CASE NO. 21-436

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE KEVIN D. LOGGINS SR.-PETITIONER

VS.

STATE OF KANSAS, AND THE UNITED STATES,
-RESPONDENTS.

PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO THE GREAT WRIT

28 U.S.C. §§§ 2241, 2242, 2243

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QUESTION(S) PRESENTED

LIST OF PARTIES

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

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

RELATED CASES

1.) Loggins v. Pilshaw, et. al., Appeal No. 20-3007 (Writ of Cert., U.S. SUPREME COURT, Case No._____).

2.) Loggins v. State of Kansas, Appeal No. 119,888-A/119,889-A (Writ of Cert., U.S. SUPREME COURT, Case No._____).

3.) Loggins v. State of Kansas. Appeal No._____ (Petition for Review, Kansas Supreme Court, Case No._____).

4.) Loggins v. Norwood, Appeal No. 20-3009 (Writ of Cert., U.S. SUPREME COURT, Case No._____).

TABLE OF AUTHORITIES CITED

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OTHER

Appendix-A: (Partial Transcript of Preliminary Examination (14-pg's) Case No. 95 CR 1859)

Appendix-B: (Partial Transcript of Preliminary Examination (52-pg's) Case No. 95 CR 1859)

Appendix-C: (Appellate's Request for Additions to Appellate Record)

Appendix-D: (Appellant's document letter to Appellate Defenders office Requesting issue be raised on direct appeal.)

Appendix-E: (Order denying relief pursuant to K.S.A. 60-1507 (State district court)

Appendix-F: (Kansas Court of Appeals Memorandum/Order Case No. 94,723-A)

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Appendix-H: (Kansas Supreme Court denial of Petition for review, Case No. 94, 723-A)

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Appendix-J: (Kansas Court of Appeals Memorandum/Order Case No. 114,578-A)

Appendix-K: (Kansas Supreme Court dismissal of Petition for Habeas Corpus Case No. 18-119,110-S)

Appendix-L: (U.S. Court of Appeals For the Tenth Circuit denial of permission to file a 2nd 28 U.S.C. § 2254 motion)

Appendix-M: (Kansas Court of Appeals Memorandum/Order Case No. 101,435-A)

Appendix-N: (Transcript of Proceedings (Arraignment) Case No. 95 CR 1859)

Appendix-O: (Motion to produce arraignment transcript)

Appendix-P: (Complaint/Information Case No. 95 CR 1859)

Appendix-Q: (U.S. District Court denial Case No. 99-3102-SAC)

Appendix-R (Transcript of State Evidentiary hearing Case No 04CV2780)

Appendix-S: (County Commissioners Policy Authorizing destruction of record evidence (Exculpatory Evidence)).

JURISDICTION

The Jurisdiction of this Court is invoked under **28 U.S.C. § 2241**; **§ 2242**; and **§ 2243**.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF FACTS

In 1996 petitioner was convicted of robbing 2 local drug houses. On appeal petitioner sought to raise the claim of lack of neutral/impartial tribunal. The court reporter at the behest of the judge spolitated the record so as to conceal the record evidence of her bias, to obstruct the State Court of Appeals, and Federal Habeas Court from observing the structual error. The transcript record was spliced into three parts and binded in two seperate volumes. The volume containing the evidence of the structual error was not transcribed and released to petitioner until 2-days after the Federal District Court denied habeas corpus relief.

Likewise, C.R. Lou Ann Hale, spolitated the arraignment transcripts in both Case No. 95 CR 1616 and 95 CR 1859. The Arraignment transcript was requested by direct appeal counsel to perfect the appeal, however said transcript was concealed for approximately 10-years. The transcript was finally transcribed 2-months after the State District Court denied the timely filed habeas petition, wherein the claim of failure to arraign was argued. The district court adopted the states pre-evidentiary hearing pleadings and never looked to the actual living transcript to determine if in fact the defendant was ever arraigned. The district court simply took the word of court appointed trial counsel whom stated on the stand he has no recollection of the hearing , but that he pretty sure it occured. The Court of Appeals afirmed the district courts finding.

As for petitioners claim concerning the lack of impartial/neutral tribunal, once the record was transcribed, and the claim was properly before the trial court in a timely filed state habeas motion, the district court applied the wrong standard of review, by subjecting petitioners structual error claim unto a harmless error review, and ruled that "Irregualirty at Preliminary hearing not objected to is deemed waived". Petitioner sought to have the previous holding set aside in a subsequential motion arguing an abuse of discretion, (Error of facts, law & in contradiction to the competent evidence in the record.) The district court, and the Kansas Court of Appeals argued petitioner claim lack exceptional circumstance showing, and said claim is barred by laches, and the doctrine of res judicata. Petitioner sought to vacate the judgment in state court pursuant to K.S.A. § 60-260(b)(4). The state courts ruled it was an improper vehicle, and denied relief.

Petitioner sought to vacate the prior judgment by the U.S. District Court as void for want of jurisdiction pursuant to Fed. R. 60(b)(4), the court denied and the U.S. Court of Appeals for the 10th Cir. found that the relief petitioner seeks will result in the revesal of the state conviction, thus, denied the C.O.A. and dismiss the appeal, finding petitioner must seek permission to file a successive 2254 motion. Petitioner sought authorization pursuant to 28 U.S.C. § 2244, the U.S. COA denied the authorization. Petitioner sought to file a original habeas motion to the Kansas Supreme Court to address the structual and jurisdictional claims. The highest state court claim to have no jurisdiction and dismiss the petition. The following petition to Invoke the **GREAT WRIT** pursues.

REASONS FOR GRANTING THE PETITION

ISSUE I. WHETHER THE UNITED STATES/STATE OF KANSAS, FOR GOING ON 25 YEARS HELD PETITIONER ILLEGALLY IN PRISON CONTRARY TO THE FUNDAMENTAL LAWS OF THE UNITED STATES CONSTITUTION ON A VOID JUDGMENT THAT IS REPUGNANT TO THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE?

Standard of review: "Questions of Jurisdiction, of course, should be given priority -- since if there is no jurisdiction there is no authority to sit in judgment of anything else." **Vermont Agency of Natural Res. v. United States ex rel. Stevens**, 529 U.S. 765, 778, 146 L.Ed. 836, 120 S.Ct. 1858 (2000).

"Should a judge act in a case in which he or she has no authority to act, he or she acts unlawfully, **U.S. v. Wills**, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed. 2d 392, 406 (1980); **Cohens v. Virginia**, 19 U.S. (6 Wheat) 264, 404, L.Ed. 257 (1821), and without and judicial authority."

"In **Griffin v. Griffin**, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1946), this court held:

"a failure to observe constitutional requirements deprives a court of jurisdiction and any judgment rendered by such court is void and may always be questioned collaterally." 'Due Process forbids any exercise of judicial power which, but for constitutional infirmity, would substantially affect a defendnat's rights'."

USCS Const. Amend. 14, Part 1 of 14

Amendment 14

Sec. 1. [Citizens of the United States.] 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 protection of the laws**. (Emphasis added).

USCS Const. Amend. 5, Part 1 of 13

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

In the case at bar the trial judges actions violated the U.S.C.A Amend. 14th on two fronts. 1.) Denial of a impartial tribunal, and 2.) Violation of Seperation of Powers.

a. Denial of impartial tribunal

"**A fair trial in a fair tribunal is a basic requirement of due process**." **In re Murchison**, 349 U.S. 133, 136 (1955).The due process right to a competent and impartial tribunal is quite separate from the right to any particular form of proceeding. Due process requires a competent and impartial tribunal in administrative hearings, **Goldberg v. Kelly**, 397 U.S. 254, 271 (1970), and in trials to a judge, **Tumey v. Ohio**, 273 U.S. 510 (1927)."

"A fundamental principle of procedural due process is a hearing before an impartial tribunal". See **Withrow v. Larkin**, 421 U.S. 35, 46-47, 43 L.Ed. 2d 712, 95 S.ct. 1456 (1975). "A tribunal is not impartial if it is biased with respect to the factual issues to be decided at the hearing." **Patrick v. Miller**, 953 F.2d 1240, 1245 (10th Cir. 1992).

