CASE NO. 21-7436 ORIGINAL
(TO BE SUPPLIED BY COURT)

IN THE UNITED STATES SUPREME COURT
FOR THE
UNITED STATES OF AMERICA

KEVIN D. LOGGINS SR., PETITIONER;

VS.

JOESPH NORWOOD, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI FROM THE TENTH CIRCUIT COURT OF APPEALS FOR THE UNITED STATES

Respectfully,

Kevin D. Loggins Sr.
KEVIN D. LOGGINS SR.
KDOC NO. #63088
HCF PO BOX 1568
HUTCHINSON, KANSAS
67504

QUESTION(S) PRESENTED

LIST OF PARTIES

[X] 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

United States Supreme Court Case No. 21-435 (Petition for the Great writ)

United States Supreme Court Case No. 21-5933, (To be supplied by Court)
(Appeal No's 119,888-A/119,889-A)
(Petition for Writ of Cert.,)

U.S. Sup. Ct. Case No. 21-436 (Writ of Cert.)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

[X] reported at 854 Fed. Appx. 954 (10th Cir. 2021); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[X] reported at 2020 U.S. Dist. Lexis 13184; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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

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[ ] is unpublished.

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

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[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was May 4th, 2021.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 11th, 2021, and a copy of the order denying rehearing appears at Appendix C.

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

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

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

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

STATEMENT OF FACTS

In 1996 a jury convicted my persons of a crime of Aggravated Sexual Battery under aiding and abetting with a theory that although plaintiff did not commit the crime personally, was not present when it was committed, nor encouraged, planned or shared intent in its commission that it was reasonably foreseeable said crime would occur since these crimes often happen at night time. The State courts held on appeal and post-conviction relief it was uphold the conviction "although it toed the line", because Kansas Law holds that if the intended crime is inherently dangerous to human life, its reasonably foreseeable that a felony would occur.

After being in prison for 8-years (2003), the defendant enacted IMPP. 11-115A which labeled all offenders convicted of a sex crime as Sex Offenders, and to house said offenders of such. The policy removed all minor visitors from inmates visiting list. Unit Counselor was instructed to assist these offenders in obtaining overrides to resume their visits with their children. However the ability to communicate via phones, letters and pictures remained intact.

In 2015 the defendant authorized an amendment to IMPP. 11-115A which abrogated the right in its entirety prohibiting any contact with any minors family and friends. Plaintiff/ petitioner sought a complete override and to be removed from being housed as a sex offender. KDOC Unit Counselor Rank ignored plaintiffs/petitioners request and submitted an override to only visit and communicate with plaintiff/petitioners grandchildren and plaintiff being housed as a sex offender. The Override board granted in part the privilege of communicating with and visiting my grandchildren and denied the requested to be removed from being housed as a sex offender.

Said policy does not provide a means to appeal the boards decision. So plaintiff sued and the district court summarily denied and the court of appeals affirmed the district courts summary judgment and plaintiff filed this forgoing Writ of Cert to vindicate the federally protected constitutional right.

I. WHETHER THE U.S. DISTRICT COURT AND U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT ERRED IN FINDING PLAINTIFF FAILED TO STATE A CLAIM REGARDING ENCROACHMENT UPON PLAINTIFF'S CONSTITUTIONAL PROTECTED FREEDOM TO ASSOCATION?

Standard of Review: "As early as 1909 that court said in such a case, Ex parte Dickens, 162 Ala. 272, at 276, 279-280, 50 So. 218, at 220, 221:

" 'Originally, on certiorari, only the question of jurisdiction was inquired into; but this limit has been removed, and now the court 'examines the law questions involved in the case which may affect its merits.' . . .

. . . .

". . . The judgment of this court is that the proper way to review the action of the court in cases of this kind is by certiorari, and not by appeal.

""We think that certiorari is a better remedy than mandamus, because the office of a 'mandamus' is to require the lower court or judge to act, and not 'to correct error or to reverse judicial action,' . . . whereas, in a proceeding by certiorari, errors of law in the judicial action of the lower court may be inquired into and corrected." (Quoting, **NAACP v. Ala. ex rel. Patterson**, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958)).

"This Court has long recognized that " freedom of personal choice in matters of marriage and family life is one of the liberties protected by the **Due Process Clause** of the Fourteenth Amendment. **Roe v. Wade**, 410 U.S. 113; **Loving v. Virginia**, 388 U.S. 1, 12; **Griswold v. Connecticut**, 381 U.S. 479; **Pierce v. Society of Sisters**, 268 U.S. 510; Meyer v. Nebraska, 262 U.S. 390. "See also **Prince v. Massachusetts,** 321 U.S. 158; **Skinner v. Oklahoma,** 316 U.S. 535. (Quoting, **Cleveland Bd. of Educ. v. LaFleur**, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974)).

"In the domain of these indispensable liberties, whether of speech, press, or **assocation**, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental actions". See **American Communication Assn. v. Douds,** 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950)).

"Appropriate limits on substantive due process come not from drawing arbitrary lines but rather from careful "respect for the teachings of history [and] solid recognition of the basic values that underlie our society." " Griswold v. Connecticut, 381 U.S., at 501 (Harlan, J., concurring)." See generally Ingraham v. Wright, 430 U.S. 651, 672-674, and nn. 41, 42 (1977); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162-163 (1951) (Frankfurter, J., concurring); Lochner v. New York, 198 U.S. 45, 76 [**1938] (1905) (Holmes, J., dissenting). Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. " It is through

the family that we inculcate and pass down many of our most cherished values, moral and cultural." (Quoting, **Moore v. East Cleveland**, 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977)).

"Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. " Over the years millions of our citizens have grown up in just such an environment, and most, surely, have profited from it. Even if conditions of modern society have brought about a decline in extended family households, they have not erased the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, that supports a larger conception of the family. Out of choice, necessity, or a sense of family responsibility, it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home. Decisions concerning child rearing, which Yoder, Meyer, Pierce and other cases have recognized as entitled to constitutional protection, long have been shared with grandparents or other relatives who occupy the same household - indeed who may take on major responsibility for the rearing of the children. " Especially in times of adversity, such as the death of a spouse or economic need, the broader family has tended to come together for mutual sustenance and to maintain or rebuild a secure home life. This is apparently what happened here." (Quoting, **Moore v. East Cleveland**, 431 U.S. 494, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977)).

"[T]he Constitution protects 'certain kinds of highly personal relationships.'" **Overton v. Bazzetta**, 539 U.S. 126, 131, 123 S.ct. 2162, 156 L.Ed. 2d 162 (2003). "Additionally, it is well-settled that prison inmates have a **First Amendment** right both to send and receive mail." **Kaufman v. McCaughtry**, 419 F.3d 678, 685 (7th Cir. 2005).

Section § 1983. Civil action for deprivation of rights, provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

In the case at bar Kansas Department of Corrections policy writters at the Secretary of

Corrections [Joesph Norwood] behest, draw up a policy that travels back in time to suspended the fundamental protected freedom to Assocation with all offenders labeled as sex offenders, with family and friends under the age of 18 years of age. This policy prohibits any communication via mail, email, pictures as well as phone calls. "Where rights secured by the Constitution are involved, there can be no rulemaking of legislation which abrogates them." **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed 2d 694 (1966). " ... the Congress cannot revoke the Sovereign Power of the People." **Perry v. United States**, 294 U.S. 330, 353 (1935).

Since plaintiff/petitioners case was dismissed on the respondents motion, the Court of Appeals was required to accept all the factual allegations in plaintiffs complaint as true. "Because we review here a decision granting respondent's motion to dismiss, we must accept as true all of the factual allegations contained in the complaint." See, e.g., **Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit**, 507 U.S. 163, 164, 122 L.ed. 2d 517, 113 S.Ct. 1160 (1993).

When viewing plaintiff's complaint in this light, it cannot be said no relief is warranted. For Plaintiff's established the right to assocation is a fundamental constitutional right, and that after being in prison for **20 years** the defendants in this case wrote a policy that encroached, abridged and intruded upon said right. In complaince with federal rules "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the alligation." **Hishon v. King & Spalding**, 467 U.S. 69, 73, 81 L.Ed. 2d 59, 104 S.Ct. 2229 (1984).

