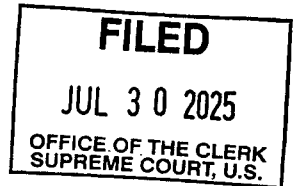


NO.

25-5557

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DANNY W. HOWELL--PETITIONER

VS.

STATE OF INDIANA--RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF INDIANA

DANNY W. HOWELL

THE GEO GROUP INC.

NEW CASTLE CORRECTIONAL FACILITY

P.O. BOX A

NEW CASTLE, IN. 47362

QUESTION(S) PRESENTED

- I. "WHETHER PRISONER MADE A SUFFICIENT FACTUAL SHOWING TO ESTABLISH 'GOOD CAUSE' FOR DISCOVERING ACTUAL JUDICIAL BIAS BY SHOWING THAT TRIAL JUDGE MADE SPECIFIC ALLEGATIONS AS TO HOW HIS CASE WAS AFFECTED?"
- II. "DID [THE] INDIANA SUPREME COURT ERR IN HOLDING . . . THAT EVERY IND. R. P. POST-CONVICTION REMEDIES RULE 1, SECTION 12 MOTION CONSTITUTES [A] PROHIBITED 'SECOND OR SUCCESSIVE' PETITION AS [A] MATTER OF LAW?"
- III. "WHETHER PROSECUTOR'S FAILURE TO CORRECT TESTIMONY OF A WITNESS THAT HE KNEW TO BE FALSE WAS USED TO OBTAIN A CONVICTION, EVEN THOUGH OTHER TESTIMONY REGARDING THE WITNESS'S CREDIBILITY WAS INTRODUCED?"

LIST OF PARTIES

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

CHIEF JUSTICE OF INDIANA

315 STATEHOUSE

INDIANAPOLIS, IN. 46204

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APPENDIX F: NEW EVIDENCE MATERIALLY EXCULATORY AND IMPEACHING

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix E-1 to the petition and is

☒ reported at 565 U.S. 847; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix E-20 to the petition and is

☒ reported at 2010 U.S. Dist. Lewis 40581; 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☐ is unpublished.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 C-1 to the petition and is

☒ reported at 253-OR-112 (Mar 12, 2025); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Ind. Ct. App. No. 2009 IND. App. Unpub. 16213 597 court appears at Appendix A-1 to the petition and is

☒ reported at 90A02-0809-PL-879 (Apr. 2, 2009); or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

1.
JURISDICTION

☐ FOR ~~CASES FROM FEDERAL COURTS:~~

☒ FOR CASES FROM STATE COURTS:

THE DATE ON WHICH THE HIGHEST STATE COURT DECIDED MY CASE WAS MAY 12, 2025. PETITION FOR REHEARING IS NOT ALLOWED UNDER INDIANA ORIGINAL ACTION RULE 5 (C). A COPY OF THAT DECISION APPEARS AT APPENDIX C-1.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257 (a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C., 3 Const. Art. III, § 2, Cl. 2. JURISDICTION OF SUPREME COURT _____ P. 25

IN ALL CASES AFFECTING AMBASSADORS, OTHER PUBLIC MINISTERS AND CONSULS, AND THOSE IN WHICH A STATE SHALL BE A PARTY, THE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION, IN ALL THE OTHER CASES BEFORE MENTIONED, THE SUPREME COURT SHALL HAVE APPELLATE JURISDICTION, BOTH AS TO LAW AND FACT, WITH SUCH EXCEPTIONS, AND UNDER SUCH REGULATIONS AS THE CONGRESS SHALL MAKE.

U.S.C.S. Const. Art. VI, Cl. 2. SUPREME LAW _____ P. 25

THIS CONSTITUTION, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE PURSUANT 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.

IND. CONST. ART. 7, § 4. JURISDICTION OF SUPREME COURT _____ P. 29

THE SUPREME COURT SHALL HAVE NO ORIGINAL JURISDICTION EXCEPT IN ADMISSION TO THE PRACTICE OF LAW; DISCIPLINE OR DISBARMENT OF THOSE ADMITTED; THE UNAUTHORIZED PRACTICE OF LAW; REMOVAL AND RETIREMENT OF JUSTICES AND JUDGES; SUPERVISION OF THE EXERCISE OF JURISDICTION BY THE OTHER COURTS OF THE STATE; AND ISSUANCE OF WRITS NECESSARY OR APPROPRIATE IN AND OF ITS JURISDICTION. THE SUPREME COURT SHALL EXERCISE APPELLATE JURISDICTION UNDER SUCH TERMS AND CONDITIONS AS SPECIFIED BY RULES EXCEPT THAT APPEALS FROM A JUDGMENT IMPOSING A SENTENCE OF DEATH

SHALL BE TAKEN DIRECTLY TO THE SUPREME COURT. THE SUPREME COURT SHALL HAVE, IN ALL APPEALS OF CRIMINAL CASES, THE POWER TO REHEAR ALL QUESTIONS OF LAW AND TO REVIEW AND REVISE THE SENTENCE IMPOSED.

U. S. C. S. CONST AMEND. 6 RIGHTS OF THE ACCUSED _____ P. 24

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

U. S. C. S. CONST. AMEND. 8 BAIL - PUNISHMENT _____ P. 17

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CUEL AND UNUSUAL PUNISHMENTS INFLICTED.

U. S. C. S. CONST. AMEND. 14 _____ P. 26

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABIDGE 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.

~~28 USC § 1254 (1) COURT OF APPEALS; CERTIORARI IN RELEVANT PART P. 2, 28~~
~~CASES IN THE COURT OF APPEALS MAY BE REVIEWED BY THE SUPREME COURT BY THE FOLLOW-~~
~~ING METHODS:~~

~~(1) BY WRIT OF CERTIORARI GRANTED UPON THE PETITION OF ANY PARTY TO ANY CIVIL OR~~
~~CRIMINAL CASE, BEFORE OR AFTER RENDERING OF JUDGMENT OR DECREE;~~

28 USC § 1257 (a) STATE COURTS; CERTIORARI IN RELEVANT PART P. 2

(a) FINAL JUDGMENTS OR DECREES RENDERED BY THE HIGHEST COURT OF THE STATE IN WHICH A DECISION COULD BE MADE, MAY BE REVIEWED BY THE SUPREME COURT BY WRIT OF CERTIORARI WHERE THE VALIDITY OF A TREATY OR STATUTE OF THE UNITED STATES IS DRAWN IN QUESTION ON THE GROUND OF IT BEING REPUGNANT TO THE CONSTITUTION OR TREATIES OR STATUTES OF, OR ANY COMMISSION HELD OR AUTHORITY EXERCISED UNDER THE UNITED STATES.

28 USC § 2403 (a) INTERVENTION BY UNITED STATES OR A STATE; CONSTITUTIONAL QUESTION.

(a) IN ANY ACTION, SUIT OR PROCEEDING IN A COURT OF THE UNITED STATES TO WHICH THE UNITED STATES OR ANY AGENCY, OFFICER OR EMPLOYEE THEREOF IS NOT A PARTY, WHEREIN THE CONSTITUTIONALITY OF ANY ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST IS DRAWN IN QUESTION, THE COURT SHALL CERTIFY SUCH FACT TO THE ATTORNEY GENERAL, AND SHALL PERMIT THE UNITED STATES TO INTERVENE FOR PRESENTATION OF EVIDENCE, IF EVIDENCE IS OTHERWISE ADMISSIBLE IN THE CASE, AND FOR ARGUMENT ON THE QUESTION OF CONSTITUTIONALITY, THE UNITED STATES SHALL, SUBJECT TO THE APPLICABLE PROVISIONS OF LAW,

HAVE ALL THE RIGHTS OF A PARTY AND BE SUBJECT TO ALL LIABILITIES OF A PARTY AS TO COURT COST TO THE EXTENT NECESSARY FOR A PROPER PRESENTATION OF THE FACTS AND LAW RELATING TO THE QUESTION OF CONSTITUTIONALITY. P. 27

INDIANA CODE SECTION 35-37-1-4 PROSECUTION FOR SEX CRIME IN RELEVANT PART EVIDENCE RULE 412 (a) PROVIDES THAT:

IN A PROSECUTION FOR A SEX CRIME, EVIDENCE OF THE PAST SEXUAL CONDUCT OF THE VICTIM OR WITNESS MAY NOT BE ADMITTED, EXCEPT:

(1) EVIDENCE OF THE VICTIM'S OR WITNESS'S PAST SEXUAL CONDUCT WITH THE DEFENDANT;

(2) EVIDENCE WHICH SHOWS THAT SOME PERSON OTHER THAN THE DEFENDANT COMMITTED THE ACT UPON WHICH THE PROSECUTION IS FOUNDED;

(3) EVIDENCE THAT THE VICTIM'S PREGNANCY AT TIME OF TRIAL WAS NOT CAUSED BY THE DEFENDANT; OR

(4) EVIDENCE OF CONVICTION FOR A CRIME TO IMPERCH UNDER RULE 609. App A7-8

INDIANA CODE SECTION 35-42-1-3 CHILD MOLESTING IN RELEVANT PART P. 11

(a) A PERSON WHO, WITH A CHILD UNDER FOURTEEN (14) YEARS OF AGE KNOWINGLY OR INTENTIONALLY PERFORMS OR SUBMITS TO SEXUAL INTERCOURSE OR OTHER SEXUAL CONDUCT COMMITTS MOLESTING A LEVEL 5 FELONY.

