Case No. 25-5703

IN THE SUPREME COURT OF THE UNITED STATES

IN RE STEVEN RAY WYCOFF, PETITIONER

vs:

WARDEN NICK LAMB, RESPONDENT

PETITION FOR A WRIT OF HABEAS CORPUS

LIFE WITHOUT POSSIBILITY OF PAROLE CASE

STEVEN WYCOFF, Petitioner,
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(Respondent' Council of Record)

Questions Presented

Mr. Wycoff's habeas petition presents exceptional circumstances that have sharply divided the courts below. Since Mr. Wycoff's 1976 murder conviction, without (Brady) materials evidence has come to light exposing the prosecution acted in bad faith, violated petitioner's right of confrontation, and knowingly allowed perjured statements to stand uncorrected. In addition, newly discovered evidence reveals that both of petitioner's trial attorneys operated under an actual conflict of interest in choosing to represent potential state witnesses interest over their client-petitioner and, withheld from client, trial court, and jury documented proof of the state prosecutor's false statements made during closing arguments and six new witnesses have come forth to offer reliable testimony tending to show that blood and mustard spillage (i.e., the sole evidence upon which this conviction has been upheld for the last 35-years) occurred when the victim's body was removed and thereafter petitioner was escorted along and through the exact same extraction path accounting for small spots of blood and mustard to be on his shoes. Despite substantial new evidence of his innocence, no court, state or federal, has ever held a hearing to assess the half-dozen new witnesses that show Mr. Wycoff is innocent.

The questions presented are:

1. Whether upon a court of appeals' denial of leave to file a second federal habeas application AEDPA's § 2244(b) (3) (E) prohibits any party from seeking rehearing en banc?
2. Whether transfer to the district court for a hearing pursuant to this Court's original habeas jurisdiction is warranted in the unusual life without possibility of parole case where the petitioner has raised a substantial case of innocence, the lower federal courts refused to address his innocence in his second federal habeas petition and no state or federal court has held an evidentiary hearing to examine his new evidence?
3. When considered pursuant to the core requirements of due process right to be heard and to rebut the state court decisions on post-conviction petitioner were summary denials, assigning no reasons, and the court of appeals' denial favored petitioner with no reasoning, analysis, findings of fact, or legal basis for denying a second federal habeas application, where (and/or what process) is the avenue for seeking relief if petitioner's new claim did meet the AEDPA's §§ 2244(b)(2(B)(i) and 2244(b)(2)(B)(ii) requirements?
4. Whether and to what extent the AEDPA applies to original habeas petitions and if remand is granted pursuant to an original habeas what requirements of the AEDPA (and to what extent) are applicable below?
5. Where does the onus fall when the prosecution and trial counsel absent mutual knowledge to withhold, both denied Petitioner and all the judiciary to date the ssole document that would have established that Petitioner's original trial counsel functioned under an actual prejudicial conflict of interest and false testimonial statements during final rebuttal closing arguments by the prosecution?

Parties to the Proceedings Below

This petition stems from a habeas corpus proceeding in which petitioner, Steven Ray Wycoff, was the movant before the United States Court of Appeals for the Eighth Circuit. Mr. Wycoff is a prisoner sentenced to life without possibility of parole and in the custody of Nick Lamb, Acting Warden of the Iowa State Penitentiary.

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Petition for a Writ of Habeas Corpus

Petitioner, Steven Ray Wycoff respectfully requests that this court vacate his 1976 murder in the first degree conviction and remand for a new jury trial or in the alternative transfer for hearing and determination his application for habeas corpus to the district court in accordance with its authority under 28 U.S.C. § 2241(b).

Opinion Below

The opinions of the United States Court of Appeals for the Eighth Circuit is published at Wycoff v Ludwick, _____ F. 3d _____, 2010 WL103349 (8th Cir 2010) and See, Attachments hereto "A" & "B".

Statement of Jurisdiction

The order(s) of the court of appeals denying a filing of rehearing en banc and authorization to file a successive petition were entered on January 5, 2011 and December 2, 2010 respectfully. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241, 2254, 2254(A), 1651(A) and Article III of the US Constitution.

Relevant Constitutional and Statutory Provisions

The Fourteenth Amendment of the United States Constitution states, in relevant part: "Nor shall any state deprive any person of life, liberty, or property, without due process of law...."

The Sixth Amendment of the United States Constitution states, in relevant part: "to have the assistance of counsel for his defense."
28 U.S.C. § 2241(2010):
28 U.S.C. § 2244 (2010):
28 U.S.C. § 2254 (2010):

Statement of the Case

On November 3, 1975, inmate Cecil Polson of the Iowa State Penitentiary

November 3, 1975 a prisoner by the name of Cecil Polson was stabbed numerous times in his cell in cell-house 18 of the Iowa State Penitentiary. Petitioner Wycoff and at least three other inmates were segregated shortly thereafter and detained in the maximum security cell-house220 of the penitentiary for investigation of the stabbing and murder of Polson. Subsequent to Mr. Wycoff's detention, a grand jury was convened to investigate and indict the individual(s) responsible for Polson's murder. December 17, 1975 Mr. Wycoff alone was indicted by the grand jury for the murder of Mr. Polson. Due to hid

indigence, Mr. Wycoff was appointed Counsel for his defense. Attorneys Kent Hutchenson and Gordon Liles, law partners, were appointed by the court to represent Mr. Wycoff in the criminal trial proceedings.

The prosecution's case against Wycoff was circumstantial. Mr. Wycoff's defense was one of alibi. Mr. Wycoff called his alibi witness James Cain. He testified that at the time of the screams were heard in the cell-house on November 3, 1975, Mr Wycoff was nowhere near the area of the cell-house where the screams were coming from (Appendix p. 22-25) Upon cross-examination by The prosecutor, Mr. Cain was asked whether he had ever told a correctional officer Bowen that he knew Mr. Wycoff was involved in the murder. (Appendix p. 26-29) Mr. Cain denied any such conversation. (Appendix p. 27-28). In closing argument Mr. Wycoff's counsel argued that Mr. Cain's testimony was unrefuted as the prosecutor never brought in Officer Bowen to contradict or impeach Cain. (Appendix p.29) the prosecutor in closing rebuttal argument told the jury the Mr. Bowen was not a guard, he was under suspension and that he was un cooperative. (Appendix p. 30) In state post-conviction proceeding in 1983 correctional officer Bowen was subpoenaed to testify upon Mr. Wycoff's claim that he was denied effective conflict-free counsel at his criminal trial
in 1976. Mr. Bowen testified that in 1976 at the time of Mr. Wycoff's criminal trial that he was a correctional officer at the Iowa State Penitentiary. He stated that he was subject to disciplinary proceedings and that for those proceedings he had retained Mr. Wycoff's counsel to represent his interests. Further stated that prior to Mr. Wycoff's in 1976 he was requested by the prosecution to testify against Mr. Wycoff/ He stated that he had told both his/Mr. Wycoff's counsel prior to Mr. Wycoff's trial, and the prosecutor that he had no knowledge concerning the case. Specifically, he told the prosecutor, when he was subpoenaed for the trial that he had never had no conversation with witness Cain where Cain said that Wycoff was involved in the murder. He stated he was told by the prosecutor to go away. (Appendix p. 38-40) It is undisputed that the trial court at the criminal trial in 1976 wass never alerted to the concurrent representation of Mr. Bowen by Wycoff's trial counsel. Further it is undisputed that at the time of the prosecutor's closing rebuttal he was aware the Mr. Bowen had denied any knowledge of a conversation with Mr. Cain. Specifically, he told the prosecutor when he was subpoenaed as a witness that Cain had never told him Mr. Wycoff was involved in the murder.

Mr. Wycoff was granted a new trial by the Iowa Court of Appeals in 1985. On the prosecutor's misconduct in closing argument. However the award of the new trial was reversed and post-conviction relief denied by the Iowa Supreme Court upon further review of the Iowa Court of Appeals decision. See Wycoff v. State, 382 N.W. 2d 462 (Iowa 1986).

The united States District Court Southern District of Iowa, denied habeas relief, pursuant to 28 U.S.C.§ on January 21 1988. The United States Court of Appeals for the

Eighth Circuit affirmed the denial of habeas Corpus relief on March 13, 1989. It further denied rehearing on April 18, 1989, See Wycoff v. Nix, 869 F.2d 1111 (8th Cir. 1989).

Newly Discovered Witnesses

Since the time of trial, Wycoff has learned of new information from six new witnesses, who did not testify at trial.

The Robinson-Bey, Rinehart, Cain, Page affidavits; the Willis' deposition and Prough's tape recording contain new evidence. They explain away the most critical and significant evidence, the blood and mustard on Wycoff's shoes, as being from an accidental exposure due to the ambulance attendant spilling blood and mustard off the body of the victim while removing it, and exposing Wycoff to it when he was moved through the area of the spill 45 minutes later.

Wycoff is advancing an **"actual innocence claim"** which is an exception to the Iowa statute of limitations (this limitation does not apply to a ground of fact or law that could have been raised within that applicable time periods).

Newly Discovered Evidence of a Prejudicial Conflict of Interest.

Wycoff was represented in his original trial by attorney(s) Kent Hutchinson and Gordon Liles, both of whom suffered under a prejudicial conflict of interest. Correctional Officer Kenneth Bowen a potential prosecution witness and clearly Wycoff's favorable and material witness to sustain the testimony of Cain (See, Att-55) was also represented by the same lawyers as Wycoff before the State of Iowa, Iowa Merit Employment Department, regarding disciplinary proceedings due to his loss of employment as a guard (correctional officer) at the Iowa State Penitentiary. (See, Att – pgs 71, 82 & 88). Bowen retained Liles after Wycoff had been charged with murder, but before the actual trial of Wycoff on April 26, 1976. James Cain was a key alibi witness who if believed by the jury the jury would have exonerated Wycoff of murder. (See, Att – pg. 55). Bowen possessed material testimony that would have supported Wycoff's key alibi witness (Cain's) testimony against the illegal, unfounded and prejudicial cross-examination of prosecutor Williams of Cain. The Court of Appeals of Iowa ruled in 1985 that if Cain would have been believed Petitioner would have been acquitted (See Att- pg. 55). Wycoff's attorneys refused to subpoena Bowen to testify for Wycoff to clear up the impeachment of Cain, and never told Wycoff of the significance of Bowen's testimony. Bowen had instructed his attorney (Liles) to not get him involved in Wycoff's murder trial for murder due to what he perceived would be a negative impact upon his employee proceedings if he testified for the Applicant. (See, Att – pgs. 85, 88, 94, 99 & 100).

The Court of Appeals of Iowa was unable to render a finding regarding the claim advanced by Wycoff during his post-conviction appeal in the mid-eighties regarding a

"conflict of interest" in Wycoff v State of Iowa, 5-194/84-106, September 24, 1985 "unreported"). (See, Att - pg. 54). The Court of Appeals of Iowa Stated:

> We are reluctant to agree with petitioner that it was Liles' concurrent representation of both men which prevented him from objecting without more evidence to support the claim.