Wherefore, under the allegations and facts in this case, plaintiff is able to establish that the Fundamental right to Freedom of Assocation 14th/1st Amendment protected right was abridged when Joesph Norwood sanctioned policy permitting KDOC official to deprive plaintiff of exercising said right. Likewise, defendant Norwood also authorized the defamation and slander of plaintiff by permitting KDOC official to post plaintiff on the worldwide web as a sex offender. Plaintiff's case is ripe for trial and this Superior Court must find that the district court erred in dismissing the case and order the U.S. Court of Appeals and district courts order reversed and remanded for a full discovery and jury trial.

II. WHETHER PETITIONER MET THE Turner v Safley (1987) 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254, PRONGS IN THE ALLEGATIONS IN THE COMPLAINT?

Standard of Review: We begin, as did the courts below, with our decision in **Procunier v. Martinez**, supra, which described the principles that necessarily frame our analysis of prisoners' constitutional claims. The first of these principles is that " federal courts must take cognizance of the valid constitutional claims of prison inmates. Id., at 405. "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution. Hence, for example, prisoners retain the constitutional right to petition the government for the redress of grievances, Johnson v. Avery, 393 U.S. 483 (1969); and they enjoy the protections of due process, **Wolff v. McDonnell**, 418 U.S. 539 (1974); **Haines v. Kerner**, 404 U.S. 519 (1972). "Because prisoners retain these rights, "when a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." **Procunier v. Martinez,** 416 U.S., at 405-406. (quoting, **Turner v Safley** (1987) 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987).

"When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. In our view, such a standard is necessary if "prison administrators . . . , and not the courts, [are] to make the difficult judgments concerning institutional operations." **Jones v. North Carolina Prisoners' Union**, 433 U.S., at 128. (quoting, **Turner v Safley** (1987) 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987).

"First, there must be a "valid, rational connection" between the prison regulation and the legitimate governmental interest put forward to justify it. **Block v. Rutherford**, supra, at 586. Thus, a regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental objective must be a legitimate and neutral one. We have found it important to inquire whether prison regulations restricting inmates' **First Amendment** rights operated in a neutral fashion, without regard to the content of the expression." See Pell v. Procunier, 417 U.S., at 828; **Bell v. Wolfish**, 441 U.S., at 551. (quoting, **Turner v Safley** (1987) 482 U.S. 78, 96 L.

Turner v Safley (1987) 482 U.S. 78, 96 L. Ed. 2d 64, 107 S. Ct. 2254 (1987).

It is settled " a prison inmate "retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." **Pell v. Procunier**, supra, at 822." When viewing the Turner test prongs, under the circumstances and facts in this case the goal of the policy **[IMPP. 11-115-A]** can not be deemed legitment.

Turner Test:

The Turner test requires a court to weigh four factors: (1) whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it"; (2) "whether there are alternative means of exercising the right that remain open to prison inmates"; (3) "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally"; and (4) the "absence of ready alternatives" to the regulation. 482 U.S. at 89-90 (quotations omitted). "Courts must conduct this analysis giving "substantial deference" to prison authorities. **Frazier v. Dubois**, 922 F.2d 560, 562 (10th Cir. 1991).

"In addition to the four-part test, Turner clearly establishes "restrictive prison regulations [including restrictions on **First Amendment** rights] are permissible if they are reasonably related to legitimate penological interests and are not an exaggerated response to such objectives." **Beard v. Banks**, 548 U.S. 521, 528, 126 S. Ct. 2572, 165 L. Ed. 2d 697 (2006) (citation and quotations omitted).

As to the first prong, whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it? The policy under a particular case may have a rational connection to render it valid, however in its blanketed and overbreadeth application it has to be deen arbitrary and irrational. This Superior Court has held in similar cases: "This overly broad statute also creates a "danger zone" within which protected expression may be inhibited. Cf. **Speiser v. Randall**, 37 U.S. 513, 526. Also see **Dombrowski v. Pfister**, 380 U.S., at 491 n. 7 ("in each of these cases the statute was not merely vague or overly

broad "on the face"; **the statute was held vague or overly broad as construed and applied to a particular defendant in a particular case**.") (Emphasis added).

Thus merely finding that a policy, regulation or statute has legitmacy does not answer the question of the test as to prong-1, because said policy, regulation and statute may be deemed legitment in one case, and arbitrary and irrational in another. In this particular case plaintiff was subjected to said overly broad policy when after 20 years in prison, the defendant authorized the drafting of said policy, that permits state officials to deprive plaintiff of the Fundamental Right to Freedom of Assocation with all my minor family and friend members, on the basis that 20 years previous to its enactment plaintiff was convicted of a sex crime.

Plainitiff ask that the Court take notice that for 20 years plaintiff exercised the right to Intimate Assocation without incident. The policy was drawn after a state officials minor child was found to be communicating with a KDOC inmate whom happen to be housed as a sex offender. The vindictiveness of the policy to apply it to all inmates before evaluating any inmates to determine if said regulation would be legitment under the circumstances or considered arbitrary or irrational, in itself is capricious and irrational.

In respects to overbroad statutes this Superior Court said at least as early as 1940 that when dealing with First Amendment rights we would insist on statutes "narrowly drawn to prevent the supposed evil." **Cantwell v. Connecticut**, 310 U.S. 296, 307. In this case at bar the defendants has authorized restraint upon constitution freedom 20 years after the trial. This Court has held: "A statute authorizing previous restaint upon exercise of the guranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative actions." **Cantwell v. Conn.**, Supra.

In the case at bar, the defendant in the implication of of its policy put into no place a safeguard to plaintiff's constitutional rights. The application of the policy was blindly applied to all defendants that the defendant and KDOC official themselve classified as sex offenders. This application is not applied upon a case-by-case system, but a blanket application no matter the circumstance nor facts of individual cases. In the case at bar the district court and court of appeals looked to a Tenth Circuit case that actually disadvantage the respondents argument because in said case, the defendant was evaluated before his restrictions by the State DOC was applied.

Plaintiff's claims were based on a deprivation of contact with other's and family members who are minors, the court held that he failed petitioner/plaintiff fails to identify any unreasonable restriction on his constitutional rights. **Wirsching v. Colorado**, 360 F.3d 1191, 1199-1201 (10th Cir. 2004) (affirming as constitutional a ban on visitation between a convicted sex offender who refused to comply with treatment program requirements and his child because the prisoner failed to present evidence demonstrating the prison regulation was not reasonably related to legitimate penological interests).

As stated above in the Wirsching case, the plaintiff was evaluated, showing that Colorado Department of Corrections policy was being applied on a case-by-case basis. In the case at bar the defendant and the created "Sex Offender Overview Board" all have undisputable evidence that in the case at bar, plaintiff is not accused personally of any sexual misconduct, that plaintiff wasn't present when the sexual misconduct occurred and that plaintiff had no knowledge of its occurance previous to it occurring nor after its occurance.

As to prong-2 "whether there are alternative means of exercising the right that remain open to prison inmates"? As stated in 2003 when the policy **IMPP. 11-115-A** was first implemented, the policy only restricted visitation, until overides was granted. Said process was expedient, because all unit counselors was instructed to assist inmates whom the policy affected to achieve the overrides. However, the alternative means of talking via phone, writing, and receiving mail and pictures was allowed. In 2015 when the current amendment was enacted to the policy, no alternative was permitted, all contact was cut off and any incoming emails, letters, and pictures was censored and inmates warned concerning phone calls.

The new policy prohibits any contact until a override is granted for every minor family member. However, said overrides is dependant upon a unit counselor supporting the override. In the case at bar when plaintiff petition to override the prohibition to visit, talk via phone, write via email, and regular mail, as well as receive photos with my three grandchildren, the request to override for my minor family and friend members (nieces, nephews, cousins, step grandchildren and family friends minors). The unit counselor was permitted to disregard that request and only submit the portion of the petition for override he supported. See Appendix-(D).

This renders the alternative means of exercising the right contingent upon the opposing parties support. Concerning the inmates' other alternative means to exercise their **First Amendment** rights, we agree that the ability to listen to the radio or watch television is not an adequate substitute for reading newspapers and magazines. **Morrison v. Hall**, 261 F.3d 896, 904 (9th Cir. 2001); **Mann v. Smith,** 796 F.2d 79, 83 (5th Cir. 1986). Likewise, in the case at bar, it must be held that the override process and the defendants employees dictating what will be submitted for override is not a substitute for exercising the protected right.

