No. _____

In The

Supreme Court of the United States

RANDY HOLKESVIG,

Petitioner,

v.

STATE OF NORTH DAKOTA,

Respondent.

On Petition For A Writ Of Certiorari To The North Dakota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The U.S. Supreme Court set forth an objective standard that is applicable to this Writ of Certiorari that requires a recusal when the likelihood of bias on the part of the judge "is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872 (2009) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). The U.S. Supreme Court recently stated on 6-9-16 in *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016) that "there is an impermissible of risk of bias that violates the Due Process Clause of the Fourteenth Amendment when a judge was previously involved in the case as a prosecutor who participated in crucial decisions about the case." The U.S. Supreme Court left uncertainty open and has yet to decide whether bias is applicable to due process when District Court Judges and State Supreme Court Justices intentionally refuse to recuse, withdraw, disqualify and declined to address issues raised and retaliated by taking oppressive action and extraordinary measures to cover up and protect illicit acts committed by prosecutors and executives in a post-conviction relief application. They issued frivolous rulings, meritless orders and retaliatory opinions in violation of the 1st, 5th and 14th Amendments of the U.S. Constitution and maliciously violated the Oath of Office. The question is;

"Whether District Court Judges and State Supreme Court Justices can refuse to recuse in violation of *Williams v. Pennsylvania*, supra, and *Caperton v. A.T. Massey Coal Co.*, supra," by issuing biased,

QUESTION PRESENTED – Continued

frivolous rulings, meritless opinions and retaliatory orders to cover up and conceal illicit acts committed by the State's Judiciary, prosecutors and executives that conflicts with the right to redress grievances in a post-conviction relief application that not only violates due process under the 1st, 5th and 14th Amendments of the U.S. Constitution, it offends justice and fair play under due process and all Oaths taken."

PARTIES TO THE PROCEEDING

Randy Holkesvig is the Petitioner of this brief. The State of North Dakota is the Respondent. Grand Forks County State's Attorney's office and Assistant State's Attorney Haley Wamstad was the respondent to the N.D. Supreme Court on appeal.

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OPINIONS BELOW

The Opinion of North Dakota Supreme Court Nos. 20170266 and 20170267 was filed on 1-22-18. (App.1). The Judgment was filed on 1-22-18. (App.5). Judge Hager issued an Order Denying Filing of Post-Conviction Relief Application by Defendant on 5-25-17. (App.7). Judge Hager issued an Order Denying filings on 7-6-17 regarding the Motion for Default and Motion for Contempt against Hager that Holkesvig filed on 6-28-17. (App.11). On 3-7-18 the Petition For Rehearing was denied. (App.14).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution, in relevant part:

> "Congress shall make no law . . . abridging the freedom of speech . . . the right of the people . . . to petition the Government for a redress of grievances."

The Fifth Amendment of the U.S. Constitution, in relevant part;

> "nor be deprived of life, liberty, or property, without due process of law."

The Due Process Clause and Equal Protection Clause in the Fourteenth Amendment of the U.S. Constitution in relevant part:

> " . . . 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."

N.D. Constitution, Article XI, Section 4, Oath of Office states in relevant part:

> " . . . I will support the Constitution of the United States and the Constitution of North Dakota . . . I will faithfully discharge the duties of the office. . . . to the best of my ability, so help me God, (if an oath), (under pains and penalties of perjury) if an affirmation."

STATEMENT OF THE CASE

Randy Holkesvig was charged with stalking on 2-6-08 that became Grand Forks Co. Case No. 18-08-K-00417. On 3-26-08 Holkesvig was charged with a violation of a Disorderly Conduct Restraining Order, (DCRO) that became Grand Forks Co. Case No. 18-08-K-00714. The State offered a plea stating they would drop the DCRO violation charge only if Holkesvig pled guilty to the stalking charge. On 6-5-08 Holkesvig involuntarily, unknowingly and unintelligently pled

guilty to the State's stalking charge with Judge Sonja Clapp, presiding.

Holkesvig previously filed 2 post-conviction relief, (PCR) applications that the North Dakota Supreme Court, (NDSC), denied. *Holkesvig v. State*, 2013 ND 1, 828 N.W.2d 546 and *State v. Holkesvig*, 2015 ND 105, 862 N.W.2d 531. Holkesvig filed a Writ of Certiorari, U.S. Supreme Court No. 12-1413, that was denied on 1-23-13 and a Petition For Rehearing was denied on 2-26-13.

On 5-25-17 Holkesvig filed his 3rd PCR citing *Williams v. Pennsylvania*, 136 S.Ct. 1899 (2016). Clapp was an Assistant Grand Forks County State's Attorney in 1999 who personally investigated a petty incident between Holkesvig and Heather Eastling in May-June 1999. Clapp wrote a private letter to the Grand Forks Sheriff's Office in July 1999. Clapp personally decided the State would not file any charges against Holkesvig because of insufficient evidence as falsified claims were made by Eastling and the Grand Forks Sheriff's Office. Holkesvig contends Clapp's failure to disclose her 1999 prosecutor role and letter was bias that was prejudicial against Holkesvig on 6-5-08. Clapp should have recused, disqualified or withdrawn from the 6-5-08 plea hearing. The lack of fairness, neutrality and impartiality impugned the integrity, dignity and trustworthiness of Clapp, executives and Magistrate Vigeland in 2008.

On 5-25-17 Holkesvig filed a 511 page PCR, a 74 page Motion To File Leave Of Court To Seek Court's

Permission To File PCR application and a 70 page Motion To Support PCR with Leave of Court and Affidavit of Service. The district court clerks refused to file 2 Leave of Court Motions because it exposed the State's corruptive acts. Judge Hager never read it. Acting as the State's lawyer in violation of N.D. Code Jud. Conduct 2.11(A)(2)(b), Hager automatically denied Holkesvig's PCR on 5-25-17 that violated N.D.C.C. § 29-32.1-06(1) that provides; "Within thirty days after the docketing of a PCR application . . . the state shall respond by answer or motion." The State never responded within 30 days.

On 6-28-17 Holkesvig filed a "Motion for Default against the State" for failing to reply within 30 days and a "Motion For Contempt against Judge Hager." The district court clerks refused to file both Motions. Presiding Judge Jensen illegally intervened and denied both Motions on 6-30-17. Jensen was then appointed to fill the empty NDSC Justice seat on 7-12-17. On 7-6-17 Holkesvig filed his PCR appeal notice and issues raised with the NDSC Clerks. On 7-6-17 Judge Hager responded to Jensen's 6-30-17 by "denying both 6-28-17 Motions, (App.11)." The NDSC clerks delayed filing Holkesvig's 7-6-17 appeal to accommodate the NDSC Justices 7-18-17 retaliatory Order stipulating only 2 issues can be raised; (1) whether the order is appealable, (2) whether the district court abused its discretion in denying leave to file a 511 page document. On 7-27-17 Holkesvig filed a 34 page scathing reply and argument that was not filed by the NDSC clerks on 7-31-17. NDSC Justices Jensen and VandeWalle

immediately disqualified themselves on 7-31-17. It was a complete mockery of justice with fraud upon the court and no NDSC reply.