Clearly the Court of Appeals of Iowa was asking for more evidence before they would support sustain Wycoff's claim of a "conflict of interest." Att – pages 71-76 provides the missing evidence needed to sustain the "conflict of interest" claim withheld by the prosecution until September 20, 2005, and never provided to Wycoff from his own counsel. Att – pgs. 71-76 makes clear that Liles was functioning under a conflict of interest by representing both the Wycoff in his murder trial and Correctional Officer Kenneth Bowen on his disciplinary hearings regarding the loss of his job at the Iowa State Penitentiary and that such duel representation not only resulted in a "conflict of interest" but it prejudiced this Wycoff as well, as is shown below:

Wycoff v State, 382 N.W.2d at 467, or at Att – page 65 where it states:

> He tells you about correctional officer Bowen. He said to you in his closing argument that Bowen is a guard. Ladies and Gentlemen, Mr. Bowen is not a guard anymore. *I am sorry that he wasn't here as a witness. He was subpoenaed. I had hoped he would be cooperative. I'm sorry but he wasn't.* But, he is not a guard. Mr. Hutchinson knows that. Mr. Hutchinson knows that when he made that statement to you that Bowen is not a guard. He knew that statement was not true. Maybe he meant though, to say he was a guard but he told you that he was a guard. When he told you that, that statement, I guess he was – I could be corrected – he's under suspension. He has disciplinary hearings pending.

LEGAL NOTICE: When the Court of Appeals of Iowa in 1985 reversed Wycoff's conviction for murder, it did so for the false statements made by the prosecutor in closing rebuttal emphasized in *italics* above. (See, Att – pg 52).

The concurrent representation of Bowen and Wycoff prejudiced Wycoff as follows:

Liles was unable to object to prosecutor Williams false statements to the jury that Bowen was uncooperative[1] (See, Att – pgs. 51-57) unless he was willing to (1) provide

[1] The Court of Appeals of Iowa, on September 24, 1985 reversed Applicant's conviction **due to prosecutor Williams' statement that Bowen was not cooperative**. See, Att - pg. 52 where it states:

> I'm sorry that he wasn't here as a witness. He was subpoenaed. I had hoped he would be cooperative. I'm sorry but he wasn't.

testimony outside of the record, and reveal the conflict he was under and tell why he never produced Bowen as a witness; and (2) compel Bowen to testify by subpoena against Bowen's express demands to his counsel not to get him involved in Wycoff's trial due to what Bowen feared would be an adverse impact on his disciplinary proceedings that Liles was representing him on. See, Att – pgs. 88, 94, 99 &100).

Liles was well aware before the start of the trial that Bowen did cooperate with the prosecution...and that Bowen just would not corroborate Williams' impeachment of Cain nor substantiate the incorrect information in the BCI report. (See, Att – pgs. 27-28 & 52, 81, 83, 85, 86, 87, 91 & 92).

Liles could not object to the repeated attacks upon the credibility of Applicant's counsel (Hutchinson) during closing when Prosecutor Williams repeatedly told the jury Hutchinson was not being truthful to the jury when he said Bowen was guard, because the minute Liles did – he would have to reveal to the trial court (1) that he was representing Bowen and Wycoff on two separate matter, and that Bowen had made it clear he did not want to get involved in Wycoff's criminal trial (2) he could not reveal that he had represented Bowen and prevailed on his job hearings reinstating him as a correctional officer (guard), without revealing the concurrent representation to correct the prosecutor's attacks upon the credibility of Wycoff's counsel.

Liles denied Applicant a mistrial by failing to reveal to the district court the concurrent representation that existed between Bowen and Wycoff, said mistrial should have been granted at either the cross-examination of Cain or no later than the closing rebuttal of prosecutor Williams. (See, Att – pg 177-180).

Liles who also served as Wycoff's direct appeal counsel, concealed the fact that he represented Bowen and Wycoff at the same time, and that a prejudicial conflict existed, thereby denying Wycoff any opportunity to utilize the "conflict of interest" issue as a claim on direct appeal.

Brady Violation of State Star Witness

The below mentioned exculpatory documentation constituted a Brady violation. Wycoff's right to due process, guaranteed by the Fourteenth Amendment to the U.S. Constitution, was violated before, during, and after trial, when the State failed to turn over to the defense critical exculpatory evidence that was unknown to his defense namely documentation and other verbal evidence that the state's chief star witness (Thomas Leroy Garrett) was given a **work release**[2] for his testimony against Wycoff (See, Ex A at pg. 39) as well as other favorable financial gains (See footnote 17 at pg. 10 of Evidence Introduced at Trial file) that he obtained by being transferred to the Iowa State Men's Reformatory on December 3, 1975 (See, Ex A pgs. 34-39), that such evidence (1) was discovered after the verdict; (2) could not have been discovered earlier in the exercise of

[2] The state could not provide Garrett a parole...but, the Department of Corrections could provide Garrett a **work release** for his cooperation in testifying against Wycoff.

due diligence; (3) are material to the issues of the case, and not merely cumulative or impeaching; and (4) would probably change the result if a new trial were granted.

Wycoff's right to due process, guaranteed by the Fourteenth Amendment to the United States Constitution, and Article I, section 9 of Iowa States Constitution, was violated before, during, and after trial when the state failed to turn over to the defense critical exculpatory evidence that was unknown to his defense namely documentation that chief star witness (Thomas Leroy Garrett), was a documented liar (See Ex A, pg. 41), untrustworthy, was making repeated attempts through administrative means to obtain release from prison through deceit and means of which he failed to earn his release, by using the fact he had testified before against other inmates and needed to be released from prison or transferred, that prison officials were well aware that Garret was a liar, was making all sorts of attempts to secure his release in an unethical manner, that such evidence was (1) discovered by Wycoff after the verdict; (2) could not have been discovered earlier in the exercise of due diligence; (3) is material to the issues of the case, not merely cumulative or impeaching; and (4) would probably change the result if a new trial was granted.

Wycoff's right to due process, guaranteed by the Fourteenth Amendment to the United States Constitution, was violated before, during, and after trial, when the state failed to turn over to the defense critical exculpatory evidence that was unknown to his defense – namely, several inmate kites all determined to be authored by the state's chief star witness (Thomas Leroy Garrett), the BCI interview of Garrett of November 3, 1975, an additional kite by inmate Garrett suggesting where the knife was, a second interview with Garrett dated November 6, 1975, a third interview by the BCI with inmate Garrett dated November 20, 1975, the record of the interview with Garrett, where the BCI, Deputy Warden Paul Hedgepeth, and the area prosecutor Dick Williams, the January 21, 1976 interview with Garrett and BCI Agent Goepel dated January 21, 1976, and an additional interview between BCI Agent Mike Dooley and Garrett dated January 16, 1976 (See, Ex A pg. 43-45), that such evidence (1) was discovered after the verdict; (2) could not have been discovered earlier in the exercise of due diligence; (3) administrative remedy are material to the issues of the case, and not merely cumulative or impeaching; and (4) would probably change the result if a new trial were granted.

Ex A is the discover request by the Wisconsin Innocence Project that resulted in the discovery of all the exculpatory materials attached to the discovery request. Note page 10 where the PCR states attorney makes clear that a number of documents had not been provided counsel or Wycoff after court orders set forth at page 3 (Ex B); pg. 6 Ex C; after the same states attorney lied to the court that it all had been provided page 8 of Ex D, and finally it was provided on September 22, 2005.

Att: U-evidence the affidavit of trial counsel Gordon Liles makes clear, that none of the exhibits found on September 22, 2003 in the prosecutor's archived files were ever given to him during the original trial other than Exhibit #6 which is the Iowa Merit

Employment Department decision, date March 4, 1976 (Att -71-76) contained in the "Attachments Files to Grounds Two, Three, Four, Five and Six"), and which forms the basis of Wycoff's **"prejudicial conflict of interest"** claim.

Also note Att: U-3A pgs. 1-2 which is my trial lawyers (Hutchinson and Liles) Brady materials request in 1975-76, and note also Att: U-3A pages 3-4 wherein the prosecutor (Williams) states **there is no exculpatory information to be provided** in 1975-76.

False Testimonial Statements by Prosecutor in Rebuttal Closing

On September 20, 2005, Wycoff obtained newly discovered evidence of a material nature from the archived files of prosecutor Richard Williams. Such evidence was seen for the very first time by Wycoff on September 20, 2005, and makes clear that prosecutor committed "bad faith" during closing argument and made *repeated false statements* to the jury. Att - pgs. 71-76 is the document Wycoff speaks about, and was obtained only following multiple court orders of this Court in the case of Wycoff v State of Iowa, Case No. PCLA 4785, Lee County District Court. Att - pgs. 71-76 are the State of Iowa - Iowa Merit Employment Department records of correctional officer Kenneth Bowen. As shown at page 1 of this document, Bowen's legal counsel was the same as Wycoff during his criminal trial. (Gordon Liles). Att - pg 76 at the last paragraph and as dated March 4, 1976, (over two months **prior** to the start of Wycoff's criminal trial) Bowen had prevailed and won his job back as a Correctional Officer/Guard.

Wycoff v State, 382 N.W. 2d at 467, or at Att - pg. 65 where it states:

> He tells you about correctional officer Bowen. He said to you in his closing argument that Bowen is a guard. **Ladies and Gentlemen, Mr. Bowen is not a guard anymore.** *I am sorry that he wasn't here as a witness. He was subpoenaed. I had hoped he would be cooperative. I'm sorry but he wasn't.* **But, he is not a guard. Mr. Hutchenson knows that. Mr. Hutchinson knows that when he made that statement to you that Bowen is not a guard. He knew that statement was not true. Maybe he meant though, to say he was a guard but he told you that he was a guard.** When he told you that, that statement, I guess he was -- I could be corrected -- he's under suspension. He had disciplinary hearings pending.

LEGAL NOTICE: When the Court of Appeals of Iowa in 1985 reversed Wycoff's conviction for murder, it did so for the false statements made by the prosecutor in closing rebuttal emphasized in ***italics*** above. (See, Att - pg. 52). The newly discovered evidence located in the prosecutor's archived files (Att - pg. 76) now makes it clear that the

prosecutor committed additional false statements to the jury in closing rebuttal, all emphasized in bold and underline above.

In Wycoff v State, 382 N.W. 2d at 467-469, or at Att - pg. 65 the issue of Bowen's status as a guard was a significant issue addressed by the Iowa Supreme Court:

> The Court of Appeals found Williams' statement in rebuttal constituted prosecutorial misconduct necessitating reversal. It held Williams' comments "implied Bowen would confirm that Cain previously implicated Wycoff and that the only reason Bowen did not appear was because Bowen was uncooperative."
>
> Williams' statement was in response to Hutchinson's reference to Bowen as a guard. *Clearly, Williams believed this factual inaccuracy aided Hutchinson's argument because a guard would likely have every reason to cooperate with the State. The thrust of Williams' argument was to contradict defense counsel's characterization of Bowen as a guard.* While Williams made no attempt to disclose his conversation with Bowen following his examination of Cain, the testimony in question contained only his questions to Cain, made in good faith, and Cain's negative answer.