Wherefore, there lies no alternative means to exercise the constitutional rights and that which remotely resembles a alternative means is dictated by the same party encroaching upon the right. Thus, as to prong-2 plaintiff case meets the criterion.

As to prong-3 "the impact accomodation of asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally". In support of this prong plaintiff/petitioner states that for 20-years prior to the enactment of the amendment that violates the right, plaintiff/petitioner exercised the right with no incident, or any call for plaintiffs /petitioners right being infringed upon. The labeling of plaintiff/petitioner as a sex offender, and depriving my persons of the right to assocate with any of my minor family and friend members, puts a additional strain on the prison resource to monitor all inmates labeled as sex offenders, as well as censoring those not allowed and distinguishing which minors correspondence is allowed due to overrides.

In fact the defendants argued to the district court that petitioners claim is mute because a override had been granted to communicate with and visit with my grandchildren. Plaintiff argued on appeal that the defendants are commiting fraud by fraudelently arguing that I'm permit to communicate with my grandchildren. See Appendix-(E). The defendant's employee's continue to censor correspondences from my grandchildren. See Appendix-(F). The defendant and KDOC officials do not have a database to determine which minors are allowed to correspond with their loved ones thats offenders. So theres no means for mailroom officials to identify whom the minor is in the photo's or author of a email or letter. Therefore, complicating the process and put a strain on its own resources, which results in even the overrides permitting the exercise of the right, being infringed upon.

In the U.S. Court of Appeals for the Tenth Circuit petitioner argued that the defendants was guilty of fraud, by continuing to deprive petitioner/plaintiff of the right in question by their continued censoring/seizing correspondences with petitioner/plaintiffs grandchildren. The defendants argued in the Martinez report, and in its response in the district court that petitioner/ plaintiff has failed to prove that current violation has occurred and that the issue is moot, since petitioner/plaintiff was granted a override to communicate with three grandchildren. Yet the censoring/seizing of correspondences continues. See Appendix-(F).

FRAUD:

Standard of review: "Appellate court reviews disposition of action for fraud upon the court under abuse-of-discretion standard". **Switzer v. Coan**, 261 F.3d 985, 988 (10th Cir. 2001)

> "Fraud on the court," whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests underlying finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing of conscious wrongdoing-what can properly be characterized as a deliberate scheme to defraud-before relief from a final judgment is appropriate . . . . Thus, when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself a sufficient basis for setting aside a judgment under the guise of "fraud on the court."**Robinson v. Audi Aktiengesellschaft**, 56 F.3d 1259, 1267 (10th Cir. 1995).

Proof of fraud upon the court must be by clear and convincing evidence. See **Weese**, 98 F.3d at 552. In the case at bar the defendants argued before the district court their was no controversy before the court and that an override had been granted permitting the plaintiff to exercise the Constitutional Right, however during the proceedings the defendant continued to infringe upon the right. This is fraud in its most basic form.

Wherefore, the enforcement of the policy requires hardship upon the guards and inmates and a reallocation of prison resources to implement it , whereas plaintiff exercise

of the right for 20 years prior to the policy had no effect guards, inmates or the allocation of the prison resources.

As to prong-4, "abscence of ready alternatives", in the case at bar there lies no alternative, since the defendants subordinates are allow to dictate what request will be submitted to the overview board. See Appendix-(E). Said request was submitted to Unit Counselors at HCF, and the counselor did not submit plaintiffs request, instead drew up his own override request exluding the override to correspond with all my family and friends considered minors pursuant to the policy.

The override board does not meet the standard when it comes to safeguarding a individual concerning the exercise of the Constitutionally protected freedom of assocation. thus leaving petitioner without a avenue to demand the right to exercise my protected constitutional right. This is equivalent to the State Actor under the Color of State Law writing a policy that suspends constitutional freedoms under the federal constitution. Then set up a review board (employee's of the party) violating the right, and allowing them the authority to dictate what will be petitioned before the reviewing board, and the authority to rule upon the infringed right.

Right to Impartial Administration:

Standard of review: ".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)".

Due process requires a "neutral and detached judge in the first instance," **Ward v. Village of Monroeville**, 409 U.S. 57, 61-62, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972), **and the command is no different when a legislature delegates adjudicative functions to a private party**, see **Schweiker v. McClure**, 456 U.S. 188, 195, 72 L. Ed. 2d 1, 102 S. Ct. 1665 (1982). "That officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is, of course, the general rule." **Tumey v. Ohio**, 273 U.S. 510, 522, 71 L. Ed. 749, 47 S. Ct. 437 (1927). **Before one may be deprived of a protected interest, whether in a criminal or civil setting,** see **Marshall v. Jerrico, Inc.**, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610, and n.2 (1980), one is entitled as a matter of due process of law to an adjudicator who is not in a situation "'which would offer a possible temptation to the average man as a judge . . . which might lead him not to hold the balance nice, clear and true . . . ." **Ward**, supra, at 60 (quoting **Tumey**, supra, at 532). **Even appeal and a trial de novo will not cure a failure to provide a neutral and detached adjudicator**. 409 U.S. at 61.

Justice," indeed, "must satisfy the appearance of justice, and this stringent rule may sometimes bar trial [even] by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." **Marshall v. Jerrico**, Inc., supra, at 243 (citations and internal quotation marks omitted).

In the case at bar, the adjudicator [Sex Offender Override Board] and the Defendant Joesph Norwood are one and the same entity. Thus the defendants is not only the judicial branch, its also the executive branch and controls the advocacy to petition the Override Board. Thus the author of the policy that deprived plaintiff/petitioner of the fundamental constitutional right to Intimate Assocation, also is the Sex Offender Override Board. This conflicts with the fundamental right to due process of law.

Wherefore, there is abscence of a ready alternatives and "**even appeal and a trial de novo will not *cure* a failure to provide a neutral and detached adjudicator**", Petitioners case

demands the case be reversed and remanded.

III. WHETHER HEARING PLAINTIFF'S EX POST FACTO LAW VIOLATION CLAIM IS WARRANTED TO PREVENT A MISCARRIAGE OF JUSTICE?

Standard of Review: A district court's determination that a state law does not violate the ex post facto clause is a question of law we review de novo. See **Lustgarden v. Gunter**, 966 F.2d 552, 553 (10th Cir. 1992).

Although the constitution only prohibuts the states from passing an ex post facto law, **U.S. Const. Art. I, § 10**, an agency regulation which is legislative in nature is encompassed by this prohibition because a legislative body "cannot escape the Constitutional contraints on its power by delegating its lawmaking function to an agency. **United States v. Bell**, 991 F.2d 1445, 1450 (8th Cir. 1993).

"To fall within the ex post facto prohibition, a law must be retrospective--that is, "it must apply to events occurring before its enactment"--and it "must disadvantage the offender affected by it," by altering the definition of criminal conduct or increasing the punishment for the crime, see **Collins v. Youngblood**, 497 U.S. 37, 50, 111 L. Ed. 2d 30, 110 S. Ct. 2715 (1990).

The ex post facto prohibition " forbids the Congress and the States to enact any law "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." **Cummings v. Missouri**, 4 Wall. 277, 325-326 (1867). See **Lindsey v. Washington**, 301 U.S. 397, 401 (1937); **Rooney v. North Dakota**, 196 U.S. 319, 324-325 (1905); **In re Medley**, 134 U.S. 160, 171 (1890); **Calder v. Bull**, 3 Dall. 386, 390 (1798).

In the case at bar the amendment to **IMPP. 11-115A** which infringes upon the right [Intimate Assocation] was not enacted until 20-years after petitioner/plaintiff was "allegedly"

convicted of the crime of aiding and abetting Aggravated Sexual Battery. The policy, rule or regulations permits the state officials to deprive plaintiff/petitioner of the fundamental right based upon that **20-year old** "alleged" conviction. In the fall of 1995 neither Kansas Statute law or KDOC policy annexed the lost of the Fundamental right to Intimate Assocation to a conviction of Aggravted Sexual Battery.