INDIANA CODE SECTION 35-42-1-9 SEXUAL MISCONDUCT WITH A MINOR IN RELEVANT PART P. 11

(a) A PERSON AT LEAST EIGHTEEN (18) YEARS OLD WHO KNOWINGLY OR INTENTIONALLY

PERFORMS OR SUBMITS TO SEXUAL INTERCOURSE OR OTHER SEXUAL CONDUCT WITH A CHILD LESS THAN SIXTEEN (16) YEARS OF AGE, COMMITS SEXUAL MISCONDUCT WITH A MINOR, A LEVEL 5 FELONY.

INDIANA CODE SECTION 35-50-2-14. REPEAT SEXUAL OFFENDER, IN RELEVANT PART P.12

(a) AS USED IN THIS SECTION, "SEX OFFENSE" MEANS A FELONY CONVICTION UNDER I.C. 35-42-4-1 THROUGH I.C. 35-42-4-9 OR UNDER I.C. 35-46-1-3.

(b) THE STATE MAY SEEK TO HAVE A PERSON SENTENCED AS A REPEAT SEXUAL OFFENDER FOR A SEX OFFENSE DESCRIBED IN SUBSECTION (a) BY ALLEGING, ON A PAGE SEPARATE FROM THE REST OF THE CHARGING INSTRUMENT, THAT THE PERSON HAS ACCUMULATED ONE (1) PRIOR UNRELATED FELONY CONVICTION FOR A SEX OFFENSE DESCRIBED IN (a).

(c) AFTER A PERSON HAS BEEN CONVICTED AND SENTENCED FOR A FELONY DESCRIBED IN SUBSECTION (a), THE PERSON HAS ACCUMULATED ONE (1) PRIOR UNRELATED FELONY SEX OFFENSE CONVICTION.

WOOD V. STATE, 534 N.E. 2d 1146 (Ind. Ct. App. 1989) 25

STATUTES AND RULES

~~28 U.S.C. § 1254 (1)~~ 2

28 U.S.C. § 1257 (a) 2

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IND. RULES OF PROF. CONDUCT 3.1 _____ 13

IND. RULES OF PROF. CONDUCT 3.3 _____ 13

IND. APPELLATE RULE 1(B)(3) _____ 8

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ARTICLE III, § 2, cl. 2 _____ 25

ARTICLE VI, cl. 2 _____ 25

IND. CONST. ART. 7, § 4 _____ 8, 9

~~E.g., JACKSON, THE FEDERAL PROSECUTOR, 31 S. AM. INST. CRIM. L. & CRIMINOLOGY~~ _____ 16

3, 6 (1940-1941)

STATEMENT OF THE CASE

IND. APPELLATE RULE 56 (B) 3 PRECLUSION OF SUPREME COURT REVIEW OF A DENIAL OF AN AUTHORIZATION BY A COURT OF APPEALS TO FILE A SECOND OR SUCCESSIVE APPLICATION " (id) APPLIES ONLY TO AN ACTUAL "DENIAL", NOT SOME OTHER TYPE OF RULING THAT MIGHT HAVE "THE EFFECT OF DENYING" AUTHORIZATION . . . TO FILE A SECOND . . . APPLICATION. " STATE OF INDIANA EX REL. DANNY W. HOWELL V. WELLS CIRCUIT COURT, ET AL., NO. 283-08-112 (MAY 12, 2025). THUS, FOR EXAMPLE, A CIRCUIT COURT'S DENIAL OF A PETITIONER'S OR IND. R.P. POSTCONVICTION REMEDIES RULE 1, SECTION 12 MOVANT'S ARGUMENT THAT AN APPLICATION IS NOT IN FACT "SUCCESSIVE" IS REVIEWABLE ON WRIT OF HABEAS CORPUS BY VIRTUE OF INDIANA CONSTITUTION, ARTICLE 7, SECTION 4 AND IND. APPELLATE RULE 4 (B) (3), EVEN THOUGH THE CIRCUIT COURT'S RULING "HAD THE EFFECT OF DENYING" AUTHORIZATION . . . TO FILE A SECOND . . . APPLICATION. " Id. AS THE SUPREME COURT EXPLAINED IN INDIANA CONSTITUTION, ARTICLE 7, § 4, SUPRA, "[T]HE SUBJECT OF . . . [A WRIT OF HABEAS CORPUS] PETITION [APPELLATE RULE 4 (B) (3)] IS NOT THE COURT OF APPEALS' DENIAL OF AN AUTHORIZATION BUT RATHER THE "VERY DIFFERENT QUESTION" OF "THE LOWER COURTS' REFUSAL TO RECOGNIZE THAT . . . [THE CURRENT] POSTCONVICTION REMEDIES RULE 1, § 1 (a) PETITION IS [THE MOVANT'S] FIRST, NOT HIS SECOND." Id. App. C, D.

AND, AS THE INDIANA SUPREME COURT OBSERVED IN RULING AGAINST MOVANT OVER GOVERNMENTAL ARGUMENT THAT RESTED ON "LAW OF THE CASE" DOCTRINE, THIS DOCTRINE "CANNOT POSE AN INSURMOUNTABLE OBSTACLE" TO GRANTING RELIEF IN "AN APPROPRIATE CASE" BECAUSE THE DOCTRINE "SIMPLY EXPRESSES COMMON JUDICIAL PRACTICE" AND "DOES NOT LIMIT THE COURT'S POWER." INDIANA CONSTITUTION, ARTICLE 7, § 4. App.

HERE, THE CONSTITUTIONALITY OF AN ACT OF CONGRESS WAS DRAWN INTO QUESTION? IND. CONST. ART. 7, §4, PROVIDES: THE SUPREME COURT SHALL HAVE NO ORIGINAL JURISDICTION EXCEPT IN ADMISSION TO THE PRACTICE OF LAW; DISCIPLINE OR DISBARMENT OF THOSE ADMITTED; THE UNAUTHORIZED PRACTICE OF LAW; REMOVAL AND RETIREMENT OF JUSTICES AND JUDGES; SUPERVISION OF THE EXERCISE OF JURISDICTION BY OTHER COURTS OF THE STATE; AND ISSUANCE OF WRITS NECESSARY OR APPROPRIATE IN AID OF ITS JURISDICTION. THE SUPREME COURT SHALL EXERCISE APPELLATE JURISDICTION UNDER SUCH TERMS AND CONDITIONS AS SPECIFIED BY RULES EXCEPT THAT APPEALS FROM A JUDGMENT IMPOSING A SENTENCE OF DEATH SHALL BE TAKEN DIRECTLY TO THE SUPREME COURT. THE SUPREME COURT SHALL HAVE, IN ALL APPEALS OF CRIMINAL CASES, THE POWER TO REVIEW ALL QUESTIONS OF LAW AND TO REVIEW AND REVISE THE SENTENCE IMPOSED. . . . THE COURT SHOULD HAVE GRANTED IT (IN VIEW) OF THE ISSUES OF PUBLIC IMPORTANCE INVOLVED AND THE CONFLICTING PRIOR DECISIONS. 388 Ind. App. R. P. 57 (B)(2) & NOT-FOR-PUBLICATION MEMORANDUM DECISION. FOR EXAMPLE, IN HOWELL V. STATE, NO. 90A02-0407-CR-571 (Ind. Ct. App. Apr. 13, 2005); TRIAL COURT NO. 90C01-0310-PA-5;

SHORTLY AFTER HOWELL MARRIED LORINDA IN OCTOBER OF 2002, HER THEN THIRTEEN-YEAR OLD DAUGHTER B.S. EXHIBITED INCORRIGIBLE BEHAVIOR AT HOME AND HER NEW SCHOOL (TT. 130-31, 159, 176-78). B.S. TOLD HER MOTHER HOWELL'S SON, B.H. HAD MOLESTED HER. HOWELL'S SON DENIED IT, AFTER DISCOVERING DIARY ENTRIES REVEALING SHE LIVED. App. C, 16-17; 31. SCHOOL REPORT CARDS REFLECTED BEHAVIORAL PROBLEMS EXISTED PRIOR TO ACCUSING HOWELL App. C, 17; 31. NOTES, LETTERS INDICATE MOTIVE BEGINNING FEBRUARY OF 2003, HOWELL AND LORINDA SOUGHT COUNSELING FOR B.S. WITH SOCIAL WORKER, TED RAHSEY. DURING THESE FIVE MEETINGS THEY DISCUSSED B.S.'S SEXUAL

MISCONDUCT WITH STEP-BROTHER B.H. AND HER INCORRIGIBLE BEHAVIOR, ADMITTING SHE
LIED. THOSE COUNSELING SESSIONS ENDED MID MARCH OF 2003 (TR. 137, 245-49, 294-95). B.S.
COULD NOT HAVE DISCUSSED HOWELL MOLESTING HER WITH RAMSEY. App. C, 17; 31