Due to the recent disclosure of Att - pgs. 71-76, from the archives of prosecutor Williams there are several fact finding errors with the Iowa Supreme Courts fact findings, all of which constitute a manifest injustice. These are:

To start with, the prosecutor *fabricated* his repeated statements to the jury about Bowen not being a guard, when the prosecutor knew full well Bowen was a guard due to the prosecution's possession of Att – pgs. 71-76 located in the prosecutor's archived files, which makes clear Bowen prevailed in getting his job returned to him.

Bowen was cooperative, and did appear when subpoenaed by Williams to come to trial, and appeared, was spoken to by Williams for the second time that he had no knowledge of the crime and nothing to offer. (See, Att - pgs. 81-82). Williams sent Bowen home choosing not to call him to testify. Therefore, Bowen was cooperative; he just would not corroborate Williams' impeachment of Cain nor substantiate the BCI report.

Williams had absolutely no reason to believe in any factual inaccuracy regarding Hutchinson's statements to the jury about Bowen being a guard.

First, Hutchinson knew first hand that Bowen was a guard, because, Wycoff's legal counsel Gordon Liles prevailed in getting Bowen his guard job back on March 4, 1976, well over two months prior to the start of Wycoff's criminal trial. (Att - pgs. 71 - 76).

Second: Williams himself was in possession of Att – pgs. 71-76, thereby possessing the very document prior to Wycoff's trial that made clear Bowen was a guard by prevailing in getting his job back. The prosecutors questions made to Cain under cross-examination by prosecutor Williams could never have been made in good faith, due to the fact, that well before the start of the trial on April 26, 1976, and the cross-examination of Cain on May 4, 1976, the prosecutor's office had met with Bowen who made it clear he had no testimony or evidence that he could provide that would help the prosecution. (See, Att - pgs. 27-28).

Not only did Williams not disclose to the jury his discussion with Bowen following his examination of Cain, he further failed to tell the jury that well before the trial started and his cross-examination of Cain on May 4, 1976, Bowen had told the prosecution that he had no evidence or testimony to offer. (See, Att - pgs. 27-28).

The prosecutor made repeated attacks upon the credibility of Wycoff's attorney during closing argument alleging, (i.e., "Hutchinson knows that. Mr. Hutchinson knows that when he made that statement to you that Bowen is not a guard. He knew that statement was not true. Maybe he meant though, to say he was a guard but he told you that he was a guard",)...and did so with full knowledge that Bowen was a guard, intentionally attacking Wycoff's counsel's credibility on a topic of which he was fully aware he was not being truthful about.

Liles was present during the closing arguments of Williams during Wycoff's trial for murder, and was well aware of his legal obligation to insure that Hutchinson (lead counsel) was well aware of the information possessed by Bowen regarding the disciplinary proceedings, both so that Hutchinson could protected the legal rights of Wycoff, but also, so that prosecutor Williams could not get away with making repeated false statements to the jury absent objection. Liles failed at this point to protect the Applicant from the prosecutor's misconduct, due to his legal obligations to Bowen.

Perjury of Prosecutor During Collateral Proceedings

Prosecutor Williams during the February 1-2, 1983 post-conviction hearing in Wycoff v State of Iowa, Cause No. 17171 testified under oath and committed perjury when he falsely testified that the Lee County Attorney Joel Kamp never got in contact with Kenneth Bowen prior to the start of Wycoff's trial. (See, Att - pgs. 82-83, 91-92 & 141-143).

This was perjured testimony on Williams' part, as shown by the Lee County District Court. (See pages 10-11 of the Lee County District Court's "findings of Fact, Conclusions of Law, and Order in Wycoff v State of Iowa, Cause No. 17171 on file with this Court or See, Att - pgs. 27-28 & 82-83).

There would have been no reason for Williams to commit perjury regarding this matter unless he was trying to conceal the fact that before the trial and the cross

examination of Cain on May 4, 1976, Williams had been told by prosecutor Kamp -- that Bowen would not support his impeachment of Cain or the BCI report.

Williams had to perjure himself about Kamp not contacting Bowen --because not to do so, his and Respondent's alleged "good faith" argument would have failed before the district court and the appellate courts of Iowa.

It was this very "good faith" defense that the State of Iowa relied on to get the Iowa Supreme Court in 1986 to reverse the Court of Appeals 1985 decision reversing Wycoff's conviction.

Prosecutor Williams intentionally falsified the post-conviction trial record to conceal his "bad faith" during Wycoff's original trial, to defeat reversible error and to be able to assist the State in their advancement of a "fraudulent good faith defense" regarding the impeachment of Cain and closing arguments.

Manifest Injustice

In this case, both the prosecutor and Petitioner's own original trial counsel prior to the start of the original jury trial, were well aware of the State of Iowa, Iowa Merit Employment Department document, regarding disciplinary proceedings of Correctional Officer Bowen due to his loss of employment as a guard (correctional officer) at the Iowa State Penitentiary. (See, Att – pgs. 71, 82 & 88). The prosecutor's and Petitioner's original trial counsels withholding of this document constitutes a **manifest injustice in itself.**

The Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W.2d 462 at 467 held that prosecutor Williams *acted in good faith* due to his reliance on an inadmissible BCI report to lay the foundation for the impeachment of Cain. This was a holding of manifest injustice due to it being based (1) upon law contrary to the law established by the United States Supreme Court (See, Att – pgs. 182, 183-84 & 185) and (2) the holding is based on facts contrary to the state district court record , as shown below:

> Williams' questions did insinuate Cain made such a statement.
> Williams' reliance on an inadmissible BCI report to lay the foundation for impeachment may in retrospect appears questionable, ***but we agree with the post-conviction court's findings regarding the credibility of Williams and we hold that he acted in good faith. He believed that if called, Bowen would substantiate the report.***

Id. at 467.

When the Iowa Supreme Court relied upon Love, and the legal proposition in Love regarding the "bad faith" of prosecutor's they did so relying on law in direct conflict with the law established by the United States Supreme Court. The law during Love and during Wycoff's trial never permitted a prosecutor's misconduct to be assessed by the

judiciary based upon his/her "good verses bad faith." (See, Att – pgs. 182, 183-84 & 185) Also, this holding and fact finding by the Iowa Supreme Court is in error and is not supported by the district court post-conviction record. Williams and his second chair Joel Kamp spoke to correctional officer Bowen before the start of Wycoff's original trial, and Bowen made it clear he would not substantiate the information contained in the BCI report. See, Att – pgs. 27-28), where it states as follows:

> He was contacted by someone, apparently Joel Kamp from the County Attorney's office, near the start of the trail on April 26, 1976 concerning giving testimony relating to the charge against Mr. Wycoff. He told the prosecutors he had no knowledge regarding the matter and could provide no testimony. Within the next day or two, before the May 4, 1976 cross-examination of Mr. James Cain, he told Mr. Wycoff's defense attorneys that he had been contacted by the prosecutors and that he knew nothing about Mr. Polson's death. They advised him that if subpoenaed to testify, he would have to attend and testify.

Joel J. Kamp, second chair prosecutor during Wycoff's original trial, and now District Associate Judge for Lee County, Iowa, assisted prosecutor Williams in the prosecution of Wycoff for murder. (See, Att – pgs. 156-157).

Second chair prosecutor Kamp maintained a legal duty to inform Williams of the fact Bowen had already denied any conversation took place between Cain and himself regarding Wycoff committing the murder of Cecil Polson, so that Williams did not attempt to illegally impeach Cain, if he (Williams) was unaware of Kamp's exchange with Bowen.

This is further substantiated by Correctional Officer Bowen's own testimony during the post-conviction proceedings in Wycoff v State of Iowa, Cause No. 17171, Lee County District Court. (See, Att - pgs. 85-86).

There can be no question that the facts of the original trial in this matter and those learned at the post-conviction hearing that were appealed to the Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W. 2d 462 at 467 are in direct conflict of those relied upon by the Iowa Supreme Court. This factual error is one of manifest injustice due to it going directly to the material issues under review by the Iowa Supreme Court when they ruled in error.

There is no way that prosecutor Williams could have acted in "good faith" as declared by the Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W. 2d 462 at 467, because the prosecution "prior to any cross-examination of inmate Cain had spoken to Bowen who had told them he would not substantiate the BCI report."

Additionally, the prosecutor's "good v bad faith" was not the correct standard of review for the Iowa Supreme Court to rely on to assess Wycoff's constitutional claims of the denial of due process due to prosecutorial misconduct. (See, Att – pgs. 182, 183-84 & 185).

Clearly, before the trial started without question the prosecutor was well aware that Bowen would provide no testimony concerning Cain telling Bowen that Wycoff committed the murder. As such, well before the impeachment of Cain on May 4, 1976, prosecutors Williams knew full well that Bowen would not support his impeachment of Cain or substantiate the BCI report, because Bowen had already made this clear to the prosecution before the trial started.

This error transpired due to the State of Iowa's legal counsel during the 1983 post-conviction proceedings advancing a "fraudulent defense of good faith," i.e., that Williams was relying on the BCI report and due to the concealment of material and favorable evidence by the prosecutor and Wycoff's own trial counsel from this Court and the appellate courts as well as Wycoff.

Clearly the Iowa Supreme Court committed a factual error in their holding and fact findings of a manifest injustice, that had it not been committed, the Iowa Supreme Court would not have reversed the Iowa Appeals Court's reversal of Wycoff's conviction.

The Iowa Supreme Court denied Wycoff "due process" contrary to the Fourteenth Amendment to the United States Constitution and Article I, section 9 of the Iowa State Constitution when they relied on bad law to re-impose a life sentence upon Wycoff after Wycoff had obtained a reversal of his conviction.

Furthermore, Love was and remains in direct conflict with the law of the United States Supreme Court. (Att – pgs. 182 - 185).

The conduct of the Iowa Supreme Court denied Wycoff due process and as such the judgment of the Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W. 2d 462 (Iowa 1986) is legally "void".

The Court of Appeals Decision:

On December 2, 2010 a three judge panel of the court of appeals denied Mr. Wycoff permission to file a second habeas petition with no reasoning, analysis, findings of fact, or legal basis.(See Attachment "A" hereto) The lower court even failed to identify whether Mr. Wycoff "failed to meet the procedural requirements of 28 U.S.C. §§ 2244(b) (2) (B) (i) or 2244(b) (2) (B) (ii) and/or both." (Attachment hereto – "A") Second, it held that under 28 U.S.C. § 2244(b) (3) (Evidence), Mr. Wycoff could not file an application for rehearing en banc. In fact, the court of appeals actually held that "the Clerk of the Eighth Circuit Court of Appeals was not required to even file an application for rehearing en banc." (Attachment hereto – "B") (See, also, Attachment hereto "C"). Initially, the Clerk of the Eighth Circuit Court of Appeals took it upon his/herself to not file the

Respondents Petition for Rehearing En Banc pursuant to AEDPA §2244 (b)(3)(E) (See Attachment "D" hereto).

