DOCKET NO.	:	**SUPERIOR COURT**
	:	
RICHARD LAPOINTE,	:	**JUDICIAL DISTRICT OF**
	:	
***Petitioner*,**	:	**HARTFORD AT HARTFORD**
	:	
VS	:	
	:	
WARDEN, STATE PRISON,	:	
	:	
***Respondent*,** :		
	:	
	:	**August 1, 2002**

PETITION FOR SECOND WRIT OF HABEAS CORPUS

The petitioner RICHARD LAPOINTE, presently confined in State Prison, through undersigned counsel, by way of Petition for Issuance of a Writ of Habeas Corpus, pursuant to the Connecticut Practice Book 23-32, states:

STATEMENT OF THE CASE

A. Procedural History

1. On July 5, 1989 the petitioner was arrested and charged by way of information with the March 8, 1987 murder of Bernice Martin. Most specifically, the information alleged the petitioner committed the following offenses: Capital Felony Murder, in violation of C.G.S. §53a-54b(7); Arson Murder, in violation of C.G.S. §53a-54c; Felony Murder, in violation of C.G.S. §53a-54b(7); Assault in the First Degree, in violation of C.G.S. §53a-59; Assault of a Victim 60 or Over in the First Degree, in violation of C.G.S. §53a-59a; Sexual Assault in the First Degree, in violation of C.G.S. §53a-70; Arson in the First

Degree in violation of C.G.S. §53a-111.

2. On August 23, 1989, an amended information was filed in which first degree sexual assault was charged under C.G.S. §53a-70(a)(1) and charges of Kidnaping in the First degree, in violation of C.G.S. §53a-92(a)(2), and Sexual Assault in the Third Degree, in violation of C.G.S. §53a-72a were added.

3. On August 23, 1989 probable cause was found by Hammer, J.

4. On March 6, 1990 a Motion to Suppress the petitioner's statements of July 4, 1989 to the Manchester Police was filed. On February 3, 1992 the motion to suppress was denied by Judge David M. Barry after an evidentiary hearing over the course of several days beginning on December 16, 1991.

5. On March 11, 1992, the State filed a long form information charging the petitioner with the following crimes: Capital Felony Murder, in violation of C.G.S. §53a-54b(7); Arson Murder, in violation of C.G.S. §53a-54d; Felony Murder, in violation of C.G.S. §53a-54c, with the underlying felonies being sexual assault in the first degree or attempt to sexual assault in the first degree or sexual assault in the third degree or attempt to commit sexual assault in the third degree; Murder, in violation of C.G.S. §53a-54a; Arson in the First Degree, in violation of C.G.S. §53a-111(a)(2)(4); Assault in the First Degree, in violation of C.G.S. §53a-70(a)(1); Sexual Assault in

the Third Degree, in violation of C.G.S. §53a-72a(1)(A); and Kidnaping in the First Degree, in violation of C.G.S. §53a-92a(2)(A).

6. Jury selection, Judge David M. Barry presiding, commenced on March 16, 1992, and on May 6, 1992 the presentation of evidence began. On June 26, 1992 the State filed an amended long form information identical to its predecessor excepting for the following: the Felony Murder Count omitted any reference to attempted first and third degree sexual assault; subsection (1) of C.G.S. Sec 53a-111(a)(1) was added to the Arson Count; and Assault in the First Degree was changed to allege a violation of C.G.S. Sec.53a-59(a)(1).

7. On June 30, 1992 the petitioner was convicted of capital felony, arson murder, felony murder, murder, arson in the first degree, assault in the first degree, two counts of sexual assault and first degree kidnaping. The petitioner was spared a death sentence by the jury and on September 30, 1992 he received an aggregate sentence of life imprisonment without the possibility of parole.

8. On July 16, 1996 the Supreme Court affirmed the petitioner's convictions, State v Lapointe, 237 Conn. 694, 678 A.2d 942 (1996), and on November 18, 1996 his petition for a writ of certiorari was denied by the United States Supreme Court. Lapointe v Connecticut, 519 U.S. 994, 117 S. Ct. 484, 136 L.Ed.2d

378 (1996).

9. On May 30, 1997 the petitioner, represented by Attorney Henry Theodore Vogt, filed a Petition for Writ of Habeas Corpus. There were a succession of amendments to the original petition the last being the Fifth Amended Petition in which it was asserted the petitioner's confinement was illegal based upon, the following: (1) Count One, newly discovered evidence, in the form of scientific advancements in the understanding of Dandy-Walker Syndrome, a congenital brain disease which afflicted the petitioner, it was contended established the petitioner's actual innocence, in that the evidence demonstrated he: (a) "lacked the physical and intellectual ability to carry out and conceal the crimes at issue;" (b) did not knowingly and voluntarily participate in the police interrogation two years after the murder which produced his alleged confessions; and (c) lacked the capacity to testify reliably; (2) Count Two, alleged prosecutorial misconduct in the form of the suppression of exculpatory evidence, the delayed or belated disclosure of evidence, the distortion of the petitioner's alibi via the objection to the introduction of a police officer's testimony concerning statements made by Jeanette King regarding the petitioner's whereabouts, which it was contended were evidence helpful to proving the reliability of the petitioner's alibi, and

the State's failure to present evidence exculpatory to the petitioner at trial; (3) Count Three, alleged discrimination by the State based upon the petitioner's mental and physical disabilities in violation of his equal protection rights under the United States and Connecticut Constitutions; (4) Count Four, contended trial counsel was ineffective based upon the following alleged failures: (a) to advise the petitioner against testifying; (b) to "adequately employ available information;" (c) to make a complete and accurate record of the petitioner's disabilities; (d) to investigate; (e) to make a record as to prosecutorial misconduct; (f) to submit a comprehensive judgment of acquittal; (g) to move for a new trial based upon prosecutorial misconduct; and (h) to properly preserve issues for appellate review; and (5) Count Five alleged ineffective assistance of appellate counsel based upon a laundry list of alleged errors.

10. On February 23, 2000 the habeas trial began before Judge Samuel Freed and continued on various dates thereafter until its conclusion on April 6, 2000. At the close of the trial the court ordered the petitioner to submit his Post Trial Brief by May 5, 2000, and the Respondent to submit its response by May 26, 2000. [H.T. 4/6/01, 61-3 to 18]

11. On April 20, 2000 Attorney James Cousins entered an appearance in lieu of Attorney Vogt and filed a motion for the

Pro Hac Vice Admission of Attorney Paul Casteleiro. On April 24, 2000 Mr. Vogt filed opposition to Mr. Cousins' in lieu appearance.

12. On May 5, 2000 the petitioner, through Attorney James Cousins, filed a motion to reopen the evidentiary proceedings, to stay the briefing schedule and to compel Mr. Vogt to turn over to him his complete trial file. In support of his motion to reopen the evidentiary proceedings the petitioner argued that throughout the history of the habeas case, trial counsel exhibited a fundamental lack of understanding of the evidentiary requirements necessary to prove his claims. The petitioner asserted this resulted in the failure to introduce the essential proofs necessary to support the claims alleged in Counts One, (actual innocence), Two (prosecutorial misconduct) and Four (ineffective assistance of counsel), and the forfeiture of his opportunity to prove he was wrongfully convicted and imprisoned in violation of his constitutional rights. [A222 to A242] On May 16, 2000 petitioner filed a motion to strike Attorney Vogt's May 5, 2000 Post Trial Brief and a supplement to his motion to reopen which centered upon the failure of habeas counsel to raise under the ineffective assistance of counsel claim, the following: (a) the issue of trial counsel's failure to call the petitioner's alibi witness, Karen Lapointe, to testify; and (b) the failure to

object to the admission of Detective Michael Morrissey's opinion testimony that Karen Lapointe's recollection was inaccurate, her demeanor and body language displayed knowledge of petitioner's guilt and that she had divided loyalties to her grandmother and her husband "who we believe is guilty" of her murder. [T.T. 5/21/92, 1483-1484, 1486-1488; A202 to A221] On June 9, 2000 petitioner filed a response to the State's Post Trial Brief, along with a supplement to his motion to reopen in which he contended habeas counsel also failed to raise the issue of trial counsel's failure to impeach Detective Michael Morrissey at trial with his suppression hearing testimony during which he denied telling Karen Lapointe of the existence of alleged or false evidence in his interview of her on July 4, 1989 in an obvious effort to maker her believe the petitioner murdered her grandmother so that she would implicate her. [A105 to A192] On June 15, 2000 petitioner moved for oral argument on his motion to reopen. [A101 to A104] On July 26, 2000, having finally been given access to Attorney Vogt's files on petitioner's case, a motion was submitted supplementing the motion to reopen based upon the discovery of the State's suppression of its arson expert's opinion affixing the "burn time" of the fire in the decedent's apartment at between "30-40 mins. pass.". This evidence was contained in Detective Michael Ludlow's notes, which were disclosed to Attorney Vogt during the discovery phase of the

habeas proceeding, and if accepted by the jury made it impossible for the petitioner to have committed the crimes. [A58 to A90; H.T. 2/24/00, 17-11 to 19-18; 23-7 to 27] Finally, on August 17, 2000 the petitioner submitted a motion for disclosure of all exculpatory evidence on the subject of the "burn time" of the fire in the State's possession. [A33 to A52]

13. The trial court refused to consider the petitioner's multiple motions to reopen, holding any matters outside the evidence produced during the testimonial phase of the habeas trial to be beyond the purview of the court's consideration. The court stated, the following:

> "All I am, all I'm interested at this point is any arguments in favor of Mr. Lapointe that anybody wants to make as well as arguments, favorable to the State that the State wants to make. Material that, you know, indicates that perhaps a strong case wasn't presented or something of that nature, that's beyond, I think that's beyond, the scope of this habeas hearing at this point.
>
> If you want to make that at some later point, I suppose you're entitled to do that ... 'but I'm going to go by evidence that was presented."
>
> [H.T. 5/17/00, 24-10 to 20]

14. On September 6, 2000 the trial judge dismissed the petitioner's petition for a writ of habeas corpus in a written opinion holding the petitioner failed to prove any of the five counts contained in his petition. On September 15, 2000 the trial court submitted a two (2) page addendum to its Memorandum

Decision of September 6, 2000.

15. A Petition for Certification was filed on behalf of the petitioner on September 12, 2000 seeking permission to appeal the trial court's denial of his motion to reopen, his motion for discovery, and the dismissal of his petition for a writ of habeas corpus. On September 19, 2000 Judge Freed granted the petition for certification.

16. The Appellate Court on January 22, 2002 affirmed the trial court's dismissal of the petition for a writ of habeas corpus, holding the following: (1) the trial court did not abuse its discretion in denying the motions to reopen; (2) the claim that habeas trial counsel was ineffective was improperly raised on direct appeal, and instead the petitioner should pursue the claim by filing a petition for a second writ of habeas corpus challenging the effectiveness of his habeas trial counsel; and (3) because the trial court failed to rule on petitioner's motion for discovery of exculpatory evidence relating to any reports and opinions obtained by the State regarding the "burn time" of the fire in the victim's house the issue was not reviewable on appeal.

17. On February 11, 2002 the petitioner filed a Petition for Certification with the Supreme Court seeking to appeal the Appellate Court's affirmance of the trial court's disposition of his petition for writ of habeas corpus. On March 6, 2002 the Supreme Court denied petitioner's petition for certification.