On 9-14-17 Holkesvig filed his PCR appeal brief. Grand Forks County Prosecutors Meredith Larson and Nancy Yon filed and/or prosecuted all 2008 charges. They were silent in all 2017 district court proceedings and refused to file the PCR Appellee Brief. On 9-18-17 Haley Wamstad replaced Larson and Yon and she filed the PCR Appellee Brief on 10-12-17 that contained lies and false claims. On 10-27-17 Holkesvig filed his reply brief. On 2-15-18 Holkesvig filed a Petition for Rehearing that was denied on 3-7-18. On 3-13-18 Holkesvig signed, dated and filed a Motion For Stay Pending a Petition for Writ of Certiorari. The NDSC Justices ignored it. The Clerks refused to file it and refused to send copies of all orders and rulings issued. The NDSC Justices failed to address 3 Motions for Stay pending this Writ of Certiorari request that Holkesvig filed on 3-13-18, 3-20-18 and 4-25-18 with the intent and purpose to cover up their illegal acts. On 3-15-18 the mandate and Opinion was fraudulently entered in clear violation of N.D.R.App.P.41(d)(1)(2). *State v. Holkesvig*, 2018 ND 17, 906 N.W.2d 84.

On 5-6-14 Peter Welte, Grand Forks County State's Attorney and his buddy Dan Gaustad from a local law firm replied to Holkesvig's 4-29-14 email, (App.16), stating that several documents were missing from the State's 2008 evidence files and can't be found. (App.21). Holkesvig contends the missing documents would prove his innocence because they were

intentionally withheld, hidden or destroyed by the State between 12-22-07 and 5-6-14. The Welte/Gaustad response letter is new evidence because the State's Judiciary blocked Holkesvig from filing it in his 2nd PCR appeal. Hager and Welte are best friends.

Holkesvig claims he has the legal right to petition the government for redress of grievances in his 3rd PCR filing using the N.D. Uniform Post-Conviction Procedure Act cited under N.D.C.C. § 29-32.1 without the fear of retaliation by the State's Judiciary. The entire PCR record comes into play as numerous, illegal and retaliatory acts were made by state officials, law enforcement officials, executives, district court and supreme court clerks, Magistrates, District Court Judges and NDSC Justices. It was done with the intent and purpose to obstruct justice, conceal the truth and cover up the State's illicit acts since 2008 to prevent Holkesvig from getting his certificate of innocence in 2017 that he lawfully deserves.

LAW AND ARGUMENT

Certain facts and procedural history are necessary and important to understand the extraordinary issues and obstructive hurdles the State's Judiciary egregiously displayed in Holkesvig's PCR appeal.

On 2-6-08 Holkesvig was charged with stalking Eastling and/or her mother, Christine Moore. Larson overzealously filed the stalking charge citing N.D.C.C. § 12.1-17-07(2), "A person may not intentionally stalk

another person." Holkesvig is the only person in North Dakota to be cited and charged with stalking under this statute. Larson failed to prove and identify 2 or more acts of stalking that is required by statute and supported by true facts that must prove Eastling and Moore "experienced fear, intimidation or harassment from Holkesvig between 12-22-07 and 2-13-08." Eastling and Moore were never harmed, threatened or in any danger between 12-22-07 and 2-13-08. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. N.D.C.C. § 12.1-01-03(1).

Eastling never spoke, texted, emailed, wrote, called, contacted or proved in open court that she didn't want any contact from Randy Holkesvig between 12-22-07 and 2-13-08. The stalking statute requires that "Eastling must have 2 or more acts that frightened, intimidated and harassed her and the act committed must be intentionally and knowingly done after being informed by Eastling that no contact is wanted." The State never proved that Eastling contacted Holkesvig and stated she wanted no contact. Eastling and Moore repeatedly lied to law enforcement officials in 2008. Moore's illegal conduct and egregious behavior between 12-22-07 and 3-26-08 completely eliminated Moore as being a stalking victim.

Larson wrote the State's plea on 5-23-08. Larson lied to Holkesvig's attorney in April 2008 by failing to subpoena Moore's January 2008 Qwest phone records. Larson met privately with Moore in early May 2008 to discuss Moore's Qwest phone records, her 7 unwanted

and harassing calls and 6 statute violations. Larson illegally withheld Moore's Qwest records in 2008. Larson's false stalking charge and frivolous DCRO violation charge tainted and tarnished the plea on 6-5-08. Larson failed to appear at the hearing. Nancy Yon replaced Larson as the prosecutor. Larson conspired with Clapp, Vigeland and executives to trick Holkesvig into accepting the plea offer. The plea called for payment of administrative fees and court costs with a 2 year deferred sentence and all charges would be wiped from the records by 6-5-10. The signed plea did not include Eastling's reimbursement fees of $112.01. Yon made several false claims and failed to provide a copy of the plea to the court. Yon and Clapp breached the plea by forcing Holkesvig to pay reimbursement fees on 6-5-08. The government may not openly breach a plea agreement. *Mabry v. Johnson*, 467 U.S. 504, 509 (1984). Any person who pleads guilty who has been "tricked by the prosecutor through misrepresentations into pleading guilty, his due process rights were offended." *Walker v. Johnston*, 312 U.S. 275 (1941) (citing *Santobello v. New York*, 404 U.S. 257, 262-266 (1971).

Clapp's 1999 deception as a prosecutor carried over to her judicial role on 6-5-08 that includes bias and prejudice that quickly turned into manifest injustice with fraud upon the court. Holkesvig spoke 32 words for the plea colloquy on 6-5-08 that fails at all levels of justice. Clapp didn't want Holkesvig to speak any more than what she wanted. Clapp was well aware of the State's illegal acts committed in 2008. Clapp turned her back on her oath, the truth and justice on

6-5-08 and quickly accepted the plea without legal justification. Clapp was confused about a brief and facts as stated by Holkesvig's attorney. Clapp meticulously and personally asked two "*other than*" questions; (1) was directed at Holkesvig's attorney, "*Other than* the restitution is that your understanding of the plea agreement," and question (2) directed at Holkesvig, "As far as your plea of guilty, *other than* the agreement that has been made, has anyone promised you anything in order to get you to enter a plea of guilty." Clapp's use of the "*other than*" phrase against Holkesvig mirrors the exact same exclusionary conversation that occurred in *State v. Feist*, 2006 ND 21, ¶¶22-28, 708 N.W.2d 870. The NDSC reversed the *Feist* criminal judgment and remanded that case back to district court to allow Feist to withdraw his guilty plea. Under identical "*other than*" circumstances, N.D.R.Crim.P. 11(c) was not in compliance with the Judge or the court. The State and State's Judiciary adamantly refuses to address why Holkesvig is not entitled to withdraw his 6-5-08 guilty plea.