So the policy authorized not only the encroachment upon the fundamental right by state actors, but it authorized violating petitioner/plaintiffs constitutionally protected freedom, by enacting policy in violation of law [**Ex Post Facto Law**]. The defendant in its response argued that petitioner did not raise this claim in the district court and should not be able to raise the claim on appeal, that the issue is abandoned.

Standard of Review: **USCS Fed Rules Crim Proc R 52**(b) "**Plain error**. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention".

"The Federal Rules of Criminal Procedure vest us with some discretion to consider forfeited arguments for the first time on appeal. See **Fed. R. Crim. P. 52(b)** ("A plain error that affects substantial rights may be considered even though it was not brought to the court's attention."). But our discretion in these circumstances is "limited." **United States v. Olano**, 507 U.S. 725, 731, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993).

The first limitation on appellate authority under **Rule 52(b)** is that there indeed be an 'error.'" **Olano**, 507 U.S. at 732. "Deviation from a legal rule is 'error' unless the rule has been waived." Id. at 732-33. "Waiver is different from forfeiture. "Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.'" Id. at 733 (quoting **Johnson v. Zerbst**, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938)).

"Is the time for determining "plainness" the time when the error is committed, or can an error be "plain" if it is not plain until the time the error is reviewed? The question reflects a conflict between two important, here competing, legal principles. On the one hand, " '[n]o procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.' **Olano,** 507 U. S., at 731, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (quoting **Yakus v. United States**, 321 U. S. 414, 444, 64 S. Ct. 660, 88 L. Ed. 834 (1944)). (This principle favors assessing plainness limited to the time the error was committed.)

"On the other hand, "[t]he general rule . . . is that an appellate court must apply the law in effect at the time it renders its decision." **Thorpe v. Housing Authority of Durham**, 393 U. S. 268, 281, 89 S. Ct. 518, 21 L. Ed. 2d 474 (1969). See **Ziffrin v. United States**, 318 U. S. 73, 78, 63 S. Ct. 465, 87 L. Ed. 621 (1943). Indeed, Chief Justice Marshall wrote long ago:

> ""It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. . . . In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside." **United States v. Schooner Peggy**, 5 U.S. 103, 1 Cranch 103, 110, 2 L. Ed. 49 (1801).

"**Rule 52(b)** itself makes clear that the first principle is not absolute. Indeed, we have said that a " 'rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with . . . the rules of fundamental justice.' **Olano**, supra, at 732, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (quoting **Hormel v. Helvering**, 312 U. S. 552, 557, 61 S. Ct. 719, 85 L. Ed. 1037 (1941); ellipsis in original). **Rule 52(b)** does not give a court of appeals authority to overlook a failure to object unless an error not only "affect[s] substantial rights" but also "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." **Olano**, supra, at 732, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (internal quotation marks omitted; brackets in original).

Rule 52(b)authorizes an appeals court to correct a forfeited error only if (1) there is "an error," (2) the error is " plain," and (3) the error "affect[s] substantial rights." 507 U. S., at 732, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (internal quotation marks omitted). "Pointing out that **Rule 52** "is permissive, not mandatory," id., at 735, 113 S. Ct. 1770, 123 L. Ed. 2d 508, we added (4) that "the standard that should guide the exercise of remedial discretion under **Rule 52(b)** is whether "the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,' id., at 736, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (quoting **United States v. Atkinson,** 297 U. S. 157, 160, 56 S. Ct. 391, 80 L. Ed. 555 (1936); brackets in original)."

In the case at bar, in the district court, plaintiff did not specifically argue that the amended policy violates the **Ex Post Facto Clause** of the U.S. Constitution, but implied that the forced application of the policy raises serious question of **Ex Post Facto violation**. The defendant argued that plaintiff/petitioners claim was barred due to time limitation to raise the claim. The defendant also argued that plainitiff/petitioners should have anticipated this change in the law that would affect a fundamental constitutional right when the KDOC first started the labeling of "Sex Offenders" and housing inmates as such.

This would require plaintiff/petitioner to have intuition that 20 years after the alleged crime, and 20 years of exercising the right, that state policy writers would draft a amendment to a policy that was written 8 years after the alleged criminal conduct, that would trigger a amendment that would all out abrogate the constitutional right. In **Miranda v. Arizona,** 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), this superior court has held, "Where rights secured by the United States Consitution are involved there can be no rule making or legislation to abrogate them."

Article 1, § 9, of the United States Constitution provides: "No Bill of Attainder or ex post facto Law shall be passed." In addition, " **Article 1, § 10**, provides: "No State shall . . . pass any . . . ex post facto Law."

"The United States Supreme Court has developed " a two-pronged test to determine whether application of a penal law violates the Ex Post Facto Clause. "First, the law 'must be retrospective, that is, it must apply to events occurring before its enactment'; and second, 'it must disadvantage the offender affected by it.'" **Miller v. Florida**, 482 U.S. 423, 430, 96 L. Ed. 2d 351, 107 S. Ct. 2446 (1987) (quoting **Weaver v. Graham**, 450 U.S. 24, 29, 67 L. Ed. 2d 17, 101 S. Ct. 960[1981]). See **State v. LaMunyon**, 259 Kan. 54, 65, 911 P.2d 151 (1996) " ("An ex post facto violation occurs when a new law is retroactively applied to events that occurred before its enactment and the new law disadvantages the offender affected by it.").

In the case at bar, 1.) there is a plain error, the amendment to the policy that permitted the defendant to interfer with the fundamental right 20 years after the crime, is repugnant to the constitution. 2.) The actions of the defendant disadvantage plaintiff/petitioner, because after 20 years the defendant authorized policy that abrogated the fundamentally protected freedom.

A retrospective law violates the Ex Post Facto Clause of the Constitution and is void. See **In re Petty**, 22 Kan. 477, 482-83 (1879). It follows that a conviction resulting from ex post facto application of the law is also void. A void conviction has no force or effect so that nothing can cure it--not even a legal fiction as attempted by the trial court in the instant case. See **In re M.K.D.**, 21 Kan. App. 2d 541, 544, 901 P.2d 536 (1995) (quoting **46 Am. Jur. 2d, Judgments** § 31, p. 393-94) ("A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication."); **Black's Law Dictionary** 1573 (6th ed. 1990).

"**If the act of 1872 is an ex post facto law, it is unconstitutional, and void**, as the legislature cannot pass such a law. The supreme court of the United States has defined an ex post facto law to be one which renders an act punishable in a manner in which it was not punishable when it was committed." (**Fletcher v. Peck**, 6 Cranch, 138.)

Seeing as how the **Ex Post Facto Law is void**, it becomes a constitutional obligation to end the miscarriage of justice and vindicate the Federally Protected Constitutional Right, because a void judgment is a legal nullity with no legal binding effect.

"**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. Also see, 7 **Moore's Federal Practice § 60.25[2]**, pp. 223-25 (2d ed. 1995).

"Two critical elements must be present for a criminal or penal law to be ex post facto: it must be retrospective, that is, it must apply to events occurring before its enactment, " and it must disadvantage the offender affected by it. **Lindsey v. Washington**, supra, at 401; **Calder v. Bull,** supra, at 390.Contrary to the reasoning of the Supreme Court of Florida, a law need not impair a "vested right" to violate the ex post facto prohibition. Evaluating whether a right has vested is important for claims under the Contracts or Due Process Clauses, which solely protect pre-existing entitlements. "See, e. g., **Wood v. Lovett**, 313 U.S. 362, 371 (1941); Dodge v. **Board of Education**, 302 U.S. 74, 78-79 (1937). See also **United States Railroad Retirement Board v. Fritz**, 449 U.S. 166, 174 (1980). The presence or absence of an affirmative, enforceable right is not relevant, however, to the ex post facto prohibition, which forbids the imposition of punishment more severe than the punishment assigned by law when the act to be punished occurred. "Critical to relief under the Ex Post Facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated. Thus, even if a statute merely alters penal provisions accorded by the grace of the legislature, it violates the Clause if it is both retrospective and more onerous than the law in effect on the date of the offense." (Quoting **Weaver v. Graham**, 450 U.S. 24, 101 S. Ct. 960 , 67 L. Ed. 2d 17 (1981))

In the case at bar, the Right to Familal Assocation is deemed a fundamental/substantial right that was guarnteed before the Bill of Rights and when viewing the conduct of defendants in

light of the circumstances of plaintiff's case, the encroached upon the right based upon a alleged crime committed 20 years prior to its creation.