This principle of law ensures that no person will be deprived of any constitutionally protected interest in a proceeding in which a judge is predisposed to rule against them. **Marshall v. Jerrico, Inc.**, 446 U.S. 238, 242, 64 L.Ed. 2d 182, 100 S.ct. 1610 (1980).

b. Violation of Seperation of Powers

"When a judge plats the role of the prosecutor -- usurping the executive branches sole disxcretion -- such invovles a serious seperation of powers question. Generally speaking, the executive power is the power to enforce the laws, and the judicial power is the power to interpret and apply the laws in actual controversies". **Van Sickle v. Shanahan**, 212 Kan. 426, Syl. 8 , 511 P.2d 223 (1973).

"The prosecuting attorney is a member of the executive branch, not judicial branch, of government. Although the Kansas constitution contains no express provision requiring the seperation of powers, 'seperation is accomplished by the establishment of the three branches of government and distribution of the various sovereign powers to each other.'" **212 Kan. at 440**. "Allowing judicial oversight of what is essentially a function of the prosecution's office would erode that power. **State v. Dedman**, 230 Kan. at 797-798, Also see **State v. Williamson**, 253 Kan. 163, 853 P.2d at 59.

The law provides 'as long as a court remains impartial and DOES NOT become a advocate for either side the seperation of powers doctrine is not abridged.' **United States v. Henderson**, 770 F.2d 724, 729 (8th Cir. 1985). See Appendix-(R), pg's (121-22).

The trial judges conduct in this case runs afoul to the **DUE PROCESS CLAUSE** Constitutional mandate, thus repugnant to the U.S. Const., rendering the judgment fundamentally unfair and void. The Judge **expressed interest** and advocacy for the states case disqualified her from setting in judgment on the case. See **28 U.S.C. § 455(a).**

c. Transcript evidence of judges lack of impartiality/neutrality.

Prosecuting attorney: (Pg.-(10), lines-(7-8))

7. should be added. I'm not interested in an aggravated

8. sexual battery being added. I'm not interested in an

Trial Judge: (Pg.-(11), lines-(10-12))

10. THE COURT: Thank you. Well, I -- **I am**

11. **interested in adding an aggravated sexual battery**

12. **charge, and I am adding aggravated sexual battery**. See Appendix-(A). (Emphasis added).

Its the prosecutions sole duty to determine whom to charge and what charges to file. **Wayte v. U.S.**, 470 U.S. 598, 670 (1985); **U.S. v. Goodwin**, 457 U.S. 368, 380 n. 11 (1982); **State v. Williamson**, 253 Kan. 163 (1993) and **State v. Dedman**, supra id. (The prosecuting attorney has broad discretion in discharging his duty. The scope of discretion extends to the power to investigate and determine who shall be prosecuted and what crime shall be charged.)

We have recognized that " most constitutional errors can be harmless." Fulminante, supra, at 306. "[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis." Rose v. Clark, 478 U.S. 570, 579, 92 L. Ed. 2d 460, 106 S. Ct. 3101 (1986). Indeed, we have found an error to be "structural," and thus subject to automatic reversal, only in a "very limited class of cases." (Quoting **Neder v. United States**, 527 U.S. 1 (1999)).

One of which violations is, **Tumey v. Ohio**, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927) (**biased trial judge**). This Court has found such a error to be structual and contain a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." **Fulminante**, supra, at 310. Such errors "infect the entire trial process," **Brecht v. Abrahamson**, 507 U.S. 619, 630, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993), and

"necessarily render a trial fundamentally unfair," Rose, 478 U.S. at 577. "Put another way, these errors deprive defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair." **Rose,** Id. at 577-578.

In the **Tumey v. Ohio**, supra decision the Court held:

"The very premise of structual error review is that **even a conviction reflecting the "right" result are reversed for the sake of protecting a basic right.** For example, in **Tumey v. Ohio**, supra, where we reversed the defendant's conviction because he had been tried before a biased judge, the State argued that "the evidence show clearly that the defendant was guilty and that he was only fined $100, which was the minimun amount, and therefore that he can not complain of lack of due process, either in his conviction or in the amount of judgment". Id. at 535 **We rejected this argument out of hand, responding that "no matter what the evidence was against him, he had the right to have a impartial judge**."

"When a judge lose its color of neutrality and tends to accentuate and emphasize the prosecution's case, he or she failed to play the role of Art. III Judicial officver." **U.S. v. Leuth,** 807 F.2d 719, 727 (8th Cir. 1986). "Once a trial judge steps outside the role of detachment, he or she assumes the role of partisan or advocate. At that point the judge is no longer, nor even appears to be neutral and impartial." **Limitations of Judicial Activism in Criminal Trials** 33 Conn. L. rev. 243, 273-274 (2000). (Emphasis added).

"Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. **Yazoo, etc. R. Co. v. Kirk**, 102 Miss. 41, 58 So. 710. This principle applies even to the state in criminal cases. "**State v. Brown**, 8 Okla. Crim. 40, 126 Pac. 245. "The purpose of the rules is to guarantee that no judge shall preside in a case in which he is not wholly free, disinterested, and independent. **Tumey v. Ohio**, supra id., "The law goes further than requiring an impartial tribunal; it also requires that the tribunal appears to be impartial. **Re Perez**, 194 La. 763, 194 So 774.

In **46 Am. Jur.2d Judges § 97** it is stated: "Thus, it would appear to be a rule of policy, that if there is any doubt or question of the judge being '**interested** ' in the case, the doubt or question should be resolved in favor of disqualification, rather than qualification of the judge and where a judge has an interest in the result of litigation, **it has been held he is disqualified to act even if he acts in good faith without knowledge of the disqualification circumstances** . . . ."

This rule, policy and procedure is recognized by all courts state and federal and said

rights contours was emphasized in the Superior Courts mandate in **Marbury v. Madison** (1803) 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60. which held:

". . . . it is apparent, that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature. Why, otherwise, does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the Legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "**I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich: and that I will faithfully and "*impartially discharge*" all the duties incumbent on me** . . . ." Marshall, C. J. **Marbury v. Madison** (supra).

The violations renders the judgment void for want of jurisdiction and it being in contradiction to due process of law. Both state and federal courts define a void judgment as "A judgment is void only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law." **United States v. Buck**, 281 F.3d 1336, see also, **Automatic Feeder Co. v. Tobey**, 221 Kan. 17, 558 P.2d 101 (1976). "A judgment is void for Rule 60(b)(4) purposes if the "rendering court was powerless to enter it." **V.T.A., Inc. v. Airco, Inc.**, 597 F.2d 220, 224 (10th Cir. 1979).

"A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment need not be recognized by anyone, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based on it.

"Although it is not necessary to take any steps to have a void judgment reversed or vacated, it is open to attack or impeachment in any proceeding, direct or collateral, and at any time or place, at least where the invalidity appears upon the face of the record. "All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose." (Emphasis added.) **46 Am. Jur. 2d, Judgments § 31, p. 393-94**, 7 **Moore's Federal Practice § 60.25[2]**, pp. 223-25 (2d ed. 1995).

The state official ([Judge Pilshaw] & [C.R. Nichols]) committed a criminal act to hide the structual error. These state officials obstructed justice by spolitating the record to conceal the fact that Judge Pilshaw was biased and lacked impartiality/neutrality as a advocate for the states case. See **18 U.S.C. § 1512(c)(1)**. These state official spliced the prelim., Examination transcript into three parts. See Appendixes-(A), and (B). Appendix-(B) was the only portion of the record transcribed and turned over to petitioners appellate counsel for perfecting the direct appeal. As stated herein the remaining portion of the record was not transcribed until 2-days after the federal district court denied habeas relief. Petitioner request the record, See Appendix-(C), and petitioner requested that the claim be raised on direct appeal. See Appendix-(D). See (**Issue IV**).

State courts simply applied the wrong standard of review, entered judgments that was in error of facts and law, and upon challenging the orders as unlawful the courts asserted that the claims are procedurally barred by laches and the doctrines of res judicata/issue preclusion. Likewise, the federal district court and U.S. court of appeals both held the claims is barred and that petitioner is without a vehicle to challenge the jurisdiction of the court. All lower courts ignored this Superior Courts holding that no preclusive effect attaches where the court was without jurisdiction over the controversy. **Lessess of Hickey v. Stewart**, 44 U.S. 750, 11 L.Ed 814 (1845). See **Issue II**, detailing the lower courts holdings.)

When as here, the initial court (trial court) acted without authority to do so, resulting in the deprivation of petitioners liberty in contradiction to federal constitutional law, and state officials conceal the structual error through obstruction of justice (hiding the evidence) this surely amounts to a miscarriage of justice. Wherefore this Superior Court is the only option to dispose of the matter as law and justice requires. See **28 U.S.C. § 2241(c)(3), § 2243**.