On 7-12-09 Clapp terminated the deferred imposition of sentence early to cover up her 2008-2009 illegal, immoral and unethical acts. Two N.D. Governors, N.D. Attorney General, Presiding Judge Medd, Clapp, Vigeland, Welte, Larson, Smith, Grove and the NDSC Justices, all saw and read +400 pages consisting of several legal complaints, new facts and new evidence that Holkesvig privately obtained and filed between 6-6-08 and 1-31-10 that disproves all 2008 charges. Clapp obstructed justice by violating her oath and due process

with falsified findings on 6-5-08 and 7-12-09. Holkesvig filed several legal complaints and 2 judicial complaints against Clapp between 6-6-08 and 8-27-14. Clapp abruptly resigned on 8-28-14.

On 10-22-11 Holkesvig filed his 1st PCR. Clapp purposely delayed and refused to address her recusal for +75 days. The NDSC replaced Clapp and assigned Judge Lee Christofferson on 3-28-12 who presided in the 1st PCR and 2nd PCR filed on 2-5-14. Christofferson covered up both PCR applications using frivolous, meritless rulings and retaliatory orders. Christofferson struck several exhibits and legal documents from the docket records. He had no jurisdiction to issue an order after Holkesvig filed his appeal with the NDSC. Welte and Gaustad failed to file legal copies of their 5-6-14 response with the clerks to keep it off the docket records. Christofferson intervened and issued a retaliatory Order on 5-27-14 to block Holkesvig from filing the 5-6-14 letter and the State would not have to respond to it. The 2nd PCR opinion by the NDSC Justices was filled with bias and prejudice. Christofferson abruptly announced his retirement on 2-13-16.

The 5-6-14 Welte/Gaustad letter indicates certain evidentiary documents that the State had in their possession on or before 6-5-08 and used to file charges was now missing and can't be found. The stamped date on 5 envelopes provides a date it was mailed. The name on 5 envelopes proves who it was mailed to. The State repeatedly violated N.D.R.Crim.P.16 and *Brady v. Maryland*, 373 U.S. 83, 87 (1963) because if the State had legally disclosed "all discoverable documents" prior to

the 6-5-08 hearing, Holkesvig would not have pled guilty to the stalking charge. The State and State's Judiciary refuses to address evidence withheld before 6-5-08 and new evidence discovered after 6-5-08. Bad faith by the State's failure to preserve potentially material exculpatory evidence and/or destroying evidence violates due process of law. *Arizona v. Youngblood*, 488 U.S. 51, 56-58 (1988).

The 1st envelope missing contained a sympathy card, condolence note and $10.00 memorial money that Holkesvig sent to Eastling "in care of" Moore's mailing address on 12-22-07. Moore stole the envelope, opened it, kept the money and gave the card and note to Grand Forks Sheriff's Deputies Smith and Grove. Moore didn't tell Eastling for +10 days. Moore lied in Smith's 1-31-08 investigative report claiming "a card was waiting on the table on 1-2-08." On 3-11-08 Eastling testified under oath at the DCRO hearing that, "Randy Holkesvig has never threatened me," and that "she only saw a copy of the card." It proves Eastling didn't see, read or receive the original sympathy card, note or memorial money. Eastling's statement of "never been threatened by Holkesvig" raises serious legal concerns for the State's 2-6-08 stalking charge and 2 temporary DCRO complaints filed on 2-14-08 because the frivolous stalking allegation ended on 2-13-08. The State withheld the stolen envelope because Eastling's name was printed on it that proves the contents belonged to Eastling, not Moore. The State used the stolen envelope to start the stalking charge on 12-22-07. The State frivolously claimed the sympathy card, condolence

note and $10.00 memorial money was stalking violation #1.

The 2nd envelope missing was Holkesvig's civil, non-threatening letter sent to Moore after she initiated 2 harassing and unwanted calls to Holkesvig on 1-2-08 and 1-3-08 using her Qwest phone. Moore told Holkesvig, "the wrong person died in Heather's life." Deputies Smith and Grove inserted 32 blatant lies into their 1-31-08 investigative report. Smith and Moore falsely claimed that "Holkesvig called Moore on 1-3-08 and she hung up on him." Larson intentionally withheld Moore's January 2008 Qwest records because it proves Moore called Holkesvig on her dime on 1-3-08. Moore's Qwest record was exculpatory evidence and *Brady* material. Holkesvig filed 2 lawsuits against Moore. Holkesvig obtained Moore's January 2008 Qwest phone records in October 2010 that proved Moore called Holkesvig on 1-3-08. Larson illegally suppressed *Brady* material while Smith and Moore falsely accused Holkesvig of calling Moore twice. The State withheld the envelope and falsely claimed Holkesvig's 1-4-08 reply letter and 2 phantom calls were stalking violations #2 and #3.

The 3rd envelope missing was the civil, non-threatening letter sent by Holkesvig to Moore after she initiated her 3rd unwanted call to Holkesvig's relative and a 4th unwanted and harassing call to Holkesvig's folks on 1-5-08 using her Qwest phone. On 1-6-08 Holkesvig replied to Moore. The State withheld the envelope and frivolously claimed Holkesvig's reply letter was stalking violation #4.

The 4th envelope missing is the civil, non-threatening letter that Holkesvig sent to Moore after she put on a ridiculous act of despair on 1-23-08 making absurd comments and blatant lies to Grand Forks Police Officer Wayne Schull. The State withheld the Schull report in 2008. Holkesvig obtained the Schull report in December 2010 that is littered with blatant lies. Moore is a vindictive, aggressive instigator who is a pathological liar. Moore's Verizon cell records indicates she made 1 call before Schull arrived to get advice on what to say and how to act and 10 cell phone calls immediately followed after Moore completed her frivolous complaint to Schull on 1-23-08. Moore was gloating over what she said to Schull. On 1-23-08 at 5:34 PM Moore placed her 5th unwanted call to Holkesvig using Qwest that showed up on Holkesvig's caller ID. Moore was baiting Holkesvig to call her back so she could show it to the Sheriff and falsely claim she is a victim. Holkesvig never initiated, called or spoke to Moore on his dime on 1-2-08, 1-3-08 or 1-23-08. On 1-24-08 between 7:00 AM and 7:30 AM Moore initiated her 6th unwanted call that wasn't answered and Moore's 7th unwanted and harassing call was a disturbing, gleeful, antagonizing voice message stating, "the police have your letters . . . you're in big trouble now, the police have all of your letters, etc . . . " Holkesvig saved Moore's voice message. Moore's 1-24-08 missed cell call was automatically saved in Holkesvig's cell phone. The State frivolously claims Holkesvig's 1-25-08 reply letter is stalking violation #5.