B. Factual Background

18. Shortly after 8:00 P.M. on March 8, 1987 Natalie Howard called the home of Richard and Karen Lapointe out of concern for her 88 year old mother Bernice Martin who did not answer her telephone when she called her at 7:55 P.M. and a little after 8:00 P.M. Karen Lapointe, the petitioner's wife, was Bernice Martin's granddaughter and Natalie Howard's niece. [T.T. 5/13/92, 655, 662 (Howard)] Ms. Howard asked the petitioner to go to her mother's apartment to check on her. [id. 664] The Lapointe's lived at 75 Union Street, Manchester, Connecticut which was approximately 3/10ths of a mile from Ms. Martin, who lived alone in the Mayfair Gardens Complex, 251A North Main Street, a senior housing apartment complex. [T.T. 5/6/92, 4-5; 5/14/92, 655-656] According to the undisputed evidence at trial, the petitioner walked over to Mrs. Martin's apartment, received no response and proceeded to the apartment of Jeanette King, a neighbor of Mrs. Martin's in the housing complex. At Ms. King's the petitioner called both his wife, and Natalie Howard to report Mrs. Martin did not answer the door. [id. 664; T.T. 6/16/92, 148 to 150 (King)] Ms. Howard instructed the petitioner to return to Mrs. Martin's apartment, which he did, and he saw smoke coming from the residence prompting him to return to Mrs. King's apartment to call 911. The police records established the petitioner called

911 from Ms. King's apartment at 8:27 P.M.[1] Almost immediately fire and police personnel arrived on the scene to find the petitioner standing in front of Mrs. Martin's locked front door, calling to them, "This is it. This is the place." [T.T. 5/6/92, 6-7, (Tomkunas)] Michael Tomkunas, the first fire fighter to arrive on the scene, kicked in the front door but was unable to enter due to the "high heat and heavy smoke condition" present necessitating that the apartment be "vented" to allow the heat, smoke and hot gases to escape. [T.T. 5/6/92, 7-8 (Tomkunas)] Firefighter Douglas Boland "vented" the apartment by going to the back entrance to the apartment and opening the unlocked sliding

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[1]Neither a tape nor a transcript of the petitioner's 911 call was ever produced by the State. The failure to produce the actual call of the petitioner, against whom the State sought the death penalty, is baffling considering one would generally expect such a call, by the alleged perpetrator, to contain a clue that the caller was the killer if in fact the caller was the killer. This is especially so in the petitioner's case given his disabilities. Was the tape not produced because it belied the State's theory that the petitioner was the killer? Why was there never any explanation offered by the State justifying its failure to produce the tape? The State certainly tried, during its cross-examination of Jeanette King to plant in the jury's mind that the petitioner was not in "an excited state" but was "cool, calm, collected, casual" when he came to her apartment to use her telephone, and therefore, uncaring to the fate of the decedent. [T.T. 6/16/92, 163 to 165] The 911 tape of the petitioner's call clearly was relevant to this issue.

As part and parcel to this petition, the petitioner demands the right to listen to and copy the tape of the 911 call. In addition, the petitioner demands copies of all chain of custody documents and evidence reports and vouchers pertaining to the tape, as well as, any and all reports compiled on behalf of the State in relation to any examinations or analysis of the 911 call by any experts.

glass doors. [T.T. 5/6/92, 4-5 (Boland)] Upon entering the apartment, on his hand and knees to minimize the impact of the still present smoke and heat, Mr. Tomkunas observed a body in the living room area 6 to 8 feet from a smoking burning couch, with very little frame. [T.T. 5/6/92, 9-10 (Tomkunas)] The 5'2", 160 pound Bernice Martin was pulled from her smoked filled apartment and according to Mr. Tomkunas possibly had a faint pulse. [id. at pp. 10 to 13; 5/7/92, 63, (Katsnelson)] Mrs. Martin was only partially dressed and had a piece of red fabric tied to a piece of bluish gray fabric wrapped and tied tightly around her neck. [T.T. 5/6/92, 12, (Tomkunas)] Michael Tomkunas stated "it was very hard" to untie the fabric around the decedent's neck. [id. at 12] Other fabric was wrapped around Ms. Martin's wrists and stomach. [T.T. 5/6/92, 56 (Cusson)]

Bruce Kramer, a fireman and a certified EMT, arrived on the scene as Ms. Martin was being dragged out of the apartment and placed on the ground by the sidewalk. [T.T. 5/6/92, 33, 36, (Kramer)] Mr. Kramer helped Mr. Tomkunas untie the tightly knotted cloth from around Ms. Martin's neck and ascertained that she "definitely was not breathing" and had no pulse. [id. At 37, 41-44] According to Mr. Kramer, normally when an individual is unconscious they are very limp "because the muscles tend to be relaxed." He observed that Ms. Martin's hands "were almost in a rested position like so, over the chest area and stomach area,"

and in his experience with unconscious people "their hands are down at their sides." He testified the position of her hands was especially "peculiar" and "strange" given she was "rather obese or large." [id. At 41-42]

According to both Kenneth Cusson, a firefighter paramedic, and Donald Turner, a police officer, when they arrived on the scene at 8:33 P.M., CPR was being administered to Mrs. Martin, and the fire in the decedent's apartment was extinguished. [T.T. 5/6/92, 46, 48 (Cusson); 5/7/92, 21, 24, 25, 30 (Turner)] Mr. Cusson employing a defibrillator monitor on Ms. Martin determined there was no electrical activity in her heart. [5/6/92, 48-49 (Cusson)] Ms. Martin was taken from the scene to the hospital where she was pronounced dead. [T.T. 5/7/92, 57-58 (Cusson)]

A pair of men's gloves, having no evidentiary connection or link to the petitioner, State's Trial Exhibits 24 to 25, were found in the decedent's bedroom, one on the floor the other in the bed. [T.T. 5/8/92, 200 to 201, 224; T.T. 5/11/92, 415 to 419 (Bates)] Head hairs on the gloves were determined to be similar to the decedent's head hairs. [T.T. 5/12/92, 592 to 593, (Novitch)] A pubic hair, microscopically dissimilar to both the decedent's and the petitioner's pubic hairs, was recovered from a blue sweater on the bedroom floor. Head hairs which did not match either the decedent's or the petitioner's head hairs were found on the decedent's shoes and on a blanket. [id. 593 to 597;

T.T. 5/13/92, 644 (Novitch)]

The decedent's bedspread contained a large blood stain, and a semen stain. [T.T. 5/8/92, 224 (Bates); T.T. 5/12/92, 595 to 596 (Novitch)] A knife blade, which was never connected to the attack on the decedent, was discovered in the bedding and the knife's charred handle was recovered in the livingroom. [T.T. 5/8/92, 224, 236 to 237 (Bates)]

The medical examiner, Dr. Arkady Katsnelson testified Mrs. Martin suffered premortem second degree burns on her face, neck and back and premortem first degree burns in the area of her abdomen and back. [T.T. 5/7/92, 67 to 68] In addition, Mrs. Martin suffered a three inch deep stab wound to the abdomen, ten less severe stab wounds on the back, and two superficial scrape type abrasions in the abdominal area. There were also superficial lacerations and contusions on the front of her vagina, around her urethra and the opening of the vagina which Dr. Katsnelson opined were evidence of blunt trauma to the area. The cause of death was determined to be a combination of asphyxia by strangulation, possibly by means of pressure with a blunt object to the right side of the neck, and smoke inhalation. [id., 85-86, 91] All of Mrs. Martin's wounds were suffered premorten, i.e., while she was alive, as established by the extensive hemorrhaging in the areas of the wounds. [id. 68 to 70; 76] In addition, Dr. Katsnelson testified Mrs. Martin had

cyanide and 43% carbon monoxide in her blood, along with soot in her airways and bronchi all of which were byproducts of the fire, and established Mrs. Martin was alive and breathing when the fire occurred. [T.T. 5/7/92, 88 to 89]

Stephen Igoe, an arson expert, assigned to the State Fire Marshal's Office at the time of the incident testified at trial on behalf of the State. [T.T. 5/8/92, 283, 285-286 (Igoe)] According to Mr. Igoe he arrived on the scene around 2:20 A.M. on March 9, 1987 and was met by Detective Michael Ludlow of the Manchester Police Department and Sgt. Grant Gould of the State Attorney's Office, Major Crime Squad. [id. 286] Upon completing his investigation Mr. Igoe determined there were three separate fires set in the apartment. The major fire was in a couch located in the living room, and the two other fires were on the refrigerator door handle, and around a kitchen drawer handle both of which caused only very light and minor burning. Mr. Igoe found no evidence of the use of an accelerant, although he conducted no scientific tests to determine whether there was evidence of an accelerant present, and he concluded, because there were three separate fires, that the fires were not the result of an accident or careless smoking. [id. 286, 194, 298] At the scene Mr. Igoe took a piece of the couch cushion and ignited it with a match in order to see if the material burned rapidly or slowly. He concluded based upon his test that the

fire was "slow burning" with very small flames, which created "a lot of smoke." [id. 300; 5/11/92, 318-319 (Igoe)] The smoke from the couch fire "caused the walls and ceilings ... to be blackened [and] ... the heat ... affected different things by melting them ..." [id. 305] He stated that in the living room, where the couch was, the damage to the wall began approximately 4 feet above the floor and went up to the ceiling. [T.T. 5/8/92, 288, 291-292 (Igoe)] He observed that the fire burned the seat cushion material down its wood frame, lightly blackening it, with no deep charring to the frame. [id. 299]

After two years no arrests were made in the case and in March 1989, Detective Paul Lombardo of the Manchester Police Department replaced Detective Michael Ludlow, who was promoted and transferred, as the lead investigator on the case. [H.T. 2/24/00, 12-24 to 14-23 (Ludlow)] Detective Lombardo immediately zeroed in on the petitioner as his sole suspect. Once it was determined, through the testing of the petitioner's saliva, that the petitioner had Type A blood, was a secretor, and had had a vasectomy Lombardo was convinced the petitioner committed the crimes, because a semen stain found on the decedent's bedspread contained no sperm, which was consistent with the semen of an individual who had had a vasectomy, and came from a person who was a secretor with Type A blood. [T.T. 5/19/92, 1064, 1172-1173, 1215, 1220-1221 (Lombardo)]

The petitioner, who suffers from Dandy-Walker Syndrome, a congenital brain malformation, which severely affects the brain, was never considered a real suspect before Lombardo took over the investigation, because it was established he had an alibi, he was home with his wife and child from 4:00 P.M. until Natalie Howard called worried about her mother a little after 8:00 P.M. [T.T. 5/19/92, 1191-1192 (Lombardo); H.T. 3/30/00, 19-24 (Dennis)] Karen Lapointe testified, during the pretrial hearing to suppress statements made by the petitioner to the police on July 4, 1989, she was physically in the presence of her husband from 7:00 P.M. until the time her aunt Natalie Howard called reporting an inability to reach Bernice Martin by telephone, and that the petitioner was home at all times, from 4:00 P.M. until a little after 8:00 P.M., except for a 20 minute period of time when he walked the dog prior to the family sitting down to dinner at 5:15 P.M. [S.T. 1/30/92, 2090 to 2091 (Lapointe)] During the entire time between 4:00 P.M. and a little after 8:00 P.M., the only time the petitioner was out of Karen Lapointe's eyesight was when he walked the dog before dinner, and between 6:15/6:30 and 7:00 P.M. when he was downstairs and she was upstairs bathing the couple's son. At 7:00 P.M. when their son was finished bathing Ms. Lapointe and the boy came downstairs to join the petitioner in watching TV. [id. 2098 to 2099, 2117]

On July 4, 1989 Detective Lombardo asked the petitioner to

come down to the police station to talk to him and once there he told the petitioner the police believed he murdered Bernice Martin. [T.T. 5/15/92, 923-924 (Lombardo)] At the same time Detective Michael Morrissey went to petitioner's apartment to interview Karen Lapointe, who "was considered possibly a hostile witness" in an unsuccessful attempt to shake her recollection of the events of March 8, 1987 which made it impossible for the petitioner to have been the murderer. [T.T. 5/21/92, 1482-1484 (Morrissey)] The petitioner was questioned for roughly eight hours by Detectives Lombardo and Morrissey, and signed three separate statements, each of which the State contended constituted a confession. The petitioner's statements formed the core of the State's capital case at trial. [T.T. 5/15/92, 915, 969]

C. Summary of Claims and Relief Requested

19. Habeas trial counsel Henry Theodore Vogt provided ineffective assistance of counsel during petitioner's first habeas trial: (1) by failing to present known, available and necessary proofs to establish the validity of constitutional claims alleged in Counts One, Two and Four of the Fifth Amended Petition; and (2) by failing to assert constitutional claims with the capacity to either individually or cumulatively, justify the issuance of the writ of habeas corpus.