II. WHETHER THE U.S. / KANSAS, ILLEGALLY DEPRIVED PETITIONER OF LIBERTY FOR 25 YEARS BY INDIRECTLY SUSPENDING THE WRIT THROUGH AN ABUSE OF DISCRETION AND OBSTRUCTION OF JUSTTICE IN VIOLATION OF U.S.C.A. ARTICLE 1 § 9[2]?

U.S.C.A. ARTICLE 1 § 9[2]:

"[2] The privilege of the Writ of Habeas Corpus shall not suspended, unless when in Cases of Rebillion or Invasion the public Safety may require it."

The writ of habeas corpus commands general recognition as the essential remedy to safeguard a citizen against imprisonment by State or Nation in violation of his constitutional rights. To make this protection effective for unlettered prisoners without friends or funds, federal courts have long disregarded legalistic requirements in examining applications for the writ and judged the papers by the simple statutory test of whether facts are alleged that entitle the applicant to relief. See **Darr v. Burford**, 339 U.S. 200 (1950). (Emphasis added).

Ever since the Magna Charta, man's greatest right -- personal liberty -- has been guaranteed, and the procedures of the Habeas Corpus Act of 1679 gave [***43] to every Englishman a prompt and effective remedy for testing the legality of his imprisonment. Considered by the Founders as the highest safeguard of liberty, **it was written into the Constitution of the United States that its "privilege . . . shall not be suspended**, unless when in cases of rebellion or invasion the public safety may require it." **Art. I, § 9**. Its principle is imbedded in the fundamental law of 47 of our States. It has long been available in the federal courts to indigent prisoners of both the State and Federal Governments to test the validity of their detention. Over the centuries it has been the common law world's "**freedom writ**" by whose orderly processes the production of a prisoner in court may be required and the legality of the grounds for his incarceration inquired into, failing which the prisoner is set free. We repeat what has been so truly said of the federal writ: "there is no higher duty than to maintain it

unimpaired," **Bowen v. Johnston**, 306 U.S. 19, 26 (1939), and unsuspended, save only in the cases specified in our Constitution. When an equivalent right is granted by a State, financial hurdles must not be permitted to condition its exercise. (Emphasis added).

"The Writ of habeas corpus petition is a fundamental instrument for safeguarding indiividual freedom against arbitrary and unlawful state action." **Harris v. Nelson**, 394 U.S. 286, 290-291 (1969). "It's well-known history bears repetition. The writ emerged in England several centuries ago, and was **given explicit protection in our constitution**. The Judiciary Act provided federal habeas corpus for federal prisoners. In 1867, Congress provided the writ of habeas corpus for state prisoners; the Act gave federal courts "power to grant the writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or any treat or any law of the United States." The current statute confers similar power, **28 U.S.C. § 2241(c)(3)**, and provides: "The court shall ... diispose of the matter as law and justice require." **28 U.S.C. 2243**.

As the statute suggest, the central mission of the Great Writ should be the substance of "justice," not form of procedures. As Justice Frankfurter explained in his separate opinion in **Brown v. Allen**, 344 U.S. 443, 498 (1953):

"The mertorious claims are few, but our procedures must ensure that those few claims are not stifled by undiscriminating generalities. The complexities of our federalism and the working of a scheme of goverment involving the interplay of two goverments, **one of which is subject to limitations enforcable by the other, are not to be escaped by simple, rigid rules which, by avoiding some abuses, generate others**." (Emphasis added).

In **Hensley v. Municipal Court**, 411 U.S. 345, 349-350 (1973), the Court similarly emphasized this approach, stating:

"Our recent decisions have reasoned from the premise that habeas corpus is not 'a static, narrow, formalistic remedy,' **Jones v. Cunningham**, [371 U.S. 236,] 243 [(1963)], but one which must retain the 'ability to cut through barriers of form and procedural mazes.' **Harris v. Nelson**, 394 U.S. 286, 291 (1969). See **Frank v. Mangum**, 237 U.S. 309, 346 (1915) (**Holmes, J., dissenting**). 'The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.' **Harris v. Nelson**, supra, at 291.

Thus, this High Court have consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formallisms or hobble it its effectiveness with the manacles of arcane and scholastic procedural requirements. This lead to the statutory mandate to "dispose of the matter as law and justice requires" clearly requiring at the least some consideration of the character of the constitutional claims.

Since petitioners claim involves a structual error that defys harmless error standards of review (**Arizona v. Fulminante**, 499 U.S. at 309), the 'cause' and 'prejudice' standard must yield to the correcting the fundamental unjust incarceration assertion to review its validity.

This Superior Court has has ruled: "In recent exposition of the "cause and prejudice" standard, moreover, the Court again emphasized that "cause and prejudice" must be considered within an overall inquiry into justice. In **Engle v. Issac**, 456 U.S. 107 (1982), the Court closed its opinion with the assurance that it would not allow its judge-made "cause" and "actual prejudice" standard to become so rigid that it would forclose claim of this kind:

"The terms 'cause' and 'actual prejudice' are not rigid concepts; the take their meaning

from the principles of comity and finality. **In appropiate cases those principles must yeald to the imperative of correcting a fundamentally unjust incarceration**. Since we are confident that victims of a fundamental miscarriage of justice will meet the cause-and-prejudice standard, See **Wainwright v. Sykes**, 4333 U.S. at 91; id., at 94-97(**Steven, J.**, concurring), we decline to adopt the more vague inquiry suggested by the words 'plain error'". id. at 135. (Emphasis added).

As stated in Issue-I, C.R. Nichols withheld the transcript for 5 years, thus hiding evidence that revealed the lack of a impartial tribunal, and court appointed counsel conspiring with the prosecution to add charges against petitioner. At the evidentiary hearing the court appointed counsel refused to call the witness to the stand even though the court was willing to make concession to call the witness to the stand. See Appendix-(R), pg.-(112). The same court refused to remove counsel despite the obvious conflict of interest between counsel and petitioner. See Appendix-(R), pg.-(3-5).

Appointed trial counsel stated on the stand at the hearing that in the State of Kansas the judge decides what to charge a defendant with. See Appendix-(R), pg.-(13). At the conclusion of the evidentiary hearing the district court ignored all the evidence presented at the evidentiary hearing and adopted the pre-evidentiary argument of the prosecution as its decision. See Appendix-(E)(Case No. 04 CV 2780).

Thus, the state district court entered rulings that are **manifest error** and **reissuable error.** The fact of the matter remains the judgment of conviction in the case is a legal nullity because it is void for want of subject-matter jurisdiction and for being in contradiction to due process of law.

Petitioner sought to redress this fundamental error on four ocassions. In **Loggins-I,** (60-1507 motion) Kansas State Habeas Corpus statute, in Case No. 04 CV 2780. The district court classifed petitioners claim as "**Irregularity at preliminary hearing**", finding that on authority of State v. Henry, 263 Kan. 118, 129, 947 P.2d 1020 (1997), the error was harmless and since petitioner went to trial and was convicted of the crimes the issue is deemed waived. See Appendix-(E), pg's-(3-4). On appeal therefrom, Loggins V. State, 2007 Kan. App.Unpub Lexis 487, the Court of Appeals affirmed the district courts harmless error conclusion, citing Palmer v. State, 119 Kan. 73, 75, 427 P.2d 492 (1967) as its authority. See Appendix-(F), pg-(2).

Both courts applied the wrong standard of review. Applying a harmless error standard of review to a structual error which defy the harmless error standard. See **Rose v. Clark**, supra and **Arizona v. Fulminante**, 499 U.S. at 309. Furthermore this Superior Court in **Dickerson v. Zurko**, 527 U.S. 150 (1999) held: "When a court makes a ruling applying the wrong standard of review is grounds for reversal."

Not only did both courts apply the wrong standard of review, both cases recited by the district court and the Court of Appeals circumstances was not remotely similar to petitioners claim. In The Henry, supra case the defendant argued the evidence at preliminary hearing was insufficient to bound him over on premeditated murder. In the Palmer, supra case, the defendant argued that he did not waive his right to preliminary hearing. In both instances the claims raised was 'diametrically different' then the issue raised in petitioners case.

In **Loggins-II,** (K.S.A. 22-3504 motion)(correction of an illegal sentence) Case No. 95 Cr 1859 the district court summarily denied petitioners motion. On appeal therefrom Case No. 11-103, 345-A the court held the K.S.A. § 22-2301 which prohibits a judge from setting in judgment in cases wherein said judge orders a county attorney to institute criminal proceedings

against a person is not applicable in petitioners case, since the original complaint and information was filed in October, 1995. See Appendix-(G), pg's-(3-4).