The 5th envelope missing included the missing 2-8-08 note and $100.00 check that Holkesvig sent to the United Church Committee that was holding a pancake benefit and a local University Scholarship Fund Raiser event in honor and in memory of Joel Lovelien (Eastling's fiancé), who was a victim of a homicide on 10-31-07. Holkesvig didn't attend the benefit. Eastling and Moore were not named in the 2-8-08 note while the envelope was addressed to the United Church. On 2-10-08 the Church Pastor gave the note and donation to Eastling who blatantly lies, telling him she has a restraining order against Holkesvig. There was no restraining order in place or against Holkesvig on 2-10-08. The Pastor notifies Smith, Grove and local police on 2-11-08. Larson, Smith, Grove and others quickly conspire to get an arrest warrant according to their emails. On 2-13-08 Smith placed 2 threatening calls to Holkesvig; (1) Smith claims the $100.00 donation and 2-8-08 note is stalking and threatens to file stalking charges. Holkesvig tells Smith it isn't stalking, his threat was inappropriate and hangs up the phone, (2) Smith personally threatens to arrest Holkesvig if he shows up at the courthouse on 2-22-08 for a court hearing for Travis Stay who was charged in the 10-31-07 homicide of Lovelien. In December 2010 Holkesvig obtained the Sheriff's February 2008 phone records from the Grand Forks County Auditor's office that proves Smith lied about his 2-13-08 calls.

Larson, Smith and Grove helped Eastling and Moore fabricate claims and filed 2 temporary DCRO's on 2-14-08 that Vigeland granted on 2-14-08. Smith

and Grove quickly submit a false stalking Affidavit of Probable Cause on 2-15-08. Vigeland grants it and signs the arrest warrant on 2-15-08 using in part 32 blatant lies that Smith and Grove wrote on 1-31-08. Larson signed and dated her Memorandum and the State's stalking charge document on 2-6-08 but 7 days later Larson claims stalking ended on 2-13-08. Larson's 2-6-08 stalking charge signature conflicts with Smith's 2-13-08 calls because the State set it up to end on 2-13-08. The State withheld the 2-8-08 note and envelope and falsely claimed the note and $100.00 donation was sent to Eastling that became stalking violation #6.

Holkesvig received an incoming cell call while he was sitting in a dentist's chair on 3-24-08. Holkesvig didn't answer it. It was automatically saved in his cell phone that now contains 2 missed cell numbers. Holkesvig inadvertently hit Moore's 1-24-08 cell number instead of the 3-24-08 cell number. It automatically dials and rings. Holkesvig stated he was returning a call that was made to him about an hour ago. After +30 seconds Holkesvig realized he was speaking to Moore. Holkesvig quickly apologized and hung up. Larson, Smith and Grove knew from Holkesvig's 2-1-08 interrogation that Moore called Holkesvig and left a disturbing voice message on 1-24-08. The State desperately wanted to file a DCRO violation charge. So Larson blatantly lied stating that Holkesvig intentionally and knowingly called Moore. Smith and Grove submitted a false affidavit of probable cause report on 3-26-08. Vigeland signs it on 4-1-08. On 4-11-08 Holkesvig

is conveniently arrested on a Friday mid-afternoon and spent the next +75 hours in jail. The State would not have filed a frivolous stalking charge on 2-6-08 or a frivolous 3-26-08 DCRO violation charge to entice the 6-5-08 plea if executives and State's Judiciary, Eastling and Moore didn't lie and cheat to obtain 2 DCRO's on 2-14-08 and 3-11-08. The State frivolously claimed Holkesvig's mistaken 3-24-08 cell call was stalking violation #7.

Welte sent an email memo in December 2010 to Grand Forks County, Court, Police and Sheriff's personnel departments ordering them not to give, share, receive or accept any more documents or information with Holkesvig. In January 2011 the Sheriff's secretary told Holkesvig and pointed to the Welte memo taped to her computer monitor. Welte was very upset that Holkesvig obtained several new documents between 6-6-08 and 12-31-10 that the State withheld, hid and never disclosed prior to the 6-5-08 plea hearing. Welte, Larson and Smith received 4 lawsuits and Grove received 2 lawsuits while several legal complaints, lawyer and law enforcement complaints were filed between 6-6-08 and 12-7-14. On 12-08-14 Welte abruptly resigned.

Vigeland set bail for Travis Stay in December 2007. Stay bonded out quickly. Eastling was upset. She sent a letter to Judge Jahnke in January 2008 who was presiding in the "Stay trial." Jahnke recused himself after reading Eastling's letter. Judge Medd replaced Jahnke while Larson and Yon prosecuted Stay that concluded in December 2008 with an acquittal.

Vigeland, Clapp and Medd read Eastling's letter that obviously established grounds for bias and prejudice against Holkesvig. Medd's bias and prejudice was obvious in 2 Moore lawsuit rulings. Medd refused to recuse. Medd abruptly resigned on 5-29-13. Clapp and Vigeland didn't recuse, disqualify or withdraw like Jahnke did that violated N.D. Code Jud. Conduct 3E(1)(a). Their predisposition and partiality towards Eastling and Moore was obvious in 2008. Smith and Grove submitted false information in 2 Affidavits that Vigeland ignored with repugnancy that violated *Franks v. Delaware*, 438 U.S. 154, 171- 172 (1978). Holkesvig filed 3 judicial complaints against Vigeland between 6-6-08 and 12-22-14. Vigeland refused to respond to his illegal, immoral and unethical 2008 acts. Vigeland abruptly resigned on 12-23-14.

The State and the State's Judiciary is eerily silent on N.D.R.Prof.Conduct 3.3(a)(1), 3.4(a)(b), 3.8(a), 3.8(g)(2)(i)(ii) and 3.8(h). N.D.R. Prof.Conduct 8.4(f) provides: "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." Black's Law Dictionary, 7th edition, defines "administration of justice" as "the maintenance of right within a political community by means of the physical force of the state; the state's application of the sanction of force to the rule of right," (quoting NDSC Chief Justice Gerald VandeWalle) (citing *Matter of Reciprocal Discipline of Haderlie*, 2016 ND 189, ¶22, 885 N.W.2d 78).

The State and State's Judiciary outrageous conduct is not in compliance with the administration of

justice based on their illegal, immoral, unethical and retaliatory acts taken against Holkesvig between 2008 and 2017 that conflicts with due process and N.D.C.C. § 27-02-05.1. It directly involves 3 PCR appeals that relates to 13 lawsuits, 42 lawyer complaints, 51 judicial complaints and thousands of dollars of unnecessary expenses and illegal awarding of fees/costs. Judicial impeachment is allowed under N.D.C.C. § 44-09-01 for crimes, corrupt conduct, malfeasance, or misdemeanor in office. Two N.D. Governors refused to address N.D.C.C. § 44-11-01 that allows the removal of sheriff's, deputies and state's attorney for misconduct, malfeasance, crimes in office, neglect of duty in office or gross incompetency.