20. Habeas trial counsel's failures were caused by his

fundamental lack of understanding of the evidentiary requirements necessary to prove the petitioner's claims, as well as, the absence of the knowledge necessary to recognize what did and what did not constitute a valid constitutional claim.[2]

21. As a result of habeas trial counsel's ineffective assistance of counsel the petitioner was prevented from establishing his entitlement to an order issuing the a writ of habeas corpus, vacating his convictions and granting a new trial, based on the following grounds: (1) the violation of his rights to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and the Connecticut Constitution by virtue of the State's suppression of exculpatory evidence; (2) the denial of his right to ineffective assistance of criminal trial counsel in violation of his Sixth Amendment rights to counsel; and (3) newly discovered medical or scientific evidence establishing his innocence by proving he lacked (a) the physical and intellectual capacity to carry out and conceal the crimes, and (b) the capacity to knowingly and voluntarily participate in the police interrogation of July 4, 1989 during which he issued three inculpatory statements.

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[2]No evidence was introduced during the habeas trial regarding the allegations in Count Three (Equal Protection) and Count Five (Ineffective Assistance of Appellate Counsel), nevertheless Attorney Vogt, in response to an inquiry by the court after both sides rested, maintained both counts were viable. [H.T. 4/6/00, 59-20 to 26]

FIRST COUNT

22. The petitioner incorporates the allegations contained in paragraphs 1 to 21 as if fully set forth herein at length.

23. Count Two of the Fifth Amended Petition purported to address the violation of the Petitioner's due process rights as a result of the State's failure to disclose exculpatory evidence. Unfortunately, because of Attorney Vogt's incompetence he failed to raise as an issue the State's suppression of its arson expert's opinion that the "burn time" of the fire set in the decedent's apartment was between 30 and 40 minutes. Paradis v Arave, 130 F.3d 385, 392-3 (9th Cir. 1997); Foster v Lockhart, 9 F.3d 722, 725-727 (8th Cir.1993).

Not only did Attorney Vogt fail to raise the State's suppression of the arson expert's estimate of the fire's burn time, the Brady issue he did raise he incompetently presented to the court by failing to even attempt to elicit the necessary proofs to the establishment of the claim. The issue was the suppression of Detective Paul Lombardo's notebook containing handwritten notes which, possibly, belied his trial testimony that he had no knowledge that the Petitioner may be retarded prior to questioning him on July 4, 1989 and obtaining his inculpatory statements. Although habeas counsel summoned Detective Lombardo to testify he failed to ask him any questions concerning the meaning of his writings in his notebook. The

failure to ask the writer the meaning of various notes in his notebook left the trial court with nothing other than speculation as to the meaning of the notes resulting in the denial of the claim based upon the absence of the proof necessary to establish the claim.

The Fire's Burn Time

24. By letter dated June 21, 1999 JoAnne Sulik, Assistant State's Attorney forwarded to Attorney Vogt copies of Detective Michael Ludlow's handwritten notes authored during the time he lead the investigation into the murder of Bernice Martin. The notes consisted of 34 pages, including two pages of computer generated printouts, and on the bottom of page 11 of the notes the following was written:

"CSP - Steve Igoe
Joe Roy Fire Marshals

30 - 40 mins poss. -Slow burn smolder
-No char on wood of couch
-Fabric burn test - slow
-Soot on Window
-High heat above couch area"

[Exhibit A][3]

[3]Detective Ludlow identified the third page of the notes as being in his handwriting. [H.T. 2/24/00, p. 23] Page 3 and page 11, the page containing the suppressed exculpatory evidence, appear to have been written by the same individual.

Exhibit A is a redacted copy of page 11 of Detective Ludlow's Notes submitted to the first habeas court as part of the petitioner's July 26, 2000 submission.

25. The note represented an undisclosed and suppressed exculpatory expert opinion of Fire Marshals Stephen Igoe and Joe Roy opining that the fire's burn time was between 30 and 40 minutes.[4] Attorney Vogt failed to recognize the contents of the note and to raise the following constitutional issues growing out of the discovery that the State suppressed it at the criminal trial: (a) the note constituted exculpatory evidence, because the fire's burn time of 30 to 40 minutes made it impossible for the petitioner to have set the fires, and the State's failure to disclose the note deprived the petitioner of due process of law; (b) the suppression of the note deprived the petitioner of his right to counsel by eliminating critical information counsel needed in making strategic choices, e.g. whether to call Karen Lapointe as an alibi witness; and (c) the discovery of the note demonstrated criminal trial counsel failed to adequately investigate the issues arising from the setting of the fires and as a result deprived the petitioner of his Sixth Amendment right to effective assistance of counsel by foreclosing him from establishing it was impossible for him to have set the fires.

26. The State contended the same person, who sexually abused Bernice Martin, stabbed her 10 times, tied a cloth

[4]Whether the note contains Fire Marshal Igoe's opinion and/or Fire Marshal Joseph Roy's opinion does not change the exculpatory nature of the burn time estimate the State possessed and suppressed.

ligature around her neck and tied cloth materials on her wrists also set fire to her apartment.

27. At trial Stephen Igoe testified on behalf of the State as an expert, without objection, in the field of fire investigation and the determination of the cause and origin of fires. [T.T. 5/8/82, 285-286] There can be no dispute that Detective Ludlow's note contains arson expert Stephen Igoe's opinion because the note tracks Stephen Igoe's trial testimony, given over 5 years after his investigation on the night of the crime's discovery, excepting for his opinion regarding the fire's burn time which he was never directly asked. [See Infra, ¶21, pp. 14 to 15][5]

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[5]On cross-examination Mr. Igoe was asked if he timed his test of the cushion to determine how long it would take the cushion to be consumed. He answered the question by asking a question i.e., whether he timed the test to make an estimate of the burn time and he then cautiously answered the rephrased question stating that the "purpose" of his test was merely to see if the cushion material burned rapidly or slowly. The following, occurred at trial:

"Q. And so did you actually extinguish it yourself, that particular test piece?
A. More than likely, yes.
Q. Did you time the burning in any way so -- were you able to conduct any tests to make some judgment as to how long it would have taken an entire cushion made of the material that you tested -- how long it would have taken a cushion to burn completely -- to be completely consumed by that particular fire?
A. The question is, did I time the test to make an estimate of burn

time?

Q. Yes, Sir, with respect to how long it would take one of those cushions, made of that particular material, to be completely consumed by a fire?

A. No. The purpose was to see if the material burned rapidly or slowly. That's all the purpose of that burn test was.

Q. And it was your conclusion that the material burned slowly; is that right?

A. The cushioning material burned slowly, yes, Sir."

[T.T. 3/11/92, pp. 318-319]

28. In order to establish the suppression of exculpatory evidence the movant must prove the evidence was exculpatory, that it was suppressed, and that the suppressed evidence was material to the petitioner's conviction. Brady v Maryland, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963). In United States v Agurs, 427 U.S. 97, 49 L.Ed.2d 342, 96 S.Ct. 2392 (1976), the court held where previously undisclosed evidence demonstrated that the prosecution introduced trial testimony that it knew or should have known as perjured that a conviction must be set aside if there is any reasonable likelihood that the false testimony would have affected the judgment of the jury. In Agurs, supra the court also held where the exculpatory evidence was not requested, and perjury was not an issue, the evidence was material if it was of sufficient significance to result in the denial of the defendant's right to a fair trial. [id at 108] In United States v Bagley, 473 U.S. 667, 87 L.Ed. 2d 481, 105 S.Ct. 3375 (1985) the court held, where perjury was not an issue, that favorable evidence was material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." at p. 682.

29. At the criminal trial the State undeniably knew the petitioner was relying on an alibi defense, asserting he did not murder Bernice Martin because he was home with his wife and son

when the crimes were committed. The suppressed opinion of Fire Marshal Igoe that the burn time was between 30 to 40 minutes made it impossible for the petitioner to have set the fire because it was undisputed he was home, several blocks away from the decedent's apartment, talking on the telephone to State's witness Natalie Howard, a few minutes after 8:00 P.M.

30. Karen Lapointe, the petitioner's former wife, unequivocally testified during the suppression hearing that she was physically in the presence of Richard Lapointe from 7:00 P.M. until the time her aunt Natalie Howard called reporting an inability to reach Bernice Martin by telephone. [S.T. 1/30/92, 2090 to 2091][6]

31. According to Karen Lapointe, between 6:15/6:30 P.M. and 7:00 P.M., she was upstairs bathing the couple's son and the petitioner "was downstairs the whole time," although he was not in her presence. At 7:00 P.M., when Sean Lapointe was finished bathing, Ms. Lapointe and Sean returned downstairs, where the petitioner was, and the family watched television together until Natalie Howard called their home. [S.T. 1/30/92, 2098 to 2099, 2117]

32. Fire Marshal Igoe's expert opinion that the fire burned

[6]Karen Lapointe was not called to testify at trial. The petitioner contends, infra Count Two, the failure to call Karen Lapointe to testify should have been raised in habeas trial in support of the petitioner's contention that trial counsel provided ineffective assistance of counsel.

for between 30 and 40 minutes established that the fire was not set at anytime before 7:00 P.M., the time Karen Lapointe and Sean Lapointe came downstairs to watch television with the petitioner, and destroyed any theory of the State that the petitioner set the fire while his son was being bathed by his wife.

33. Not only did the suppression of Fire Marshal Igoe's expert opinion on burn time deprive the jury of hearing his expert opinion, it also adversely impacted upon trial counsel's strategy.

34. At the habeas trial Attorney Patrick Culligan, criminal trial counsel, testified he did not produce Karen Lapointe as a defense alibi witness because she testified during the pretrial suppression hearing that the Petitioner was downstairs, out of her sight, when she was bathing the couple's son from 6:15/6:30 P.M. to 7:00 P.M. [H.T. 3/18/00, 46-2 to 49-00; S-1/30/92, 2088 to 2128] Defense counsel's decision to not call Karen Lapointe to testify was made in the absence of knowledge of Fire Marshal Igoe's estimate of the "burn time."

35. Criminal trial counsel unjustifiably exacerbated his lack of knowledge by failing to retain either a pathologist or an arson expert to appraise him of exactly what impact the fire had upon the decedent and how long the fire in the apartment burned.

35. Because criminal trial counsel was unaware of an arson expert's estimate of the "burn time" and failed to consult with

his own arson expert, and a forensic pathologist he did not know the critical time frame within which the crimes against Bernice Martin were committed. The time the crimes were committed could have easily been calculated by using the start of the fire as the time the perpetrator was last in the apartment based upon the reasonable assumption that the fire's heat and smoke would have forced the assailant out of the apartment. A forensic pathologist could have told criminal trial counsel the condition of the decedent's body immediately after being removed from the apartment in combination with the presence of the byproducts of the fires in the decedent's blood and airways meant the fire was burning in excess of 30 minutes by the time the decedent was removed from the apartment.