ON JULY 19, 2003, B.S. DID NOT PROVIDE ANY INFORMATION TO OFFICER GREG STEELE
OF THE BLUFFTON POLICE DEPARTMENT OR WENDY GARRET OF THE WELLS COUNTY OFFICE OF
FAMILY AND CHILDREN, WHEN SHE WAS INTERVIEWED THE FIRST TIME (TR. 112-19, 124, 170). B.S. PRE-
VIDED INFORMATION WHEN IT WAS RECORDED IN HER SECOND AND THIRD INTERVIEWS (TR. 126-
27, 109-10, 117-19, 120-24, 180). TWO - EXTRA-JUDICIAL CHILDREN IN NEED OF SERVICES WERE ABSD,
TRIAL JUDGE DAVID L. HANSELMAN, JR. PRESIDED AND SOCIAL WORKER, RAMSEY TESTIFIED UNDER
PROSECUTOR MICHAEL LUTZENAELISER'S DIRECT EXAMINATION QUESTIONS AS STATE PARTIALLY
ACCREDITING EXPERT,

HOWELL'S TRIAL COUNSEL WANTED TO MAKE AN OFFER OF PROOF TO ESTABLISH THE NECESS-
ARY FOUNDATION UNDER IND. EVIDENCE RULE 3412 (a) (2) EVIDENCE WHICH SHOWS THAT SOME
PERSON OTHER THAN THE DEFENDANT COMMITTED THE ACT UPON WHICH THE PROSECUTION IS
FOUNDED. ON APRIL 14, 2004, A MOTION IN LIMINE HEARING WAS HELD, WHERE PROSECUTOR ARGUED
THAT THIS EVIDENCE WAS INADMISSIBLE UNDER THE RAPE SHIELD STATUTE, INDIANA CODE SEC-
TION 35-37-4-4. App. A, 3; 2, 18, 32. IN GRANTING STATES MOTION IN LIMINE TRIAL JUDGE RULED
TO "EXCLUDE ANY EVIDENCE RELATING TO B.S.'S PAST SEXUAL CONDUCT."

TRIAL JUDGE OVERRULED TRIAL COUNSEL'S OBJECTION TO RAMSEY'S PARTIALLY ACCRED-
ITING TESTIMONY. . . THAT IT WAS MISLEADING AND IT WOULD ALLOW THE JURY TO DRAW AN
UNRELIABLE INFERENCE OF HOWELL'S GUILT BECAUSE B.S. ALSO CLAIMED SHE WAS MOL-
ESTED BY HOWELL'S SON, B.H.. (TR. 246-47). App. A, 17-24

FOUR OF STATE'S WITNESSES, NAMELY, DEBRA EVANS, MARY SCOTTHERN, KIMBERLY ROBERTS, AND TONY RHODES TESTIFIED THAT THEY SAW HOWELL TOUCHING B.S. INAPPROPRIATELY ON THEIR WAYS TO HOWELL'S HOME (TT. 196-98, 209, 213-14, 223, 234-37). STATE APPELLATE COURT'S OPINION DID NOT . . . MENTION THAT FOUR OF STATE'S DEFENSE WITNESSES, NAMELY, DIANNE MCMILLEN, TAMMY AND JOE VAN HECSTER AND LORINDA HOWELL TESTIFIED THAT THEY DID NOT SEE HOWELL TOUCHING B.S. INAPPROPRIATELY (TT. 267, 273, 286, 307). TESTIMONY WAS RECONCILED.

B.S. TESTIFIED THAT SHE TOLD HER MOTHER THAT HOWELL WAS TOUCHING HER INAPPROPRIATELY AND SHE DID NOTHING (TT. 156-57, 182-83). B.S. DID NOT TELL HER MOTHER ABOUT THE SEXUAL INTERCOURSE WITH HOWELL (TT. 169). B.S. WAS NOT EXAMINED BY A DOCTOR (TT. 171). B.S. TESTIFIED THE SEXUAL ACTIVITY ONLY OCCURRED WHEN HOWELL CAME INTO HER ROOM AT NIGHT (TT. 132-34, 148, 152-54). B.S.'S MOTHER TESTIFIED THAT B.S. DID NOT TELL HER ABOUT ANY SEXUAL CONTACT WITH HOWELL (TT. 297-98, 302-03, 306). ABSENCE OF STATE FACTFINDINGS. 1d.

IN HOWELL V. STATE, 826 N.E.2d 164, [slip.op.] p. 2-4 (Ind.ct. App. 2005) ON APRIL 30, 2004, A JURY FOUND HOWELL GUILTY OF:

COUNT I: CHILD MOLESTING, A CLASS A FELONY UNDER IND. CODE § 35-42-1-3, THAT HOWELL PERFORMED OR SUBMITTED TO [SEXUAL INTERCOURSE] WITH B.S., A CHILD UNDER FOURTEEN-YEARS OLD, WHEN HE WAS AT LEAST TWENTY ONE-YEARS OLD, AND

COUNT II: SEXUAL MISCONDUCT WITH A MINOR, A CLASS B FELONY UNDER I.C. § 35-42-9, THAT HOWELL PERFORMED OR SUBMITTED TO [SEXUAL INTERCOURSE] WITH B.S., A CHILD WHO IS AT LEAST FOURTEEN-YEARS OLD, BUT NOT YET SIXTEEN-YEARS OLD, WHEN HE WAS AT LEAST TWENTY ONE-YEARS OLD; AND

HOWELL WAS SENTENCED AS A "HABITUAL FELONY OFFENDER UNDER STATE LAW" (M. 352, 354-56).
SEE I.C. § 35-50-2-14,

INDIANA COURT OF APPEALS ACTED CONTRARY TO, OR UNREASONABLY APPLIED, CLEARLY ESTABLISHED FEDERAL LAW WHEN IT REJECTED HIS CLAIM; IN SUM:

CONTRARY TO THE STATE'S ARGUMENT, THE FACT THAT SOCIAL WORKER RAMSEY'S TESTIMONY WAS WITHIN THE BOUNDARIES OF THE TYPE OF "PARTIALLY ACCREDITING" EXPERT TESTIMONY THAT MAY BE ADMISSIBLE IN A CHILD MOLEST PROSECUTION IN INDIANA DOES NOT MEAN THAT IT WASN'T ERROR TO ADMIT THAT TESTIMONY IN HOWELL'S CASE. IT WAS ERROR TO ADMIT RAMSEY'S "PARTIALLY ACCREDITING" TESTIMONY WERE BECAUSE THE JURY WASN'T INFORMED THAT THE ALLEGED VICTIM HAD ALLEGED THAT SHE HAD ALSO BEEN MOLESTED BY HOWELL'S SON, WHICH MADE THE TESTIMONY IN THE FORM OFFERED BY THE STATE, MISLEADING AND SUBJECTED HOWELL TO GRAVE DANGER OF UNFAIR PREJUDICE.

FURTHER, CONTRARY TO THE STATE'S ARGUMENT, HOWELL'S FAILURE TO SEEK ADMISSION AT TRIAL OF EVIDENCE, WHICH WOULD HAVE INFORMED THE JURY OF THE ALLEGED VICTIM'S ALLEGATIONS THAT HOWELL'S SON HAD ALSO MOLESTED HER, IS OF NO CONSEQUENCE TO WHETHER OR NOT IT WAS ERROR TO ADMIT RAMSEY'S TESTIMONY, WHICH HE DID TIMELY OBJECT TO AND PRESERVE AS AN ISSUE FOR APPEAL. FURTHERMORE, AS WITH THE CASE WITH ANY EVIDENCE, IT IS THE PARTY SEEKING ADMISSION OF THE EVIDENCE THAT BEARS THE BURDEN OF ESTABLISHING A PROPER FOUNDATION FOR ITS ADMISSION FOR A PROPER PURPOSE.

APP. A, 17-18

PETITIONER'S POSTCONVICTION COUNSEL FAILED TO FULFILL HIS DUTY AS AN ADVOCATE

AFTER EXAMINING THE EVIDENCE SUBMITTED IN THE POSTCONVICTION PROCEEDINGS, THE TRIAL COURT DENIED RELIEF BECAUSE HOWELL FAILED TO MEET HIS BURDEN OF PROOF. APP. A, 2-13; C, 2-42. HOWELL WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL IN POSTCONVICTION PROCEEDINGS BECAUSE:

1. COUNSEL FAILED TO APPRISE HIMSELF OF THE CASE LAW AND PROCEDURAL RULES RELEVANT TO THE CASE;
2. COUNSEL FAILED TO GATHER AND INTRODUCE THE EVIDENCE NECESSARY TO SUPPORT IND. RULES OF PROC. CONDUCT 3.1, MERITORIOUS CLAIMS AND CONTENTIONS;
3. COUNSEL'S CONDUCT WAS UNREASONABLE OVERALL, IND. RULES OF PROC. CONDUCT 3.3, LANDOR TOWARD THE TRIBUNAL,

BACK GROUND

HOWELL INITIALLY FILED A PETITION FOR A VERIFIED STATE WRIT OF HABEAS CORPUS ON JANUARY 5, 2005, NO. 77 COI-0501-MI-5, PRIOR TO HIS DIRECT APPEAL DECISION AND STATES FAILURE TO COMPORT WITH FAIR PROCEDURE, AND WITH DOCUMENTARY EVIDENCE SUPPORTING SUBSTANTIAL FACTS, EXHIBITS: A, B, C, D, E, F AND TWO AUDIO TAPES. APP. F, 13. BECAUSE PETITIONER WAS CHALLENGING THE VALIDITY OF HIS CONVICTION, IT WAS TRANSFERRED BACK TO THE SENTENCING COURT UNDER IND. POSTCONVICTION REMEDIES 1, SECTION 1(c), WHICH WAS ERRONEOUSLY WAS DATED MAY 15, 2005. ENTRY DATE WAS 1/21/2005. HOWELL V. HANUS.