All district court clerks must take an oath under N.D.C.C. §'s 11-10-09 and 11-10-13. All NDSC clerks must take an oath under N.D.C.C. § 27-03-02. All N.D. lawyers must take an oath prescribed by N.D.C.C. § 27-11-20 and N.D. Constitution, Article XI, Section 4. All Police Officers, Sheriff's, Deputies and all civil officers, board members, commission members appointed by the Governor must take an oath prescribed by N.D.C.C. § 44-01-05. Every District Court Judge, Magistrate, Surrogate Judge and all NDSC Justices must take an oath under N.D. Constitution, Article XI, Section 4. All District Court Judges and NDSC Justices are elected State officials and they must uphold the State and Federal law according to the promise they made when they took the Judicial Oath of Office. The "Oath to support the Constitution" is an "Oath to support its interpretation by the Supreme Court." *Cooper v. Aaron*, 358 U.S.

1, 18 (1958); *Marbury v. Madison*, 1 Cranch 137, 163, 178-180, 2 L.Ed. 60 (1803): *Robb v. Connolly*, 111 U.S. 624, 637 (1884); *Ex Parte Young*, 209 U.S. 123, 176-177 (1908).

"A state-court decision is contrary to clearly established federal law if it applies a rule that contradicts the governing law set forth in Supreme Court cases or if it 'confronts a set of facts that are materially indistinguishable from a decision of the Court and nevertheless arrives at a result different from the Court's precedent." *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000). To be considered an "unreasonable application," the state court decision must be "more than incorrect or erroneous" but "objectively unreasonable." *Wiggins v. Smith*, 539 U.S. 510, 520-21 (2003) (quoting *Williams*, supra at 409). "It is unimaginable, in the long run, that State government can be excused from respecting individual rights guaranteed by our Constitutions . . . In a democracy that safeguards individual rights in a Constitution, the judiciary cannot be impotent to rectify private injustices inflicted in the name of public interests." *Schloesser v. Larson*, 458 N.W.2d 257, 263 (N.D.1990).

Under N.D.C.C. § 29-32.1-01(1)(a) a petitioner can file a PCR when a "conviction was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota." The N.D. Oaths of Office Measure 2 Amendment was approved in a statewide vote on 11-6-12. Prior to 11-6-12 the N.D. Constitution, Article XI, Section 4 did not require "executive branch officials" to take an oath because the

word "executive" was missing. Article XI, Section 4 stated in part on 11-6-12, "Members of the legislative assembly and the judicial branches . . . shall take and subscribe the following oath . . . " The word "executive" was missing. The State of North Dakota passed Measure 2 on 11-6-12 and 30 days later, Article XI, Section 4 was changed to, "Members of the legislative assembly and the executive and judicial branches . . . shall take and subscribe the following oath . . . "

Before Measure 2 was passed on 11-6-12 the N.D. Constitution, Article XI, Section 4 conflicted with Article VI, Clause 3 of the U.S. Constitution that mandates "senators, representatives, state legislators and 'all executive and judicial officers' take an oath to uphold and support the Constitution." By not including "executive" in the N.D. Constitution, Article XI, Section 4, the "state's executives" clearly defied the U.S. Constitution prior to 11-6-12. Holkesvig filed several legal complaints and lawsuits before 11-6-12 against members of the N.D. Executive Branch, aka Welte, Larson, Smith, Grove and other executives who failed to tell the truth. They violated their Oath and/or affirmation that was mandated by N.D.C.C. § 27-11-20 and N.D.C.C. § 44-01-05 and described in Article XI, Section 4 because they were not required to take an oath in North Dakota to legally support Article VI, Clause 3 of the U.S. Constitution. The "North Dakota executives" had no oath and no affirmation to make because their Oath wasn't supported by truth, state statutes, state law and it was incompatible and not in compliance with the N.D. and U.S. Constitutions. It was

legally impossible for "N.D. Executive Branch officials" to solemnly swear to God and affirm that they would support Article VI, Clause 3 of the U.S. Constitution and in the same breadth support Article XI, Section 4 of the N.D. Constitution because the word "executive," was clearly missing prior to the 11-6-12 election.

The 2008 investigation, stalking charge, DCRO violation charge, 2 DCRO's, 2 affidavits of probable cause and 2 arrest warrants contained blatant lies and false claims that violated all oaths and due process since 12-22-07 that is seriously flawed for many legal reasons up to the Measure 2 vote on 11-6-12. Executives manufactured evidence and falsified evidence and repeatedly lied using illegal and unethical tactics to obtain a guilty plea on 6-5-08. The State's prosecution falsified charges and obtained 2 arrests and a plea conviction by using perjured testimony and deliberately suppressed evidence that would have impeached and refuted all claims, allegations and charges in 2008. The State's Judiciary fixed all rulings simply by intentionally diverting the truth into lies. Without an oath the executives had no desire or duty to tell the truth. Any document they submitted "under oath" between 12-22-07 and 11-5-12 was false because there was no legal oath or valid affirmation to make the 2008 charges legitimate and true.

Holkesvig was unconstitutionally deprived of due process and equal protection by the selective, arbitrary and vexatious prosecution in 2008 that the State's Judiciary refuses to address for the past +10 years. Perjury, false statements, false information, tampering

with public records and public servant refusing to perform duty obviously violates N.D.C.C. §'s 12.1-11-01, 12.1-11-02, 12.1-11-03, 12.1-11-05 and 12.1-11-06.

The purpose of the Uniform Post-Conviction Procedure Act, N.D.C.C. ch. 29-32.1, is to furnish a method to develop a complete record to challenge a criminal conviction. *Chisholm v. State*, 2014 ND 125, ¶15, 848 N.W.2d 703.

Under North Dakota law any individual who pleads guilty can legally pursue a PCR if they can demonstrate a manifest injustice that justifies the withdrawal of the guilty plea. *Moore v. State*, 2007 ND 96, ¶¶9-14, 734 N.W.2d 336; *State v. Gress*, 2011 ND 233, 807 N.W.2d 567. Holkesvig pled guilty and no trial was held. The appropriate analysis for "manifest injustice" falls under N.D.R.Crim.P. 32(d). Holkesvig must show (1) the evidence was discovered after the guilty plea, (2) the failure to learn about the evidence before the plea was not the result of the defendant's lack of diligence, (3) the newly discovered evidence is material to what would have been the issues at trial, and (4) the weight and quality of the newly discovered evidence would likely result in an acquittal at trial. Holkesvig met and exceeded the manifest injustice criteria.

Holkesvig cited N.D.C.C. § 29-32.1-01(1)(a),(b),(d),(e) and (f) that established 5 legal grounds for filing his 3rd PCR. The 6-5-08 plea was obtained in violation of the U.S. Constitution, N.D. Constitution, N.D. laws and N.D. Statutes. The sentence was not authorized by law. New evidence exists that wasn't presented or heard. A

significant change in substantive and procedural law has occurred with N.D.Sup.Ct.Admin.R.58 and *Williams v. Pennsylvania*, supra.