The Court then discussed K.S.A. § 22-2902(5), Kansas preliminary hearing statute. The Court cited State v. Pioletti, 246 Kan. 49, syl. ¶ 4, 785 P.2d 963 (1990), as authoritive on petitioners claim. The court found that said statute permits a district court judge to preside over preliminary hearing and trial, and that petitioner does not argue the constitutionality of said statute.

Whether K.S.A. § 22-2902(5) permits a judge to preside over preliminary hearing and trial is not at issue before the court, nor whether a judge is permitted to bound a defendant over on additional charges not lodged in the complaint and information. The law permits both, however the law does not permit a judge to add nor institute charges of its own that the State Prosecution seeks not to add to the complaint. Nor does the statute nor the Pioletti case grant a judge authority to give up its impartiality and neutrality to be a partisan or advocate for the States case.

Kansas Legislatures never contemplate permitting Judges in the State of Kansas to erode the Seperation of Powers doctrine of Art., II and III of the United States Constitution, nor authority to abridge the 14th Amend., of the U.S.C.A. (due process clause) right to impartial tribunal. K.S.A. § 22-2301 is a counterpart to 28 U.S.C. § 455(b)(4) and Judicial Canon 3D:

" **28 U.S.C. § 455(b)(4)** the Congress of the United States legislated that any judge shall disqualify himself where he knows that he has an interest financially ". . . . or any other interest that could be substantially affected by the outcome of the proceeding." § 455(d)(1) defines proceeding thusly: "proceeding" includes pretrial, trial, appellate review or other stages of litigation;" § 455(e) mandates that no judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)." (Emphasis added).

In **46 Am. Jur.2d Judges § 97** it is stated: "Thus, it would appear to be a rule of policy, that if there is any doubt or question of the judge being '**interested**' in the case, the doubt or question should be resolved in favor of disqualification, rather than qualification of the judge and where a judge has an interest in the result of litigation, it has been held he is disqualified to act even if he acts in good faith without knowledge of the disqualification circumstances . . . ." (Emphasis added)

In all cases involving actual, potential, probable or possible conflicts of interests, a judge should reach his own determination as to whether he should recuse himself from a particular case, without calling upon counsel to express their views as to the desirability of his remaining in the case. **Resolution of The Judicial Conference**, Oct. 1971. Even the foregoing admonition is now disapproved as too lax. See **Canon 3D Code of Judicial Conduct; 28 U.S.C. § 455**.

The Kansas Supreme Court on both occasions seeking petition for review denied review, See Appendixes-(H) & (I). In **Loggins-III**, petitioner filed a K.S.A. § 60-260(b)(4) motion which permits a defendant to seek relief from a void judgment. Its the State counterpart to Fed.R. Civ. P. R. 60(b). The district court summarily denied relief. On appeal therefrom the Court of Appeals held that K.S.A. § 60-260(b)(4) is not the vehicle for the relief petitioner is seeking that K.S.A. § 60-1507 is the appropiate vehicle. The Court went on to discuss that all of petitioners claims is barred under res judicata. One of the concurring Judges on the panel held that the claim was out of time. See Appendix-(J).

Issue preclusion and the docrine of res judicata is not applicable in the case at bar, because neither of the state courts prior rulings on the issue are a valid prior ruling. One of the prerequisites to invoke these doctrines require a valid prior ruling. "The prior judgment must be a valid final judgment, for res judicata or collateral estoppal." **Frandsen v. Westinghouse Corp.**, 46 F.3d 975 (10th Cir. 1995).

"Issue preclusion generally refers to effect of a prior judgment in foreclosing successive litigation of an issue of fact or law actually litigated and **resovled in a valid court determination essential to the prior judgment**, whether or not the issue arises on the same or a different claim. See **Restatement (second) of Judgments** §§ 12, 27, pp. 148, 250 (1980); **D. Sharpiro, Civil Procedure: Preclusion in Civil Actions** 32, 46 (2001)" (emphasis added).

These doctrines never contemplated nor allowed a court to enter an erroneous judgment then rely upon said erroneous ruling in a subsequential motion to bar review or relief. In fact measures have been put into place expressing exception for these exact situations.

Courts have limited their discretion and generally recognize only three exceptions that allow changing the law of the case. These exceptions apply when (1) a subsequent trial produces substantially different evidence, (2) a controlling authority has made a contrary decision regarding the law applicable to the issues, or (**3) the prior decision was clearly erroneous and would work a manifest injustice**. **18B Wright, Miller, & Cooper, Federal Practice and Procedure: Jurisdiction** 2d § 4478, pp. 670-72 (2002).

The prior rulings by the state courts in the case at bar has been described in law as "Judicial Error", "Manifest Error" and "Reissuable Error". Black's Law Dictionary (9th ed.) describe them as:

Judicial Error: "errors into which the court itself falls are 'judicial errors'. An Error of this character occurs when the judgment rendered is erroneous in some particular, requiring it to be changed."

Manifest Error: "An error that is plain and indisputable, and that amounts to a complete disregard of controlling law or the credible evidence in the record."

Reissuable Error: "A mistake of law or of fact in a tribunal's judgment, opinion, or order."

All these definitions can describe the actions by the previous state courts regarding

petitioners issue. The decisions render are diametrically different then this Superior Courts precedent in **Tumey v. Ohio**, supra and **In re Murchison**, supra and all the long standing State and Federal courts holdings regarding the fundamental basic due process right to an impartial tribunal.

Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. **Yazoo, etc. R. Co. v. Kirk**, 102 Miss. 41, 58 So. 710. This principle applies even to the state in criminal cases. **State v. Brown**, 8 Okla. Crim. 40, 126 Pac. 245. The law is not so much concerned with the respective rights of judge, litigant, or attorney in any particular cause as it is, a matter of public policy, that the courts shall maintain the confidence of the people. **U'Ren v. Bagley**, 118 Or. 77, 245 P. 1074. The purpose of the rules is to guarantee that no judge shall preside in a case in which he is not wholly free, disinterested, and independent. **Tumey v. Ohio**, 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437. The law goes further than requiring an impartial tribunal; it also requires that the tribunal appears to be impartial. **Re Perez**, 194 La. 763, 194 So 774. Under this aspect of the rule, where the circumstances are such as to create in the mind of a reasonable man a suspicion of bias, there may well be a basis for disqualification though in fact no bias exists. **46 Am. Jur.2d § 86** citing **State v. Deutsch**, 34 N.J. 190, 168 A2d 12.

The state courts have illegally but effectively done indirectly what the courts could not do directly, "**SUSPENDED THE WRIT OF HABEAS CORPUS**" in violation of **Art. 1 § 9 of the United States Constitution**. The State Courts have accomplished this through erroneous rulings, wrong standard of review, spolitation of the record and misapplication of the doctrine of res judicata and issue preclusion. In the State of Kansas the Supreme Court has defined a ruling in abuse of discretion as unlawful.

Saucedo v. Winger, 252 Kan. 718, Syl. P 4, 850 P.2d 908 (1993) ("A decision which is contrary to the evidence or the law is sometimes referred to as an abuse of discretion, but it is nothing more than an erroneous decision or a judgment rendered in **violation of law**.")(Emphasis added). The state courts then upon these judgments rendered in violation of law, seeks to invoke finality in litigation principles. If this Superior Court allows such a miscarriage of justice, it permits the state courts to do indirectly what it can not do directly, "Suspend the Writ of Habeas Corpus".

To prevent, Judges, Justices and Tribunals from such abridgments of individual rights, this Superior Court has helds: "The conventional notions of finality of litigation have no place where life or liberty are at stake and infringement of constitutional rights is alleged." **McClesky v. Zant**, 499 U.S. 467.

This marked a return to the common-law principle that restraints contrary to fundamental law, by whatever authority imposed, could be redressed by writ of habeas corpus. See also **Ex parte Wells**, 18 How. 307; Ex parte Parks, 93 U.S. 18, 21. The principle was clearly stated a few years after the Lange decision by Mr. Justice Bradley, writing for the Court in **Ex parte Siebold**, 100 U.S. 371, 376-377:

". . . The validity of the judgments is assailed on the ground that the acts of Congress under which the indictments were found are unconstitutional. If this position is well taken, it affects the foundation of the whole proceedings. An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. **But personal liberty is of so great moment in the eye of the law that the judgment of an inferior court affecting it is not deemed so conclusive but that . . . the question of the court's authority to try and imprison the party may be reviewed on habeas corpus**. . . ." (quoting **Fay v. Noia**, 372 U.S. 391).(Emphasis added).