35 Because the defense did not know the critical time frame when the crimes had to have been committed, he miscalculated the significance of Karen Lapointe's suppression hearing testimony that the petitioner was out of her presence between 6:15 and 7:00 P.M. while she bathed their son. If the fire burned for 30 to 40 minutes and was discovered at 8:27 P.M., and completely extinguished before 8:33 P.M. when Kenneth Cusson and Donald Turner arrived on the scene, it had to have been set at the latest at 7:57 P.M., when the Petitioner was home, or the earliest at 7:47 P.M. when the Petitioner was also home. This estimate is corroborated by the fact that the decedent's body was

exhibiting signs that rigor mortis was setting in by the time it was removed from the apartment. Rigor mortis takes approximately 30 minutes after death to begin to be seen in an individual's smaller muscles. In addition, the presence of soot in the decedent's airways and cyanide and carbon monoxide in her blood conclusively establish that she was alive and breathing in the fire's smoke during some of the time of the fire. Combining the onset of rigor mortis and the evidence that the decedent was alive during part of the fire establishes that the fire had to have been burning in excess of 30 minutes when the decedent was removed from the apartment shortly after 8:27 P.M.

36. Once having established the parameters when the fires in the apartment were set, trial counsel could have established the time the perpetrator was last in the apartment and then worked backwards to establish the time the perpetrator needed to commit the other acts the evidence indicated occurred.

For example, before the fire was set the perpetrator had to have had the time to tie a cloth around the refrigerator handle, tie a cloth around the kitchen drawer, stab the victim 10 times, sexually abuse the victim, and tie the cloth material on the victim's arms and tie a ligature around her neck. Clearly. if the petitioner was at home with his wife and child watching television from 7:00 P.M. until 8:05 P.M. when Natalie Howard called, he could not have been the perpetrator because he so

clearly could not have set the fires. Certainly, the petitioner was entitled to Fire Marshal Igoe's estimate of burn time because it was exculpatory evidence, and it impacted strategic choices the defense had to make in summoning witnesses and consulting experts. Although defense counsel compounded the impact of the State's suppression of the expert's opinion concerning burn time by not consulting his own arson expert or a forensic pathologist, their failures do not excuse the State's violation of the petitioner's due process rights.

39 The petitioner has obtained the opinion of Gerald J. Kelder, Jr., an expert in the causes and origins of fires, in which he opines that the burn time for the fire was 45 minutes to 60 minutes, and the opinion of Howard C. Adelman, M.D., a forensic pathology expert in which he states that the decedent was dead for approximately 30 minutes by the time she was pulled from the burning apartment. The burn time of the fires and the decedent's approximate time of death make it impossible for the petitioner to have been the perpetrator, because he was home with his wife and son when the fires in the decedent's apartment had to have been set. [S.T. 1/30/92, 2098 to 2099, 2117]

40. The fact that Attorney Vogt had the "Ludlow Notes" since June 21, 1999 and failed to recognize their significance demonstrates just how ineffective he was in representing the petitioner during the habeas trial. Because of this incompetence

the petitioner was deprived of the opportunity of presenting to the court evidence that established his innocence, the violation of his rights to due process of law by means of the suppression of exculpatory evidence, and the violation of his right to effective assistance of counsel by virtue of criminal trial counsel's failure to adequately investigate the case by consulting experts in pathology and arson to establish that it was impossible for the petitioner to have committed the offenses alleged.

41. The fact that the Petitioner's former habeas counsel negligently failed to recognize the obvious exculpatory nature of the Ludlow notes is clear from the exchange Attorney Vogt had with the court when he attempted to move the Ludlow notes, Exhibit 17 for identification, into evidence over the State's objection. The following colloquy occurred:

> THE COURT: What are they offered for?
>
> MR. VOGT: Your Honor, just to show that he maintained these notes and that they were not disclosed to defense counsel.
>
> THE COURT: Well, is there something in it that they should have disclosed?
>
> MR.VOGT: There is no Brady material in it, your Honor.
>
> MS. SULIK: Your Honor, if there is no Brady material, I don't see the relevance.
>
> THE COURT: So what is the relevance?
>
> MR. VOGT: Your Honor, these are notes that

have information about the investigation that was conducted, and my argument is this is something also that defense counsel should have pursued and requested.

MS. SULIK: Your Honor, he wasn't entitled to them. Defense counsel wasn't entitled to them.

THE COURT: You're claiming this -- you say it's not Brady material.

MR. VOGT: Yes, your Honor.

THE COURT: What is it that -- why are you entitled to it?

MR. VOGT: It's cross-examination material, your Honor, of the witness, and understanding the crime scene and the nature of the investigation that was conducted.

THE COURT: Well, just tell me what's relevant to this case and I'll certainly consider it. I haven't heard anything so far.

MR. VOGT: My point is, your Honor, these are notes that defense counsel should have pursued and should have pursued for use at the trial in examining the various police witnesses and understanding the investigation that was conducted.

THE COURT: What rule entitles you to everything that the police have in their records? Is there some rule that says you're entitled to that?

MR. VOGT: Your Honor, my understanding is that it is discretionary with the trial judge, and it really depends on the facts and circumstances of a particular case. But, obviously, when we're talking about a capital felony, understanding the investigation, the crime scene, exactly what happened, other suspects that were pursued, your Honor, these are all important issues.

> THE COURT: Just tell me what's in it that's relevant to this case and I'll certainly consider your request. But I haven't heard it yet. What's relevant to this case in that proposed exhibit?
>
> MR. VOGT: Detective Ludlow basically has outlines of an investigation, notes about the investigation he was doing, witnesses who he was talking to, and various information about the --
>
> THE COURT: All right. So what's relevant? You want the court to look at it. That's why you put it in. You feel that's something that I should consider. Why?
>
> MR. VOGT: The totality of the notes, your Honor. I can't explain it better than that, your Honor. That's what I'm presenting, basically.
>
> MS. SULIK: Well, your Honor, if they're not being admitted for the truth of the matter asserted and they're not Brady material, then we would object to the admission.
>
> THE COURT: You know, I'm certainly going to give you every leeway that's reasonable, but I mean I can't even find anything to overrule this objection with because you haven't said -- I mean, you're familiar with what's in it. I haven't looked at it."
>
> [H.T. 2/24/00, pp 19 to 22]

42. Not only did Attorney Vogt fail to recognize the exculpatory nature of the "Ludlow Notes," he also failed to do the following: (a) to present an arson expert to testify to the cause, origin and burn time of the fire; (b) to present a forensic pathology expert to testify to the impact of the fire on the decedent and to estimate the time of the decedent's death;

and (c) to raise as a claim of criminal trial counsel's ineffective assistance of counsel their failure to consult and present at trial an arson expert and forensic pathology expert to corroborate the petitioner's alibi by establishing it was impossible for him to have set the fire based upon the fire's burn time.

The Lombardo Notebook:

43. On page 17 of the Lombardo notebook, Petitioner's Exhibit 2, at the habeas trial it is stated under the date 6/28/89, "R.L. very boastful - Borderline M.R. consistent;" on page 8 it is stated "Retarded or slow member of family who was a suspect," on page 4 under the date 6/14/89, it is written "Little bullshit fires - Retardation;" and on page 5 it is written "Born in Hartford - adopted Peter Goetz Steve Cumnick."

44. Detective Lombardo maintained at trial that the petitioner appeared on July 4, 1989 at all times to be perfectly normal. He also denied checking into the petitioner's background prior to the questioning or ever hearing anything about the petitioner being retarded. Whether Detective Lombardo knew the petitioner was "retarded" was a significant issue because it was the defense's contention at trial that he manipulated and intimidated the mentally limited defendant into falsely implicating himself in the murder.

45. The notebook also contains notes which could be

interpreted as statements by the petitioner which if they are the petitioner's statements, could possibly have been used to prove the defense contention that the petitioner's inculpation of himself was false because it in no way conformed to the known factors. Most specifically, on p. 21 of the notebook it is written "I strangled her," followed by: "I went home to eat and Aunt Nat called then I went back to the house."

46. During the habeas hearing Detective Lombardo was not asked any questions concerning the meaning of anything in his notebook. Similarly, criminal trial counsel was not asked any questions concerning why he failed to request a copy of the Lombardo notebook despite knowing of its existence as a result of Detective Lombardo's testimony during the probable cause hearing on August 23, 1989.

47. Instead of confronting Detective Lombardo and proving the meaning and materiality of the notations in his notebook Attorney Vogt questioned the petitioner's trial attorney Patrick Culligan and the petitioner's legal expert Attorney Lee Grudberg about what they felt the notations in the notebook meant and how they would have used the notebook to question Detective Lombardo.

48. In his post trial brief, at p. 7, Attorney Vogt, without any citation of authority, in a transparent effort to cover up his obvious failure to fulfill the evidentiary requirements necessary to establish a claim under Brady v

Maryland, 373 U.S. 83, 10 L.Ed. 2d 215, 83 S.Ct. 1194 (1963), and its progeny, argued, contrary to any known decision discussing the Brady principle, the following:

> "The relevant inquiry under the Brady line of cases is not what spin Detective Lombardo might put on various notebook entries eight years after Mr. Lapointe's criminal trial and outside the presence of a jury, but rather what effective defense counsel could have done with it during the criminal proceedings against Mr. Lapointe. It is precisely because Mr. Lapointe's defense counsel was deprived of this opportunity by the suppression of the notebook that he is entitled to a new trial."

49. Whether the notebook was exculpatory could only be determined by the fact-finder through the testimony of Detective Lombardo on the alleged meaning of his notes, and an examination of the complete trial record, including Detective Lombardo's prior testimony, to determine the notes' meaning and the effect of their non-disclosure.

50. The failure to elicit Detective Lombardo's testimony as to what he alleged the contested writings meant not only prevented the court from determining whether the notes were exculpatory but also foreclosed the court from making a determination whether the State's failure to disclose the notebook was material to the defendant's conviction, because the court was presented only with speculation in the form of criminal trial counsel's and the legal expert's opinions concerning the meaning of the notes.

51. Absent inquiry into what Detective Lombardo was asserting the writings meant, it was impossible to know what "effective counsel could have done with (the notebook) during the criminal proceedings." It is the witness' answers to questions which constitute the evidence in a trial and not the questions the attorney could have asked the witness.

52. The result was armed with the notebook which possibly proved the foundation of Detective Lombardo's testimony was false, Attorney Vogt failed to present the necessary proofs because he simply did not understand the evidentiary prerequisites to proving a suppression of exculpatory evidence claim or an ineffective assistance of counsel claim.

53. Attorney Vogt's failure to raise the constitutional issues emanating from the State's suppression of the Ludlow note deprived the petitioner of his right to effective assistance of habeas counsel and resulted in the denial of his petition for habeas corpus despite the existence of the necessary proofs to establish the petitioner's entitlement to the issuance of the writ of habeas corpus and a new trial based upon the State's violation of the petitioner's rights to due process of law through the suppression of exculpatory evidence and the denial of the petitioner's effective assistance of counsel by virtue of trial counsel's failure to adequately investigate the case relative to the issue of the fire's burn time. Furthermore,

Attorney Vogt's failure to establish the meaning of the notes in the Lombardo Notebook deprived the petitioner of the opportunity of proving the State's failure to disclose the notebook violated the petitioner's rights to due process of law mandating the issuance of the writ of habeas corpus and the granting of a new trial.