Holkesvig cited N.D.C.C. § 29-32.1-01(3)(a)(1) that alleges the existence of newly discovered evidence, which if proved and reviewed in light of the evidence as a whole, would establish that Holkesvig did not engage in the alleged stalking, DCRO and/or DCRO violation claims that the State alleged in 2008. N.D.C.C. § 29-32.1-01(1)(e) also provides, "Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice."

N.D.C.C. § 29-32.1-01(3)(a)(3) provides 2 exceptions for a court to consider and legally apply for a PCR appeal; (1) Holkesvig must assert a new interpretation of law applies to his case and (2) Holkesvig must establish the new interpretation is retroactively applicable to his case. *Keller v. State*, 2015 ND 228, ¶14, 869 N.W.2d 424. "No statute of limitations can justify denying review of a judgment of conviction for a crime that does not exist," (quoting Gerald VandeWalle) (citing *Keller v. State*, supra, at ¶30)).

Holkesvig complied with N.D.C.C. § 29-32.1-01(3)(a)(3)(b) that is applicable to Clapp using "retroactive," based on *Williams v. Pennsylvania*, supra, dated 6-09-16 and N.D.Sup.Ct.Admin.R.58 made effective 3-1-17. For purposes of the exception to the statute of limitations, the NDSC concluded that the effective date of the 'retroactive application of law is the date the opinion' announcing a new interpretation of

federal or state law is distributed or published. *Hieb v. State*, 2016 ND 146, ¶11, 882 N.W.2d 724. The State's Legislature directed that N.D.C.C. § 1-02-10 "cannot be retroactively applied unless specifically permitted." "No part of this code is retroactive unless it is expressly declared to be so." *White v. Altru Health Sys.*, 2008 ND 48, ¶¶12-20, 746 N.W.2d 173. N.D.C.C. § 1-02-30 recognizes that subsequent legislation cannot be used to deprive a person of a vested right.

The NDSC increased punishment by amending N.D.Sup.Ct.Admin.R.58, Section 10 on 6-21-17 stating; "A pre-filing order entered under this rule supersedes any other order limiting or enjoining a person's ability to file or serve papers or pleadings in any North Dakota State court litigation." The State's Judiciary illegally retaliated by increasing punishment in violation of the ex post facto law that is prohibited under the N.D. Constitution, Article 1, § 18 and U.S. Constitution, Article I, § 10. Ex post facto law is defined using 4 criteria listed in *State v. Jensen*, 333 N.W.2d 686, 693-94 (N.D.1983). It not only violates due process it obstructs justice and covers up the State's abhorrent acts. Holkesvig claims this is manifest injustice and/or gross miscarriage of justice and abuse of discretion. "'Manifest injustice' means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable person, with due consideration of the totality of circumstances." N.D.C.C. § 12.1-01-04(18). *State v. Farrell*, 2000 ND 26, ¶¶8-25, 606 N.W.2d 524; *State v. Feist*, supra, at ¶¶22-28.

A "new rule" is one that "breaks new ground or imposes a new obligation on the States or the Federal Government. To put it differently, a case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Teague v. Lane*, 489 U.S. 288, 301 (1989). The *Teague* retroactivity rule has two exceptions; (1) the rule is substantive or places a class of private conduct beyond the power of the State, or (2) the rule is a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. *Teague*, supra, at 311. A substantive rule is one that "alters the range of conduct or the class of persons that the law punishes." *Schriro v. Summerlin*, 542 U.S. 348, 351-353 (2004). See NDSC Order Nos. 20160285, 20170161, Measure 2 Amendment dated 11-6-12 and N.D.Sup.Ct.Admin.R.58.

Holkesvig commenced his 5-25-17 PCR filing using N.D.C.C. § 29-32.1-03. The Clerks failure to file Holkesvig's legal documents violates N.D.C.C. § 29-32.1-03(5). Holkesvig complied with N.D.C.C. § 29-32.1-04. Judge Hager's 5-25-17 flawed ruling conflicts and contradicts N.D.C.C. § 29-32.1-07. Discovery was not allowed that violated N.D.C.C. § 29-32.1-08. Genuine issues to any material fact certainly existed and no evidentiary hearing was held that violated N.D.C.C. § 29-32.1-09(3) and (4). "A district court should ensure that where it has found a PCR hearing is justified, the hearing must be held in person or through remote presence in compliance with our rules." (quoting NDSC

Justice Jerod Tufte) (citing *Hamilton v. State*, 2017 ND 5, ¶29, 890 N.W.2d 810).

Holkesvig proved that evidence in the government's possession in 2008 was purposely lost or never disclosed by the State in violation of N.D.C.C. § 29-32.1-10. District court clerks and supreme court clerks refused to file legal documents into the docket records in 2017-2018 as filings are out of date, out of order or simply not filed. (App.23).

In 2008 the State intentionally withheld and purposely hid certain documents, exculpatory evidence, material evidence of innocence and *Brady* evidence that obviously violated *Brady v. Maryland*, supra. Under *Brady*, all material known to a prosecutor must be disclosed at a plea proceeding. *Tate v. Wood*, 963 F.2d 20, 24 (2d Cir.1992); If the government withholds evidence of factual innocence, the voluntariness of the guilty plea can be challenged under *Brady*. *McCann v. Mangialardi*, 327 F.3d 782, 787-788 (7th Cir.2003). N.D.R. Prof.Conduct 3.8(d) is not ambiguous. It clearly indicates that a prosecutor "shall . . . disclose to the defense at the earliest practical time all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense." A guilty plea is not knowingly and voluntarily made when the defendant has been misinformed about the critical elements of the charged offense. *United States v. Brown*, 117 F.3d 471, 474-479 (11th Cir.1997). It is axiomatic that, "to be constitutionally valid, a plea of guilty must be knowingly and voluntarily made." *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). A guilty

plea that was "knowing" and "intelligent" may be vulnerable to challenge if it was entered without knowledge of material evidence withheld by the prosecution. *Miller v. Angliker*, 848 F.2d 1312, 1320 (2d Cir.1988). A guilty plea based on misinformation is constitutionally invalid. *Smith v. O'Grady*, 312 U.S. 329, 334 (1941). A plea can't be intelligent or knowingly made when executives withheld, hid or destroyed evidence of innocence prior to the 6-5-08 plea hearing while executives and the State's Judiciary refused to address it.