Petitioner sought relief pursuant to Kan. Sup. Ct. R. 9.01 Original Action (Habeas Corpus). This statute accompanied with K.S.A. § 60-2101, grants the Kansas Supreme Court or the Kansas Court of Appeals Jusridiction to correct these type errors and to prevent miscarriages of justice. The Kansas Supreme Court dismissed the action stating lack of jurisdiction. Appendix-(K). Petitioner, in the mo., of July, 2019 sought authorization to file a second 28 U.S.C. § 2254 motion pursuant to 28 U.S.C. § 2244. Petitioner asserted that the spolitated portion of the record was newly discovered evidence and made unavailable to petitioner prior to the previously filed 2254 motion. That said unavailablity of the record was accomplished through unlawful means and violation of the law. See 18 U.S.C. § 1512(c)(1) (Obstruction of Justice).

The Tenth Circuit Court of Appeals, panel denied permission on grounds that petitioner states that I was aware of the violation and sought to have direct appeal counsel to raise the claim on direct appeal. See Appendix-(L). The panels decision flies in the face of reason and logic. Kansas Law deems an argument put forrth without record support as no argument in theory nor fact. See Kan. Sup. Ct. R. 6.02. Likewise, in the federal judiciary, if an issue is asserted in a 2254 motion that was not exhausted in the state courts, petitioners petition will be deemed a mixed petition and subjected to dismissal.

Thus, unavailability of record through obstruction of justice, prevented petitioner from exhausting the claim in the state courts. **The continued obstruction of justice until 2-day after the U.S. District Court denied petitioners timely filed 2254 motion**, rendered petitioner unable to raise the claim in the prior 2254 motion. Said record being made available to petitioner on the 13th day of Sept., 2001, was obviously a strategic move by state court officials, and has worked a miscarriage of justice. There is no defense against the **FACT** that petitioners fundamental basic right to an impartial tribunal was abridged by Former Judge Rebecca L.

than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the constitution and laws of the United States. We find no exception to this grant, and we cannot insert one". (Emphasis added).

The state courts obstruction of justice tactics is surely an exceptional circumstance/unusual event, and the state courts abuse of discretion through incorrect standard of review and rulings in error of fact and law, worked a miscarriage of justice. Likewise, the Kansas Supreme Courts refusal to exercise its jurisdiction to correct the error, and the Federal disttrict Court and Tenth Circuit Court of Appeals procedurally barring the claim, is effectively equivalent to suspension of the Writ of Habeas Corpus in a indirect manner since said action can not be done directly. This claim is fundamental, Constitutional, jurisdictional and structual, and can not be relied upon as a just and fundamentally fair vehicle to determine petitioners guilt or innocense, so as deprive peitioner of his liberty. "Failure to consider the claim would result in a miscarriage of justice." **Coleman v. Thompson,** 501 U.S. 722, 111 S.ct. 2546; 115 L.Ed. 2d 640 (1991).

Wherefore, Petitioner invokes this Great Writ, and ask that in the name of JUSTICE and all that is fundamentally fair in compliance with the United States Constitution 5th and 14th Amendment Due Process Clause, and this Superior Courts Clear, Implicit and Unambiguous mandates concerning the right to an impartial tribunal at trial be honored to secure this basic right. That petitioner be allotted Equal Protection of this law as similar situated defendants.

III. WHETHER THE U.S. / KANSAS, ACTED IN A MANNER THAT IS REPUGNANT TO THE U.S.C.A. SIXTH AMENDMENT RIGHT TO FAIR NOTICE BEFORE DEPRIVING PETITIONER OF LIBERTY IN COMPLIANCE WITH DUE PROCESS OF LAW & EQUAL PROTECTION OF THE LAW PURSUNAT TO THE FOURTEENTH AMENDMENT OF THE U.S.C.A. & KANSAS OWN CONSTITUTIONAL BILL OF RIGHTS § 10TH AMENDMENT?

USCS Const. Amend. 6, Part 1 of 16

Amendment 6 Rights of the accused.

"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." (Emphasis added).

USCS Const. Amend. 14, Part 1 of 14

Amendment 14 :

Sec. 1. [Citizens of the United States.] 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 protection of the laws.**" (Emphasis added).

Kansas Consistutional Bill of Rights mirror these principles of law. The § 10 Amendment specifically holds:

Kan. Const. B. of R. § 10

10. **Trial; defense of accused; witness against self; double jeopardy**.

"In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; **to demand the nature and cause of the accusation against him**; to meet the witness face to face, and to have compulsory process to compel the attendance of the witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense". (Emphasis added).

The Kansas Legislatures drafted and enacted statutory law to protected this fundamental constitutional right, pursuant to K.S.A. § 22-3205(a),(b) and 22-2202(c) which provides:

K.S.A. § 22-3205

22-3205. Arraignment.

"(a) **Arraignment shall be conducted in open court and shall consist of reading the complaint, information or indictment to the defendant or stating to the defendant the substance of the charge and calling upon the defendant to plead thereto. The defendant shall be given a copy of the indictment or information before the defendant is called upon to plead. Except as provided in subsection (b), if the crime charged is a felony, the defendant must be personally present for arraignment;** if a misdemeanor, with the approval of the court, the defendant may appear by counsel. The court may direct any officer who has custody of the defendant to bring the defendant before the court to be arraigned.

"(b) Arraignment may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or the defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel during such arraignment. The defendant shall be informed of the defendant's right to be personally present in the courtroom during arraignment. Exercising the right to be present shall in no way prejudice the defendant."

K.S.A. § 22-2202

22-2202. Definitions.

"(c) "**Arraignment" means the formal act of calling the defendant before a court having**

jurisdiction to impose sentence for the offense charged, informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is guilty or not guilty." (Emphasis added).

Petitioner states the state statutes merely for supporting the issue, and establlishing that said judgment of conviction is repuugnant to the United States Constitution 5th, 6th, and 14th Amendments, and is by definition a void judgment, from its inception. "Interest protected by due process are not always created by the federal constitution, they are often created by some independant source quite frequently by state statute or rule entitlting the person to certain benefits. **Board of Regents of State Colleges v. Roth,** 408 U.S. 564, 577, 33 L.Ed. 2d 548, 92 S.Ct. 270 (1983). (Emphhasis added). "Procedural due process provides a gurantee of fair procedure in connection with any deprivation of life, liberty or property by the state." **Doyle v. The Oklahoma Bar of Association**, 998 F.2d 1559 (10th Cir. 1993).

The right in question is a fundamental basic right which this Highest Court in the Land has long since held:

"Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise. As Mr. Justice Frankfurter has said: "The history of American freedom is, in no small measure, the history of procedure." But in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary

methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. "**Procedure is to law what 'scientific method' is to science**." See **In re Gault**, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

This Superior Court also held: "We cannot agree with the court's conclusion that adequate notice was given in this case. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity." Id., at 33.

Likewise, this Court has contiuously held: It is "the law of the land" that no man's life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal". See **Chambers v. Florida**, 309 U.S. 227, 236-237.

Also: "No principle of procedural due process is more clearly established than notice of the specific charge, and chance to be heard in a trial of the issue raised by that charge, if desired, are among the constitutional rights every accussed in a criminal proceeding in all courts, state or federal." **In re Oliver**, 333 U.S. 257, 273, decided today, and cases there cited. If, as the State Supreme Court held, petitioners were charged with a violation of § 1, it is doubtful both that the information fairly informed them of that charge and that they sought to defend themselves against such a charge; **it is certain that they were not tried for or found guilty of it. It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made**." **De Jonge v. Oregon**, 299 U.S. 353, 362. (Quoting **Cole v. Arkansas**, 333 U.S. 196 (1948). (Emphasis added).

Petitioner does not argue that the right to due process of law, equal protection of the law and the right to fair notice was violated because the Sedgwick County district court did not follow the statute word for word. Petitioner, does argue that the intent of the statutes is to give fair notice [Sixth Amendment], which is a fundamental right. The statute gives specific steps the court must do, as it declares the court **SHALL**, is a statutory directive.