HOWELL SUBSEQUENTLY FILED A VERIFIED PETITION REQUESTING APPOINTMENT OF SPECIAL PROSECUTOR, NUNC PRO TUNC AS OF FEBRUARY 22, 2005. AFTER MOTION FOR CHANGE OF JUDGE WAS FILED JANUARY 26, 2005, AFTER THE INMATE'S COUNSEL ENTERED HIS APPEARANCE FOR HIM IN NO. 90001-0501-PC-1, COUNSEL SHOULD HAVE TAKEN THE NECESSARY STEPS TO PRESENT THE EVID-

-ENCE TO SUPPORT HIS CLIENTS' CLAIMS: FIRST, THE FACT THAT JUDGES' BIAS AND/OR PREJUDICE
STEMMED FROM EXTRAJUDICIAL PROCEEDINGS REQUIRED REVERSAL; AND SECONDLY, JUDGE
DAVID L. HANSELMAN, SR., OBTAINED / TOOK JUDICIAL NOTICE WERE ACQUIRED PERSONAL
KNOWLEDGE OF THE DISPUTED EVIDENTIARY FACTS. ALTHOUGH TRANSCRIPTS WERE REQUEST-
ED AND A HEARING WAS HELD, MARCH 7, 2005, NO ACTUAL LEGAL REPRESENTATION OCCURRED.

THIS SITUATION WAS ONE OF REVERSAL, WHICH SHOULD HAVE BEEN EMPLOYED INSTEAD OF
A ROUTINE CHANCE JUDGE MOTION. THERE AN ABSENCE OF STATE RECORD. . . NO FINDING
WAS MADE BY THE STATE COURT ALL." App. F, 14-15.; HOWELL V. STATE.

IN HOWELL V. STATE, NO. 90A02-CB09-PC-029 (Ind. Ct. App. 2004), trans. denied. INDIANA
PUBLIC DEFENDER, JOHN BANNON AMENDED POSTCONVICTION RELIEF PETITION THAT WAS PREMIS-
ED ON THE VALIDITY OF THE CONVICTION, PROSECUTORIAL AND JUDICIAL MISCONDUCT TO AN
INEFFECTIVE ASSISTANCE CLAIM. App. A, 4 . . . WE PRESENTED NO WITNESSES OR EVIDENCE
AT THE POSTCONVICTION EVIDENTIARY HEARING. COUNSEL IN EFFECT CONCEDED THAT HOWELL
LACKED ANY MERITORIOUS CLAIM, App. 5-7 INCLUDING HIS CLAIM OF INEFFECTIVE ASSISTANCE
OF TRIAL COUNSEL ON COLLATERAL REVIEW. . . A FRIVOLOUS SUIT OR APPEAL CORRESPONDS
AT LEAST APPROXIMATELY, TO THE TORT OF MALICIOUS PROSECUTION, THAT IS, GROUNDLESS
LITIGATION; A SUIT OR APPEAL THAT IS NOT NECESSARILY GROUNDLESS BUT WAS FILED FOR AN
IMPROPER PURPOSE, SUCH AS DELAY, CORRESPONDS TO — INOARD IS AN INSTANCE OF —
ABUSE OF PROCESS. . . Id.

SEE HOWELL V. STATE, NO. 90C01-CB05-PC-2

— "TO PRECLUDE A PETITIONER WHO CAN DEMONSTRATE THAT HE OR SHE IS FACTUALLY INNOCENT
OF THE CRIMES THAT HE OR SHE WAS CONVICTED OF VIOLATES THE SUSPENSION CLAUSE . . . , AS WELL
WELL AS THE EIGHTH AMENDMENT'S BAN ON CRUEL AND UNUSUAL PUNISHMENT." App. A-F

THE INDIANA PUBLIC DEFENDER KNOWINGLY ASSISTED A JUDGE AND PROSECUTOR IN CONDUCT THAT IS A VIOLATION OF APPLICABLE RULES OF JUDICIAL CONDUCT AND OTHER LAW. STATE PRESENTED A 'RED HERRING' INTENDED TO OVERTHROW THE COURT'S ATTENTION FROM THE REAL ISSUES RAISED AT TRIAL LEVEL, ON APPEAL AND IN STATE POSTCONVICTION PROCEEDINGS.

FOLLOWING UNSUCCESSIVE APPEALS, PETITIONER FILED ANOTHER PETITION FOR A WRIT OF HABEAS CORPUS IN DISTRICT COURT CLAIMING COURT IMPROPERLY LIMITED HIS CROSS-EXAMINATION OF THE ALLEGED VICTIM, WHOSE ATTEMPTING TO SHOW HER MOTIVE FOR ACCUSING HIM FALSELY. THE DISTRICT COURT DENIED THE PETITION, App E, 20-23, WHICH WAS REVERSED BY THE SEVENTH CIRCUIT COURT OF APPEALS, Id. at 16. PETITIONER WAS SQUANDERED THOUSANDS OF DOLLARS AND BARRED FOR ATTEMPTING TO RAISE THE BRADY CLAIM. ADDITIONALLY, ALL ATTEMPTS TO FILE A NEW EVIDENCE CLAIM HAS BEEN DENIED WHEN RETURNED TO STATE.

"[W]E CANNOT SAY THAT [PETITIONER], (RATHER THAN HIS COUNSEL) 'FAILED' TO ESTABLISH A RECORD SUFFICIENT TO ANALYZE HIS CLAIMS ON APPEAL AS THE RECORD CLEARLY ESTABLISHES, [PETITIONER] SOUGHT TO INTRODUCE NEW EVIDENCE IN 'EVIDENTIARY HEARING . . . [IN] POSTCONVICTION COURT.' WE REVIEW PETITIONERS . . . CLAIMS DE NOVO "BECAUSE STATE COURT RELIED ON STATE CASE LAW THAT EMPLOYS STANDARD DIFFERENT FROM FEDERAL CONSTITUTIONAL RULE: "WHERE THE TRIAL COURT HAS APPLIED THE WRONG LEGAL STANDARD. . . ." WHERE NEW EVIDENCE IS ADMITTED, SOME COURTS OF APPEALS HAVE CONDUCTED DE NOVO REVIEW ON THE THEORY THAT THERE IS NO RELEVANT STATE COURT DETERMINATION TO WHICH ONE COULD DEFER, STATE RENDERED PROCEDURAL COMPLIANCE IMPRACTICABLE App C, 1.

REASONS FOR GRANTING THE PETITION

INTRODUCTION TO A FEDERAL DEFENSE

a. "ALORD" BREYER V. HALEY, 124 S.Ct. 1647, 1652 (2004) ("THE CAUSE AND PREJUDICE STANDARD IS NOT A PERFECT SAFEGUARD AGAINST FUNDAMENTAL MISCARRIAGES OF JUSTICE. MURRAY V. CARRIER, 477 U.S. 478 (1986), THUS RECOGNIZED A NARROW EXCEPTION TO THE CAUSE REQUIREMENT WHERE A CONSTITUTIONAL VIOLATION WAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT OF THE SUBSTANTIVE OFFENSE." Id. at 496; ALORD SCHUPP V. DELO, 513 U.S. 298, 45 S.Ct. 651, 130 L.Ed.2d 808 (1995)

cf. AND AS THE SUPREME COURT OBSERVED IN RULING IN FAVOR OF A SECTION 2255 MOVANT OVER A GOVERNMENTAL ARGUMENT THAT RESTED ON THE "LAW OF THE CASE" DOCTRINE, THIS DOCTRINE "CANNOT BE AN INSURMOUNTABLE OBSTACLE TO GRANTING RELIEF IN 'AN APPROPRIATE CASE' BECAUSE THE DOCTRINE 'SIMPLY EXPRESSES COMMON JUDICIAL PRACTICE' AND DOES NOT 'LIMIT THE COURT'S POWER'." CASTRO V. UNITED STATES, 124 S.Ct. 786, 793 (2003) (CITING MBSSENGER V. ANDERSON, 225 U.S. 436, 444 (1912) (HOLMES, J.)).

b. PETITIONS NOT CLASSIFIED AS "SUCCESSIVE"

COMPARE CASTRO V. UNITED STATES, SUPRA, 124 S.Ct. 786, 789, 792-93 (2003) (PROSE FEDERAL PRISONERS' RULE 33 MOTION FOR NEW TRIAL, WHICH DISTRICT COURT RECHARACTERIZED AS § 2255 MOTION WITHOUT PREREQUISITES FOR SUCH RECHARACTERIZATION, COULD NOT BE "CONSIDERED A FIRST § 2255 MOTION" AND THEREFORE PRISONERS LATER § 2255 MOTION "CANNOT BE CONSIDERED A 'SECOND OR SUCCESSIVE MOTION'").