Between 1-1-09 and 9-10-15 Holkesvig filed 7 judicial complaints against Clapp, Vigeland and Christofferson and 19 judicial complaints were filed against the NDSC Justices. Circumstances can automatically and immediately disqualify the judge from presiding over a case. See James J. Alfini et al., Judicial Conduct and Ethics § 4.04, at 4-10 (4th ed. 2007). *State v. Jacobson*, 2008 ND 73, ¶¶30-32, 747 N.W.2d 481. Clapp, Vigeland, Christofferson, Hager and the NDSC Justices, "all had personal knowledge of other issues that involved Eastling's January 2008 letter and Holkesvig's 6-5-08 plea," that required a recusal, disqualification or withdrawal from all 2008 proceedings that violated N.D. Code Jud. Conduct Rules 3E(1)(a) up to 6-30-12 and/or 2.11(A)(1) since 7-1-12 in 3 PCR appeals. A Judge should recuse if they "become embroiled in a running, bitter controversy" with one of the litigants. *Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971). Holkesvig is entitled to a neutral and detached judge. *Ward v. Monroeville*, 409 U.S. 57, 60-62 (1972).

On 5-30-12 oral argument was held that became *Holkesvig v. Welte*, 2012 ND 142, 818 N.W.2d 760. NDSC Justice Maring angrily blurted out, " . . . You, Mr. Holkesvig, will not get your post-conviction relief . . . " Holkesvig's 1st PCR application was still being argued in Grand Forks District Court on 5-30-12. Holkesvig filed a Judicial complaint against Maring for her extrajudicial comments, bias and prejudicial comments. Holkesvig wanted the 5-30-12 audio tape recording. Maring did not respond. The NDSC Justices destroyed the audio tape. Four NDSC Justices witnessed Maring's 5-30-12 outburst and all Justices including Maring participated in the 1st biased PCR Opinion. VandeWalle forced Maring to quit. Maring abruptly submitted her resignation on 9-17-13 and her last day as a Justice was 12-31-13. Governor Dalrymple appointed his close friend, Lisa McEvers to replace Maring on 11-19-13. McEvers wrote the 3rd biased PCR Opinion with the intent and purpose to smear the truth with blatant lies to cover up the State's illegal acts.

NDSC Chief Justice Gerald VandeWalle went to Houston, Texas to attend 2 Judicial meetings on October 1-3, 2012 and 2-9-15. Eastling taught middle school in the Houston area. In between Judicial meetings, VandeWalle secretly met with Eastling to conduct his own personal investigation regarding the State's 2008 stalking charge and Holkesvig's 2 PCR appeals. VandeWalle has never denied meeting with Eastling in Houston while 2 PCR appeals were being decided on 1-23-13 and 4-28-15.

"A public official's retaliation against an individual exercising his or her 1st Amendment right is a violation of 42 U.S.C § 1983. *Barrett v. Harrington*, 130 F.3d 246, 263-264 (6th Cir.1997); *Hartman v. Moore*, 547 U.S. 250, 256 (2006). Freedom to criticize public officials and expose their wrongdoing is at the core of First Amendment values, even if the conduct is motivated by personal pique or resentment. *Barrett*, supra, at 264; *Mezibov v. Allen*, 411 F.3d 712, 726 (6th Cir.2005). All District Court Judges retaliated by issuing "precise, vindictive and revengeful rulings" in "13 Holkesvig lawsuits" that the NDSC Justices cited in "3 PCR appeals" between 2010 and 2017 using meticulous, frivolous language, false accusations and carefully placed adjectives that covered up the truth with false findings of facts.

In order to prevail on a claim of retaliation a plaintiff must allege either that the retaliatory act was taken in response to the exercise of a constitutionally protected right or that the act itself violated such a right. *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir.1994). Access to the court is protected by the 1st Amendment right to petition for the redress of grievances. *Wilson v. Thompson*, 593 F.2d 1375, 1387 (5th Cir.1979); Article 1, Section 5, N.D. Constitution. Due process prevents any judicial retaliation against pro-se litigants or self-represented parties for the exercise of their statutory or constitutional rights and it requires that, in pursuing their rights, it must be free of an apprehension of judicial retaliation. See, Id., *North Carolina v. Pearce*, 395 U.S. 711, 725 (1969). "A rule of law should not be

interpreted so as to benefit or reward the wrongdoer or to shield the perpetrator." *Fischer v. Knapp*, 332 N.W.2d 76 (N.D.1983).

Collusion is defined as "an agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law." Black's Law Dictionary 264 (6th ed.1990). *Higgens v. Trauger*, 2001 ND 149, ¶22, 632 N.W.2d 463. A conspiracy is an agreement or understanding to achieve an unlawful objective. "In order to state a conspiracy claim, the plaintiff must at least allege that 'the defendants had directed themselves toward an unconstitutional action by virtue of a mutual understanding,' and provide some facts suggesting such a 'meeting of the minds.'" *Haley v. Dormire*, 845 F.2d 1488, 1490 (8th Cir.1988) (quoting *White v. Walsh*, 649 F.2d 560, 561 (8th Cir.1981)).

Domestic violence is identified by N.D.C.C. § 14-07.1-02. The State "never filed a domestic violence charge or a domestic violence order violation charge against Randy Holkesvig." The NDSC Justices blatantly, knowingly and intentionally lied for 1226 days by stating, "Holkesvig violated a domestic violence protection order." *Holkesvig v. State*, 2013 ND 1, 828 N.W.2d 546. The NDSC Justices falsely claimed, intentionally lied and smeared Holkesvig for 1750 days stating that "Holkesvig violated a domestic violence protection order." *Holkesvig v. Welte*, 2011 ND 161, ¶3, 801 N.W.2d 712. On 6-2-16 NDSC Justice McEvers blatantly lied making several false accusations by conveniently changing "domestic violence protection order" to

a "disorderly conduct restraining order" in *Holkesvig v. VandeWalle*, 2016 ND 107, 879 N.W.2d 728 to assist the cover up of VandeWalle's illegal, retaliatory acts associated in Holkesvig's PCR applications. "To set aside a judgment or order because of fraud upon the court * * * it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." *England v. Doyle*, C.A.9th, 1960, 281 F.2d 304, 309, (quoting *Gajewski v. Bratcher*, 240 N.W.2d 871, 887 (N.D.1976)). Fraud on the court is an extraordinary form of relief that is available only to "prevent a grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38, 47 (1998). "Fraud is defined as deceit, deception, artifice, or trickery operating prejudicially on the rights of another, and so intended, by inducing him to part with property or surrender some legal right . . . Anything calculated to deceive another to his prejudice and accomplishing the purpose, whether it be an act, a word, silence, the suppression of the truth, or other device contrary to the plain rules of common honesty." (emphasis added), *Nelson v. Charlesworth*, 82 Conn. App. 710, 714-715, 846 A.2d 923 (2004). The State used numerous illegal tactics to trick and deceive Holkesvig into accepting the State's 6-5-08 plea offer.

"Fraud on the court" is characterized as "a scheme to interfere with the judicial machinery performing the task of impartial adjudication, as by preventing the opposing party from fairly presenting his case or defense." *Pfizer, Inc. v. International Rectifier Corp.*, 538 F.2d 180, 195 (8th Cir.1976). The term "contemplates

conduct so egregious that it undermines the integrity of the judicial process." *Stone v. Stone*, 647 P.2d 582, 586 n.7 (Alaska 1982).