We have also held that " no ex post facto violation occurs if the change effected is merely procedural, and does "not increase the punishment nor change the ingredients of the offense or the ultimate facts necessary to establish guilt." **Hopt v. Utah**, 110 U.S. 574, 590 (1884). See **Dobbert v. Florida**, 432 U.S. 282, 293 (1977). **Alteration of a substantial right, however, is not merely procedural, even if the statute takes a seemingly procedural form**. **Thompson v. Utah**, 170 U.S. 343, 354-355 (1898); **Kring v. Missouri, supra, at** 232. (quoting **Weaver v. Graham**, 450 U.S. at supa 39). (Emphasis added)

"The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. **It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised**." **Cummings v. Missouri**, 4 Wall. 277, 325 (1867). (Emphasis added).

This court has held when such violation occurs the remedy for such conduct effecting the right is, "The proper relief upon a conclusion that a state prisoner is being treated under an ex post facto law is to remand to permit the state court to apply, if possible, the law in place when his crime occurred. See **Lindsey v. Washington**, supra, at 402, **In re Medley**, supra, at 173. In remanding for this relief, we note that only the ex post facto portion of the new law is void as to petitioner." (**Weaver v. Graham**, Supra at FN 22).

Wherefore, the Court should find that the Appellate Court erred in finding petitioner was not entitled to relief under **Rule 52(b)** and order the case reversed and remanded back to the district court for jurytrial.

IV. WHETHER THE US DISTRICT COURT AND THE US COURT OF APPEALS ERRORED IN HOLDING THAT THE HECK BAR APPLIES TO A VOID JUDGMENT, AGAINST TRESPASSERS OF THE LAW AND ACCOMPLISHED THAT BY AVOIDED ANSWERING PLAINTIFF/PETITIONER'S MOTION TO IMPEACH THE VOID JUDGMENT?

Standard of review: **Rule 60(b),** however, provides an "exception to finality," **Gonzalez v. Crosby**, 545 U.S. 524, 529, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005), that "allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances". Specifically, **Rule 60(b)(4)**--the provision under which United brought this motion--authorizes the court to relieve a party from a final judgment if "the judgment is void."

A void judgment is a legal nullity. See **Black's Law Dictionary** 1822 (3d ed. 1933); see also id., at 1709 (9th ed. 2009). Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. See **Restatement (Second) of Judgments** 22 (1980); see generally id., § 12. The list of such infirmities is exceedingly short; otherwise, **Rule 60(b)(4)**'s exception to finality would swallow the rule.

Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. See **United States v. Boch Oldsmobile, Inc.**, 909 F.2d 657, 661 (CA1 1990); **Moore's** § 60.44[1][a]; **11 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure** § 2862, p. 331 (2d ed. 1995 and Supp. 2009); cf. **Chicot County Drainage Dist. v. Baxter State Bank**, 308 U.S. 371, 376, 60 S. Ct. 317, 84 L. Ed. 329 (1940); **Stoll v. Gottlieb,** 305 U.S. 165, 171-172, 59 S. Ct. 134, 83 L. Ed. 104 (1938).

Federal courts considering **Rule 60(b)(4)** motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an "arguable basis" for jurisdiction. **Nemaizer v. Baker**, 793 F.2d 58, 65 (CA2 1986); see, e.g., **Boch Oldsmobile**, supra, at 661-662 ("[T]otal want of jurisdiction must be distinguished from an error in the exercise of jurisdiction, and . . . only rare instances of a clear usurpation of power will render a judgment void" (brackets and internal quotation marks omitted)). (quoting **United Student Aid Funds, Inc. v. Espinosa**, 559 U.S. 260,130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010)).

In the case at bar the defendant in its Martinez report argued that plaintiff's claim fails because of the judgment of conviction for **Aggravated Sexual Battery** in **Case No. 95 CR 1859** suffices to prove that plaintiff is correctly labeled as a sex offender. Thus the defendant argued legal benefits of said judgment, thus bringing the matter of the judgment into the current matter.

This Superior Court as earily as **1828** answered this issue. In **Elliott v. Peirsol**, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) ("Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court**. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them**. **They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers**. This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority over a subject, **may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.**) Id. at 340-341.

In plaintiff/petitioner's response to the Martinez report, plaintiff argued that the judgment of conviction for Agg. Sexual Battery is a legal nullity, because it was imposed in contradiction to Due Process of Law and for want of Subject-matter Jurisdiction. See Appendix-(J). The district court simply ignored answering the challenge and inserted a Heck Bar defense on behalf of the defendant and summarily dismissed the case with prejudice.

A district court must grant relief under **Rule 60(b)(4)** if "the judgment is void." **Fed. R. Civ. P. 60(b)(4)**; see **V.T.A., Inc., v. AIRCO, Inc.**, 597 F.2d 220, 224 n.8 (10th Cir. 1979) ("**If voidness is found, relief is not a discretionary matter; it is mandatory.**"). Unlike the other provisions of Rule 60(b), **Rule 60(b)(4)** is not limited by the timeliness provisions of Rule 60(c); a motion under **Rule 60(b)(4)** may be made at any time. **Buck**, 281 F.3d at 1344; see also **V.T.A.**, 597 F.2d at 224 **n.9** (explaining that "if a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time"). However, "[i]n the interest of finality, the concept of setting aside a judgment on voidness grounds is narrowly restricted." **V.T.A.**, 597 F.2d at 225. "**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**." **Buck**, 281 F.3d at 1344 (quotation marks omitted).

(Emphasis added).

In **In re Tip-PA-Hans Enterprises, Inc.**, 27 B.R. 780, 783 (1983), it was held: ("a judge lacks jurisdiction in a particular case until it has been demostrated that jurisdiction over the subject matter exists") (**when a judge acts "outside the limits of his or her jurisdiction, he or she becomes a trespasser...".**) (Emphasis added).

In the case at bar plaintiff/petitioner established from the record that the judgment was void because the judge that presided over the trial, is the actual individual that brought the charge of aggravated sexual battery, rendering her disqualified from setting in judgment on the case. See **28 U.S.C. § 455(a)**. "A fair trial, as required by due process, requires not only an absence of actual bias on the part of the judge, but also that no man be a judge in his own case or try cases where he has an interest in the outcome." **In re Murchison**, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955). In **Beall v. Reidy**, 457 P.2d 376, the court ruled and determined, "Except by consent of all parties a judge is disqualified to sit in trial of a case if he or she comes within any of the gounds of disqualification named in the constitution. See **28 U.S.C. § 455(a)**.

In **Taylor v. O'Grady**, 88 F.2d 1189 (7th Cir. 1989), the circuit ruled, "further, the judge has a legal duty to disqualify, even if there is no motion asking for his or her disqualification. 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**.

This particular error or defect is considered structual, thus in conflict with due process of law. As discussed in **United States Aids Funds, v. Espinosa**, supra, this is one of those rare instances of clear usurpation of power, rendering this judgment void. In another United States Supreme Court ruling, in **Neder v. United States,** 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999).

"We have recognized that " most constitutional errors can be harmless." **Fulminante,** 499 U.S. 279, 309, 113 L. Ed. 2d 302, 111 S. Ct. 1246 (1991); "[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." **Johnson v. United States**, 520 U.S. 461, 468, 137 L. Ed. 2d 718, 117 S. Ct. 1544 (1997).

The error at issue here, ("**Tumey v. Ohio,** 273 U.S. 510, 71 L. Ed. 749, 47 S. Ct. 437 (1927) (**biased trial judge**)); is a constitutional violations this Court has found to defy harmless-error review. This particular error in "cases, have been explained, to 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. "**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.**" Id. at 577-578.

In the case at bar, not only was the judge bias, but she was aware of the bias and lack of impartiality, and although disqualified by **28 U.S.C. § 445(a)**, she remained on the case, and at the conclusion of trial ordered the court reporter Diana Nichols to spolitate the record. Thus,

committing a crime of Obstruction of justice. See **18 U.S.C. § 1512(c)(1)**.