C. PROCEDURES AND STANDARDS IN PRE-AEDPA CASES.

"SEE ALSO" DRETKE V. HALEY, 124 S. CT. 1847, 1853 (2004) (STEVENS, J. DISSSENTING). ("THE STATE HAS. . . [AN] OVERRIDING OBLIGATION TO SERVE THE CAUSE OF JUSTICE" (QUOTING UNITED STATES V. AGURS, 427 U.S. 97, 111 (1976)); id. at 1856 (KENNEDY, J. DISSSENTING) ("THE RIGORS OF THE PENAL SYSTEM ARE THOUGHT TO BE MITIGATED TO SOME DEGREE BY THE DISCRETION OF THOSE WHO ENFORCE THE LAW, SEE, E.G., JACKSON, THE FEDERAL PROSECUTOR, 31 J. AM. NAT. LHM. L. & CRIMINOLOGY 3, 6 (1940-1941). . . . THE LAW MUST SERVE THE CAUSE OF JUSTICE. . . . EXECUTIVE DISCRETION CAN INSPIRE LITTLE CONFIDENCE IF OFFICIALS SWORN TO FIGHT INJUSTICE CHOOSE TO IGNORE IT."); BANKS V. DRETKE, 124 S. CT. 1256, 1275 (2004) ("WE HAVE SEVERAL TIMES UNDERSCORED THE 'SPECIAL ROLE PLAYED BY THE AMERICAN PROSECUTOR IN SEARCH FOR TRUTH IN CRIMINAL TRIALS'. COURTS, LITIGANTS, AND JURIES PROPERLY ANTICIPATE THAT 'OBLIGATIONS [TO REFRAIN FROM IMPROPER METHODS TO SECURE A CONVICTION], . . . PLAINLY RESTING UPON THE PROSECUTING ATTORNEY, WILL BE FAITHFULLY OBSERVED." (QUOTING STRICKLER V. GREENE, INFRA, AND BERGER V. UNITED STATES, INFRA)).

DISCUSSION

SEE, E.G., HALEY V. LOCKRELL, 306 F.3d 257, 264 (5TH CIR. 2002), VALD & REMANDED, 124 S. CT. 1847 (2004) (IN DECISION SUBSEQUENTLY VALATED BY SUPREME COURT IN DRETKE V. HALEY, SUPRA, 5TH CIRCUIT FOLLOWS 4TH CIRCUIT IN HOLDING] THAT THE ACTUAL INNOCENCE EXCEPTION APPLIES TO NONCAPITAL SENTENCING PROCEDURES INVOLVING A LARGER OR HABITUAL FELONY OFFENDER). THE 7TH CIRCUIT HAD INITIALLY RULED THAT THE ACTUAL INNOCENCE EXCEPTION APPLIES TO NONCAPITAL HABITUAL OFFENDER SENTENCING PROCEDURES, MILLS V. JORDAN, 479 F.2d 1273, 1278-79 (7TH CIR. 1992), BUT

THEREAFTER DECLARED THAT THE EXCEPTIONS APPLICATION TO SUCCESSIVE PETITION DEFENSE WAS BEEN SUPERSEDED BY AEDPA'S SPECIFIC RULES FOR SUCCESSIVE PETITIONS, HOPE V. UNITED STATES, 108 F.3d 119 (7th Cir. 1997); 382 FOOTNOTE, INFERA, ALSO.

IN CASES IN WHICH A HABEAS CORPUS PETITIONER'S "MISCARRIAGE OF JUSTICE" ARGUMENT IS FOUNDED UPON A CLAIM OF "ACTUAL INNOCENCE, WHETHER OF THE SENTENCE OR OF THE CRIME CHARGED," THE FEDERAL COURT MUST, BEFORE REACHING AND RESOLVING SUCH A CLAIM, "FIRST ADDRESS ALL NONDEFAULTED CLAIMS FOR COMPARABLE RELIEF AND OTHER GROUNDS FOR CAUSE TO EXCUSE THE PROCEDURAL DEFAULT," ORTEGA V. HALEY, SUPRA, 124 S. CT. AT 1852. THIS SEQUENCING REQUIREMENT WAS DESIGNED BY THE SUPREME COURT AS A MEANS OF AVOIDING THE "THRESHOLD LEGAL QUESTIONS OFTEN ACCOMPANYING CLAIMS OF ACTUAL INNOCENCE," Id. AT 1853. SEE ALSO Id. AT 1854 WHEN A DEFAULT CAN BE EXCUSED ON SOME SIMPLER GROUND OR FULL RELIEF CAN BE GRANTED ON A NONDEFAULTED CLAIM.

SEE, E.G., WIGGINS V. SMITH, 539 U.S. 510, 528 (2003) ("STATE COURT'S ASSUMPTION THAT THE [SOCIAL SERVICE] RECORDS DOCUMENTED INSTANCES OF THIS [SEXUAL] ABUSE WAS 'INCORRECT' AND ACCORDINGLY 'REFLECTS' AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING," § 2254(d)(2); MILLER-EL V. COKKREIL, 537 U.S. 322, 340 (2003) ("A DECISION ADJUDICATED ON THE MERITS IN A STATE COURT AND BASED A FACTUAL DETERMINATION WILL NOT BE OVERTURNED ON FACTUAL GROUNDS UNLESS OBJECTIVELY UNREASONABLE IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING," § 2254(d)(2) ... [BUT] FEDERAL COURT CAN DISAGREE WITH A STATE COURT'S CREDIBILITY DETERMINATION AND, WHEN GUIDED BY AEDPA,

CONCLUDE THE DECISION WAS UNREASONABLE"; TAYLOR V. MADDOX, 366 F.3d 992, 999 (9th Cir. 2004) ("UNREASONABLE DETERMINATION" CLAUSE, . . . APPLIES . . . TO SITUATIONS WHERE PETITIONER CHALLENGES THE STATE COURT'S FINDINGS BASED ON THE CLAIM THAT THE FINDING IS UNSUPPORTED BY SUFFICIENT EVIDENCE, . . . THAT THE PROCESS EMPLOYED BY THE STATE IS DEFECTIVE, . . . OR THAT NO FINDING WAS MADE BY THE STATE COURT AT ALL. APP. A, B, C.

NO DOUBT THE SIMPLEST IS THE SITUATION WHERE THE STATE COURT SHOULD HAVE MADE A FINDING OF FACT BUT NEGLECTED TO DO SO. TAYLOR V. MADDOX, SUPRA AT 1000; HOWELL V. STATE NO. 90001-0305-PC-2, TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION FOR RECUSAL UNDER IND. R.P. POSTCONVICTION REMEDIES 1 (4)(b) BECAUSE THE JUDGE IN A HIGHLY SIMILAR CASE, RECUSAL WAS MANDATORY DUE TO IMPARTIALITY CONCERNS AND THERE WAS NO EVIDENCE ON THE RECORD. 322, C.3, STIVERS V. KNOX COUNTY DEPT. OF PUBLIC WELFARE, 482 N.E.2d 748. (Ind. Ct. App. 1985) (JUDGE WHO SERVED ON COMMUNITY LAND PROTECTION TEAM THAT OVERSAW THE CASE DECIDING WHETHER A DAUGHTER WAS IN NEED OF SERVICES AND MAKING HER A WARD OF THE DEPARTMENT OF PUBLIC WELFARE COULD NOT PRESIDE OVER THE CASE).

AT THE WORST, THIS SITUATION IS A CLASSIC EXAMPLE OF EX PARTE COMMUNICATION CONTEMPLATED AND PROHIBITED BY IND. CODE OF JUDICIAL CONDUCT CANON 3 (A)(1); PROSECUTING LITIGANT ("PARTIALLY ACCREDITED" EXPERT") DISCUSSING POTENTIAL LITIGATION AS WELL AS THE EVIDENCE, ADMISSIBLE OR INADMISSIBLE, IN SUPPORT OF THAT LITIGATION WITHOUT THE PRESENCE OF THE OTHER PARTY AND ALL DONE IN THE PRESENCE OF THE JUDGE WHO WILL PRESIDE OVER THAT LITIGATION WHEN ITS FILED CONSTITUTES AN INTOLERABLE SITUATION. C. DISQUALIFICATION (1) A JUDGE SHOULD DISQUALIFY HIMSELF IN A PROCEEDING IN WHICH HIS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED, INCLUDING BUT NOT LIMITED TO INSTANCES WHERE: (a) HE HAS A BIAS OR PREJUDICE CONCERNING A PARTY, OR PERSONAL KNOWLEDGE OF DISPUTED FACTS.

FACTS CONCERNING THE PROCEEDING. Id. at 751.

THE LAW PRESUMES THAT A JUDGE IS IMBIAL AND UNPREJUDICIAL IN MATTERS BEFORE HIM, HOWEVER, THE RECORD MUST SHOW ACTUAL BIAS OR PREJUDICE OF THE JUDGE AGAINST THE DEFENDANT BEFORE A CONVICTION WILL BE REVERSED ON THE GROUND THAT THE JUDGE SHOULD HAVE REFUSED HIMSELF. BANKS V. DRETKE, 124 S. Ct. 1256 (2004) ("STATE PERSISTED IN IMPAIRING [PROSECUTING WITNESS'S] INFORMANT STATUS AND MISLEADINGLY REPRESENTED THAT IT HAD COMPLIED IN FULL WITH ITS BRADY DISCLOSURE OBLIGATIONS" AND PROSECUTOR'S FAILURE TO CORRECT WITNESS'S "MISREPRESENT [ATIONS] [OF] HIS DEALINGS WITH POLICE" IN TESTIMONY AT GUILT AND PENALTY PHASES OF TRIAL: "WHEN POLICE OR PROSECUTORS CONCEAL SIGNIFICANT EXCULPATORY OR IMPRACHING MATERIAL IN STATE'S POSSESSION, IT IS ORDINARILY INCUMBENT ON THE STATE TO SET THE RECORD STRAIGHT.")