"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function – thus where the impartial functions of the court have been directly corrupted." *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir.1985).

The deception by Hager and NDSC Justices protecting Clapp, Vigeland, clerks and executives illicit acts was fraud upon the court that consists of conduct that occurs; "(1) On the part of an officer of the court; (2) That is directed to the "judicial machinery" itself; (3) That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; (4) That is a positive averment or is concealment when one is under a duty to disclose; (5) That deceives the court." *Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6th Cir.1993). N.D.R.Civ.P. 60(d)(3) can be used to "set aside a judgment for fraud on the court." North Dakota courts have inherent power to vacate judgments through fraud upon the court, deception and/or interests of justice. *Yorke v. Yorke*, 3 N.D. 343, 351, 55 N.W. 1095, 1098-1099 (1893); *Freeman v. Wood*, 11 N.D. 1, 7, 88 N.W. 721, 723 (1901); *Lamb v. King*, 70 N.D. 469, 473, 296 N.W. 185, 187 (1941); *In Re Braun*, 145 N.W.2d 482, 484-85 (N.D.1966).

The NDSC Justices illegally issued Supreme Court Order No. 20160285 on 8-17-16 and No. 20170161 on 4-5-17 to cover up Holkesvig's 3rd PCR appeal. All orders and rulings issued by the State's Judiciary since 8-17-16 must be void and vacated for lack of jurisdiction. *Albrecht v. Metro Area Ambulance*, 1998 ND 132, ¶¶9-17, 580 N.W.2d 583. The NDSC Justices creatively issued two retaliatory Orders to assist the State's cover up of past, present and future illegal acts. Both docket records have missing documents. The NDSC Justices falsely stated without jurisdiction, proof, facts, evidence, arguments or open court hearings in 20160285 that, "Randy Holkesvig is a vexatious litigant." It was sent by "email only," (high emphasis on *email only*). It was libelous, slanderous and recklessly filed without proper legal notice, without service of process, without jurisdiction, without cause, without a statute cited, without a court hearing, without evidence and no summons. Oral arguments and evidentiary hearings were never held. Holkesvig's reply briefs and arguments were not filed by the clerks in both Orders. The NDSC Justices unfettered, illegal, vindictive action has been repeated in other NDSC Case Nos. 20100273, 20140101, 20140283, 13 lawsuits and 3 PCR appeals. On 5-25-17 and 7-6-17 Hager cited "vexatious" using these 2 Orders and N.D.Sup.Ct.Admin.R.58(7) to cover up Holkesvig's 3rd PCR appeal.

The animosity, hatred and retaliatory agenda displayed by the State's Judiciary is reprehensible, disgusting and deplorable. The NDSC Justices created this "vexatious litigant rule" in March-April 2016 to

retaliate against Holkesvig for filing 3 lawsuits against VandeWalle, Maring and Edison/Erickson. Judges Thelan, Jensen and the NDSC Justices cited "vexatious" to cover up *Holkesvig v. Uglem*, Grand Forks County District Court No. 18-2017-CV-00028 and *Holkesvig v. Larson*, Grand Forks County District Court No. 18-2017-CV-00029 lawsuits.

The U.S. Supreme Court's precedent set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge "is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872 (2009) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Holkesvig's 6-5-08 plea that involved Clapp and Vigeland, and 3 PCR applications that involved Christofferson, Hager and NDSC Justices, has facts, complaints and evidence that required all of them to recuse, disqualify or withdraw under the due process clause. Due process guarantees "an absence of actual bias" on the part of a judge. *In re Murchison*, 349 U.S. 133, 136 (1955). The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias." "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Tumey v. State of Ohio*, 273 U.S. 510, 532 (1927).

Due process demands disqualification when "extreme facts" proved "the probability of actual bias." *Caperton*, supra, at 886-887. Holkesvig cited oaths of office, state statutes, professional codes of conduct and constitutional protections that provides more "protection than due process requires." *Caperton*, supra, at 890. "The touchstone of due process is protection of the individual against arbitrary action of the government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). A substantive due process violation requires proof that a government official's conduct was conscience-shocking and violated one or more fundamental rights. *Moran v. Clarke*, 296 F.3d 638, 643-651 (8th Cir.2002) (en banc). A state court's decision may be overturned as a federal due process violation if the impartiality of judges can be legitimately questioned. *Withrow*, supra, at 47; *Mayberry*, supra, at 466.

A party seeking recusal must show that a judge has a "deep-seated and unequivocal antagonism that would render fair judgment impossible" to obtain recusal. *Liteky v. United States*, 510 U.S. 540, 555-556 (1994). Holkesvig's facts and evidence proves the State's Judiciary has bias and prejudice and refused to recuse that violates due process. The North Dakota disqualification directions for Judicial Conduct recusal rules are not merely guidelines, they are absolutely mandatory as stated and supported in *Matter of Estate of Risovi*, 429 N.W.2d 404, 407 (N.D.1988); *Baier v. Hampton*, 440 N.W.2d 712, 715 (N.D.1989); *State v. Jacobson*, supra, at ¶¶6-52.

Deliberate deception of a court by the presentation of false evidence is incompatible with "rudimentary demands of justice." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). It was reaffirmed in *Pyle v. Kansas*, 317 U.S. 213 (1942). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Napue v. Illinois*, 360 U.S. 26, 269 (1959). "If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself . . . it invites anarchy." *Olmstead v. United States*, 277 U.S. 438, 471-485 (1928). "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U.S. 196, 220 (1882).

REASONS TO GRANT THE WRIT

By issuing retaliatory orders, rulings and opinions to cover up the clerks, prosecutors and executive's illegal acts, Hager and/or the NDSC Justices are not neutral, fair or impartial. The improprieties and hypocrisy displayed by the State's Judiciary indicates a total disregard for due process that gives an unacceptable risk of actual bias and prejudice against Holkesvig. Neutrality and due process helps guarantee that life, liberty or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law and it allows a litigant to present his case with

assurance that no member of the court is "predisposed to find against him." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Hager's biased ruling and NDSC prejudicial opinion "must be forbidden if the guarantee of due process is to be adequately implemented, it must forbid the risk of actual bias or prejudgment." *Withrow*, supra, at 47. Dishonest judges were exposed and convicted through "Operation Greylord," for illegally "fixing cases" in Chicago. *United States v. Maloney*, 71 F. 3d 645 (CA7 1995); *Bracy v. Gramley*, 520 U.S. 899 (1997). Rogue prosecutors, executives and the State's Judiciary "fixed" Holkesvig's 3 PCR appeals. The U.S. Supreme Court has the inherent power to vacate the PCR judgment and/or grant the Writ of Certiorari to clarify the law, due process and oath requirements regarding judicial recusals, withdrawals and disqualifications.

CONCLUSION

In the interests of justice and due process, this Writ of Certiorari should be granted.

Respectfully submitted,

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