SECOND COUNT

54. The petitioner incorporates the allegations contained in paragraphs 1 through 53 as if fully set forth herein at length.

55. In the Fourth Count of the Fifth Amended Petition it was alleged petitioner's criminal trial counsel provided constitutionally infirm representation by failing: (1) to establish "Mr. Lapointe's disabilities and the implications of his disabilities with respect to the accusations against him;" (2) to advise Mr. Lapointe not to testify; (3) to adequately investigate the case; (4) to adequately employ the information available to the defense; (5) to adequately object to prosecutorial misconduct; and (6) to properly preserve issues which were not specified in the petition.

56. Under Strickland v Washington, 466 U.S. 668, 80 L.Ed. 674, 104 S.Ct. 2052 (1984), a convicted defendant's claim that his trial or appellate attorney failed to provide him with effective assistance of counsel has two components.

> "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the

> conviction ... resulted from a breakdown in the adversary process that rendered the result unreliable." id at p. 687.

The court went on to state,

> "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." id., at p. 689

In judging the claim, the court stated, at p. 690, the following:

> "a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance."

57. During the petitioner's habeas trial Attorney Vogt refused to "reconstruct the circumstances of counsel's challenged conduct" through Attorneys Patrick Culligan and Christopher Cosgrove who represented the petitioner during his criminal trial, despite calling them as witnesses. Attorney Vogt asked the attorneys no questions regarding their competence as the petitioner's trial counsel, and blocked the State from cross-examining Attorney Culligan on the subject of the petitioner's

ineffective assistance of counsel claim, arguing questioning of trial counsel on the subject would cause the witness to disclose "work product with respect to his representation of Mr. Lapointe." [3/8/00, p. 87-25 to 88-2] By way of example, in regard to the Lombardo notebook, it was contended in the petition trial counsel failed to adequately employ available information and to object to prosecutorial misconduct, nevertheless, no questions were asked of either attorney about why they never demanded disclosure of the notebook after learning of its existence during the probable cause hearing in August of 1989, some two years before the trial.

58. Habeas counsel's failure to "reconstruct the circumstances of counsel's challenged conduct" was further graphically illustrated in connection with the clam that criminal trial counsel failed to adequately employ available information. No questions were asked of the trial lawyers about any of the following items: (a) evidence that the screen door of the decedent's neighbor, Yvonne Cassista was cut indicating someone tried to gain entry into her apartment; (b) evidence that gloves were found in the victim's apartment which were too large to belong to either the petitioner or the decedent; (c) evidence that hairs were discovered in the decedent's apartment which did not belong to either the decedent or the petitioner; (d) evidence that a blunt object and not a man's erect penis caused the

decedent's injuries in the area of her vagina; and (e) evidence that a "disheveled" looking man came "running out from the apartments" "like he was being chased by a pack of dogs" and almost hit by Paulette De Rocco as she drove past the decedent's apartment. [H.T. 3/1/00, p. 26-3 to 27-5; 27-23 to 28-11]

59. Similarly, no questions were asked of criminal trial counsel concerning (a) their determination of experts to testify to the petitioner's physical and mental disabilities; (b) their advice and discussions with the petitioner concerning whether he should testify at trial; (c) their decision to have the petitioner testify at trial; (d) their failure to object to unspecified acts of prosecutorial misconduct; or (e) their failure to preserve issues for appellate review.

60. Attorney Vogt's failure to "reconstruct the circumstances of counsel's challenged conduct," Strickland, supra, at p. 689, made it impossible from the petitioner to prove the claims of ineffective assistance of counsel raised in his habeas corpus petition and resulted in the denial of the claims.

61. Instead of reconstructing "the circumstances of counsel's challenged conduct," Attorney Vogt took the legally indefensible position that the legal expert, Ira Grudberg, without the benefit of any of the trial attorney's thinking, could establish the validity of the claim by listing things he would have done had he been counsel for the petitioner. The

legal expert's opinion, because it was not based upon the reconstructed circumstances of trial counsel's challenged conduct, meant the petitioner's ineffective assistance of counsel claim rested upon, what amounted to be, inadmissible opinion testimony. The result was there was no proof of the claims because the essential evidence needed to support the expert's opinion and the claims, a reconstruction of the circumstances of counsel's challenged conduct was never entered into evidence.

62. Equally troubling to Attorney Vogt's reliance upon the legal expert's opinion as "evidence" of trial counsel's ineffectiveness was the legal expert's reliance upon Attorney Vogt to pinpoint the issues that may possibly constitute ineffective assistance of counsel as opposed to the expert independently deciding based upon his review of the record, the specific instances of conduct that he felt established ineffective assistance of counsel.

63. Because Attorney Vogt lacked the training, experience and expertise in criminal law necessary to recognize what did and what did not implicate the petitioner's right to counsel, the process whereby he pinpointed the issues for the legal expert resulted in significant claims of criminal trial counsel's ineffectiveness not being raised, including the following: (a) the failure to investigate, consult, retain and present an arson expert to establish the fire's "burn time;" (b) the failure to

investigate, consult, retain and present a pathologist to establish the sequence of the injuries suffered by the decedent, the impact of the fire upon the decedent and the decedent's time of death; (c) the failure to produce Karen Lapointe to testify to the petitioner's whereabout on the day of the murder; (d) the hearsay presentation of Karen Lapointe's July 4, 1989 statement to Detective Michael Morrissey and the agreement with the State permitting the hearsay statement to be introduced; (e) the failure to impeach Detective Morrissey when he testified at trial that he did not threaten Karen Lapointe with the loss of her son during the July 4, 1989 interview; (f) the failure at trial to impeach Detective Michael Morrissey with his testimony during the suppression hearing in which he falsely denied discussing evidence with Karen Lapointe during his July 4, 1989 interview of her and falsely represented evidence existed which did not in an effort to get her to implicate the petitioner in the murder; (g) the failure to object to prejudicial and inflammatory demeanor and opinion testimony concerning the credibility of Karen Lapointe; and (h) the repeated introduction of prejudicial hearsay testimony during the cross-examination of Detective Lombardo concerning an alleged statement he received from Jeanette King to the effect that she observed the petitioner walking his dog in the vicinity of the Mayfair Gardens Complex around 7:00 P.M. on March 8, 1987;

Issues of Ineffective Assistance of Criminal Trial Counsel Not Raised by Habeas Trial Counsel During Habeas Proceedings

A. The Fire's Burn Time

64. The State never affixed the time it contended the petitioner murdered Bernice Martin and set fire to her home, other than sometime between 4:00 P.M. and 8:00 P.M. The State's approach necessitated that defense counsel account for the petitioner's whereabouts for every possible minute during the 4:00 P.M. to 8:00 P.M. period in order to demonstrate the petitioner's innocence. In fact, as pointed out above, there was an objective method readily available to pinpoint when the crimes occurred, which trial counsel failed to utilize, the method being the fire's "burn time."

65. Because the State was contending that the same person who murdered Bernice Martin set her apartment on fire and the petitioner was pleading alibi, the time the fire was set enabled the petitioner to narrow the critical time period for which he needed to establish his whereabouts in order to prove his innocence. The approximate burn time of the fire permitted the petitioner to establish the time the perpetrator was last in Bernice Martin's apartment based upon the assumption that the perpetrator could not remain within the apartment once the fires were set because of the smoke and heat they generated.

Unfortunately, trial counsel in preparation for trial failed to adequately investigate the issue of the fire's burn time despite its obvious importance and failed to consult, retain and present the testimony of an arson expert to affix the burn time of the fire. Had defense counsel consulted an arson expert he would have discovered the fire's burn time was between 30 and 40 minutes as indicated in the Ludlow note, or between 45 and 60 minutes as opined by petitioner's expert, Gerald Kelder making it impossible for the petitioner to have been the perpetrator. Once the fire's burn time was fixed, criminal trial counsel would have realized even if Karen Lapointe could not unequivocally state the petitioner was home during the time she bathed the couple's son, 6:15 to 7:00 P.M., she, nevertheless, was a solid alibi witness because the petitioner was in her presence during the critical time period, 7:15 P.M. to 8:00 P.M., when the fires had to have been set. Furthermore, Karen Lapointe's alibi was strengthened and corroborated by Natalie Howard who testified that the petitioner was home when she called the Lapointe's shortly after 8:00 P.M.

B. Failure to Consult a Forensic Pathologist and to Present Evidence Concerning the Victim's Time of Death

66. Criminal trial counsel failed to consult a forensic pathologist in regard to the sequence of injuries suffered by the decedent, the impact the fire had upon the decedent and/or the

estimated time of the decedent's death. The autopsy and toxicological studies established the presence of cyanide and 43% carbon monoxide in the decedent's blood, and soot in her airways and bronchi. The cyanide, carbon monoxide and soot are all byproducts of the fires and were present in the decedent as a result of her breathing the smoke from the fires and overwhelmingly establish that the decedent was alive during part of the time that the fires burned. However, when the decedent was pulled out of the apartment shortly after 8:27 P.M. she was not breathing and all efforts to revive her were futile. Firefighter and EMT Bruce Kramer observed that when the decedent was lying on the ground her hands were on her chest, as opposed to her sides where they would be expected to be if she were merely unconscious which would result in the relaxation of all muscles. In fact, the position of the decedent's hands to a reasonable degree of medical certainty, according to Howard C. Adelman, an expert in forensic pathology, is actually rigor mortis. Rigor mortis is a sign of death and involves a series of chemical reactions occurring in an individual's muscles which causes them to stiffen. It is approximated that the onset of rigor mortis occurs 20 to 30 minutes after death in the smaller muscles of a person. The onset of rigor mortis is affected by a number of variables, including heat which will hasten it and cold which will retard it. The fact rigor mortis had formed in the

decedent's arms means she could have been dead for at least 30 minutes before EMT Kramer made his observations.

67. If the decedent was dead for 30 minutes when she was pulled from her apartment and alive during some of the time the fires burned, after the fires were set as established by the cyanide and carbon monoxide in her blood and the soot in her airway, the fire clearly had to have been set sometime before 8:00 P.M., a time when the petitioner was indisputably home with his wife and son.

68. Unfortunately, criminal trial counsel did not consult with a forensic pathologist, and as a result did not have any scientifically based approximation of the time of death to present at trial to corroborate the petitioner's alibi and establish that it was impossible for him to have committed the offenses charged. The failure to properly investigate and to present the testimony of an expert in forensic pathology deprived the petitioner of his right to effective assistance of counsel mandating the granting of his petition for a writ of habeas corpus and a new trial.

C. The Failure to Call Karen Lapointe as a Witness

69. Despite being a critical witness to establishing the petitioner's innocence Karen Lapointe was not called to testify on his behalf. Instead, trial counsel was permitted, through

some obvious off the record arrangement with the State, to elicit, on cross examination of Detective Michael Morrissey, the content of her July 4, 1989 interview in which she unequivocally stated the petitioner was in her presence between 4:00 P.M. and 8:00 P.M. except for the time he walked the family dog, between 4:00 and 5:15 P.M. The failure to summon Karen Lapointe as a defense witness was not raised in the habeas petition relative to the claim of ineffective assistance of counsel. Similarly the off-record agreement trial counsel entered into with the State to enable him to elicit Karen Lapointe's July 4, 1984 statement to Detective Morrissey was not raised as an issue of ineffective assistance of counsel.