Reasons for Granting the Writ

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." Ex Parte Fahey, 332 U.S. 258, 260 (1947). Title 28 U.S.C. 2244(b)(3)(Evidence) prevents this Court from reviewing the court of appeals' order denying Mr. Wycoff leave to file a second habeas petition by appeal or writ of certiorari. The provision, however, has not repealed this Court's authority to entertain original habeas petitions, Felker v Turpin, 518 US 651, 660 (1996), nor has it disallowed this Court from granting relief and/or from "transferring the application for hearing and determination" to the district court pursuant to 28 U.S.C. § 2241(b).

Rule 20 of this Court requires a petitioner seeking a Writ of Habeas Corpus demonstrate that (1) "adequate relief cannot be obtained in any other form or in any other court;" (2) "exceptional circumstances warrant the exercise of this power;" and (3) "the writ will be in aid of the Court's appellate jurisdiction." Further, this Court's authority to grant relief is limited by 28 U.S.C. § 2254, and any considerations of a second petition must be "informed" by 28 U.S.C. 2244(b). See, Felker, 518 US at 662-63.

Mr. Wycoff's last hope, after 35 years, is that this Court will allow him to be heard, grant to him a new jury trial, or an evidentiary hearing to prove his innocence with this Court. His case presents exceptional circumstances that warrant exercise of this Court's discretionary powers.

I. Statement of Reasons for Not Filing in the District Court

As required by Rule 20.4 and 28 U.S.C. §§ 2241 and 2242, Mr. Wycoff states that he has not applied to the district court because the circuit court prohibited such an application. (See, Attachment "A" hereto) Mr. Wycoff exhausted his state remedies for his Brady, misconduct, conflict of interest and newly discovered evidence claims when the Iowa Supreme Court denied his request for further review, on June 4, 2010. (Attachment "E" hereto). Since Mr. Wycoff exhausted his state remedies and was denied permission by the court of appeals to file a second habeas petition, he cannot obtain relief in any other form or any other court.

II. The Exceptional Circumstances of this Case Warrant the Exercise of this Court's Jurisdiction

Courts that reviewed Mr. Wycoff's newly discovered innocence case have never reached the merits. (See, Attachments "F", "Garrett", "H", "I", "J" and "K" all hereto).

Nevertheless, the Court of Appeals of Iowa and Iowa Supreme Court denied Mr. Wycoff relief without a hearing based on these entities 40-year's old mantra – i.e., statute of limitations. (See, Attachments hereto "F", "H", "I" and "K"). Mr. Wycoff's new evidence and Brady materials, however, are exceptions to that rule. See, Harrington v. State, 659 N.W. 2d 509 (Iowa 2003).

Few, if any, Brady claims involve withheld evidence from the State prosecution of which defense counsel knew of, agreed with, and helped keep the secret, even under oath. Moreover, newly discovered evidence on tape exposing a state witness consistently perjured himself with the prosecutor's approval are even rarer.

The State Prosecutor's False Testimonial Statements, Perjured Testimony Given under Oath in Subsequent Collateral Proceedings, and the Negative Impact of Those Falsehoods on All State and Federal Actions are Rare, Exceptional, and Structural

This Court has held that "[a]ll perjured relevant testimony is at war with justice, since it may produce a judgment not resting on truth." In re Michael, 326 U.S. 224, 227 (1945). Twenty-years later this Court made clear that – the "solemn purpose of endeavoring to as certain the truth…is the 'sine qua non' of a fair trial." Estes v. Texas, 381 U.S. 532, 94 S.Ct. 1628, 1631 (1965). In short, the State prosecutor informed the jury that "a correctional officer would give testimony implicating Mr. Wycoff in murder through an alleged confession and/or admission to a third-party." When the correctional officer "allegedly" declined – to testify, i.e., allegedly declined because the state prosecutor nor trial court has ever responded to "why the subpoena served upon the guard was not enforced, the prosecutor testified before the jury, during closing arguments, that the intended witness was no longer a guard: "I am sorry that he wasn't here as a witness. He was subpoenaed. I had hoped he would be cooperative. I'm sorry but he wasn't. But he is not a guard, he's under suspension. He has disciplinary hearings pending."

The new evidence exposes that "the prosecutor knew before trial that the guard would not substantiate the alleged third-party confession," but throughout trial the prosecution continued to present that he would testify implicating Mr. Wycoff in murder. And at the very last minute the prosecutor shifted his tactics and attacked the correctional officer as "uncooperative, refused to answer a subpoena," who was no longer a guard because "he's under suspension and he has disciplinary hearings pending." Yet other new evidence exposes that before these "testimonial" arguments, the guard had won his disciplinary appeal and was reinstated as a correctional officer. Moreover, one of Mr. Wycoff's trial attorneys represented the guard at the reinstatement hearing. Of course, at no time did counsel inform Mr. Wycoff, the court or jury that "he was present at the reinstatement hearing as the correctional officer's attorney, and that the witness had been reinstated as a guard." Obviously, the prosecutor failed to bring these known facts to light as well. Shockingly, with the record facts now so clear, trial counsel allowed the

prosecutor tot knowingly make false testimonial statements in speaking directly to Mr. Wycoff's jury.

Thus, when the prosecutor spun out before the jury his theory that Wycoff had confessed to murder to a third-party and that person had told a guard of the alleged confession and that would be testifying to that fact, the prosecutor was attempting to subject the jury to the influence of clearly false information, and information clearly known to the prosecutor at the time to have been false. The prosecutor knew before trial that the guard had disavowed making any statements and further knew that the guard had won his job back, and knew he would not be taking the witness stand to testify to any knowledge of the murder, or Mr. Wycoff's involvement. The other arguments, quoted above in full, all reinforcing the prosecutor's false theme that "the confession to murder had been made to a correctional officer," but "he was no longer a guard," "he's under suspension," "he's being uncooperative," and "he has disciplinary hearings pending" – were dispersed during the prosecutor's rebuttal closing argument.

Thus, the prosecutor intentionally painted for the jury a distorted picture of the realities of Mr. Wycoff's case in order to secure a conviction. M. Wycoff's alleged confession, known to a correctional officer, and thus then the prospect that he actually committed the killing loomed over this trial. As noted above, this record leaves no doubt that the prosecutor's testimonial statements were in fact false and misleading to the jury. The prejudice to the accused is equally clear. Although of course the alleged confession of Mr. Wycoff should never have been allowed into evidence since "it had been denied by the third-party (i.e., Mr. Cain) at trial, and the guard had informed the prosecutor before trial that he never made a statement to anyone that Mr. Cain had told him of an alleged confession by Mr. Wycoff" but, that Mr. Wycoff had confessed to the killing, although clearly not true, was squarely placed before the jury – in the prosecutor's opening statement, introduction of BCI reports, and cross-examination of Mr. Cain. Thus, the prosecutor's testimonial misrepresentations were intended to induce the jury to discredit Cain's testimony that Mr. Wycoff had not made any such confession to him, nor had he told such to a guard. The prejudicial effect in this case is enhanced because the prosecutor's testimonial misrepresentations were designed to undermine the core of the defense. The testimonial misrepresentations were calculated to undermine the credibility of Cain, and the deep dagger thrust of the defense to the prosecutor's whole case – i.e., if a confession had been made to a guard why is he then not here testifying to such? Concomitantly, the prosecutor's false testimonial statements were highly misleading and highly prejudicial.

Since at least 1935, it has been the established law of the United States that a conviction obtained though testimony the prosecutor knows to be false is repugnant to the Constitution. See, Mooney v. Holoban, 294 U.S. 103, 112, 55 S.Ct. 340 (1935). This is so because, in order to reduce the danger of false convictions, we rely on the prosecutor not to be simply a party in litigation whose sole object is the conviction of the defendant

before him or her. The prosecutor is an officer of the court whose duty is to present a forceful and truthful case to the jury, not to win at any cost. See, e.g., Jenkins v. Artuz, 294 F. 3d 284, 296 n.2 (2d Cir 2002) (noting the duty of prosecutors under New York law "to seek justice, not merely to convict").

Respectfully, with the assistance of court appointed counsel, if this Court were to bless Mr. Wycoff with such help and assistance, petitioner could actually identify and submit proof of millions – of convictions, in which the prosecutor has knowingly allowed false and/or perjured testimony to go uncorrected, or itself made false testimonial misrepresentations during jury trials. Respectfully, it is long overdue for this Honorable Court to give some kind of protection against such foul and reprehensible behavior to all criminal defendants and respect to the United States Constitution and the very laws of this Court. Moreover, there are several hundred-thousand cases whereby the time the truth surfaces, like Mr. Wycoff's case, the accused has been imprisoned for 35 years! All the while long the prosecutor's make false statements under oath, and fights against the truth from being revealed. And when it does, makes no apology – and suffers no onus.

Of course, if a witness testifies falsely, the same prosecutor's will prosecute them for which the prosecutor's themselves do on a regular basis. Naturally, it would be up to Congress to create some type of punishment for criminal acts committed by prosecutors during prosecution of criminal cases. But, we beg you, please give all defendants a basic minimal constitutional protection...whereas, if a defendant can prove beyond a reasonable doubt that the prosecution knowingly presented false testimony and/or evidence before a jury, the error is "structural" in nature and prejudice is presumed. And this protection is not requested for instances where "a witness offers false testimony and the prosecutor allows it to go uncorrected." But, solely, for when a prosecutor (him or herself) offers false statements by their own questions to a witness, or when a prosecutor knowingly makes false testimonial and/or evidentiary statements during opening and/or closing arguments; or when a prosecutor knowingly presents false evidence. See on-point Miller v. Pate, 87 S.Ct. 985 (1967) (misconduct to deliberately misrepresent the facts, evidence or testimony). Also, see, Berger v. United States, 195 U.S. 78, 8455 S.Ct. 629 (1935) ("Prejudice to the accused is so highly probable – 'we are not justified in assuming' its nonexistence").