IN CHRONOLOGICAL CASE SUMMARY (CCS) NO. 90001-0301-PC-1, MOTION FOR CHANGE OF VENUE FROM THE JUDGE & COUNTY AFTER PRESCRIBED TIME HAS RUN; SEE, E.G., MILLER V. FORD, 124 S. Ct. 2441, 2448 (2004) (O'CONNOR, J., CONCURRING) ("IF THE PETITIONER IS AFFIRMATIVELY MISLED . . . BY THE STATE, EQUITABLE TOLLING MIGHT BE APPROPRIATE"); SIMILARLY, KING V. BELL, 2004 U.S. App. LEXIS 15402, at *5, *6 (6th Cir. Aug. 3, 2004) (GRANTING EQUITABLE TOLLING BECAUSE "GOVERNMENT'S FAILURE TO PRODUCE THE VOIR DIRE [TRANSCRIPTS] PREVENTED [PETITIONER] FROM COMPLYING WITH THE COURT'S ORIGINAL SCHEDULING ORDER"; IN ABSENCE OF EQUITABLE TOLLING IN SUCH SITUATIONS, "THE GOVERNMENT COULD PREVENT ANY DEFENDANT FROM FILING A TIMELY CLAIM SIMPLY BY FAILING TO PRODUCE RELEVANT EVIDENCE IN A REASONABLE PERIOD, AGREEING TO A COURT APPROVED EXTENDED FILING SCHEDULE, AND THEN SAND BAGGING HIM WITH A STRIKE OR LIMITATIONS DEFENSE"). App. F, 13-14.

IN HOWELL V. STATE, NO. 90AD2-0407-CR-571 (Ind. Ct. App. 2005) APPELLATE COURT'S RECON-
STRUCTION OF THE LOWER COURT'S DECISION WAS A "CLEARLY ERRONEOUS" DETERMINATION OF
THE FACTS. HOWELL WANTED TO BRING OUT B.S.'S LIE ON CROSS-EXAMINATION TO SHOW THAT
SHE WOULD LIE ABOUT BEING SEXUALLY ASSAULTED IN ORDER TO GET ATTENTION, AND
THUS HAD A MOTIVE TO ACCUSE HIM FALSELY. THE TRIAL JUDGE, SECONDED BY THE INDIANA
COURT OF APPEALS, REFUSED TO PERMIT THIS CROSS-EXAMINATION. THE COURT OF APPEALS
HELD THAT ALTHOUGH THE STATE'S RAPE SHIELD LAW MAKES AN EXCEPTION FOR A PRIOR
FALSE CHARGE OF CHILD MOLESTATION, IND. RULE OF EVID. 412 (a)(2), B.S.'S FALSE CHARGE
DID NOT HAVE "SUFFICIENT PROBATIVE VALUE TO OUTWEIGH ITS INFLAMMATORY AND PREJUDI-
CIAL NATURE," AND THEREFORE, UNDER ANOTHER SECTION OF THE STATUTE, § 412 (a)(4), IT
WAS INADMISSIBLE. COMPARE REDMOND V. KINGSTON, 240 F.3d 590, 591-92 (7th Cir. 2001).

GENERALLY APPLICABLE EVIDENTIARY RULES LIMIT INQUIRY INTO SPECIFIC INSTANCES
OF CONDUCT THROUGH THE USE OF EXTRINSIC EVIDENCE AND THROUGH CROSS-EXAMINA-
TION WITH RESPECT TO GENERAL CREDIBILITY ATTACKS, NO SUCH LIMIT APPLIES TO CREDIBIL-
ITY ATTACKS BASED ON MOTIVE OR BIAS. REDMOND, at 593. . . WITH ALL DUE RESPECT,
THE COURT OF APPEALS' ANALYSIS AND CONCLUSION CANNOT BE CONSIDERED A REASON-
ABLE APPLICATION OF THE SUPREME COURT'S CONFRONTATION DOCTRINE. Id.

FURTHER, CONTRARY TO STATE'S ARGUMENT, CHILD ABUSE SYNDROME EVIDENCE MUST
SATISFY THE RELIABILITY REQUIREMENT OF IND. EVID. RULE 702(b) AS WELL AS RULE 403'S
BALANCING TEST. STEWART V. STATE, 652 N.E.2d 490, 1995 IND. LEXIS 91 (IND. 1995). IT WAS
ERROR TO PERMIT FURTHER TESTIMONY OF COMMON BEHAVIOR CHARACTERISTICS OF SEXUAL
ABUSED CHILDREN AFTER DEFENDANT'S OBJECTION PARTICULARLY IN LIGHT OF THE QUEST-

TIONABLE RELIABILITY OF CHILD SEXUAL ABUSE SYNDROME EVIDENCE FOR PROVING ABUSE. FLENER V. STATE, 656 N.E.2d 1140, 1142 (Ind. 1995). FURTHERMORE, "THERE IS NO FOUNDATION IN THE STATE COURT PROCEEDINGS FOR ASDPA'S DEFERENCE" AND "FEDERAL COURT HAS NO ALTERNATIVE BUT TO CONDUCT AN INDEPENDENT REVIEW OF THE CLAIM" BECAUSE STATE COURT'S RULING ON PETITIONER'S MOTION TO AMEND POSTCONVICTION PETITION FOR AN EVIDENTIARY HEARING AND ON THE MERITS OF THE INEFFECTIVE ASSISTANCE CLAIM . . . RELED UPON WHAT [STATE COURT] PERCEIVED TO BE A FAILURE ON [HOWELL'S] PART TO MAKE AN OFFER OF PROFF TO INTRODUCE RAPE SHIELD EVIDENCE. HOWELL V. STATE, NO. 96A02-0809-PC-B29 (Ind. Ct. App. Feb. 2009).

STATE POSTCONVICTION COURT "NEVER DIRECTLY ADDRESSED THE SPECIFIC ISSUE OF WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT HOWELL'S CONVICTION" BECAUSE THE COURT ERRONEOUSLY BELIEVED THAT CLAIM HAD BEEN RESOLVED ON DIRECT APPEAL; "[A]CCORD, DRETKE V. HALBY, 399 U.S. 291, 124 S.Ct. 871 (1956) (KENNEDY, J., DISSENTING) ("THE LAW MUST SERVE THE CAUSE OF JUSTICE . . . PERHAPS SOME MIGHT SAY THAT HALBY'S INNOCENCE IS A MERE TECHNICALITY, BUT THAT WOULD MISS THE POINT. IN A SOCIETY DEVOTED TO THE RULE OF LAW, THE DIFFERENCE BETWEEN VIOLATING OR NOT VIOLATING A CRIMINAL STATUTE CANNOT BE SHABBED ASIDE AS A MINOR DETAIL"). "WHERE THE TRIAL COURT HAS APPLIED THE WRONG LEGAL STANDARD" IN MAKING THE FACTUAL DETERMINATION (IN LIGHT OF THE RECORD EVIDENCE THAT WAS PRESENTED AT THE EVIDENTIARY HEARING; APPELLATE COURT'S DETERMINATION THAT "THERE WAS 'OVERWHELMING EVIDENCE OF HOWELL'S GUILT' INDEPENDENT OF [IMPROPERLY ADMITTED EVIDENCE]" ALSO WAS A "CLEARLY ERRONEOUS" DETERMINATION IN LIGHT OF THE EQUIPOISED TESTIMONIAL EVIDENCE PRESENTED AT HOWELL'S TRIAL." APPELLATE COURT'S FINDING THAT THE TESTIMONIAL EVIDENCE WAS SUFFICIENT. . . CONSTITUTES A "CLEARLY ERRONEOUS" APPLICATION UNDER § 2254 (a) (1), OF THE PRINCIPLES SET FORTH . . . IN PINNEY V. STATE, 154 N.E.2d

556, 557, 1985 W.L. 104390; JACKSON V. VIRGINIA, (1974) 413 U.S. 337, 99 S.Ct. 2781, 61 L.Ed.2d 560 AND [in re] WINSUM, (1970) 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368. "HOWELL IS ACTUALLY INNOCENT"