70. Karen Lapointe testified, during the suppression hearing, that she was physically in the presence of Richard Lapointe from 7:00 P.M. until the time her aunt Natalie Howard called reporting an inability to reach Bernice Martin by telephone. [S-1/30/92, 2090 to 2091]

According to Karen Lapointe between 6:15/6:30 P.M. and 7:00 P.M. she was upstairs bathing the couple's son and the petitioner "was downstairs the whole time," although he was not in her presence. At 7:00 P.M., when their son was finished bathing Ms. Lapointe and the boy returned downstairs, where the petitioner was, to watch TV. [S-1/30/92, 2098 to 2099, 2117]

According to Natalie Howard she called the Lapointe home a

little after 8:00 P.M. [T-5/13/92, 662] The call from Natalie Howard prompted the petitioner to walk over to Bernice Martin's apartment, at the Mayfair Gardens Complex, resulting ultimately, in the discovery of Ms. Martin's body sometime after 8:27 P.M. the time the Petitioner called 911. [T-5/19/92, 1197]

Karen Lapointe was clear that the only time she knew the petitioner was not in their apartment, from the time they arrived home around 4:00 P.M. until the Natalie Howard's phone call, was for a period of approximately 20 minutes, during which time she prepared dinner and the petitioner walked the dog. She affixed the time the Petitioner walked the dog as sometime between 4:00 P.M. and 5:15 P.M., the latter being the time they started eating dinner. [S-1/30/92, 2090] It was uncontested that Bernice Martin was alive at 5:45 P.M. because she was observed, by Natalie Howard and her husband, outside her apartment emptying her garbage at that time. [T-5/13/92, 660; 695] Thus it is a given, if one credits Natalie Howard's testimony and no one disputed the accuracy of her recollections, that Bernice was murdered sometime between 5:45 P.M., when she was seen outside the apartment, and 8:27 P.M., when the Petitioner called 911 for help. Secondly, if one credits Karen Lapointe's recollection the petitioner was in her actual presence from, at a minimum, 5:15 P.M. when they started eating diner, to 6:15/6:30 P.M., when she

went upstairs to bathe the couple's son leaving the petitioner downstairs. Thirdly, while Karen Lapointe was upstairs the petitioner was in the apartment, downstairs. [S-1/30/92, 2098 to 2099, 2117] Lastly, the Petitioner was in Karen Lapointe's actual presence from 7:00 P.M., when she came downstairs after bathing the couple's son, to 8:05 when Natalie Howard called, [S-1/30/92, 2090 to 2091], the time period in which the fire in Ms. Martin's apartment had to have been set. Stated simply, the petitioner had no opportunity to murder, rape, stab and tie up Bernice Martin and set fire to her apartment, and Karen Lapointe was essential to the petitioner's innocence.

71. According to Attorney Culligan Karen Lapointe was not called as a witness, because she testified at the suppression hearing that the petitioner was out of her physical presence for possibly 45 minutes when she was bathing their son. [H-3/8/00, 46-2 to 49-00] This explanation was offered in the context of how the State's late disclosure of Karen Lapointe's tape recorded interview with Detective Morrissey on July 4, 1989 hurt the defense, and in the absence of knowledge of the fire's burn time. The explanation was not in the context of the petitioner's claim of ineffective assistance of counsel in failing to call Karen Lapointe as a witness or in the context of the effect the State's suppression of its arson expert's opinion on the fire's burn

time.

72. Attorney Culligan's explanation for not calling Karen Lapointe as a witness was not probed in anyway and was accepted uncritically. The acceptance of the explanation was in the absence of hearing Karen Lapointe's alibi testimony which was significant because there was a complete absence of questioning or probing of Ms. Lapointe's suppression hearing as to what occurred in her home between 6:15/6:30 and 7:00 P.M. when she was upstairs bathing the couple's son. In other words, Attorney Culligan's reasoning for not calling Karen Lapointe was made in the absence of hearing exactly what she would have said. [S-1/30/92-2088 to 2128] The idea that simply because Karen Lapointe stated she was upstairs and the petitioner downstairs during the 6:15/6:30 to 7:00 P.M. time period justified her elimination as a witness, ignored the fact that she could potentially have supplied the defense and the jury with a host of details to prove circumstantially that the petitioner never left the apartment while she was upstairs. By way of example, none of the following questions were asked of Karen Lapointe when she testified at the suppression hearing: (a) was the petitioner wearing the same clothes when she came downstairs as he was wearing when she went upstairs?; (b) was the petitioner wearing

the same shoes when she came downstairs as he was wearing when she went upstairs?; (c) did the petitioner smell of smoke or fire when she came downstairs?; (d) what was the petitioner doing when she went upstairs and what was he doing when she came downstairs?; (e) where was the petitioner when she went upstairs and where was he when she came downstairs?; (f) did the petitioner have blood on him, (the victim was stabbed 10 times), when she came downstairs?; (g) was his demeanor different when she came downstairs from what it was when she went upstairs?; (h) did they receive any telephone calls while she was upstairs?; (i) could she hear from upstairs if someone came in or went out the front door?; (j) if she could hear people coming and going, did she hear anyone come in or go out while she was upstairs?; (k) what was the layout of the apartment?

73. Even assuming the worst inference of her testimony, i.e. that the petitioner possibly had the opportunity to leave the apartment, and return before she finished bathing their son, the petitioner still could not have committed the offenses because he still would have had no opportunity to set the fire because it had to have been set sometime between 7:27 P.M. and 7:57 P.M. when the petitioner was indisputably home.

Alternatively, without knowing anything about the fire's

burn time, which was criminal trial counsel's state of knowledge if the defendant left the apartment while Karen Lapointe was upstairs and returned before she came downstairs in order for the petitioner to have committed the offenses he would have had to immediately bolt out the door and travel the 3/10ths of a mile to Bernice Martin's apartment once Karen Lapointe went upstairs. At Bernice Martin's apartment the petitioner would have had to stab her over ten (10) times while committing the crimes of rape, murder and arson against a woman, all evidence indicated he adored, and return home before Karen Lapointe came downstairs to watch TV with the petitioner and her son at 7:00 P.M. It is a preposterous factual scenario.

74. Attorney Culligan's explanation, and it must be accented, it was not subjected to probing by any party, also ignored the devastating effect not calling Karen Lapointe to testify had to have had on the jury, especially considering the defense was arguing the credibility of her hearsay alibi, elicited on cross-examination of Detective Morrissey. Can it seriously be disputed that during the jury's deliberations they questioned why the defense failed to call this critical witness to testify, given she was married to the petitioner at the time of the incident? Certainly based upon the manner of the alibi

presentation the jury was free to conclude, as Detective Morrissey testified, that she was not called to testify by the defense because she was not credible, and believed her husband to be the murderer. [T.T. 5/21/92, 1486-1487 (Morrissey)]

75. Any thought that the 30 to 45 minute gap during which time the petitioner was not actually in the physical presence of Karen Lapointe, because he was downstairs and she upstairs in their condominium apartment, justified not calling her to testify ignores the benefits her testimony would have provided to the defense relative to contesting the State's ambiguous scatter gun approach to affixing the time of the crime. This is especially so, given that trial counsel knew, based upon the trial testimony of the medical examiner, that the decedent was alive when her injuries were inflicted and the fires set, which meant the time of the assaults upon the decedent necessarily had to have been in close proximity to the time the fires were set i.e, sometime between 7:27 and 7:57 P.M. This is so because if Ms. Martin was alive when the fires were set the fires had to have set after she was stabbed, sexually assaulted and tied up because it would have been impossible for the perpetrator to have remained in the apartment in the heat and smoke generated by the fires.

76. Because the crimes occurred in closer proximity to the

discovery of the fire, Karen Lapointe's testimony made it physically and scientifically impossible for the petitioner to have committed the crimes, because she accounted for the petitioner's whereabouts from 7:27 P.M. to 7:57 P.M., the time period, according to the arson and forensic pathology experts, during which the fires had to have been set. If the petitioner was in Karen Lapointe's presence from 7:00 P.M. until Natalie Howard called, he could not have committed the crimes between 7:00 P.M., the time Karen Lapointe came downstairs, and 8:05 the time Natalie Howard called the Lapointe home.

77. It was also impossible for the petitioner to have set the fires after 8:05 P.M. when he left his house and at the same time to have committed the multiple violations of Ms. Martin's person, in the space of 22 minutes or by 8:27 P.M. when he called 911. For this to have happened the petitioner would have had to have walked over to Ms. Martin's apartment, once there he would have had to decide to violate her, to rape her, stab her 10 times, tie clothes around her neck and wrists, set 3 separate fires, and go to Ms. King's apartment two separate times to make 3 telephone calls, one to his wife, one to Natalie Howard and one to 911.

78. Furthermore, we now know based upon the belated

disclosure of the State's expert's opinion concerning the burn time of the fires, and the opinions of defense experts, that although Mr. Igoe, testified the fire in the couch was slow burning, by that he meant between 30 and 40 minutes, making it impossible for the fire to have been set one hour and 27 minutes before its discovery i.e., at 7:00 P.M., the time Karen Lapointe came downstairs and joined her husband watching television.

79. Natalie Howard's testimony regarding her calls to Bernice Martin and the Lapointe's, along with Jeanette King's testimony regarding Richard Lapointe's two visits to her apartment and his three telephone calls from her apartment, [T-6/16/92; 148 to 151], all corroborated Karen Lapointe's version of events and accounted for the petitioner's whereabouts from 7:00 P.M. to 8:27 P.M., the critical time period when the crimes against Bernice Martin had to have been committed. Defense counsel's failure to call her as a witness deprived the petitioner of his right to effective assistance of counsel mandating issuance of the writ of habeas corpus and the granting of a new trial.

D. Trial Counsel Failed To Impeach Detective Michael Morrissey When He Testified At Trial That He Did Not Threaten Karen Lapointe With The Loss of Her Son

80. Attorney Patrick Culligan testified, during the habeas trial, that the tape recording and transcript of Karen Lapointe's July 4, 1989 interview with Detective Michael Morrissey was significant because it corroborated a key component of Richard Lapointe's defense, i.e. that he falsely confessed because Morrissey threatened the liberty of his wife and the loss of custody of his son. [H.T. 3/8/00, 44-11 to 45-10] Nevertheless, during the trial defense counsel failed to confront Detective Morrissey on cross-examination when he denied threatening Karen Lapointe with the loss of her son in the event she was charged with obstructing the investigation.

81 At trial, on cross-examination, Detective Morrissey testified, as follows:

> "Q. And at one point in your interview, Karen Lapointe offered to go to the police station and talk to Richard, didn't she?
>
> A. Yes.
>
> Q. But you discouraged that, didn't you, Sir?
>
> A. For the time being; I left the option open.
>
> Q. Well, the plan was to keep Karen Lapointe and Richard Lapointe

separate, wasn't it?

A. There was no direct plan. That was -- that was our intent at the time, but again, I was going to leave the option open, should it be unproductive, and if we felt that she might have been concealing something else, we would -- if she would convince him to tell the truth, then that was an option that she was going to give us.

Q. All right. But that concept of not having Richard Lapointe and Karen Lapointe together, it wasn't a plan, but it was your intent, is that right?

A. Yes. Initially.

Q. Well, you also, in the context of your discussion of hindering prosecution, had asked Karen Lapointe who could take care of her son, in the event she was charged with such a crime, isn't that right?

A. No.
Q. You don't recall asking Karen who would watch out for him, in reference to her son?

A. I believe the context that that was used was later in the evening, if she came to the police station."

[T.T. 5/26/89,1642 to 1643 (Morrissey)]

In other words Detective Morrissey testified he mentioned caring for her son only in the context of a baby sitter in the event she came to the police station to help the police in their

questioning of the petitioner.