Despite the fundamental nature of the injury to the justice system caused by the knowing use of perjured testimony by the state, the Supreme Court has not deemed such errors to be "structural" in the sense that they "affect the framework within which the trial proceeds." United States v. Feliciano, 223 F. 3d 102, 111 (2d Cir 2000) (quoting Arizona v. Fulminate, 499 U.S. 279, 307-10, 111 S.Ct. 1246 (1991). Structural errors are those that "'so fundamentally undermine the fairness or the validity of the trial that they require voiding [the] result [of the trial] regardless of identifiable prejudice.'" Id. (quoting Yarborough v. Keane, 101 F. 3d 894, 897 (2d Cir 1996)). Instead, even when a prosecutor elicits testimony he or she knows or should know to be false, or allows such

testimony to go uncorrected, a showing of prejudice is required. But the Supreme Court has made clear that prejudice is readily shown in such cases, and the conviction must be set aside unless there is no "reasonable likelihood that the false testimony could have affected the judgment of the jury." United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392 (1976); Giglio v. United States, 405 US 150, 154, 92 S.Ct. 763 (1972); see also United States v. Wallach, 935 F.2d 445, 456 (2d Cir 1991) (citing Agurs and adding that the Supreme Court cases meant that "if it is established that the government knowingly permitted the introduction of false testimony reversal is virtually automatic." This then is the "clearly established federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254 (d)(1), that, obviously, in Mr. Wycoff's case, the state courts and federal court of appeals never even considered applying, let alone following.

To begin with, the government's fundamental interest in criminal prosecutions: "not that it shall win a case, but that justice shall be done." Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629 (1935); see United States v. Agurs, 427 U.S. 97, 111, 96 S.Ct. 2392 (1976). Although the prosecutor must prosecute with earnestness and vigor and "may strike hard blows, he is not at liberty to strike foul lines." See id. The due process clause requires conduct of a prosecutor that it does not require of other participants in the criminal justice system, such as the duty to "disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial...." United States v. Bagley, 473 U.S. 667, 675, 105 S.Ct. 3375 (1985). The due process requirement will case into doubt a conviction obtained by a prosecutor's knowing or reckless use of false testimony. Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173 (1959); United States v. Duke, 50 F. 3d 571, 577-78 & n.4 (8th Cir 1995) (government has duty to serve and facilitate the truth finding function of the courts). Mr. Wycoff submits the manipulation of the evidence in his case deprived him of due process and rendered his trial fundamentally unfair. Even if our adversary system is "in many ways, a gamble," Payne v. United States, 78 F. 3d 343, 345 (8th Cir 1996), that system is poorly served when a prosecutor, the state's own instrument of justice, stacks the deck in his favor. Errors that are "structural" in nature under the federal Constitution and under Supreme Court precedent, virtually all constitutional errors are subject to harmless error analysis. Neder v. United States, 527 U.S. 1(1999). The sole exception to this rule is those errors which are termed "structural" in nature. (Ibid.) In order to qualify as a "structural" error, a constitutional deprivation must affect "the framework within which the trial proceeds, rather than simply an error in the trial process itself." Arizona v. Fulminate, 499 U.S. 279, 310 (1991).

For the moment, the only errors which qualifies as a "structural" error under U.S. Supreme Court precedent is one which serves to dilute the standard of proof beyond a reasonable doubt or which directs a verdict against the defendant. Sullivan v. Louisiana, 508 U.S. 275, 281-282 (1993); United States v. Martin Linen Supply Company, 430 U.S. 564, 572-73 (1977). In Sullivan, the Court noted the harmless error analysis is impossible

when the jury has not been properly instructed on the standard of proof beyond a reasonable doubt. This is so because the dilution of the reasonable doubt standard "vitiates [all] of the jury's findings." (Id. at 281). Thus, since the consequences of the error "are necessarily unquantifiable," per se reversal is required. (Id. at 282).

Under the Sullivan reasoning, per se reversal should also be required whenever the jury is given an "intentional" false understanding of the truth by the prosecutor!

III. The Court of Appeals Erred In Barring Mr. Wycoff's Second Petition

The court of appeals denied Mr. Wycoff permission to file a second petition, providing no reasons, analysis, or findings of fact. Thus, presumably, somehow, holding that he "failed to meet the procedural requirements of AEDPA § 2244(b) (2)." Although these procedural requirements "inform" this Court's consideration of original habeas petitions, this Court has not decided whether it is bound by them. See, Felker, 518 U.S. at 663 (pretermitting the question of whether the Court is bound by § 2244(b) (2) finding that the provision "informs" its decision).

The purposes of § 2244(b) (2) that "informs" this Court's consideration of Mr. Wycoff's original habeas petition are twofold: section 2244(b) (2) (B) (ii) requires a factual predicate that could not have been previously discovered through the exercise of due diligence. Mr. Wycoff's withheld Brady and newly discovered evidence (secreted away in the state prosecutor's archive files) meets this requirement. Section 2244(b) (2) (B) (i) requires that the claim raised in a second petition "impugn" the reliability of the underlying conviction. Mr. Wycoff's claims as a whole, more than does exactly that.

A. Mr. Wycoff Diligently Discovered and Presented His New Evidence to the Court of Appeals in His Second Habeas Proceedings

In addition to the Bowen Reinstatement Hearing document and the newly discovered evidentiary evidence from witnesses, there were fifteen pages (App. Vol. II. pgs. 248-250 and 291 to 305) of additional ***Brady*** exculpatory documents that came out of the prosecutor's archived files and were turned over to the Applicant for the first time on September 22, 2005. Not only are these fifteen pages ***Brady*** exculpatory documents, they support Applicant's underlying claim if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable fact finder would have found the Applicant guilty of the underlying offence. 28 U.S.C. § 2244 (b) (2) (B) (ii).

To start with the revelation of the Bowen Reinstatement hearing document (App. Vol. I. pgs. 90-95) as shown above at Ground Two and Three makes clear two things:

(a) that prosecutor Williams made repeated false statements to the jury during closing arguments at Applicant's original trial, **that were never know to this Applicant nor any court to date (state or federal) that has reviewed this**

case and, that there can be no question that his action were prosecution misconduct and,

(b) this same document makes clear **Applicant's trial counsel functioned under a conflict of interest that prejudiced the Applicant**, because Applicant's counsel could not object to the repeated false statements of prosecutor Williams without revealing the conflict of interest and causing Bowen to come forward as a defense witness in Applicant's trial against Bowen's express demands that they not get him involved, which also would have entailed Applicant's counsel seeking a mistrial to reveal the false statements made to the jury.

Any harmless error analysis should not be applied to this application. The Iowa Supreme Court previously ruled that even if Williams had committed misconduct, there was no prejudice to Wycoff because of the circumstantial evidence against Applicant. Wycoff v. State 382 N.W. 2d 462, 468 (Iowa 1986). The newly discovered evidence discussed above and below, withheld by the prosecutor Williams and retained in his archived files until September 22, 2005, cast doubt upon the veracity of the conviction of Applicant.

At the April, 1976, trial the testimony of Thomas Garrett, that he saw Applicant climb up the cells with a knife, and then climb down after hearing yelling, was the centerpiece of the State's case. This testimony is cast into doubt by a prison document containing a description of Garrett as a "**liar.**" (Ex A pgs. 38-39). Other documents indicate that he was rewarded for his expected testimony by receiving a **work release** on sometime prior to August 9, 1976, **in spite of being denied parole on May 19, 1976.** (Compare Ex A pg. 36- to Ex A pg. 38) This documentation was withheld from Applicant due to prosecution misconduct, and a violation of ***Brady***.

When these documents first were revealed to the Applicant during his **fourth** state post-conviction action, Applicant sought to amend his action to include legal claims centering on these new documents. The District Court of Iowa would not let the Applicant amend to include the new claims in his petition **due to drafting errors** in the "Supplemental Petition for Post-Conviction Relief". (See, Attachment "L" hereto). This was a violation of statutory law:

Iowa Code § 822.6, "In considering the application that court **shall** take account of substance **regardless of defects of form.**"

During appeal before the Iowa Supreme Court, on Applicant's **fourth** post-conviction action, Applicant sought a Limited Remand back to the District Court. Applicant sought the limited remand consistent with the law set forth in Pennsylvania v. Ritchie, 480 U.S. 39 (1987). This Limited Remand motion discusses in depth the need of the limited remand and the significance of the documents found in the prosecutor's archived files.

During Applicant's **fifth** and last post-conviction action in the state courts, the Applicant sought to **again** file a Supplement to his Amended state post-conviction action, to include the claims involving these newly discovered documents. (Att. pgs. 71-75 (re; Ground Two) and Ex. File to Ground Seven pgs. 9-45) Although **the state admitted** at Ex File to Ground Seven pgs. 10-11, **the state courts would not let this Applicant file and have heard his *Brady* claims concerning these newly discovered documents.**

The state court would not permit this Applicant to make any state court record regarding any of this newly discovered evidence, or newly discovered witnesses, after at least two attempts by this Applicant; (1) Petitioner first tried amending his post-conviction application only to be denied amendment due to inconsequential defects of form, (See Attachment "L" hereto); (2) Petitioner filed a second post-conviction application trying again to get the state district court to hear these newly discovered witness's and review this newly discovered evidence to only be denied a second time due to statute of limitations. (See Attachment "J" hereto) 28 U.S.C. § 2254 (b) (B) (ii).

Had the jury been made knowledgeable of this evidence, there is a very strong likelihood this newly discovered evidence that support applicant's underlying claims, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense. (28 U.S.C. § 2244 (b) (2) (B) (ii)).

B. The Court Of Appeals Erred In Prohibiting Mr. Wycoff from Seeking Rehearing En Banc Contrary to Congress's Intent

On December 9, 2010, Petitioner mailed to this Court an Application for Rehearing En Banc and Motion to Reinstate Mandate.

On December 14, 2010 Chief Deputy Clerk Robin J. Weinberger wrote to the Petitioner and made clear that Petitioner's Application for Rehearing En Banc would not be filed, and denied Petitioner's Motion to Reinstate Mandate based upon the erroneous conclusion that Petitioner could not under 28 U.S.C. §2244(b)(3)(E) file a Application for Rehearing En Banc. (See, Attachments hereto "C" and "D").

28 U.S.C. §2244(b) (3) (E) does **not** bar Petitioner from filing for a En Banc Rehearing. The availability of rehearing *en banc* – either upon a party's "suggestion" or upon the court's *sua sponte* order – is unclear. In another section of AEDPA, Congress specifically refers to *both* suggestions of rehearing en banc and for petitions for rehearing. See id. §2266(b) (5) (B) (i). Given AEDPA's explicit reference to en banc rehearing's when it intends to regulate them, the failure to mention them in the successive petition provisions appears intentional, not inadvertent. See, e.g., Rodriguez v. United States, 480 U.S. 522, 525 (1987) (per curiam) ("""" [Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is

generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."'" (quoting Russello v. United States, 464 U.S. 16, 23 (1983))). *See also* Reno v. Koray, 515 U.S. 50, 56-57 (1995) (statutory language in one provision of AEDPA should be construed "'with reference to'" other provisions of Act (citations omitted). To like effect is the presumption that statutory terms have their accepted "' common-law meaning.'" Evans v. United States, 504 U.S. 255, 259, 284 n. 4 (1992). As the Supreme Court has noted, it is well established that "rehearing petitions" refer to pleadings different from "suggestions of rehearing *en banc*." *See,* Missouri v. Jenkins, 495 U.S. 33, 46-47 & n. 14 (1990). Taken together, these principle militate in favor of a conclusion that Congress intended the ban on "petition[s] for rehearing" to mean precisely that, and not to bar either suggestions of rehearing *en banc* or *sua sponte* orders to rehear the issue *en banc*. *See,* Thompson v. Calderon, 151 F.3d 918, 922 (9th Cir) (*en banc*), *cert. denied,* 524 US 965 (1998) (statutory prohibition of "petition for rehearing" "does not preclude *sua sponte* review by an *en banc* court"). *See, also, Triestman v. United States, supra,* 124 F. 3d 15 367 (discussed *supra* note 126). *But see,* In re King, 190 F. 3d 479 (6th Cir 1999)(*en banc*), *cert. denied*, 529 U.S. 1041(2000)(rejecting argument that section 2244(b)(3) permits *en banc* rehearing of panel ruling on leave to file second or successive petition; "once a panel of this court grants or denies an individual permission to file a second or successive petition in the district court, § 2244(b)(3)(E) prohibits any party from seeking further review of the panel's decision, either from the panel or from the *en banc* court").