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 judge was aware and committed a criminal act of concealing the record evidence from appellate review of both state and federal courts. The record was made unavailable to both petitioner and counsel until 2-days after the U.S. district court denied habeas relief. See Appendix-(G)(**Date Transcribed Sept., 13, 2001**). This portion of the record contains the first 9-pages and last 4-pages of the entire Preliminary Examination Transcript. These portions of the record was spliced and contained in a seperate volume "Labeled" '**Partial Preliminary Examination Transcript**'. The remaining 52-pages was the only portion of the record turned over to petitioner. See Related Case No. 21-436 .

The judge new her conduct was depriving me of my Fundamental right to an 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)."

"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 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."

Partial Transcript of Preliminary Examination (containing 14-pages) Pg-10, lines 1-25:

a competent attorney like Mr. Zacharias would
recognize the danger in having a preliminary hearing
because additional charges can be filed.
THE COURT: I saw it immediately, so --
MR. KAUFMAN: Mr. Zacharias correctly does
perceieve that from my count, at least three charges
should be added. **I'm not interested in an aggravated**
sexual battery being added. I'm not interested in an
aggravated robbery against Sonia being added.
I am asking that the Court tack on against
both these defendants an aggravated kidnapping. That
would be the confining of Daron for the purpose of
helping facilitate the commission of the crime, which
is the aggravated robbery, specifically by confining
Daron. It certainly makes it easier to go through the
house not worried about Daron trying to intercede or
prevent the robbery. The kick delievered by
Mr. Upchurch is the bodily harm. From where I was
standing, a good 15 feet away, I could see the scar or
the mark that was on Mr. Green's left cheek. **That is**
the only charge I'm requesting be added at this time
if the Court deems probable cause has been shown.
THE COURT: Thank you. Mr. Zacharias?
MR. ZACHARIAS: Well, I -- I think I'm
entitled to move to dismiss the chrages, but --

(Continues on page 11, lines1-12:)

THE COURT: You can make argument. I'll
listen.
MR. ZACHARIAS: I don't think I'll take up
the court's time, Your Honor.
THE COURT: Thank you. Mr. Barbara?
MR. BARBARA: I would move that the Court
strike the aggravated burglary charge in this case.
don't think evidence has been shown an aggravated
burglary occurred.
THE COURT: Thank you. Well, I – I am
interested in adding an aggravated sexual battery
charge, and I am adding aggravted sexual battery.

APPENDIX-(G), pg.'s 10-11

"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 Officer." **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." **Limitation of Judicial Activism in Criminal Trials**, 33 Conn. L. rev. 243, 273-74 (2000).

It is not in a judges jurisdiction/authorization to file nor order charges filed against a defendant, then set in trial on said charge. **In re Murchison**, supra Id. at 136, 75 S.ct. 623, 99 L.Ed. 942. "**No man can be a judge in his own case" adding that "No man is permitted to try cases where he has an interest in the outcome**." It is the sole authority of the prosecution on deciding what charges to file and on whom. **State v. Williamson**, 253 Kan. 163 (1993). Also see **Thompson v. Walker**, 583 F.Supp. 175 (E.D. Va. 1984) (**the role of a judge, however is fundamentally different from that of an advocate, a judge must remain impartial. A judge must not forget the function of a judge and assume that of an advocate**.)

In the case at bar the judge gave up her impartiality and allowed the prosecution to present the case and the charge of Agg. Sexual Battery in such a way that the jury was not required to consider any element of the charge to convict. Said lowering of the bar was accomplished by the prosection during closing arguments, by telling the jury the definition of the jury instruction on that "particular charge' [sexual battery], doesn't required petitioner to aid, assist, encourage, participate or even have knowledge of the crime. That petitioner can be found guilty, because sexual offense often happen at night time so by Kansas law it was reasonable forseeable that said crime would occur, thus establishing petitioner/plaintiffs guilt. See

Appendix-(I), pg's-(40-42). The U.S. District Court in **Batts**, 811 F. Supp. 625 (D. Kan. 1993), rejected such theory.

Although a petitioner/plaintiff need not have a void judgment reversed and has the right to have it treated as it is "A Legal Nullity", See **46 Am. Jur. 2d, Judgments** § 31, p. 393-94. **Chambers v. Bridge Manufactory**, 16 Kan. 270 (1876); 7 **Moore's Federal Practice § 60.25[2]**, pp. 223-25 (2d ed. 1995), which provides:

"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."

Thus, upon the defendant claiming he is justified in his actions and relying upon this void judgment of conviction [Agg. Sexual battery], plaintiff/petitioner is entitled to impeach said judgment and have it declared inoperative and with no legal or binding effect.

In 7 **Moore's Federal Practice § 60.25 [***10]** [2], pp. 300-301 (2d ed. 1982), the following discussion is found:

"A void judgment is something very different than a valid judgment. The void judgment creates no binding obligation upon the parties, or their privies; it is legally ineffective. And while, if it is a judgment rendered by a federal district court, the court which rendered it may set it aside under Rule 59, within the short time period therein provided, or the judgment may be reversed or set aside upon an appeal taken within due time where the record is adequate to show voidness, the judgment may also be set aside under 60(b)(4) within a 'reasonable time', which, as here applied, means generally no time limit, the enforcement of the judgment may be enjoined; **or the judgment may be collaterally attacked at any time in any proceeding, state or federal, in which the effect of the judgment comes in issue, which means that if the judgment is void it should be treated as legally ineffective in the subsequent proceeding.** Even the party which obtained the void judgment may collaterally attack it. **And the substance of these principles are equally applicable to a void state judgment.**

"**A party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf; he is entitled to have the judgment treated for what it is, a legal nullity, if he establishes that the judgment is void**." (quoting **Barkley v. Toland**, 7 Kan. App. 2d 625, 646 P.2d 1124 (1982)) (Emphasis added).

In the case at bar both the district court and the court of appeals ignored petitioners

argument that the **Heck Bar** is not applicable because the judgment in which the defendants was seeking to rely upon to justify its action is a legal nullity. See Appendix-(J).

This Court in **Gonzalez v. Crosby**, supra, Id. held:

Rule 60(b) has an unquestionably valid role to play in habeas cases. The Rule is often used to relieve parties from the effect of a default judgment mistakenly entered against them, e.g., **Klapprott**, 335 U.S., at 615, 93 L. Ed. 266, 69 S. Ct. 384 (opinion of Black, J.), a function as legitimate in habeas cases as in run-of-the-mine civil cases. **The Rule also preserves parties' opportunity to obtain vacatur of a judgment that is void for lack of subject-matter jurisdiction**--a consideration just as valid in habeas cases as in any other, since absence of jurisdiction altogether deprives a federal court of the power to adjudicate the rights of the parties. "**Steel Co. v. Citizens for Better Environment**, 523 U.S. 83, 94, 101, 140 L. Ed. 2d 210, 118 S. Ct. 1003 (1998). (Emphasis added).

The district court and the court of appeals ignored applying the law in the case at bar. The law provides: "The law provides that once State or Federal Jurisdiction has been challenged, it must be proven." **Main v. Thiboutot**, 100 S.Ct. 2502 (1980). "Jurisdiction can be challenged at anytime, "and" Jurisdiction, once challenged, cannot be assumed and must be decided. **Basso v. Utah Power & Light Co.**, 495 F.2d 906, 910. "There is no dsicretion to ignore the lack of jurisdiction." **Joyce v. U.S.**, 474 F.2d 215.

The **Gonzalez v. Crosby**, supra court also held, "required a movant seeking relief under Rule 60(b)(6) to show "extraordinary circumstances" justifying the reopening of a final judgment. **Ackermann v. United States**, 340 U.S. 193, 199, 95 L. Ed. 207, 71 S. Ct. 209 (1950). In the case at bar, petitioner/plaintiff showed from the record that the judge and court reporter in the case committed the crime of obstruction of justice, violation of **18 U.S.C. 1512(c)(1)** to prevent the discovery of this structual error which deprived the court (Judge) of jurisdiction to set in judgment on the case. A Judge committing a criminal act which resulted in the deprivation of a individuals liberty for 26 plus years must be deemed a Extraordinary Circumstances.

