.

"That is what bothered me," Hennessey said. "There was never a fair discussion of how serious the issue was."

A U.S. magistrate who next examined the case said Baca might not have been convicted of first-degree murder but for the false testimony. He said the federal court nevertheless was supposed to defer to the state courts.

"Sadly, this informant's lies were bolstered by a Deputy District Attorney, who also lied," wrote Magistrate Judge Patrick J. Walsh. "What is obvious ... is that the Riverside County District Attorney's Office turned a blind eye to fundamental principles of justice to obtain a conviction."

Armed with the magistrate's report, the three judges on the 9th Circuit panel appeared incredulous about the facts of the case.

Wardlaw, a Clinton appointee, complained that California's courts were "condoning" prosecutorial misconduct by upholding verdicts, a rare public criticism of her fellow judges. She suggested that state judges, who must be approved by voters, fear inciting the public's wrath. Federal judges are appointed for life.

"I understand why they do that," Wardlaw said. "They are elected judges. They are not going to be reversing these things."

Fletcher, another Clinton appointee, observed that the state's attorney general had fought "tooth and nail" more than a decade ago to prevent a court from seeing a transcript that revealed the false evidence.

"It would look terrible in an opinion when we write it up and name names," Kozinski, a Reagan appointee, told the government lawyer. "Would your name be on?"

Vienna said he was not involved in the case at the time, but named others in the office.

- > Kozinski demanded to know why the informant and the testifying prosecutor were not charged with perjury. He suggested the state bar should pull the law license of the prosecutor who presented the evidence.

Retired Deputy Dist. Atty. Paul Vinegrad, who prosecuted Baca in both trials, said in an interview that he did not suspect deceit. He said he has since learned that his colleague who falsely testified — former Deputy Dist. Atty. Robert Spira — had memory problems and may have been confused. Spira, who no longer practices law, could not be reached for comment.

Vinegrad also said he believed in the murder-for-hire case he presented, but that there was not enough evidence to charge the son. The informant's testimony against the son would not have been admissible under legal rules at the time, Vinegrad said.

- > Kozinski, who in the past has spoken out about an "epidemic" of prosecutorial misconduct, asked Vienna whether Harris was aware of the case. Vienna indicated she probably was not. Kozinski told him to get her attention within 48 hours. Harris would need to take action if her office wanted to avoid an embarrassing ruling, Kozinski said.

"Make sure she understands the gravity of the situation," Kozinski said, adding that the case "speaks very poorly for the attorney general's office."

Harris, a candidate for U.S. Senate, changed course. Her office decided last week not to oppose Baca's challenge.

- > Mike Hestrin, Riverside County's newly elected district attorney, did not concede that the prosecutors' "misconduct" was intentional, but said his office would investigate the prosecutors' actions and retry Baca.

It will be Baca's third trial.

maura.dolan@latimes.com

Twitter: @mauradolan

#### MORE CALIFORNIA NEWS:

Anger over development becomes key issue in L.A. council race

Steve Lopez: Aircraft worker had retirement lined up, then the boom came down

ESSENTIAL CALIFORNIA NEWSLETTER >> Get great stories delivered to your inbox

Copyright © 2015, Los Angeles Times



Judge Alex Kozinski (L), of the 9th U.S. Circuit Court of Appeals, pictured here in 2003 in San Francisco, has indicated that the judiciary is finally ready to stop prosecutors from lying and soliciting others to lie. (Paul Sakuma-Pool/Getty Images)

What will it take to produce honest and ethical conduct from our state and federal prosecutors? The Ninth Circuit has a suggestion. Perhaps a perjury prosecution will do it. In fact, that is exactly what should happen when prosecutors affirmatively lie.

This case, *Baca v. Adams*, involves a clear violation of the Supreme Court's decision in *Napue*, which holds that prosecutors cannot put on perjured testimony, much

less lie themselves. Unfortunately, as I've documented elsewhere, it happens far too often, when it should never happen at all.

In this case, the prosecution infected the case with false testimony—including by a prosecutor himself—over benefits given to a “cooperator” or a jailhouse “snitch.”

The entire program of “cooperation” is rife with problems. Prosecutors often put extraordinary pressure on the worst criminals, threatening not only them but their families. After completely terrifying the person who knows he will go to prison no matter what (because he really is guilty), the prosecutor then offers life-saving benefits, often secretly, in exchange for testimony against many less culpable “targets” of the government’s investigation.