The Clerk of the Eighth Circuit lacked any authority to make any ruling distinction between a petition for rehearing and a suggestion for rehearing hearing en banc thus given the AEDPA's explicit reference to en banc hearings when it intends to regulate them, the failure to mention them in the successive petition provisions appears intentional, not inadvertent. Thus then if the AEDPA and Congress recognizes the difference between the two, clearly the Clerk of the Eighth Circuit lacks the authority to hold and rule them to be the same.

C. In Totality The New Evidence and its Impact On The Jury's Verdict Also Exposes That Mr. Wycoff Was Not Afforded A Meaningful Opportunity To Present A Complete Defense

November 3, 1975 a prisoner by the name of Cecil Polson was killed at the Iowa State Penitentiary in cell block 318 on the fifth level in his cell. The crime scene (Polson's cell had blood and mustard on the floor of the cell where a jar of mustard broke during Polson's struggle with his attacker.) Petitioner Steven Wycoff, who resided at the time of Polson's murder at the bottom level of the same cell block, was later charged with his murder. There were no eye witnesses to the murder and the conviction against Petitioner rests upon very questionable circumstantial evidence. It was determined that

the Petitioners conviction rested primarily upon the physical evidence of blood and mustard found on Petitioner's shoes.

Since Petitioners trial new witnesses and evidence has surfaced that shows Petitioner is innocent of the crime for which he was convicted and the same evidence provides proof that the Petitioner was deprived of his constitutional right to present a complete defense. Additionally, what should be deemed structural error was committed through the repeated actions of prosecution misconduct concerning false testimonial statements during the Petitioners original trial in rebuttal closing and perjury by the same prosecutor during collateral proceedings to conceal earlier misconduct? Lastly, the Iowa Supreme Court committed manifest injustice due to it being based (1) upon law contrary to the law established by the United States Supreme Court (See, Att – pgs. 182, 183-84 & 185) and (2) the holding is based on facts inconsistent with the state district court proceedings.

Newly Discovered Witnesses

Since the time of trial, Wycoff has learned of new information from six new witnesses, who did not testify at trial.

The Robinson-Bey, Rinehart, Cain, Page affidavits; the Willis' deposition and Prough's tape recording contain new evidence. They explain the most critical and significant evidence, the blood and mustard on Wycoff's shoes, as being from an accidental exposure due to the ambulance attendant spilling blood and mustard off the body of the victim while removing it, and exposing Wycoff to it when he was moved through the area of the spill 45 minutes later.

Wycoff is advancing an "actual innocence claim" which is an exception to the statute of limitations (this limitation does not apply to a ground of fact or law that could have been raised within that applicable time periods).

Charles Robinson-Bey

Robinson-Bey attests that on November 3, 1975, he was in the recreation yard when he heard that something had happened in Cell house 218, requiring that he remain outside. Sometime after the noon meal, he was permitted to re-enter the cell house. He states that as he reached the outer steps, he noticed spots of blood. Upon entering the Cell house, he noticed a larger quantity of blood as well as a "couple of spots about the size of a quarter" of a "yellow substance." He then complained to a correctional officer that this was "leaving me and others subject to becoming implicated in the incident that morning." However, he states that he was unaware of the significance of this information until 2001, when he first became aware that Wycoff was seeking a new trial based on information regarding the presence of blood in the entranceway. (Exhibit H)

Michael Rinehart

The statement of Michael Rinehart constitutes newly discovered evidence. It was discovered after judgment, it could not have been discovered earlier in the exercise

of due diligence, it is material and not merely cumulative or impeaching, and it would probably change the result if a new trial were granted. Since the time of trial, Wycoff has learned of new information from a witness who did not testify at trial, to wit: Michael Rinehart, an inmate at the Iowa State Penitentiary on the day of the murder. Rinehart will testify that he walked into the cell house where the crime took place, with fellow inmate Charles Robinson-Bey, (See, Ex H at paragraph 10 and footnote (a)), and he saw both blood and mustard. See, Ex. H-1. Rinehart's statement corroborates Robinson-Bey. Robinson-Bey makes reference to Rinehart in his affidavit. Ex. H-2 in paragraph 10.

Brady Violation of State Star Witness

The denial of the below mentioned exculpatory documentation constituted a Brady v Maryland violation.

Wycoff's right to due process, guaranteed by the Fourteenth Amendment to the United States Constitution, was violated before, during, and after trial, when the State **failed to turn over to the defense** and **falsified discovery proceedings to deny the existence of critical exculpatory evidence** (See Att. U-3A pgs. 2 and 4) that was unknown to his defense namely documentation and other verbal evidence that the state's chief star witness (Thomas Leroy Garrett) was given a **work release**[3] (See, Ex A at pgs. 38-39)for his testimony against Wycoff, and **permitted false testimony to be introduced uncorrected** (Phillips v. Woodford, 267 F. 3d 966, 984-85 (9th Cir. 2001))that no favoritism or benefit was given Garrett as well as other **favorable financial gains** (See footnote 17 at pg. 10 of Evidence Introduced at Trial file) that he obtained by being transferred to the Iowa State Men's Reformatory on December 3, 1975 (See, Ex A pgs. 34-39), that such evidence (1) was discovered after the verdict; (2) could not have been discovered earlier in the exercise of due diligence; (3) are material to the issues of the case, and not merely cumulative or impeaching; and (4) would probably change the result if a new trial were granted.

The state failed to turn over to the defense critical exculpatory evidence that was unknown to his defense namely documentation that chief star witness (Thomas Leroy Garrett), was a **documented liar** (See, Ex A, pg. 41), untrustworthy, was making repeated attempts through administrative means to obtain release from prison through deceit and means of which he failed to earn his release, by using the fact he had testified before against other inmates and needed to be released from prison or transferred, that prison officials were well aware that Garret was a liar, was making all sorts of attempts to secure his release in an unethical manner.

Wycoff's right to due process, guaranteed by the Fourteenth Amendment to the United States Constitution, was violated before, during, and after trial, when the state failed to turn over to the defense critical exculpatory evidence that was unknown to his

[3] The state could not provide Garrett a parole...but, the Department of Corrections could provide Garrett a **work release** for his cooperation in testifying against Wycoff.

defense – namely, several inmate kites all determined to be authored by the state's chief star witness (Thomas Leroy Garrett), the BCI interview of Garrett of November 3, 1975, an additional kite by inmate Garrett suggesting where the knife was, a second interview with Garrett dated November 6, 1975, a third interview by the BCI with inmate Garrett dated November 20, 1975, the record of the interview with Garrett, where the BCI, Deputy Warden Paul Hedgepeth, and the area prosecutor Dick Williams, the January 21, 1976 interview with Garrett and BCI Agent Goepel dated January 21, 1976, and an additional interview between BCI Agent Mike Dooley and Garrett dated January 16, 1976 (See, Ex A pgs. 43-45), that such evidence (1) was discovered after the verdict; (2) could not have been discovered earlier in the exercise of due diligence; (3) administrative remedy are material to the issues of the case, and not merely cumulative or impeaching; and (4) would probably change the result if a new trial were granted.

Exhibit A is the discover request by the Wisconsin Innocence Project that resulted in the discovery of all the exculpatory materials attached to the discovery request. Note page 10 where the PCR states attorney makes clear that a number of documents had not been provided counsel or Wycoff after court orders set forth at page 3 (Exhibit B); page 6 Exhibit C; after the same states attorney lied to the court that it all had been provided page 8 Exhibit D, and finally it was provided on September 22, 2005.

Att: U-evidence the affidavit of trial counsel Gordon Liles makes clear, that none of the exhibits found on September 22, 2003 in the prosecutor's archived files were ever given to my trial attorney's other than Exhibit #6 which is the Iowa Merit Employment Department decision, date March 4, 1976 (Att – pgs. -71-76) contained in the "Attachments Files to Grounds Two, Three, Four, Five and Six"), and which forms the basis of Wycoff's "prejudicial conflict of interest" claim.

Also note Att: U-3A pgs. 1-2 which is my trial lawyers (Hutchinson) Brady materials request in 1975-76, and note also Att: U-3A pgs. 3-4 wherein the prosecutor (Williams) states there is no exculpatory information to be provided in 1975-76. See, Banks v. Dretke, 124 S. Ct. 1256 (2004); Strickler v. Greene, 527 U.S. 263, 281-82, (1999); A.B.A. Standards 3-3.11 (a), (b) and (c).

False Testimonial Statements by Prosecutor in Rebuttal Closing

On September 20, 2005, Wycoff obtained newly discovered evidence of a material nature from the archived files of prosecutor Richard Williams. Such evidence was seen for the very first time by Wycoff on September 20, 2005, and makes clear that prosecutor committed "bad faith" during closing argument and made *repeated false statements* to the jury.

Att - pgs. 71-76 is the document Wycoff speaks about, and was obtained only following multiple court orders of this Court in the case of Wycoff v State of Iowa, Case No. PCLA 4785, Lee County District Court.

Att - pgs. 71-76 are the State of Iowa -- Iowa Merit Employment Department records of correctional officer Kenneth Bowen. As shown at page 1 of this document, Bowen's legal counsel was the same as Wycoff during his criminal trial. (Gordon Liles).

Att - pgs. 76 at the last paragraph and as dated March 4, 1976, (over two months prior to the start of Wycoff's criminal trial) Bowen had prevailed and won his job back as a Correctional Officer/Guard.

Wycoff v State, 382 N.W. 2d at 467, or at Att - page 65 where it states:

> He tells you about correctional officer Bowen. He said to you in his closing argument that Bowen is a guard. Ladies and Gentlemen, Mr. Bowen is not a guard anymore. *I am sorry that he wasn't here as a witness. He was subpoenaed. I had hoped he would be cooperative. I'm sorry but he wasn't.* But, he is not a guard. Mr. Hutchinson knows that. Mr. Hutchinson knows that when he made that statement to you that Bowen is not a guard. He knew that statement was not true. Maybe he meant though, to say he was a guard but he told you that he was a guard. When he told you that, that statement, I guess he was -- I could be corrected -- he's under suspension. He had disciplinary hearings pending.