IN WATERS V. STATE, 574 N.E.2d 911 (Ind. 1991) AN INMATE WAS ENTITLED TO A NEW HEARING ON HIS PETITION FOR POSTCONVICTION RELIEF BECAUSE HIS COUNSEL'S LACK OF REPRESENTATION FOLLOWING THE ENTRY OF HIS APPEARANCE DENIED THE INMATE OF A FAIR HEARING. Id. at 912. MARTINEZ V. RYAN, 566 U.S. 1, DID NOT BECOME AVAILABLE ON HABEAS CORPUS REVIEW UNTIL 2012. IN BALDWIN V. BERGE, 124 S.Ct. 1347 (2004) THE COURT RESOLVED A NARROW, BUT-SPECIFIC QUESTION: WHETHER A PETITION FOR DISCRETIONARY REVIEW IN THE STATE SUPREME COURT HAD ADEQUATELY PRESENTED A FEDERAL CONSTITUTIONAL CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, EVEN THOUGH THE PLEADING'S DISCUSSION OF THAT ISSUE DID NOT (UNLIKE "IN RESPECT TO OTHER CLAIMS") "EXPLICITLY . . . REFER TO A FEDERAL CLAIM" OR "REFER [] TO PROVISIONS OF THE FEDERAL CONSTITUTION," "PROVIDE[D] NO CITATION OF ANY CASE THAT MIGHT HAVE ALERTED THE COURT TO THE ALLEGED FEDERAL NATURE OF THE CLAIM," AND "DID NOT EVEN CONTAIN A FACTUAL DESCRIPTION SUPPORTING THE CLAIM." Id. at 1351. THE HABEAS CORPUS PETITIONER ARGUED, AND A DIVIDED PANEL OF THE 9TH CIRCUIT HAD AGREED, THAT THE PETITIONER HAD NONETHELESS "FAIRLY PRESENTED" THE CLAIM TO THE STATE SUPREME COURT BECAUSE "THE [STATE COURT] JUSTICES WOULD HAVE, OR SHOULD HAVE, REALIZED THAT THESE CLAIM RESTED UPON FEDERAL LAW" IF THEY HAD AVAILED THEMSELVES OF THE OPPORTUNITY TO READ . . . THE OPINION OF THE LOWER STATE TRIAL COURT." Id. at 1350 (EMPHASIS IN ORIGINAL). THE SUPREME COURT REJECTED THIS ARGUMENT, HOLDING THAT "ORDINARILY

A STATE PRISONER DOES NOT FAIRLY PRESENT A CLAIM TO A STATE COURT IF THAT COURT MUST READ BEYOND A PETITION OR A BRIEF (OR A SIMILAR DOCUMENT) THAT DOES NOT ALERT IT TO THE PRESENCE OF A FEDERAL CLAIM IN ORDER TO FIND MATERIAL, SUCH AS A LOWER COURT OPINION IN THE CASE, THAT DOES SO, Id. at 1351. IN REACHING THIS SITUATION - SPECIFIC CONCLUSION, HOWEVER, JUSTICE BREYER, WRITING ON BEHALF OF SEVEN OTHER JUSTICES, ISSUED A MORE GENERAL ADMONITION AGAINST INTERPRETING THE "FAIR PRESENTATION" REQUIREMENT TO "IMPOSE] UNREASONABLE PROCEDURAL BURDENS UPON STATE PRISONERS WHO MAY EVENTUALLY SEEK HABEAS CORPUS". Id. at 1351.

THE REASONING BEHIND THE INDIANA SUPREME COURT'S TREATMENT OF THE ACTUAL JUDICIAL BIAS CLAIM IN THE WRIT OF HABEAS CORPUS ESCAPES EASY UNDERSTANDING:

1. APPELLATE COURT ERRED IN HOLDING THAT A STATE INMATE HAD FAIRLY PRESENTED A FEDERAL INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM TO THE STATE SUPREME COURT AS FEDERAL HABEAS CORPUS LAW DID NOT REQUIRE STATE APPELLATE JUDGES TO READ LOWER COURT OPINIONS; BALDWIN, SUPRA, 129 S. CT. AT 1350; WATERS, AT 912.
2. INDIANA'S RAPE SHIELD RULE BARS EVIDENCE OFFERED TO PROVE THAT A VICTIM OR WITNESS ENGAGED IN OTHER SEXUAL BEHAVIOR. BUT THE RULE DOES NOT RENDER INADMISSIBLE EVIDENCE OF SPECIFIC INSTANCES OF THE ALLEGED VICTIM'S OR WITNESS'S SEXUAL BEHAVIOR IF EXCLUSION WOULD VIOLATE THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO CONFRONTATION OR HIS FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO PRESENT A DEFENSE. Saylor v. State, 559 N.E. 2d 332 (Ind. Ct. App. 1990); Redding v. State, 644 N.E. 2d 1067 (Ind. Ct. App. 2006); AND TURNER v. State, 754 N.E. 2d 671, 676 (Ind. Ct. App. 2001). TRIAL COURT IMPROPERLY EXCLUDED UNDER RAPE SHIELD STATUTE "ANY EVIDENCE THAT

INDICATED THAT VICTIM HAD COMMITTED ACTS OF SPECIFIC ACTS OF SEXUAL CONDUCT WITH ANOTHER INDIVIDUAL OTHER THAN DEFENDANT, AS THIS INFRINGED ON HIS RIGHT OF CON- PRESENTATION. WOOD V. STATE, 534 N.E.2d 1146 (Ind. Ct. App. 1989); AND

3. CRIMINAL DEFENDANTS HAVE A CONSTITUTIONAL RIGHT TO BE TRIED BEFORE A FAIR AND IMPARTIAL JUDGE. BRACK V. GRIMLEY, 520 U.S. 899, 904-05, 138 L.Ed.2d 973, 117 S.Ct. 1793 (1997). SEE BANKS, SUPRA, 124 S.Ct. 1256, 1272, 1279 (2004) ("COINCIDENT WITH THE THIRD BRADY COMPONENT (PREJUDICE), PREJUDICE WITHIN THE COMPASS OF THE 'CAUSE AND PREJUDICE' REQUIREMENT EXISTS WHEN THE SUPPRESSED EVIDENCE IS 'MATERIAL' FOR BRADY PURPOSES"; "AT LEAST AS TO THE PENALTY PHASE, STATE'S 'SUPPRESSION OF [PROSECUTION WITNESS'S] INFORMANT STATUS' WAS 'MATERIAL' FOR PURPOSES OF BRADY DOCTRINE AND 'PREJUDICIAL' FOR PURPOSES OF PROCEDURAL DEFAULT DOCTRINE BECAUSE 'ONE CAN HARDLY BE CONFIDENT THAT BANKS RECEIVED A FAIR TRIAL, GIVEN THE JURY'S IGNORANCE OF [WITNESS'S] TRUE ROLE IN THE INVESTIGATION AND TRIAL OF THE CASE' AND 'ONE COULD NOT PLAUSIBLY DENY THE EXISTENCE OF THE REQUISITE 'REASONABLE PROBABILITY OF A DIFFERENT RESULT' HAD THE SUPPRESSED INFORMATION BEEN DISCLOSED TO THE DEFENSE").

ADVERSE CONSEQUENCES EXIST FROM THE CONVICTION SUFFICIENT TO SATISFY THE CASE OR CONTROVERSY REQUIREMENTS OF ARTICLE III, SECTION 2, CLAUSE 2 AND ARTICLE VI, CLAUSE 2. [A] COURT OF APPEALS ABUSES IT DISCRETION IN FINDING THE STATE COURT'S APPLICATION OF STICKLAND REASONABLE ON THE BASIS OF EVIDENCE NOT PROPERLY BEFORE THE STATE COURT; [THE STICKLAND STANDARD OF REVIEW ASSESSES PREJUDICE UNDER A PREPONDERANCE - OF THE EVIDENCE RATHER THAN A REASONABLE - PROBABILITY - STANDARD AND [THERE NO FACTUAL RECORD BASIS FOR A CONCLUSION THAT COURTS-

EL'S PERFORMANCE WAS CONSTITUTIONALLY DEFICIENT; THE RECORD CLEARLY INDICATES PROSECUTOR'S FAILURE TO CORRECT TESTIMONY OF A WITNESS THAT PROSECUTOR KNEW TO BE FALSE VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, EVEN THOUGH OTHER TESTIMONY REGARDING WITNESS'S CREDIBILITY WAS INTRODUCED, NAPUE V. ILLINOIS, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217, 1959 U.S. LEXIS 211 (1959).

AS A MATTER OF LAW, THE STATE MAY NOT USE THE RAPE SHIELD STATUTE, I.C. 335-37-4-4, TO EXCLUDE EVIDENCE ESTABLISHING ANOTHER POSSIBLE SOURCE OF THE VICTIM'S BEHAVIORAL PROBLEMS AND IMPEDE A DEFENDANT'S ABILITY TO REBUT INFERENCES THAT THE JURY IS ALLOWED TO DRAW FROM EXPERT TESTIMONY CONCERNING CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME, IS CONTRARY TO, TURNER V. STATE, 759 N.E. 2d at 676; AND

THE STATE CANNOT USE THE RAPE SHIELD STATUTE, I.C. 335-37-4-4, BOTH AS A SHIELD AND AS A SWORD, IT WAS ERROR TO APPLY A RULE MECHANISTICALLY TO PREVENT THE DEFENSE FROM EITHER OFFERING ITS VERSION OF THE FACTS OR ASSURING THROUGH CROSS-EXAMINATION THAT THE TRIER OF FACT HAS A SATISFACTORY BASIS FOR EVALUATING THE TRUTH OF THE WITNESS'S TESTIMONY. IS CONTRARY TO, TURNER V. STATE, 759 N.E. 2d at 677-80, WHERE THE STATE BOLSTERED ITS THEORY WITH EXPERT TESTIMONY ABOUT CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME, BY OPENING THE DOOR TO SUCH EVIDENCE, DISCLOSURE OF MINORS' PRIOR SEXUAL ACT BECAME MANDATORY, AND THE DEFENDANT WAS ENTITLED TO IMPEACH THE CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME EVIDENCE THROUGH CROSS-EXAMINATION WHICH COULD HAVE ESTABLISHED ANOTHER POSSIBLE SOURCE FOR MINORS' EMOTIONAL UPSET. SEE, NAPUE V. ILLINOIS, SUPRA, 360 U.S. at 269.