"The destruction of evidence. It constitutes an obstruction of justice. The destruction or '**significant and meaningful alteration of documents**' or instrument. See **Application of Bodkin**, D.C.N.Y., 165 F. Supp. 25, 30. (Emphasis added). "To hide or withdraw from observation, cover or keep from sight, or prevent discovery of." **People v. Eddington**, 201 Cal. App. 2d 524, 20 Cal. Rptr. 122, 124. In the case at bar, the removal of the first 9-pages and the last 4-pages of the Preliminary Examination transcript, was a significant and meaningful alteration of the document. Its purpose was to prevent higher reviewing courts State and Federal from discovering the structual/jurisdictional error. This conduct also covers a element to establish the 'knowingly' violation of plaintiff's right. "To be clearly established, the contour of a right "must be sufficiently clear that a reasonable official would undestand that what he is doing violates that right." **Hope v. Pelzer**, 536 U.S. 730, 122 S.Ct. 2508, 153 L.Ed. 2d 666 (2002).

The law provides that the jurisdiction is never presumed but must be established from the record and not averment therein. "**We presume that courts lack jurisdiction "unless 'the contrary appears affirmatively from the record**.'" **Bender v. Williamsport Area Sch. 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 a long settled principle that standing cannot be inferred argumentively from averments 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). (Emphasis added).

Neither the district court or Court of Appeals comply with the principles of these laws, both courts simply held that the Heck Bar applies and dismissed the complaint and denied the appeal therefrom. This required both courts to ignore the long standing law in this country.

Which provides:

"Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. **But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; *and form no bar to a recovery sought, even prior to a reversal*, in opposition to them**. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority [*341] over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings." **Elliott v. Lessee of Peirsol**, 26 U.S. 328, 7 L. Ed. 164 (1828). Id. at 340-341.

The law is well-settled that a void order or judgment is void even before reversal. **Vallely v. Northern Fire & Marine Ins. Co.**, 254 U.S. 348, 41 S.Ct. 116 (1920) ("Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply **VOID, AND THIS EVEN PRIOR TO REVERSAL**." [Emphasis added]); **Old Wayne Mut. I. Assoc. v. McDonough**, 204 U.S. 8, 27 S.Ct. 236 (1907); **Williamson v. Berry**, 8 How. 495, 540, 12 L.Ed. 1170, 1189 (1850); **Rose v. Himely**, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808). (Emphasis added).

Wherefore, the judgment relied upon by the defendants to justify its actions within the color of state law, is a legal nullity and incapable of establishing any rights on behalf of the defendant, and since said defendant asserted the judgment in the current proceedings and relied upon it as a defense, plaintiff/petitioners has a legal right to raise an inquiry into the jurisdiction of said judgment. This Court must reverse and remand back to the district court and court of appeals with orders to examine challenge of the voidness of the judgment, and answer the question from the record. Or an alternative is that this Superior Court on its on motion examine

the record.

V. WHETHER THE DISRICT AND COURT OF APPEALS ERRED IN FINDING PETITIONERS' SLANDER/DEFAMATION OF CHARACTER CLAIM DOESN'T MEET THE ANCILLARY JURISDICTION STANDARD?

Standard of review: Ancillary jurisdiction may extend to claims having a factual and logical dependence on "the primary lawsuit," ibid., but that primary lawsuit must contain an independent basis for federal jurisdiction. The court must have jurisdiction over a case or controversy before it may assert jurisdiction over ancillary claims. "See **Mine Workers v. Gibbs**, 383 U.S. 715, 725, 16 L. Ed. 2d 218, 86 S. Ct. 1130 (1966).

"This Court has long adhered to principles of pendent and ancillary jurisdiction by which the federal courts' original jurisdiction over federal questions carries with it jurisdiction over state law claims that "derive from a common nucleus of operative fact," such that "the relationship between [the federal] claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'" **Mine Workers v. Gibbs**, 383 U.S. 715, 725, 16 L. Ed. 2d 218, 86 S. Ct. 1130 (1966); see **Hurn v. Oursler**, 289 U.S. 238, 77 L. Ed. 1148, 53 S. Ct. 586 (1933);**Siler v. Louisville & Nashville R. Co.**, 213 U.S. 175, 53 L. Ed. 753, 29 S. Ct. 451 (1909).Congress has codified those principles in the supplemental jurisdiction statute, which combines the doctrines of pendent and ancillary jurisdiction under a common heading. **28 U.S.C. § 1367**. " The statute provides, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." **§ 1367(a).** That provision applies with equal force to cases removed to federal court as to cases initially filed there; a removed case is necessarily one "of which the district courts have original jurisdiction." See § 1441(a); **Carnegie-Mellon Univ. v. Cohill**, 484 U.S. 343, 350-351, 98 L. Ed. 2d 720, 108 S. Ct. 614 (1988) (discussing pendent claims removed to federal court)." (quoting **City of Chi. v. Int'l College of Surgeons**, 522 U.S. 156, 118 S. Ct. 523, 139 L. Ed. 2d 525 (1997).

In the case at bar the federal claim [Deprivation of the Fundamental right to Familal/Intimate Assocation] and state claim [Slander/Defamation of Character] stems from a common nucleus, and is operative of the same facts, [The judgmet of Conviction for agg. Sexual battery and labeling petitioner/plaintiff as a SEX OFFENDER] as a result. The defendants claimed benefits of that 20 year old judgment, which plaintiff argued is a legal nullity for want of jurisdiction and its imposition being in contradiction to due process of law.

Wherefore, the Constitutional abridgment of plaintiff/petitioners Fundamental right to Familal/Intimate Assocation 1st/14th Amendment was accomplished based off the defendants, labeling plaintiff/petitioner "A Sex Offender" [The Slander/Defamation]. Therefore, the State libel claim and the Constititional violation is one consitutional case, warranting the exercise of Ancillary or Pendent Jurisdiction. Thus the district court and Court of Appeals erred in not hearing the claim, and this Superior Court should issue the Writ and remand for hearing on the matter in favor of exercising Pendent or Ancillary jurisdiction on the slander/defamation claim.

VI. WHETHER THE DISTRICT COURT AND COURT OF APPEALS RULED IN ERROR OF WELL-SETTLED LAW THAT STATE OFFICIALS SUED IN THEIR INDIVIDUAL CAPACITY SHOW UP TO COURT AS INDIVIDUALS PURSUANT TO 42 U.S.C. § 1983?

Standard of Review: State officers sued for damages in their official capacity are not "persons" for purposes of the suit because they assume the identity of the government that employs them. Ibid. By contrast, "**officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person.**" Cf. **Will v. Mich. Dep't of State Police**, 491 U.S. id., at 71, n. 10 " ("[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under **§ 1983** because 'official-capacity actions for prospective relief are not treated as actions against the State'") (quoting **Graham,** 473 U.S. at 167, n. 14).

Under **§ 1983. Section 1983** provides, in relevant part:

> " "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . ."

"In an action against a judge of any court, whether of record or otherwise, for any act done by him or by his command, the question in every case to be determined is, was the act done a judicial act, done within his jurisdiction? **If it was not, he can claim no immunity or exemption by virtue of his office from liability as a trespasser**; "for if he has acted without jurisdiction, he has ceased to be a judge." See 2 Institutes, 427; The Marshalsea Case, 10 Reports, 76 A., Floyd v. Barker, 12 Id. 23; Hoskins v. Matthews, 1 Levinz, 292; Martin v. Marshall, Hobart, 63; Bushell's Case, 1 Modern, 119; Hamond v. Howell, 2 Id. 219; Smith v. Bouchier, 2 Strange, 993; Groenvelt v. Burwell, 1 Ld. Raymond, 454; Miller v. Seare, 2 W. Blackstone, 1141; Perkin v. Proctor, 2 Wilson, 386; Mostyn v. Fabrigas, 1 Cowper, 161; Sutton v. Johnstone, 1 Term, 493; Welch v. Nash, 8 East, 402; Burdett v. Abbott, 14 Id. 1; Ackerley v. Parkinson, 3 Maule & Selwyn, 411; Mitchell v. Foster, 4 Perry & Davison, 153; S.C., 12