First of which is, that in felony cases, the defendants shall be present at said hearing. **Hamilton v. Alabama,** 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed. 2d 114 (1961) (Arraignment is an essential and is necessary to trial, and it is a critical stage of a state criminal procedure.) Secondly, the court shall read the charges or notify the defendant of the nature of the charges, not counsel but the defendant. **Faretta v. Cal.,** 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) (The Sixth Amendment includes a compact statement of the rights necessary to a full defense: **"In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation**";) Id. at 818. ("**It is the accused, not counsel, who must be "informed of the nature and cause of the accusation**,"). Id. at 819.

Thirdly, that the defendant be given a copy of the complaint and Information, before called upon to plead to thereto. **Crain v. United States,** 162 U.S. 625, 16 S. Ct. 952, 40 L. Ed. 1097 (1896) ("The American treatises upon criminal law are to the same effect. Bishop says: "It is laid down, in a general way, that the arraignment and plea are a necessary part of the proceeding, without which there can be no valid trial and judgment. With the consent of the court the prisoner may waive the reading of the indictment, though without waiver it will be read, even where he has been furnished with a copy. And as the object of the arraignment is to obtain the plea, if the prisoner voluntarily makes it without, and it is accepted by the court, nothing more is required. But without plea there can be no valid trial. Nor will the proceeding be rendered good

Peck, 199 U.S. 425, 435." Id at. 645

The Court held: "Due process of law, this court has held, does not require the State to adopt any particular form of procedure," Id. at 645, however, the Court does not address if a State Legislature adopts a particular procedure, as drafted by the State Legislations, whether said procedure invokes the Due Process of Law and Equal Protection of the Law gurantees. This Superior Court in **Bd. of Regents v. Roth**, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), held: "Interest protected by due process are not always created by the federal constitution, they are often created by some independant source quite frequently by state statutes or rule entitling the person to certain benefits.). The Court of Appeals for the Tenth Circuit in **Doyle v. The Oklahoma Bar Association**, 998 F.3d 1559 (10th Cir. 1993) held: ("Procedural due process provides a gurantee of fair procedure in connection with any deprivation of liberty or property by the statute.").

In the 106 years since the Garland decision the State of Kansas legislatures statutory requirements of K.S.A. § 22-3205(a) and § 22-2202(c), remains the standing law in Kansas. As a citizen of the State of Kansas, petitioner is entitled to the benefits of fair procedure as the laws of Kansas Legislation requires its court to comply with. In the State of Kansas Jurisdiction is establish pursuant to statute. See Pieren-Abbott v. Kansas Dept. of Revenue, 279 Kan. 346, 347 (2005).

The record in the case at bar irregardless of the record inadequately obtain petitioners plead to the charges, the record of arraignment is void of any record support that petitioner was notified of the charges. In fact the fact that the amended complaint was not filed until 12-days after the alleged arraignment, its impossible for the defendant to have been notified of the nature of a complaint and information that was not before the court. See Appendix-(P).

In a similar situated case regarding the principle of notice The Supreme Court of Kansas, in **State v. Harris**, 259 Kan. 689, 915 P.2d 758 (1996), held:

"K.S.A. 1992 Supp. 21-4624(1) states that "notice shall be filed with the court and served on the defendant or the defendant's attorney at the time of arraignment." This would seem to indicate that the order is not particularly important as long as the service takes place at the time of arraignment. While we did note in Peckham that "**the filing of the service with the court is a prerequisite to serving the defendant**," this statement was made as part of our conclusion that notice to the court could not be filed after arraignment. See 255 Kan. at 316. This does not mean, and the statute does not indicate, that service and filing must be accomplished in a lockstep order **so long as both service and filing are accomplished at the time of the arraignment**."

In another Supreme Court of Kansas holding in **State v. Rosine**, 233 Kan. 663, 664 P.2d 852 (1983), the court held: "The existence of a complaint, information or indictment filed against a defendant **is a fundamental prerequisite to an arraignment**." The purpose of this mandate is to achieve the fundamental right to fair notice, in compliance with the **6th Amend.**, and **14th Amend.**, of the **U.S.C.A.**

In the case at bar, the state court held an arraignment without petitioner being physically present, with court appointed counsel petitioner attempted to fire that same day in a earlier hearing, See Appendix-(A), pg-(3), lines-(20~25). Counsel falsely stated on the record that petitioner was present, and then was allowed to waive petitioners fundamental right to fair notice, [Petitioner/defendants sole right], (It is the accused, not counsel, **who must be 'informed of the nature and cause of the accusation**,), 422 U.S. at 819. Counsel was also allowed to falsly alleged that counsel and defendant has read the complaint and information. However the record refutes that because said complaint was not filed until 12-days after the hearing in question.

Mere destruction of the documents doesn't support the State Court position, in fact it

hurts their argument, because said documents are the only proof that the court took petitioner/defendant before the court that date, and for that hearing. In all cases dealing with this issue, from **Crain**, supra; **Garland**, Supra; **State v. Smith**, 247 Kan. 455 (1990); **Meritt v. Hunter**, 170 F.2d 739 (10th Cir. 1948); **State v. Horine**, 70 Kan. 256 (1904); **State v. Wilson**, 42 Kan. 587, 597 (1889); and **State v. Montgomery**, 34 Kan.App 2d 549, 553-54 (2005), the Courts based waiver of notice upon defendants stating the understood the nature of the charges on the record and entering a plea to the charges. However, they all hold the mutual consensus that without notice (Arraignment) jurisdiction is lacking.

C.R. Lou Ann Hale concealed the arraignment transcript for approxiamtely 10 years See Appendix-(**N**), and City Counsel pasted a policy allowing the state to destroy record evidence. See Appendix-(**S**). Despite counsel requestion the arraignment transcript and C.R. Hale, swearing under penalty of perjury that she transcribed and turned over the record, the record was never transcribed until 2-months after the district court denied relief.

The Court failed to look to the record to determine if relief was warranted and created a narrative fro averments in the record that the arriagn had to happen because counsel was pretty sure it did although he had no recollection thereof. The law provides if the record is void of evidence that petitioner was arraigned and that he did not waive it petitioner was never in jeapordy.

> Without arraignment or a waiver of arraignment, and without plea or a refusal to plead and an entry of a plea by the court, the defendant was not in jeopardy, and the proceeding amounted to nothing. (The **State v. Rook**, 61 Kan. 382, 59 P. 653, 49 L. R. A. 186; **Wallace v. State**, 4 Lea 309.) Hence, all that the defendant could demand would be that the erroneous proceeding be set aside and another conducted against him in the regular way. This was done, and then all the formalities of the law were followed. Therefore, he has suffered no injury whatever to his rights. (Quoting **Horine**, Supra. Id.)

The fact theres been no proper notice of charges, and the record reflects no official complaint and information was not filed prior to the alleged arraignment, renders the judgment void. "A judgment is void "only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or **acted in a manner inconsistent with due process of law**." **In re Four Seasons Sec. Laws Litig.**, 502 F.2d 834, 842 (10th Cir. 1974).

"Due notice to the defendant is essential to the jurisdiction of all courts, as sufficiently appears from the well-known legal maxim, that no one shall be condemned in his person or property without notice, and an opportunity to be heard in his defence". **Nations v. Johnson**, 24 How. 203. (Quoting Earle v. McVeigh, 91 U.S. 503, 23 L. Ed. 398 (1875)). "The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political brances of goverment, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees." **Hanson v. Denckla**, 357 U.S. 235, 2 L.Ed. 2d 1283, 78 S.Ct. 1228.

"A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include, **Kalb v. Feuerstein**, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940); **Ex parte Rowland**, 104 U.S. 604, 26 L.Ed. 861(1882):

"A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demostrate its wants of vitality is a dead limb upon the judicial tree, which should be looped off, if the power to do so exists." **People v. Greene**, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448]. "If a courts grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (**1Freeman on Judgments, 120c.**) An illegal order is forever void.

Petitioner seeks this relief pursuant to the great writ, because there is no other remedy to

seek said relief. As to petitioners claim, the State Courts along with the U.S. District Court for the District of Kansas and the Court of Appeals for the Tenth Circuit through there judicial rulings accomplished indirectly what they could not do directly, suspended the writ.

The transcript of the proceedings exposing the abridgment of the fundamental constitutional right was spolitated and not made available to petitioner until, 9-years after petitioners trial. See Appendix-(N)(See date transcript transcribed). In **Loggins-I,** (Case No. 04 CV 2780), a timely filed motion for writ of habeas corpus, petitioner sought to have the court to order the state to produce the record of arraignment. See Appendix-(O). Petitioners argument was that petitioner was never arraigned. Counsel appointed to represent petitioner at said hearing was unable to locate that any record existed of said hearing.