LEGAL NOTICE: When the Court of Appeals of Iowa in 1985 reversed Wycoff's conviction for murder, it did so for the false statements made by the prosecutor in closing rebuttal emphasized in ***italics*** above. (See, Att - page 52). The newly discovered evidence located in the prosecutor's archived files (Att - page 76) now makes it clear that the prosecutor committed additional false statements to the jury in closing rebuttal, all emphasized in bold and underline above.

In Wycoff v State, 382 N.W. 2d at 467-469, or at Att - page 65 the issue of Bowen's status as a guard was a significant issue addressed by the Iowa Supreme Court:

> The Court of Appeals found Williams' statement in rebuttal constituted prosecutorial misconduct necessitating reversal. It held Williams' comments "implied Bowen would confirm that Cain previously implicated Wycoff and that the only reason Bowen did not appear was because Bowen was uncooperative."
>
> Williams' statement was in response to Hutchinson's reference to Bowen as a guard. ***Clearly, Williams believed this factual inaccuracy aided Hutchinson's argument because a guard would likely have every reason to cooperate with the State. The thrust of Williams' argument was to contradict defense counsel's characterization of***

> ***Bowen as a guard.*** While Williams made no attempt to disclose his conversation with Bowen following his examination of Cain, the testimony in question contained only his questions to Cain, made in good faith, and Cain's negative answer.

Due to the recent disclosure of Att - pgs. 71-76, from the archives of prosecutor Williams there are several fact finding errors with the Iowa Supreme Courts fact findings, all of which constitute a **manifest injustice**. These are:

To start with, the prosecutor *fabricated* his repeated statements to the jury about Bowen not being a guard, when the prosecutor knew full well Bowen was a guard due to the prosecution's possession of Att – pgs. 71-76 located in the prosecutor's archived files, which makes clear Bowen prevailed in getting his job returned to him.

Bowen was cooperative, and did appear when subpoenaed by Williams to come to trial, and appeared, was spoken to by Williams for the second time that he had no knowledge of the crime and nothing to offer. (See, Att - pgs. 81-82). Williams sent Bowen home choosing not to call him to testify. Therefore, Bowen was cooperative; he just would not corroborate Williams' impeachment of Cain nor substantiate the BCI report.

Williams had absolutely no reason to believe in any factual inaccuracy regarding Hutchinson's statements to the jury about Bowen being a guard.

First, Hutchinson knew first hand that Bowen was a guard, because, Wycoff's legal counsel Gordon Liles prevailed in getting Bowen his guard job back on March 4, 1976, well over two months prior to the start of Wycoff's criminal trial. (Att - pgs. 71 & 76).

Second: Williams himself was in possession of Att – pgs. 71-76, thereby possessing the very document prior to Wycoff's trial that made clear Bowen was a guard by prevailing in getting his job back. The prosecutors questions made to Cain under cross-examination by prosecutor Williams could never have been made in good faith, due to the fact, that well before the start of the trial on April 26, 1976, and the cross-examination of Cain on May 4, 1976, the prosecutor's office had met with Bowen who made it clear he had no testimony or evidence that he could provide that would help the prosecution. (See, Att - pgs. 27-28).

Not only did Williams not disclose to the jury his discussion with Bowen following his examination of Cain, he further failed to tell the jury that well before the trial started and his cross-examination of Cain on May 4, 1976, Bowen had told the prosecution that he had no evidence or testimony to offer. (See, Att - pgs. 27-28).

The prosecutor made repeated attacks upon the credibility of Wycoff's attorney during closing argument alleging, (i.e., Hutchinson knows that. Mr. Hutchinson knows that when he made that statement to you that Bowen is not a guard. He knew that statement was not true. Maybe he meant though, to say he was a guard but he told you

that he was a guard",) and did so with full knowledge that Bowen was a guard, intentionally attacking Wycoff's counsel's credibility on a topic of which he was fully aware he was not being truthful about.

Liles was present during the closing arguments of Williams during Wycoff's trial for murder, and was well aware of his legal obligation to insure that Hutchinson (lead counsel) was well aware of the information possessed by Bowen regarding the disciplinary proceedings, both so that Hutchinson could protected the legal rights of Wycoff, but also, so that prosecutor Williams could not get away with making repeated false statements to the jury absent objection.

Liles failed at this point to protect the Applicant from the prosecutor's misconduct, due to his legal obligations to Bowen. See, Napue v. Illinois, 360 U.S. 264, 79 S. Ct. 1173 (1959). Burger v. U.S., 295 US 78, 55 S. Ct. 629 (1934); A.B.A. Standards 3-2.8 (a); 3-5.8 (a); 3-5.9; 3-5.6 (a).

Perjury of Prosecutor during Collateral Proceedings

Prosecutor Williams during the February 1-2, 1983 post-conviction hearing in Wycoff v State of Iowa, Cause No. 17171 testified under oath and committed perjury when he falsely testified that the Lee County Attorney Joel Kamp never got in contact with Kenneth Bowen prior to the start of Wycoff's trial. (See, Att - pgs. 82-83, 91-92 & 141-143).

This was perjured testimony on Williams' part, as shown by the Lee County District Court. (See, pgs. 10-11 of the Lee County District Court's "findings of Fact, Conclusions of Law, and Order in Wycoff v State of Iowa, Cause No. 17171 on file with this Court or See, Att - pgs. 27-28 & 82-83).

There would have been no reason for Williams to commit perjury regarding this matter unless he was trying to conceal the fact that before the trial and the cross examination of Cain on May 4, 1976, Williams had been told by prosecutor Kamp -- that Bowen would not support his impeachment of Cain or the BCI report.

Williams had to perjure himself about Kamp not contacting Bowen -- because not to do so, his and Respondent's alleged "good faith" argument would have failed before the district court and the appellate courts of Iowa.

It was this very "good faith" defense that the State of Iowa relied on to get the Iowa Supreme Court in 1986 to reverse the Court of Appeals 1985 decision reversing Wycoff's conviction.

Prosecutor Williams intentionally falsified the post-conviction trial record to conceal his "bad faith" during Wycoff's original trial, to defeat reversible error and to be able to assist the State in their advancement of a "fraudulent good faith defense" regarding the impeachment of Cain and closing arguments. U.S. v. Teffera, 985 F. 2d 1082, 1089 n. 6 (D.C. Cir. 1993).

Manifest Injustice

The Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W.2d 462 at 467 held that prosecutor Williams *acted in good faith* due to his reliance on an inadmissible BCI report to lay the foundation for the impeachment of Cain. This was a holding of manifest injustice due to it being based (1) upon law contrary to the law established by the United States Supreme Court (See, Att – pgs. 182, 183-84 & 185) and (2) the holding is based on facts inconsistent with the state district court proceedings, as shown below:

> Williams' questions did insinuate Cain made such a statement. Williams' reliance on an inadmissible BCI report to lay the foundation for impeachment may in retrospect appears questionable, ***but we agree with the post-conviction court's findings regarding the credibility of Williams and we hold that he acted in good faith. He believed that if called, Bowen would substantiate the report.***

Id. at 467.

When the Iowa Supreme Court relied upon Love, and the legal proposition in Love regarding the "bad faith" of prosecutor's they did so relying on law in direct conflict with the law established by the United States Supreme Court. The law during Love and during Wycoff's trial never permitted a prosecutor's misconduct to be assessed by the judiciary based upon his/her "good v bad faith." (See, Att – pgs. 182, 183-84 & 185)

Also, this holding and fact finding by the Iowa Supreme Court is in error and is not supported by the district court post-conviction record. Williams and his second chair Joel Kamp spoke to correctional officer Bowen before the start of Wycoff's original trial, and Bowen made it clear he would not substantiate the information contained in the BCI report. See, Att – pgs. 27-28), where it states as follows:

> He was contacted by someone, apparently Joel Kamp from the County Attorney's office, near the start of the trail on April 26, 1976 concerning giving testimony relating to the charge against Mr. Wycoff. **He told the prosecutors he had no knowledge regarding the matter and could provide no testimony.** Within the next day or two, before the May 4, 1976 cross-examination of Mr. James Cain, he told Mr. Wycoff's defense attorneys that he had been contacted by the prosecutors and that he knew nothing about Mr. Polson's death. They advised him that if subpoenaed to testify, he would have to attend and testify.

Joel J. Kamp, second chair prosecutor during Wycoff's original trial, and now District Associate Judge for Lee County, Iowa, assisted prosecutor Williams in the prosecution of Wycoff for murder. (See, Att - pgs. 156-157).

Second chair prosecutor Kamp maintained a legal duty to inform Williams of the fact Bowen had already denied any conversation took place between Cain and himself regarding Wycoff committing the murder of Cecil Polson, so that Williams did not attempt to illegally impeach Cain, if he (Williams) was unaware of Kamp's exchange with Bowen.

This is further substantiated by Correctional Officer Bowen's own testimony during the post-conviction proceedings in Wycoff v State of Iowa, Cause No. 17171, Lee County District Court. (See, Att - pgs. 85-86).

There can be no question that the facts of the original trial in this matter and those learned at the post-conviction hearing that were appealed to the Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W. 2d 462 at 467 are in direct conflict of those relied upon by the Iowa Supreme Court.

This factual error is one of manifest injustice due to it going directly to the material issues under review by the Iowa Supreme Court when they ruled in error.

There is no way that prosecutor Williams could have acted in "good faith" as declared by the Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W. 2d 462 at 467, because the prosecution "prior to any cross-examination of inmate Cain had spoken to Bowen who had told them he would not substantiate the BCI report."

Additionally, the prosecutor's **"good vs. bad faith"** was not the correct standard of review for the Iowa Supreme Court to rely on to assess Wycoff's constitutional claims of the denial of due process due to prosecutorial misconduct. (See, Att – pgs. 182, 183-84 & 185).

Clearly, before the trial started without question the prosecutor was well aware that Bowen would provide no testimony concerning Cain telling Bowen that Wycoff committed the murder. As such, well before the impeachment of Cain on May 4, 1976, prosecutors Williams knew full well that Bowen would not support his impeachment of Cain or substantiate the BCI report, because Bowen had already made this clear to the prosecution before the trial started.

This error transpired due to the State of Iowa's legal counsel during the 1983 post-conviction proceedings advancing a "fraudulent defense of good faith," i.e., that Williams was relying on the BCI report and due to the concealment of material and favorable evidence by the prosecutor and Wycoff's own trial counsel from this Court and the appellate courts as well as Wycoff.

Clearly the Iowa Supreme Court committed a factual error in their holding and fact findings of a manifest injustice, that had it not been committed, the Iowa Supreme Court would not have reversed the Iowa Appeals Court's reversal of Wycoff's conviction.

The Iowa Supreme Court denied Wycoff "due process" contrary to the Fourteenth Amendment to the United States Constitution when they relied on bad law to re-impose a life sentence upon Wycoff after Wycoff had obtained a reversal of his conviction.