Adolphus & Ellis, 472; Garnett v. Ferrand, 9 Dowling & Ryland, 670; Van Sandau v. Turner, 6 Q.B. 773; Gossett v. Howard, 10 Id. 411; Houlden v. Smith, 14 Id. 841; Kinning v. Buchanan, 8 C.B. 271; Watson v. Bodell, 14 Meeson & Welsby, 70; Fergurson v. Kinnoull, 9 Clark & Finelly, 296; Miller v. Hope, 2 Shaw's Appeal Cases, H.L. 125; Calder v. Halket, 3 Moore's Privy Council, 28; Taaffe v. Downes, Id. 36; Gahan v. Lafitte, Id. 382; Hill v. Bigge, Id. 465; Wise v. Withers, 3 Cranch, 331; Anderson v. Dunn, 6 Wheaton, 204; Kendall v. Stokes, 3 Howard, 89; Mitchell v. Harmony, 13 Id. 144; Dynes v. Hoover, 20 Id. 65; Yates v. Lansing, 5 Johnson, 282; Bigelow v. Stearns, 19 Id. 39; Cunningham v. Bucklin, 8 Cowen, 178; Horton v. Auchmoody, 7 Wendell, 200; Bevard v. Hoffman, 18 Maryland, 479; Lining v. Bentham, 2 Bay, 1; Miller v. Grice, 2 Richardson, 27; Greene v. Mumford, 5 Rhode Island, 472; Scovil v. Geddings, 7 Ohio, 566; Piper v. Pearson, 2 Gray, 120; Clarke v. May, Id. 410; Kelly v. Bemis, 4 Id. 83; Noxon v. Hill, 2 Allen, 215; Revill v. Pettit, 3 Metealf, Kentucky, 314.

"Where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." **Bell v. Hood,** 327 U.S., at 684 (footnote omitted)." "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." **Marbury v. Madison,** 1 Cranch 137, 163 (1803).

Plaintiff/petitioner seeks to sue Joesph Norwood [The Defendant] in his individual capacity for monetary damages and in his official capacity for injunctive relief to cease and desist the unlawful action of interferring with the Fundamental Constitutional right to Familal/Intimate Assocation, and the slander/defamation of character by broadcasting my persons on the KDOC website as a Sex Offender, Managing my person as a sex offender and requirement that petitioner attend sex offender treatment classes, under the unique circumstance in this case.

Wherefore, this Superior Court should find that the district court and Court of Appeals erred in finding that the defendant [state official] sued in his individual capacity was a suit against a official in his official capacity, and that petitioner seeking said relief is not barred by the 11th Amendment, since the defendants actions based upon the void judgment renders him a trespasser of the law.

CONCLUSION

After 8-years in prison the defendant enacted a policy IMPP. 11-115A which labels all inmates convicted of a sex crime as "Sex Offenders", and housed them as such. The new implementation of the policy, required inmates to seek sex offender overrides for visits of ones minor children from the party implementing the policy [KDOC's Secretary of Corrections]. However, inmates fundamental right to Assocation remained unabridged because the offender labeled as a sex offender still had alternative means to associate with loved ones via mail, phone calls, pictures and cards.

After 20-years in prison, the KDOC's Secretary of Corrections authorized an amendment to the policy [IMPP. 11-115A], which sanctioned depriving inmates considered sex offenders of any right to association with friends or family under 18-years of age, including children, grandchildren, siblings, nephews, nieces, cousins, other relatives or friends. **This Amendment left no alternative means to exercise the right.** There was no evaluations of each case on a case by case basis, no due process hearings held before the infringement upon the constitutional right nor any notice or an opportunity to be heard before said deprivation of the right.

The policy provides that a offender may request a override to associate with a particular minor. Plaintiff/petitioner submitted a override requesting override of my grandchildren, nieces and nephews, as well as all family and friend members. See Appendix-(D). However, the policy permits the KDOC assigned Unit Counselor to submit the override based on his own approval and request. No Due Process hearing was held, and the board granted overrides for plaintiff/petitioners three granchildren, and upheld housing plaintiff/petitioner as a sex offender and requirement to atend sex offenders treatment despite the unique circumstances of the case.

The following law suit pursued and the district court granted summary judgment and dismissed the case with prejudice. The defendant argued that there is no controversy since a override had been granted for my grandchildren, and that the injury is not a ongoing injury, since the deprivation of the Constitutional right is not additional punishment. The defendant also argued that plaintiff was sueing the defendant in his official capacity which is barred by the 11th Amendment. The court ultimately held plaintiff's claims was habeas in nature and that the Heck Bars favorable termination is required.

The fact of the matter is that, KDOC's Secretary of Corrections, sanctioned the writing of state penal policy that abrogated a fundamentally protected constitutional right. **Article VI., The Supremecy Clause** provides:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and **the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding**." (Emphasis added). This Superior Court in Miranda v. Arizona, supra echoed this holding when it found, "Where rights secured by the consitution are involved, there can br no rulemaking of legislation which abrogates them."

The right to Familal/Intimate Assocation is a secured right pursuant to the 1st & 14th Amendment of the United States Constitution. Thus KDOC's Secretary of Corrections was without authority to authorize policy writers to write policy that abrogated the right. Likewise, **Article 1 §§ 9,10** of the United States Constitution prohibits the enactment of **Ex Post Facto Laws**. The defendant accomplished the encroachment/violation of the right through violation of **Article 1 §§ 9,10, Ex Post Facto Violation.**

In 1995 when petitioner alleged sexual offense occurred there was no law, rule nor policy that gave noticed to individuals that if one is convicted of a crime considered a sexual crime,

that the right to Familal/Intimate Assocation woud be taken away 20-years later. Ex Post Facto Violation is defined as

"[E]very law that changes the punishment, and inflicts a greater punishment, then the law annexed to the crime, when committed." **Calder v. Bull**, 3 Dall, 386, 390, 3 U.S. 386, 1 L.Ed 648 (1798). "States are prohibited from enacting ex post facto law. **U.S. Const., Art. I, § 10, cl. 1**. One function of **Ex Post Facto Clause** is to bar enactments which, by retroactive operation, increase the punishment for a crime after its commision". **Collins v. Youngblood**, 497 U.S. 37, 42, 111 L.Ed. 2d 30, 110 S.Ct. 2715 (1990) (citing **Beazell v. Ohio**, 269 U.S. 167, 169-170, 70 L.Ed. 216, 46 S.Ct. 68 (1925)).

In the case at bar, the defendant did just that, changed my punishment and inflicted a greater punishment, by the deprivation of my Familal/Intimate Assocation with all my minor relatives and friends. The defendant accomplished that by labeling me as a sex offender 8-years after the alleged conviction, and deprived me of the constitutional right 20-years after the alleged conviction, implicitly in retrospect. The defendant claimed benefit of the alleged judgment of conviction of Aggravated Sexual battery.

Plaintiff/petitioner challenged the judgment as void for want of jurisdiction and the judgment being entered in contradiction to Due Process of Law. **V.T.A., Inc.**, 597 F.2d at 224-25; **Arthur Andersen & Co. v. Ohio (In re Four Seasons Sec. Laws Litig.)**, 502 F.2d 834, 842 (10th Cir.), cert. denied, 419 U.S. 1034, 42 L. Ed. 2d 309, 95 S. Ct. 516 (1974); **Automatic Feeder Co. v. Tobey**, 221 Kan. 17, 558 P.2d 101 (1976). There is no discretion in the matter for relief from a void judgment is applicable, it is mandatory. **Orner v. Shalala,** 30 F.3d 1307 (10th Cir. 1994). Likewise, there is no discretion to ignore the lack of jurisdiction. **Joyce v. U.S.**, 474 F.2d 215. Jurisdiction, once challenged, cannot be assumed and must be decided. **Basso v. Utah Power & Light Co.**, 495 F.2d 906, 910.

Wherefore, neither the district court or court of appeals answered the challenge, nor did the defendant refute the allegation of lack of jurisdiction. The defendant is guilty of abrogating the constitutional protected right in violation of law [Ex Post Facto law] and petitioner is entitled to have this Superior Court vindicate the Federally protected right. The writ should issue and the case reversed and remanded for a full discovery and jury trial.

Kevin D. Loggins Sr.
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