Likewise, Petitioners direct appeal counsel requested the arraignment transcript in order to perfect petitioners appeal, and the record was never produced. See Appendix-(C). The district court denied relief by adopting the states pre-evidentiary response to petitioners state habeas motion. See Appendix-(E), pg-(14-16). On appeal therefrom the Court of Appeals affirmed the district courts judgment, holding:

"15. Error by the District Court Hearing the 60-1507 Motion in Finding that Loggins was Properly Arraigned on All Charges

The district court found that Loggins was arraigned on the afternoon of his preliminary hearing based upon his trial counsel's testimony. Though not particularly compelling, counsel testified that while he had no independent recollection of the arraignment, he was sure it took place. We do not reweigh the evidence or the credibility of witnesses. State v. Corbett, 281 Kan. 294, 310, 130 P.3d 1179 (2006). There was sufficient competent evidence to support the district court's finding that Loggins was properly arraigned on all charges." See Appendix-(F), pg-(7).

The state court of appeals ruling flies in the face of reason, for the court rules that based off trial counsels statement at the evidentiary hearing that he has no recollection of the arraignment, but that he pretty sure it happen is why the district court denied the issue. This is **FACTUALLY WRONG,** the district court adopted the states pre-evidentiary hearing response, thus the courts ruling was in error of fact [Abuse of discretion]. See Appendix-(E), pg-(1 4-1 6). Secondly, the court of appeals held that it's own conclusion of the controversy is "**not particulary compelling**", 'there was sufficient evidence to support the district courts findings'.

First the living record reflects, that the court of appeals assertion of why the district court denied relief, is factual wrong, thus in error of fact, and not supported by the competent evidence in the record. Even if a decision is entrusted to the discretion of a district court judge, and he or she correctly understands and applies the controlling legal standards, the facts upon which the discretionary decision must depend may still be challenged on appeal as unsupported by substantial competent evidence in the record. See **Cooter & Gell v. Hartmarx Corp.**, 496 U.S. 384, 405, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990) (legal conclusions and fact findings upon which discretionary decision based reviewable for abuse of discretion; **district court necessarily abuses its discretion if ruling based on an "erroneous view of the law or on a clearly erroneous assessment of the evidence**"). (Emphasis added).

The district court made no conclusion of facts and law as to this particular claim, the evidence presented at the evidentiary hearing was not considered nor did the district court nor the court of appeals look to the actual record of the issue before the court. In fact the district court ignored petitioners motion requesting that the court order the production of the unavailable transcript of the alleged arraignment before the court sought to adjudicate the claim. See Appendix-(O).

The court of appeals instead of reversing for the district courts failure to comply with Kansas Supreme Court Rule 183(j) which requires the district court to make a conclusion of facts and law on all claims raised, the court of appeals sought to insert its own ruling for the district court, and based upon said assertion, uphold its own inserted district court "nonconclusion of facts and law". This is effectively arguing on behalf of the states case and an act of protecting the lower courts dirlection of its duty by simply ruling in an abuse of discretion, with no factual nor record support.

In fact the court of appeals conclusion was that counsels statement at the evidenntiary hearing was not "**particularly compelling**". **Black's Law Dictionary** (9th ed.) defines the word "compel" in definition two as: "2.) (of a legislative mandate or judicial precedent) to convince a court that there is only one possible resolution of a legal dispute <the wording of the statute compels us to affirm>." If this inserted defense on behalf of the district court is "not compelling", it cannot be deemed sufficient evidence. Because, the court is basing its statement solely off counsels averment on the record that "he has no recollection of the hearing but he pretty sure it happen the day of preliminary hearing".

Concerning the emphasis our nations laws attach to personal liberty, in the face of a question whether an individuals liberty has been abridged in violation of the 'fundamental laws of this country', the law rejects a conclusion that "**its unclear if the due process hearing took place, but since a counsel whom has no recollection of the hearing is pretty sure it occured, its sufficient to deprive a individual of their right to liberty**". Failure to arraign deprives a court of its jurisdiction, because without this procedure no court can assert that the defendant was notified of the nature/substance of the charge in order to prepare a adequate defense.

"Obviously, arraignment in accordance with Rule 10 is intended to be a safeguard for due

process- a pattern for a fair hearing. It is only when failure to observe this safeguard amounts to denial of due process, that the court is deprived of jurisdiction". See **Merritt v. Hunter**, 170 F.2d 739 (10th Cir. 1948).

This Superior Court has long since held that: "We presume courts lack jurisdiction "unless 'the contrary appears affirmatively from the record.'" **Bender v. Williamsport Area School Dist.**, 475 U.S. 534, 546, 89 L.Ed. 2d 501, 106 S.Ct. 1326 (1986). quoting **King Bridge Co. v. Otoe County,** 120 U.S. 225, 226, 30 L.Ed. 623, 7 S.Ct. 552 (1887). "It is long settled principle that standing cannot be inferred argumentively from avertments in pleadings but rather must affirmatively appear in the record." **Phelps v. Hamilton**, 122 F.2d 1309, 1326 (10th Cir. 1997) (quoting **FW/PBS v. City of Dallas**, 493 U.S. at 231).

In the case at bar, the state court of appeals did exactly what this Superior Court stated could not be done, it inferred that the district court had standing based off its own inserted defense from stated avertments by trial counsel during his testimony at the evidentiary hearing. Avertments that establishes uncertainty at best. To this day, none of the state court decisions is based upon affirmation from the actual living record. In both instances that said claim was brought before the state courts, the district court refused to add the record to the record on appeal, and the court of appeals refused to review and rely upon the record attached to petitioners brief as an appendix. Clearly the court of appeals conclusion was guided by an erroneous conclusion it fabricated for the district court, and an erroneous conclusion of facts and law regarding the controversy.

Because "'[a] district court by definition abuses its discretion when it makes an error of law. . . [t]he abuse-of-discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions.'" **Koon v. United States**, 518 U.S. 81, 100, 135 L. Ed. 2d 392, 116 S. Ct. 2035 (1996).

The Kansas Supreme Court denied review on the claims raised in this appeal See Appendix-(H). In **Loggins-II,** (District Court Case No. 08 CV 831), the district court ruled that petitioners claim was successive and out of time, summarily denying petitioners motion for habeas corpus. On appeal thereform the Court of Appeals affirmed the district courts findings, holding that petitioner presented no exceptional circumstances, despite petitioner arguing the prior court of appeals panel and district court judge abused there discretion by ruling in error of facts and law. See Appendix-(M), pg-(2). The district court again, withheld the actual living record of the alleged arraignment from the court of appeals again, and the court of appeals refused to review the entire record appendixed to petitioners brief based off its Sup. Ct. 6.02(d) and (e). Said rule has been exploited by the district court by its failure to add the record on appeal. However, such rule is inferior to this Superior Courts precedent regarding the questioning of a courts jurisdiction.

This Superior Court in **Johnson v. Zerbst,** 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938) held: "The scope of inquiry in habeas corpus proceedings has been broadened -- not narrowed -- since the adoption of the **Sixth Amendment.** In such a proceeding, "**it would be clearly erroneous to confine the inquiry to the proceedings and judgment of the trial court" and the petitioned court has "power to inquire with regard to the jurisdiction of the inferior court, either in respect to the subject matter or to the person, even if such inquiry . . . [involves] an examination of facts outside of, but not inconsistent with, the record.**"

Congress has expanded the rights of a petitioner for habeas corpus and the " . . . effect is to substitute for the bare legal review that seems to have been the limit of judicial authority under the common-law practice, and under the Act of 31 Car. II, c. 2, a more searching investigation, in which the applicant is put upon his oath to set forth the truth of the matter respecting the causes

of his detention, and the court, upon determining the actual facts, is to 'dispose of the party as law and justice require.'" (Emphasis added).

The Sedgwick County district court withheld this record evidence from petitioner and all petitioners counsel on direct, and collateral review in both state and federal courts. Thus render the evidence unavailable for review. In **Maes v. Thomas**, 46 F.3d 979 (10th Cir. 1995) the court reiterated the United States Supreme Courts finding concerning show cause for a otherwise defaulted claim holding:

"In **McCleskey v. Zant**, 499 U.S. 467, 493-94, 113 L. Ed. 2d 517, 111 S. Ct. 1454 (1991), the Supreme Court explained the "cause" requirement as follows: " In procedural default cases, the cause standard requires the petitioner to show that "some objective factor external to the defense impeded counsel's efforts" to raise the claim in state court. **Murray v. Carrier**, 477 U.S. [478], at 488 [(1986)]. Objective factors that constitute cause include "'**interference by officials**'" that makes compliance with the State's procedural rule impracticable, and "a showing that the factual or legal basis for a claim was not reasonably available to counsel." Ibid. In addition, constitutionally ineffective assistance of counsel . . . is cause." Ibid. Attorney error short of ineffective assistance of counsel, however, does not constitute cause and will not excuse a procedural default. Id., at 486-488." (Emphasis added).