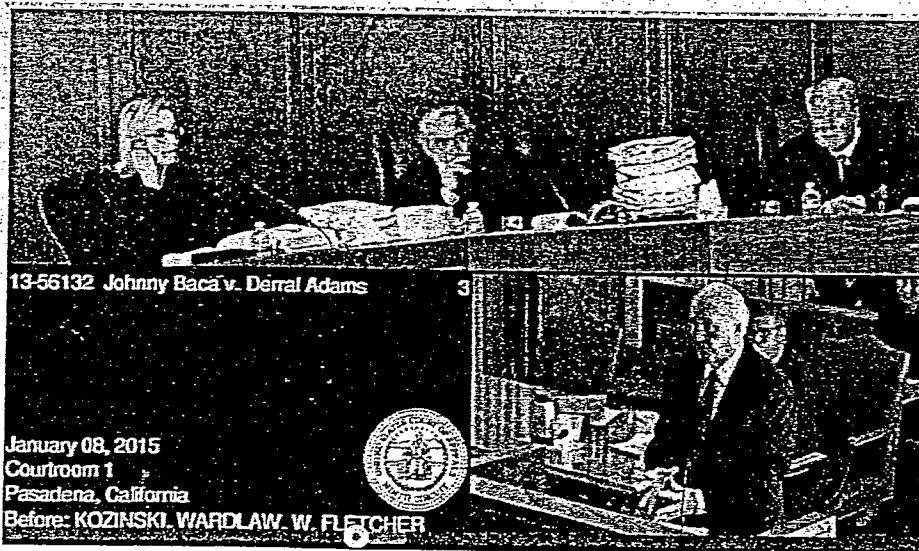
If a defense attorney gave anything to any witness in exchange for his testimony, it would be bribery, and the defense attorney would be prosecuted.

In Mr. Baca’s case, Deputy District Attorney Robert Spira first prosecuted Mr. Melendez. Melendez went to prison and became a “snitch.” Then prosecutors turned to prosecute Mr. Baca.

Prosecutor Spira took the stand at the trial of the next defendant, Mr. Baca, to discuss Mr. Melendez’s plea deal. Prosecutor Spira testified that Mr. Melendez did not get any consideration in exchange for testifying against Baca. The California Court of Appeal found this to be untrue.

Deputy District Attorney Paul Vinegrad was the prosecuting attorney in Mr. Baca’s case who put on Mr. Melendez and his fellow prosecutor Mr. Spira as witnesses against Mr. Baca.

A magistrate and the California Court of Appeal found that California deputy district attorney Spira lied under oath, testifying against a criminal defendant and in support of a lying “jailhouse snitch” who was placed on the witness stand in apparent subornation of perjury. Making matters worse, the California Attorney General fought “tooth and nail” to keep the transcript of the relevant hearing from the California Court of Appeal.



---

Hearing to the 9th Circuit (Kozinski, Wardlaw, W. Fletcher) linked in this article [use the web version of the article if this link does not come through]. This argument is worth its weight in gold - someone actually doing something about the misconduct that goes on in prosecutor's offices - or trying to!

Who was the CA Deputy Attorney General who fought tooth and nail to keep the transcript that proved a prosecutor lied under oath and another suborned perjury from the Court's review? In the >linked hearing - it comes out it is Laura Studebaker (no longer at the AG's office) and Delgado Rouché (still w/AG) (spelling of names not verified)

The 3-judge panel gives the AG one week to respond to the Court how they will resolve this case or they will issue a scathing opinion naming names in the F3d.

---

It takes a minute for the panel to warm up . . . but when they do . . . they are no holds barred on the crimes of these prosecutors and why something hasn't been done.

{ In a somewhat sad note, Wardlaw refers to the execution of Tom Thompson and the similarity to this case reminding the DAG that the AG's office has never prosecuted anyone in that case either. This all reflects very poorly on CA's Attorney General's Office which has the ability to criminally prosecute the crimes of prosecutors - who have the lives of defendants in their hands (and in the case of Tom Thompson - who was executed - literally the life of the prisoner)

<http://observer.com/2015/01/breaking-ninth-circuit-panel-suggests-perjury-prosecution-for-lying-prosecutors/>

---

## Breaking: Ninth Circuit Panel Suggests Perjury Prosecution For Lying Prosecutors

---

---

Attorneys argue the case before Ninth Circuit Judges (l to r) Kim Wardlaw, Alex Kozinski, and William Fletcher. (Johnny Baca v. Derral Adams/YouTube)

---

The Ninth Circuit is going to do something about it, including naming names—if the California Attorney General does not—and the court strongly suggests that the lying prosecutor himself be prosecuted for perjury. The entire video of the oral argument is available to watch [here](#), and it begins to draw blood about 17 minutes into it. Be sure to watch until the end.

~~Article III of our Constitution created our independent and equal third branch of government—our federal judiciary. It exists to serve as a check and balance on both the Executive and Legislative branches of government. Months ago, Judge Kozinski called upon judges across the country to put a stop to the illegal and unethical conduct of federal prosecutors. The New York Times, the Los Angeles Times and others reported it, but have gone largely silent. We will not be. We are the home of the brave.~~

We thank and applaud Ninth Circuit Judges Alex Kozinski, Kim Wardlaw and William Fletcher for personifying the virtues of Article III that our Founders intended.

Oh, say can you see?