Furthermore, Love was and remains in direct conflict with the law of the United States Supreme Court. (Att – pgs. 182, 183-184 & 185).

The conduct of the Iowa Supreme Court denied Wycoff his due process right under the Sixth and Fourteenth Amendments to the United States Constitution and as such the judgment of the Iowa Supreme Court in Wycoff v State of Iowa, 382 N.W. 2d 462 (Iowa 1986) is legally "void".

The Court of Appeals Decision:

On December 2, 2010 a three judge panel of the court of appeals denied Mr. Wycoff permission to file a second habeas petition with no reasoning, analysis, findings of fact, or legal basis. The lower court even failed to identify whether Mr. Wycoff "failed to meet the procedural requirements of 28 U.S.C. §§ 2244(b) (2) (B) (i) or 2244(b) (2) (B) (ii) and/or both." (Attachment hereto – "A") Second, it held that under 28 U.S.C. § 2244(b) (3) Mr. Wycoff could not file an application for rehearing en banc. In fact, the court of appeals actually held that "the Clerk of the Eighth Circuit Court of Appeals was not required to even file an application for rehearing en banc." (Attachment hereto – "B") (See, also, Attachment hereto "C")

It is a denial of due process of law and the right to be heard under the Fourteenth Amendment to the United States Constitution for the Eighth Circuit to deny Petitioner the right to rebut absent reasoning, analysis, findings of fact, or legal basis. See, Crane v. Kentucky, 106 S. Ct. 2142 (186). See, also, Skipper v. South Carolina, 106 S.Ct. 1669 (1986) ("Defendant's right to be heard means that he must be afforded an [opportunity] to rebut.").

IV. Mr. Wycoff's Second Petition Meets the Requirements of 28 U.S.C. § 2254

A. Mr. Wycoff Is Entitled To a New Trial Or In The Very Least An Evidentiary Hearing

After 35-years of foul blows, it is not debatable among reasonable jurists that the conduct of the state prosecutor in withholding exculpatory evidence, making a conscious choice to intentionally present false testimonial statements to the jury, and intentionally testifying under oath in other collateral proceedings in order to further hide his past deceptions all operated to deny Mr. Wycoff his right to due process. A finding to the contrary would be "so offensive to existing precedent, so devoid of record support, and so arbitrary as to [be]…outside the universe of plausible, credible outcomes."

In the alternative, if this Court transfers Mr. Wycoff's habeas petition to the district court, Mr. Wycoff would be entitled to an evidentiary hearing under 28 U.S.C. § 2254(e)(2). Subject to the requirements of § 2254, a federal evidentiary hearing is required "unless the state court trier of fact has after a full hearing reliably bound the relevant facts," Townsend v. Sain, 372 U.S. 293, 313 (1963) (overruled on other grounds).

Section 2254(e) (2) does not preclude an evidentiary hearing in this case because Mr. Wycoff consistently, but unsuccessfully, sought an evidentiary hearing to prove his innocence in state court. By the terms of its opening clause, § 2254(e) (2) bars an evidentiary hearing only to prisoners who have "failed to develop the factual basis of a claim in state court proceedings." In Williams v. Taylor, 529 U.S. 420, 435 (2000) this Court held that a petitioner who did not receive a hearing in state court may receive an evidentiary hearing in federal court "unless there is lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel." The Court held at a minimum; seek an evidentiary hearing in state court in the manner prescribed by state law." To no avail, Mr. Wycoff asserted his innocence and requested an evidentiary hearing on his newly discovered evidence at every level of the state proceedings in connection with his application seeking post-conviction relief in **two** post-conviction application proceedings.

B. The Iowa State Court's Summary Denials Contrary to State Law Deserve No Deference under § 2254

The Iowa Court of Appeals' review of Mr. Wycoff's post-conviction relief appeal is entitled to no deference under § 2254 since the state courts failed to conduct an evidentiary hearing and the Iowa District Court made an unreasonable determination of the facts in light of the evidence Mr. Wycoff had presented.

Under AEDPA's amendments to § 2254, a federal court may grant habeas relief if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding," 28 U.S.C. § 2254(d) (2). Factual determinations made by state courts are presumed correct unless rebutted by "clear and convincing evidence." § 2254(e) (1). When the state court conducted an evidentiary hearing, this Court has held that these standards are "demanding but not insatiable" as "deference does not by definition preclude relief." Miller-El v. Dretke, 545 U.S. 231, 240 (2005).

AEDPA's provisions deferring to state court factual determinations are inapplicable where, as here, the petitioner did not have the opportunity for a full and fair hearing in state court. There is a split among the circuits as to whether § 2254(d) (2) and § 2254(e) (1) apply when the state court failed to conduct an evidentiary hearing. The Tenth and Ninth Circuits have held that the presumption of correctness contained in § 2254 (d) (2) and (e) (1) does not apply if the habeas petitioner did not receive a full, fair and adequate hearing on factual determination sought to be raised in the habeas petition. Bryan v. Mullin, 335 F. 3d 1207, 1215-16 (10th Cir 2003) (en banc); Nunes v. Mueller, 350 F. 3d 1045, 1055 (9th Cir 2003). In Bryan v. Mullin, for example, the Tenth Circuit, sitting en banc, afforded no deference to the state court factual findings, reasoning that "because the state court did not hold an evidentiary hearing, we are in the same position to evaluate the factual record as it was." 350 F. 3d at 1216.

Conversely, the First and Third Circuits have taken the middle ground, finding that the lack of an evidentiary hearing in state court should be a consideration in applying deference under § 2254 (d)(2) and (e)(1). Teti v. Bender, 507 F. 3d 50, 59 (1st Cir 2007)("While it might seem questionable to presume the correctness of material facts not derived from a full and fair hearing in state court, the veracity of those facts can be tested through an evidentiary hearing before the district court where appropriate"); Rolan v. Vaughn, 445 F. 3d 671, 679-80 (3d Cir 2006)("after AEDPA, state fact-finding procedures may be relevant when deciding whether the determination was 'reasonable' or whether a petitioner has adequately rebutted a fact, the procedures are not relevant in assessing whether deference applies to those facts."); See, also, Simpson v. Norris, 490 F. 3d 1029, 1035 (8th Cir. 2007)("Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court."). Critical Note: The Eighth Circuit, **at least in Iowa cases**, does not seem to follow Simpson v Norris, **and not-at-all, when it comes to Iowa prisoner's seeking permission to file second or successive applications.** See Harold Leroy Page v. John Ault, No: 11-1072 (8th Cir 2001) (denied evidentiary hearing even though state court denied an evidentiary hearing on "withheld Brady materials evidence of state star witness plea agreement and newly discovered evidence.").

Regardless of the applicable level of deference afforded the Iowa state courts, those court's conclusions about Mr. Wycoff's new evidence are rebutted by the affidavits and Brady materials to a clear and convincing degree, showing that the court's conclusion that any reasoning, analysis, or findings of fact are "unnecessary" was unreasonable.

The state court's unreasonable factual determinations in light of the clear language of the unchallenged affidavits and unchallenged Brady materials is an error attributable to the lack of an evidentiary hearing examining the new evidence and deserves no deference.

V. State and Federal Summary Denials Violates Mr. Wycoff's Core Requirement Due Process Rights to Be Heard and To Rebut

A. Summary Denials Deprive Petitioner's Due Process of Law

This Court has held that "a core requirement of due process is the right to be heard." Crane v. Kentucky, 106 S. Ct. 2142 (1986). See, also, Skipper v. South Carolina, 106 S.Ct. 1669 (1986) ("Defendant's right to be heard means that he must be afforded an [opportunity] to rebut.").

Of course, where the state courts are allowed to render summary denials, assigning no reasons, analysis, findings of fact, or legal basis for the denials of relief and, in turn, the federal court of appeals' denials favor petitioner's with no reasoning, analysis, findings of fact, or legal basis for denying a second habeas application, petitioner's – if not denied a full and fair right to be heard, most certainly, are "totally" denied any

opportunity to rebut. Concomitantly, a petitioner cannot present (i.e., rehearing en banc and/or certiorari) an opposing argument, when he or she has been denied any information, analysis, or reasoning of the basis for the denial. Thus, then, it is the court's (state and federal) that does violence to petitioner's right to due process of law.

Respectfully, nowhere does the AEDPA inform the federal court of appeals that it shall, must, or may not give reasoning, analysis, findings of fact, or a legal basis for its denial of second habeas applications?

Therefore, it is presented that this Court should give life and meaning to a petitioner's "opportunity" to rebut, and direct that the court of appeals must give some type of reasoning, analysis, findings of fact, or legal basis for its denial of second or successive habeas applications.

B. What Process or Proceeding Gives State Prisoners' Protection from Arbitrary Court Of Appeals Opinions

This is not a "hypothetical" argument, as clearly, Mr. Wycoff's own case reveals to be true; i.e., where and/or what process is the constitutional avenue for seeking relief if petitioner's new claim does meet the AEDPA's §§ 2244(b)(2)(B)(i) and 2244 (b)(2)(B)(ii) requirements yet, the court of appeals fails or refuses to so recognize?

If these contentions be true in fact, it necessarily follows that no legal procedural remedy is available to grant relief for a violation of constitutional rights, unless this Court protects petitioner's right by original habeas corpus.

Of course, of the contention, implied, that the law provides no effective remedy for such a deprivation of rights affecting life and liberty, it may well be said – as in Mooney v. Holohan, 294 U.S. 103, 113, 55 S.Ct. 340, 343 – that it 'falls with the premise,' to deprive a citizen of any effective remedy would not only be contrary to the 'rudimentary demands of justice' but destructive of a constitutional guarantee specifically designed to prevent injustice.

Therefore, respectfully, this Court should accord some type of protection... For example: That a court of appeals, in denying a second habeas application must either (1) allow and/or grant petitions for rehearing en banc; or (2) provide reasons, analysis, findings of fact, or a legal basis in supporting each ground for denials thereof.

C. AEDPA's Impact Below On Original Habeas Petitions

If this Court grants an original habeas petition and remands to the district court for an evidentiary hearing (and presumably a decision on the merits) what requirements of the AEDPA (and to what extent) are applicable? To leave the question unanswered can only cause indecision and confusion on the part of district courts, as well as, any subsequent court of appeals' involvement. See, Felker v. Turpin, 518 U.S. 651, 660 (1996).

Conclusion

The petition for an original writ of habeas corpus should be granted and Mr. Wycoff awarded a new jury trial. In the alternative, the petition should be transferred to the district court for a hearing and determination.

Respectfully submitted,

Steven Wycoff

May 29, 2025

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Date:

Attachments "A" through "L"

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Certificate of Service

The undersigned certifies that he has mailed a true and correct copy of the foregoing to the defendant's attorney of record at the above address on the 29 day of May, 2024 by first class postage prepaid main by my signature below:

Steven Wycoff

Steven Wycoff, #13003, pro se