Petitioner sought to file a Rule 60(b) motion in the U.S. District Court for the Dist., of Kansas, the court denied the motion as successive, requiring 10th Circuit COA authorization to file. See Appendix-(Q). Petitioner sought authorization pursuant to 28 U.S.C. 2244 to file a second 2254 motion, arguing the grounds of "**Interference by Officials**". The 10th Circuit COA denied permission finding that although petitioner and counsel was denied access to the record evidence, that petitioner was aware of it seeing as how petitioner sought to have counsel raise it on direct appeal. See Appendix-(L). Petitioner also sought relief pursuant Kan. Sup. Ct. R. 9.01 (Original Action/Habeas Corpus), the Kansas Supreme Court dismissed the action ruling it lacked jurisdiction. See Appendix-(K).

The State courts effectively suspended the writ of Habeas Corpus on petitioner by spolitation of the record (Obstruction of justice), then ruling in error of law and facts, and upon subsequential motion applied the dotrine of res judicata/issue preclusion. The U.S. District Court and 10th Circuit COA followed suit effectively holding the state courts could benefit from obstruction of justice and abuse of discretion.

"However, one of the fundamental requirements for granting preclusive effect to prior judgment is the previous court's jurisdiction. Both collateral estoppal and res judicata are concerned with questions and facts "directly determined by a court of **competent jurisdiction**". **Montana v. United States**, 440 U.S. at 153 (quoting **Southern Pacific R. Co. v. United States**, 168 U.S. 1, 48-49, 42 L.Ed. 355, 18 S.Ct. 18 (1897)(emphasis added). Even at to prior determinations from **state courts,** the **Supreme Court has long recognized that no preclusive effect will attach where the court was without subject-matter jurisdiction over the controversy**." **Lessee of Hickey v. Stewart**, 44 U.S. 750, 11 L.Ed. 814 (1845)".

The record evidence spolitated revealed the trial court acted without subject-matter jurisdiction, thus all reviewing courts direct and collateral never aquired jurisdiction. If the district court's order was entered without jurisdiction, then an appellate court does not acquire jurisdiction on appeal. **State v. Stough**, 273 Kan. 113, 116, 41 P.3d 281 (2002). This fact when viewed in light of requirements for res judicata or collateral estoppal to apply fails the test. "The prior judgment must be a valid final judgment, for res judicata or collateral estoppal". **Frandsen v. Westinghouse Corp.**, 46 F.3d 975 (10th Cir. 1995).

A judgment void for want of jurisdiction can never be considered a valid judgment. "If the first judgment is a nullity, nothing which occurs after will give it vitality. 'The validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently.'" **Pennoyer v. Neff**, 95 U.S. at 714, (Quoting **Renaud v. Abbott**, 116 U.S. 227, 6 S.Ct. 1194, 29 L.Ed. 629 (1886). A "void" judgment is not a "valid" judgment, so it can never be res judicata. **State v. Fischer**, 128 Ohio St.3d 92 (2010).

Wherefore, since the record is void of any evidence that petitioner was ever given fair notice, in complaince with the fundamental law of the constitution [6th Amend., U.S.C.A], this Superior Court should find that the state court judgment of conviction is void, and issue the writ.

IV. WHETHER THE STATE OFFICIALS ABUSE OF JUDICIAL DISCRETION & OBSTRUCTION OF JUSTICE THAT HAS RESULTED IN PETITIONERS UNLAWFUL INCARCERATION FOR 25 YEARS ON THE VOID JUDGMENT WARRANTS THE ISSUANCE OF THE UNCONDITIONAL WRIT?

18 U.S.C. § 1512(c)(1) provides:

> "(c) Whoever corruptly—"(1) **alters**, destroys, mutilates, **or conceals a record, document**, or other object, or attempts to do so, **with the intent to impair the object's integrity or availability for use in an official proceeding** "shall be fined under this title or imprisoned not more than 20 years, or both." (Emphasis added).

In **Capps v. Sullivan**, 13 F.3d 350 (10th cir. 1993) it was held concerning the unconditional writ:

"The federal district courts, however, have the authority to dispose of habeas corpus matters as "law and justice require." **28 U.S.C. 2243.** The statute vests the federal courts with "'the largest power to control and direct the form of judgment to be entered in cases brought ... on habeas corpus.'" **Hilton v. Braunskill**, 481 U.S. 770, 775, 95 L. Ed. 2d 724, 107 S. Ct. 2113 (1987) (citation omitted). In this circuit, barring a new trial is a permissible form of judgment. "**Burton v. Johnson,** 975 F.2d 690, 693 (10th Cir. 1992), cert. denied, 113 S. Ct. 1879 (1993); see also **Hannon v. Maschner,** 981 F.2d 1142, 1145 (10th Cir. 1992). "It is a power necessary to protect the purpose of habeas corpus jurisdiction when the error forming the basis for the relief cannot be corrected in further proceedings. For example, when a trial would violate the Double Jeopardy Clause of the Fifth Amendment, barring the trial may be the only remedy for the violation. Cf. Justices of Boston Mun. Court v. Lydon, 466 U.S. 294, 303, 80 L. Ed. 2d 311, 104 S. Ct. 1805 (1984); Greyson v. Kellam, 937 F.2d 1409, 1413 (9th Cir. 1991); Robinson v. Wade, 686 F.2d 298, 303 n.8 (5th Cir. 1982); Fain v. Duff, 488 F.2d 218 (5th Cir. 1973), cert. denied, 421 U.S. 999, 44 L. Ed. 2d 666, 95 S. Ct. 2396 (1975). "Accordingly, it is clear Mr. Sullivan's contention that the district court lacked the authority to bar the retrial is meritless; the district court had the power to grant any form of relief necessary, including permanent discharge. **Burton, 975 F.2d at 693**; **Bromley,** 561 F.2d at 1364; **Levy v. Dillon,** 415 F.2d 1263, 1265 (10th Cir. 1969).

In the case at bar its undisputable that former State Court Judge Rebecca L. Pilshaw ordered her court reporter Diana Nichols to spolitate the preliminary examination transcript to remove testimony evidence that revealed her biasness and the structual error with the intent to prevent Kansas Court of Appeal, Kansas Supreme Court, and the U.S. District Court for the District of Kansas from reviewing the error. Former Judge Pilshaw and Court Reporter Diana

Nichols went to great lengths to alter and conceal this information.

The record was spliced into three parts and compiled in two seperate volumes. See Appendixes-(A) & (B). The spolitated portion consist of 14-pages. Pages, 1-9, lines (1-12 of pg-9). Then pages, 9,(lines, 15-25), to pg-13. Ms. Nichols on page-14 in here certificate knowingly falsified the record alleging that all testimony render at said hearing was transcribed. See pg-(14) of Appendix-(A). Said record was strategically made unavailable to petitioner and petitioners lawyers until Sept., 13th, 2001, two days after federal habeas relief was denied.

Likewise, Appendix-(N), alleged record of arraignment which contains no valuable evidence to support that petitioner was ever notified of any charges, their nature nor substance, was concealed from both federal and state court review, until Aug., 12th, 2005 approximately 2-months after the Sedgwick County district courts denial of petitioners timely filed State Habeas Motion was denied. Said record was not made a part of the record on appeal in both Loggins-I & II, and all state courts dispositions upon the claim are void of record review and support.

The State **CANNOT**, benefit from spolitation of the record, said conduct is in violation of law by these state actors. See **Yates v. United States**, 574 U.S. 528, **(18 U.S.C. § 1512(c)(1)** (**Obstruction of Justice**). The fact these state actions obstructed justice can not cure these structual/jurisdiction errors. The fact remains petitioner has been denied my fundamental right to a fundamental fair trial due to lack of impartial tribunal and failure to give fair notice. Wherefore, **THE UNCONDITIONAL WRIT** should be granted, because the judgment is void and a void judgment is incapable of tolling the Statute of Limitations on the charges, thus a retrial would be outside the state courts jurisdiction. The Court should find **JUSTICE** warrants the issuance of the unconditional writ.

Kevin D. Loggins Sr.
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