82. Incredibly, although trial counsel professed his strategy to be to use the threat to Karen Lapointe and her son as a means of corroborating the defendant's contention that Morrissey similarly threatened him causing him to falsely confess, trial counsel did not confront Morrissey at trial with the transcript of Karen Lapointe interview of July 4, 1989. A review of the transcript of the Karen Lapointe interview reveals that Detective Morrissey unquestionably threatened Karen Lapointe with prosecution and the consequent loss of the custody of the couple's son. The transcript, provides as follows:

> "MM: (Michael Morrissey): You know, we have to deal with an issue of custody of your son. If the State's Attorney considers what you've done here as to be a hindering prosecution, you realize there's not going to be anybody here to take care of your son?
>
> KL: (Karen Lapointe): Hmm mm.
>
> MM: I don't want that to happen. But it's a possibility, OK? You've left out some very important details. You say you've done that by pure accident, or you know, a lapse in your memory. Richard is going to get arrested, OK?
>
> KL: Hmm mm.
>
> MM: I don't want that to happen to you,

because you're going to have to deal with somebody else taking care of your son. Do you know that?

KL: Hmm mm.

MM: We don't want that to happen.

KL: No.

MM: Is there something that you want to tell me now that could prevent that from happening?

KL: I can't think of anything that I haven't told you, that I know. I never told you that it was different. I know it is. You've said that two things are different. But I mean what I said, I can't think anything different. Right now, I can't think of anything else. I wish I could, if that's what you want. Well, I guess that's what you want. I know it's going to --.

MM: I'm trying to prevent something -- something worse could come out of this. And you know, it's -- he's sitting [her son] right upstairs.

KL: I know.

MM: And you want to keep the rest of your family together. You want to be with your son. And I don't want to see the rest of the family getting broken up here, but that's a possibility, if you are not being entirely truthful with me."

[Attached as Petitioner's Exhibit BB, To his submission dated June 9, 2000, Pages 41 to 43]

83. Trial counsel's failure to confront Detective Morrissey and establish that he threatened Karen Lapointe with the loss of her son deprived the petitioner of his right to effective assistance of counsel mandating issuance of the writ of habeas corpus and the granting of a new trial

E. Trial Counsel Failed To Impeach Detective Morrissey By Showing (1) He Lied During The Suppression Hearing In Testifying He Did Not Discuss The So Called "Evidence" With Karen Lapointe During The July 4, 1989 Interview, and (2) Lied to Karen Lapointe During The Interview in Falsely Representing The Evidence

84. Detective Morrissey maintained at trial in interviewing the defendant on July 4, 1989 he did not lie to him but at all times told him the truth excepting in one instance when he told him a neighbor of the decedent heard screaming going on the day of the murder. [Morrissey, T.T. 5/26/92, 1677, 1693 and 1716] Detective Morrissey in testifying at the suppression hearing, prior to the disclosure that his interview with Karen Lapointe was tape recorded, similarly maintained in interviewing Karen Lapointe on July 4, 1989, that he merely told her the Manchester Police Department had reason to believe her husband was involved in the murder without enumerating any specific evidence and by

inference without telling her any lies.

85. At the suppression hearing Detective Morrissey testified, as follows:

> "Q. But you had begun your interview with Mrs. Lapointe by telling her that the police department believed her husband had killed Bernice Martin, isn't that right?
>
> A. Yes.
>
> Q. And did you tell her you had any evidence to support that belief?
>
> A. I did not enumerate any specific evidence. I said we had reason to believe that."
>
> [S.T. 1 / 2 and 1/3/92, 98 Morrissey]

Later in the suppression hearing he reaffirmed that he did not discuss specific evidence with Karen Lapointe. He testified, as follows:

> "Q. Now when you told Karen Lapointe that it was the view of the Manchester Police Department that Richard Lapointe was involved in the murder, you testified that you didn't discuss what evidence led you to that conclusion, is that correct?
>
> A. Right."
>
> [id, at p. 142]

86. Detective Morrissey's testimony that he did not discuss

"so-called" evidence with Karen Lapointe could not have been further from the truth. Not only did he discuss specific alleged evidence in an effort to get Karen Lapointe to implicate her husband in the death of her grandmother but he also falsely represented the existence of other evidence to make it appear that there existed indisputable scientific evidence establishing the petitioner's guilt. Nevertheless, trial counsel failed to confront Detective Morrissey before the jury with the transcript of his interview of Karen Lapointe on July 4, 1989 to demonstrate that he lied about his questioning technique of Karen Lapointe during the suppression hearing, and lied to Karen Lapointe during his interview of her, all of which belied his trial testimony that he did not lie to the defendant in order to extract his false inculpatory statements. Trial counsel's failure to employ the transcript of the Karen Lapointe interview to prove Detective Morrissey's lies during the suppression hearing and the interview also foreclosed the jury from learning the strength of Karen Lapointe's alibi for the petitioner despite a brutal and dishonest assault upon her integrity and her family.

87. At the beginning of the Karen Lapointe interview Detective Morrissey stated the police through DNA or blood evidence were able to conclusively identify Richard Lapointe as

her grandmother's murderer. This was a lie. The following occurred:

> "MM: I understand their concerns. I want you to know there's a reason that he's [Richard Lapointe] up there. [Police Headquarters] Do you know what's going on? We're sure he's responsible for what happened to Mrs. Martin, OK? There's a lot of reasons for that. OK? do you understand blood groupings and antigens, and Rh factors?
>
> KL: Yes.
>
> MM: You're aware of the DNA, the new forms of identification through DNA blood typing and gene-type tracks? Have you heard of that?
>
> KL:
>
> MM: OK. Through most of that, we were able to identify the person responsible, and they had Richard up to the station not too long ago, and they took a saliva sample from him. He might have mentioned it when he came home. did he tell you that?
>
> KL: Hmm mm; yes.
>
> [Petitioner's Exhibit BB, attached to submission dated June 9, 2000,page 2]

88. Detective Morrissey also lied to Karen Lapointe telling her neighbors had seen Richard Lapointe bringing food to Bernice Martin after having dinner with her and their son, and that the neighbors' observations were confirmed through analysis of

Bernice Martin's stomach contents which showed she had eaten meat loaf, potatoes and peas, the exact same thing the Lapointe's had for dinner that day. Clearly, this false allegation belied Detective Morrissey's suppression testimony that he did not "enumerate any specific evidence" to Karen Lapointe, and proved the trickery the police were employing against both the petitioner and Karen Lapointe in order to get them to falsely implicate Richard Lapointe in the murder of Bernice Martin. Nevertheless, criminal trial counsel failed to present the police lies to the jury and habeas counsel failed to make a claim that the failure constituted ineffective assistance of counsel. The following, occurred during Detective Morrissey's July 4, 1989 interview of Karen Lapointe.

> "MM: What did you have for supper?
>
> KL: Meat loaf -- potatoes, and I think it was peas. And then my aunt called about 7 or 8, around that time, 7:30, quarter to 8-type of thing.
>
> MM: OK, back up. <u>After the dinner, I understand, according to one of the neighbors, Richard had brought up some food to Mrs. Martin</u>?
>
> KL: No.
>
> MM: Why do you say, "No?"
>
> KL: Because he didn't leave the house. I know that he had - he did not leave

the house -- it never happened. I can remember, even though it was -- I remember.

MM: That's one of the real points of contention. They had seen him bringing up food to her. And it sounds like what you're saying is consistent with what she had eaten that day. I don't know how to –

KL: We never brought anything up.

MM: You didn't bring anything up. But Richard was seen up there, at supper time, carrying something. And listening to what you had, it sounds like that's in fact what he had on the plate. He stated -- he told the particular person himself -- this is going back a ways; this is now what happened in the interview this afternoon, that he in fact -- he called it "groceries." What we found out later, or what it sounds like now, is that he had brought up food -- you know, the dinner maybe that you had -- a platter or something. Now I'm looking for an explanation here, Karen. I don't want to bring you into it, and there's no way that I can help him if "

KL: I know

. . .

MM: Did he go up there with the intention of just providing her with food?

KL: If he ever went up there, he brought it just for food; just to eat. And it was -- we didn't even bring anything up that night. that was it;

we didn't bring anything that night.

MM: We did not. Richard did. Richard, by his own statement, to a person that I'm going to disclose -- I have the statement right here. And I'll read you a paraphrase from it. We had told -- Richard had told me that he had gone and delivered what he called "groceries" to Bernice Martin on that day. OK? And this was after the time that you had left, coming from My Brother's Place. That's his own words, talking to somebody.

. . .

MM: I want you to think back to dinner. did you have a discussion about that? About whether -- what about when you were inside her apartment? Did she discuss what she was going to have for dinner that night?

KL: No, she didn't mention anything at all.

MM: Was it possible that Richard had discussed it in her apartment, that he would bring her something later, and that was -- and you were not privy to that conversation; you had not overheard it?

KL: Not that, but I don't remember if I mentioned meat loaf and she said, "That sounds good," meaning, "I might have some myself, too."

MM: do you recall that conversation?

KL: I -- I remember I mentioned what we were going to have. Whether I had -- whether I was going to fix –

MM: Where were you sitting in her apartment when you were discussing that?

KL: I was sitting in the apartment; I was sitting on the couch.

MM: And who was there at the time?

KL: My son and Sean -- my son and Richard. The three of us.

MM: And she said --

KL: Yeah, she said it sounded good. So --

MM: Did you make any arrangements with her at that time?

KL: No arrangements to bring anything up at all. None of us were going up there at all. None of us had gone up. -- none of us had gone there.

MM: If he was going to bring this package to her, what kind of -- how would he wrap -- would be bring a platter, or do you have a paper-type things that he would dispose of, or what would he package the meat loaf and the peas in?

KL: I would have put it in a --

MM: Did you have beans that day, too?

KL: No. We just --

MM: What do you think we would package it on?

KL: Small casserole dishes, which I would have put the meat loaf in, but I didn't put anything in. And I would

have made one small one up with the -- which is what we used to do. If I did at all, I would -- I used to for my brother.

MM: Well, we know that be brought something up, and at this point, from everything -- it's very cold, I know, but everything is analyzed. And that includes your grandmother's stomach contents. And everything's consistent here, so you know, we know believe what he brought up wasn't in groceries, but was the supper. Is it possible that he put together this CARE package with good intentions, without you having knowledge of it? Did you come in here and watch TV afterwards, or ...

[id. pages 9 through 14]

89. Later in the interview Detective Morrissey returned to the theme that there existed evidence that her husband had been "seen" around the Martin apartment and that this occurred without Karen Lapointe knowing he was not in the apartment. Detective Morrissey stated the following to Karen Lapointe:

"I'm still concerned with the fact that Richard had been seen thereafter your guys had left, and you know, that he could get (out) of here without you knowing it."