PRISONER MADE A SUFFICIENT FACTUAL SHOWING TO ESTABLISH "GOOD CAUSE" FOR DISCOVERY OR HIS CLAIM OF ACTUAL JUDICIAL BIAS BY SHOWING THAT THE TRIAL JUDGE WAS MAKING SPECI-

THE ALLEGATIONS AS TO HOW HIS CASE WAS AFFECTED. BRACEY V. GRAMLEY, 520 U.S. 899, 138 L.Ed. 2d 97, 117 S.Ct. 1793 (1997). THE DUE PROCESS CLAUSE "REQUIRES THAT A DEFENDANT RECEIVE A FAIR TRIAL IN A FAIR TRIBUNAL BEFORE A JUDGE WITH NO ACTUAL BIAS AGAINST THE DEFENDANT OR INTEREST IN THE OUTCOME OF HIS PARTICULAR CASES." Id. 904-05.

THE SUBJECT OF THE [CERTIORARI] PETITION UNDER SUPREME COURT RULE 10 (b) IS THE ABSENCE OF JURISDICTION OF THE RESPONDENT COURT OR THE FAILURE OF THE RESPONDENT COURT TO ACT WHEN IT WAS UNDER A DUTY TO ACT. STATE OF INDIANA EX. TC. DANNY W. HOWELL V. WALLS CIRCUIT COURT, ET. AL., NO. 255 - OR - H2 (IND. 5-12-2025) App. B, D.

GOVERNMENT'S ARGUMENT BASED ON "LAW OF THE CASE" DOCTRINE, WHEN ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT. 28 U.S.C. § 2403 (a) MAY APPLY HERE. COMPARE, 28 U.S.C. § 2244 (b) (3) (B) (WEST 1994 & SUPP. 2003). THE STATUTORY PRECLUSION OF CERTIORARI REVIEW OF A "DENIAL OR AN AUTHORIZATION BY A COURT OF APPEALS TO FILE A SECOND OR SUCCESSIVE APPLICATION" (Id.) APPLIES ONLY TO AN ACTUAL "DENIAL", NOT SOME OTHER TYPE OF RULING THAT MIGHT HAVE "THE EFFECT OF DENYING" AUTHORIZATION. . . TO FILE A SECOND . . . APPLICATION. CASTRO V. UNITED STATES, SUPRA, 124 S.Ct. 786, 791 (2003). THUS, FOR EXAMPLE, A CIRCUIT COURT'S DENIAL OF A HABEAS CORPUS PETITIONERS OR SECTION 2255 MOVANT'S ARGUMENT THAT AN APPLICATION IS NOT IN FACT "SUCCESSIVE" IS REVIEWABLE ON CERTIORARI, EVEN THOUGH THE CIRCUIT COURT'S RULING "HAD THE EFFECT OF DENYING AUTHORIZATION. . . TO FILE A SECOND . . . APPLICATION." Id. AS THE SUPREME COURT EXPLAINED IN CASTRO V. UNITED STATES, SUPRA, "THE 'SUBJECT OF . . . [A CERTIORARI] PETITION [IN SUCH A CASE] IS NOT THE COURT OF APPEALS' 'DENIAL OF AN AUTHORIZATION' BUT THE 'VERY DIFFERENT QUESTION' OF THE LOWER COURT'S

REFUSAL TO RECOGNIZE THAT. . . [THE CURRENT] § 2255 MOTION IS [THE MOVANT'S] FIRST, NOT HIS SECOND.¹ Id. See also id. at 792, ACCORD PULER V. FORD, SUPRA, 124 S. Ct. at 2447 (2004) ("IN CASTRO, WE HELD THAT A FEDERAL DISTRICT COURT CANNOT SU SPONTE RECHARACTERIZE A PRO SE LITIGANT'S MOTION AS A FIRST § 2255 MOTION UNLESS IT INFORMS THE LITIGANT OF THE CONSEQUENCES OF THE RECHARACTERIZATION, THEREBY GIVING THE LITIGANT THE OPPORTUNITY TO [CONTEST] THE RECHARACTERIZATION, OR TO WITHDRAW OR AMEND THE MOTION. App. D, 516

HERE, THE STATE SUPREME COURT FAILED TO PROVIDE THE PROCEDURES OR THE FACILITIES FOR AN ADEQUATE INQUIRY, CONTRARY TO BRADY V. GRANLEY, SUPRA, 520 U.S. at 909. STATE COURT'S REFUSAL TO CONSIDER CLAIM OF SUPPRESSION OF EXCULPATORY EVIDENCE AS PREVIOUSLY DETERMINED WAS NOT PROCEDURAL DEFAULT BARRING FEDERAL HABEAS CORPUS REVIEW, SINCE CLAIM WAS RISE FOR FEDERAL REVIEW. CONN V. BELL, 566 U.S. 449, 124 S.Ct. 1769, 173 L.Ed. 2d 701, 2009 U.S. LEXIS 3248. [1] THE RIGHT TO A FAIR TRIAL, GUARANTEED TO STATE CRIMINAL DEFENDANTS BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, IMPOSES ON STATES CERTAIN DUTIES CONSISTENT WITH THEIR SOVEREIGN OBLIGATION TO ENSURE "THAT JUSTICE SHALL BE DONE" IN ALL CRIMINAL PROSECUTIONS. UNITED STATES V. AGURS, SUPRA, 427 U.S. 47, 41, 94 S.Ct. 2392, 49 L.Ed. 2d 342 (1976) (QUOTING BERGER V. UNITED STATES, 295 U.S. 78, 28, 55 S.Ct. 429, 79 L.Ed. 1314 (1935)). IN BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). WE HELD THAT WHEN A STATE SUPPRESSES EVIDENCE FAVORABLE TO AN ACCUSED THAT IS MATERIAL TO GUILT OR TO PUNISHMENT, THE STATE VIOLATES THE DEFENDANT'S RIGHT TO DUE PROCESS, "IRRESPECTIVELY OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION." Id. at 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215, [*45].

FURTHER, CONTRARY TO STATE COURT'S FINDINGS THE TRIAL JUDGE'S REFUSAL TO SUB-

"BUT THE QUESTION OF 'MATERIALITY' TO THE JURY VIOLATED THE DUE PROCESS CLAUSE AND DEFENDANT'S RIGHT TO A JURY TRIAL", INTER ALIA, PROSECUTOR'S ACTION PREVENTED JURY FROM EVALUATING WITNESS'S TESTIMONY. SEE ALSO BANKS, SUPRA, 124 S. CT. AT 1277. IN NAPUE V. ILLINOIS, SUPRA,

"PROSECUTOR KNEW THAT HE HAD PROMISED CONSIDERATION TO WITNESS, HE DID NOT CORRECT THE FALSE TESTIMONY."

"ACCORDS WIGGINS V. SMITH, SUPRA, 539 U.S. AT 528, THE STATE COURT'S ASSUMPTION THAT THE [SOCIAL SERVICE] RECORDS DOCUMENTED INSTANCES OF THIS ABUSE HAS BEEN SHOWN TO BE INCORRECT BY CLEAR AND CONVINCING EVIDENCE', § 2254 (2)(1)": "THE RECORD CONTAINS NO MENTION OF SEXUAL ABUSE, MUCH LESS OF THE REPEATED MOLESTATIONS AND RAPES OF PETITIONER"; MILLER-EL V. COCKRELL, SUPRA, 537 U.S. AT 340 ('FACTUAL DETERMINATIONS BY STATE COURTS ARE PRESUMED CORRECT ABSENT CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY, § 2254 (2)(1), . . . [BUT A] FEDERAL COURT CAN DISAGREE WITH A STATE COURT'S CREDIBILITY DETERMINATION AND, WHEN GUIDED BY AEDPA, CONCLUDE . . . THAT THE FACTUAL PREMISE WAS INCORRECT BY CLEAR AND CONVINCING EVIDENCE').

"OTHER EVIDENCE WAS INTRODUCED THAT THE PUBLIC DEFENDER HAD PROMISED TO DO WHAT HE COULD FOR THE WITNESS."

THE COURT HELD THAT THE FACT THAT THE FALSE TESTIMONY WENT TO WITNESS'S CREDIBILITY DID NOT AFFECT THE PRINCIPLE THAT FALSE EVIDENCE COULD NOT BE USED TO OBTAIN A CONVICTION. IN ADDITION, THE FACT THAT OTHER EVIDENCE REGARDING THE WITNESS'S CREDIBILITY WAS INTRODUCED DID NOT REMOVE THE TINT OF THE FALSE TESTIMONY. (Id. at 269.

AFTER EXHAUSTING OPPORTUNITIES FOR HEARING AND REHEARING, A PARTY MAY SEEK REVIEW FROM THE SUPREME COURT ON A PETITION FOR WRIT OF CERTIORARI. 28 U.S.C. § 1254 (1).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Danny W. Howell, 138701

Date: JULY 30, 2025