[id. page 25]

90. Just prior to threatening Karen Lapointe with arrest for hindering prosecution and the possible loss of custody of her son Detective Morrissey told Karen Lapointe there was evidence

that Richard Lapointe had a cut on his hand after the murder and had maintained he cut it on a tree branch. Clearly, Detective Morrissey's allegation that the petitioner had a cut on his hand belied his suppression testimony that he "did not enumerate any specific evidence" or "discuss what evidence led" to the conclusion that Richard Lapointe murdered Bernice Martin. The following exchange between Detective Morrissey and Karen Lapointe occurred:

> "MM: OK. Do you recall Richard -- I understand he had a cut on his hand or something, shortly after that?
>
> KL: I don't know.
>
> MM: He said he cut it on a branch, or something like that? Or --
>
> KL: No, I don't recall a cut on his hand. I mean I know when -- cuts on his hand, but I don't remember a cut on his hand that night.
>
> MM: Why, does he always have cuts?
>
> KL: Well, usually, they're little paper cuts or things of that sort. But he didn't have one that night.
>
> MM: How are you so certain that he didn't?
>
> KL: Well, I didn't see any cut or anything to -- see that he had cut. Otherwise, why would -- a cut."
>
> [id. page 41]

91. After threatening Karen Lapointe with arrest for hindering prosecution Detective Morrissey told her Richard Lapointe said Bernice Martin's death was an accident and that he had discussed it with her. Incredibly, trial counsel armed with the tape and transcript of the Karen Lapointe interview, nevertheless, failed to put before the jury for its consideration the specifics of the "evidence" Detective Morrissey discussed with Karen Lapointe to demonstrate the blatant nature of his lies during both the suppression hearing and his interview with Karen Lapointe. Morrissey's lies if shown to the jury had the capacity to prove the validity of the defense's contention that the police were lying in denying they manipulated the petitioner into falsely confessing. The following exchange between Detective Morrissey and Karen Lapointe occurred:

> "MM: Your husband said that it was an accident. There's a possibility that occurred to us. In fact we believe that he did not mean to kill her. And I also think there's a possibility there, you know, that under that condition, he might have confided in somebody about that. You know, had he presented any -- understand what I mean about theory or-
>
> KL: He never said anything to me about anything.

MM: Let me ask you this; has he proposed any theories of his own as to what happened over there?

KL: No.

MM: He never commented on it?

KL: Never, no.

MM: That's not true. He told you [us] that he has discussed the incident with you.

KL: He never --anything. Just when we saw it on TV, he might say "Well, I think that might have happened," but maybe he did it. But I mean, you know, we -- other than that, he didn't -- OK, other than that, it's -- nothing has come up in this house."

[id. page 49]

Earlier in the interview Detective Morrissey stooped to using Karen Lapointe's religious beliefs to manipulate her by falsely telling her, Richard Lapointe, a Roman Catholic, told the police he went to confession shortly after the murder. The following exchange, occurred:

"MM: Hmm mm. Do you think Richard -- do you think he would have confided in a priest, and basically looking for penance, (sic) or -- for what happened?

KL: Maybe.

MM: Do you know that to be true?

KL: No. But maybe he would.

MM: You don't know that to be true?

KL: I don't, but I mean, I'm saying I -- - probably would.

MM: Is he very religious?

KL: Yes.

MM: Does he go to confession?

KL: Hmm mm.

MM: When was the last time he --

KL: I don't know when the last time was that he's been.

MM: He said that he went a short time after this happened. Is that true?

KL: He did go then, after. About three years ago; but I mean you know, if he went last week, or something, I mean I don't know.

MM: Well, he said he went like a week or two, or something -- a short time afterwards. He was talking in weeks. Do you recall him going at that time?

KL: We al went, around that time, you know.

MM: Was there a big change in him at that time?

KL: No, there's never been a change in him -- you probably think I'm trying to cover something up. I'm not. I'm just trying to -- you know. There

hasn't been a change in him. I don't --"

[id. pages 38 to 39]

92. In sum, Detective Morrissey told massive lies to the court during the suppression hearing and to Karen Lapointe during her July 4, 1989 interview and trial counsel failed to confront him with his lies in order to demonstrate to the jury the methods used by the petitioner's accusers to get inculpatory information against the petitioner. The failure of trial counsel to confront Detective Morrissey and prove to the jury the lies he told constitutes ineffective assistance of counsel and compels the issuance of the writ of habeas corpus and the granting of a new trial.

I. Trial Counsel With out Justification Failed To Object to Detective Michael Morrissey's Opinion Testimony Concerning Karen Lapointe's Credibility and Beliefs

93. Any rational that the procedure whereby the defense elicited from Detective Morrissey Karen Lapointe's alibi for the petitioner, benefitted the petitioner, because it permitted the defense to put before the jury the petitioner's alibi and at the same time avoid informing the jury Karen Lapointe did not know where the petitioner was between 6:15/6:30 and 7:00 P.M., ignores the fact that trial counsel permitted the State without objection

to viciously attack her credibility by eliciting Detective Morrissey's opinion that she was not credible. Presenting Karen Lapointe in this way allowed the State to destroy her credibility by means of Detective Morrissey's opinion that her demeanor and body language displayed a knowledge of the petitioner's guilt and her recollection inaccurate. The idea that such an important and critical defense witness could be presented in a capital murder trial in this fashion without any objection or effort to limit the scope of hearsay testimony is indeed chilling. The result was the petitioner's alibi for the period of 7:00 P.M. to 8:27 P.M. was totally destroyed through the simple expedient of never letting the jury hear Karen Lapointe's testimony.

94. The State was permitted to tell the jury, because trial counsel failed to object, that Karen Lapointe has previously supplied the police with "inaccurate information."

> "Q. And were you aware of information that she had previously given to your police department?
>
> A. Yes.
>
> Q. And what were you aware of with regards to information she had previously given your police department?
>
> A. There was two points that -- she had previously told us that Richard Lapointe had not left their

apartment, after arriving back from the family visit at Bernice Martin's apartment. Once arriving home, she said that he had not left for the remainder of the evening, until they received a phone call from her aunt.

Q. You've indicated there were two points of information. What was the other point?

A. That Richard Lapointe's blood type was Type O, I believe.

Q. Now, on July 4th, 1989, were you aware of whether or not any of this information was inaccurate?

A. Yes.

Q. And what was that?

A. That the blood type that she had provided was not accurate.

Q. And did it strike you as unusual that a wife would give inaccurate information about her husband's blood type?

A. Yes.

Q. Now, as to the second part of the information, that had to do with the defendant's whereabouts on the day of Bernice Martin's death, did you know whether or not that was accurate? At the outset?

A. No."

[T-5/21/92, 1483-1484, (Morrissey)]

95. Next, the State presented Detective Morrissey's opinion

that Karen Lapointe appeared unfazed by the knowledge her husband quite possibly murdered her grandmother.

"Q. And how did you go about trying to get information from the defendant's then-wife?

A. I used several interviewing techniques.

Q. Could you tell us what those were?

A. Initially, I used -- I went in with the complete confidence that he was the guilty party, from the onset of the interview.

Q. Did you communicate that to her?

A. Yes.

Q. And how early in the interview did you do that?

A. Right from the beginning.

Q. And when you did that, did she appear to you to be shocked by that belief of your department?

A. No, she didn't.

Q. Were you able to observe her facial expressions?

A. Yes. She appeared unfazed by it. There was no surprise to her, and she was unfazed, you know.

Q. And in addition to being able to observe her facial expressions, were you able to observe the rest of her body when you communicated this to

her?

A. Yes.

Q. And was there anything in her body language that suggested to you that she was shocked by this belief of your department's?

A. No, there wasn't."

[T-5/21/92, 1486-1487, (Morrissey)]

96. The State followed its charge that Karen Lapointe was unfazed by the allegations that her husband murdered her grandmother by charging that she was suspected of conspiracy in deliberately misleading the police during the investigation of her husband whom the police "believe" is the murderer. The State elicited the following testimony, with objection:

"Q. Did you consider, when you were approaching the defendant's then-wife, that she might have some conflicting loyalties with respect to this incident?

A. Yes. That was a consideration.

Q. And in that sense did you consider that she might have conflicting loyalties?

A. Well, she's married to the person that we believe is guilty for the murder, and yet that's -- the victim of the murder is her own grandmother.

Q. And in light of that consideration of yours that Karen Lapointe might have

conflicting loyalties, did you employ any other technique?

A. Yes. I repeatedly suggested to her that any information she could provide would be of help to the defendant.

Q. And in your opinion, how would that address the possible conflicting loyalties that she might have/

A. Well, I had -- there were some suspicions at the time that maybe she had provided the wrong blood type to help him, and I was only reiterating the fact that any information that she could provide us would help him, also.

[T-5/21/92, 1487-1488, (Morrissey]

97. Detective Morrissey was also permitted, without objection, to testify that he "had suspicions that she was not" telling him everything she knew i.e., "I still felt there were other things that she might be holding back, [T-5/21/92, 1484-1496], and to offer his opinion that Karen Lapointe's stated times of events were inaccurate. [T-5/22/92, 1502]

98. Trial counsel's failure to object to the introduction of Detective Morrissey's opinions that Karen Lapointe was incredible and unfazed when informed her husband murdered her grandmother deprived the petitioner of his right to effective assistance of counsel mandating issuance of the writ and a new

trial.

G. Trial Counsel Permits The State To Impugn The Validity of Karen Lapointe's Alibi Through The Opinion Testimony Of Detective Morrissey That In His Experience Alibis by Family Members Are Inaccurate and Unreliable

99. As pointed out above, instead of calling Karen Lapointe to testify, her alibi of the petitioner was presented in the most unusual manner, by eliciting on cross examination of Detective Morrissey her statement of July 4, 1989. The method of which this evidence was presented obviously involved some sort of an agreement between the prosecution and the defense. How else can it be explained that neither party voiced any objection to the hearsay nature of the testimony? Having been permitted to "present" Karen Lapointe's alibi on the State's case through Detective Morrissey trial counsel failed to object to the State's solicitation of Detective Morrissey's opinion alibis by family members, in his experience are often inaccurate and unreliable. Detective Morrissey testified on redirect, without any objection, as follows:

> "Q. And with respect to calling this an alibi, have you had occasion to be involved in investigations or arrests where there are claims of alibis? That is, the defendant claims to have been somewhere else?

A. Yes.

Q. And in your experience, or in your training, do you know if alibis are often furnished by family members and friends of suspects?

A. Yes.

Q. And in your training, or in your experience, have any of those alibis ever been proven to be inaccurate?

A. Yes.

Q. Do you necessarily place a great deal of confidence in an alibi that's given by someone that's friendly to a suspect?

A. No."

[T.T., May 26, 1992, p. 1729]

100. Trial counsel's failure to object to above quoted testimony deprived the petitioner of his right to effective assistance of counsel mandating issuance of the writ of habeas corpus and the granting of a new trial.

H. Trial Counsel Repeatedly Elicits on Cross Examination of Detective Lombardo the Hearsay Statement of Jeanette King That She Saw The Petitioner Walking His Dog By the Decedent's Apartment at 7:00 P.M.

101. During the cross-examination of Detective Lombardo petitioner's trial counsel repeatedly and in great detail

elicited the alleged hearsay statement of Jeanette King in which she supposedly told him she saw the petitioner in the vicinity of the decedent's apartment walking his dog around 7:00 P.M., even though Jeanette King denied she saw the petitioner walking his dog at 7:00 P.M. by Bernice Martin's apartment. [T-5/19/92, 1177 to 1178; 1180 to 1187; 1189 to 1201; 1285 to 1286; T-6/16/92, 156] This line of questioning served no positive defense purpose while repeatedly and in great detail putting before the jury, in the form of rank hearsay, evidence which impeached the defendant's alibi and left open the possibility that the petitioner had an opportunity, around 7:00 P.M. to commit the crimes. There simply was no justification for the solicitation of Jeanette King's alleged hearsay statement, by trial counsel and it deprived the petitioner of his right to effective assistance of counsel mandating issuance of the writ of habeas corpus and the granting of a new trial.

OTHER FAILURES

102. Throughout the trial of the petitioner trial counsel took needless and reckless chances in examining witnesses which only served to prejudice the petitioner. By way of example during the cross-examination Kenneth Martin, Karen Lapointe's brother, the following occurred:

"Q. Mr. Martin, this morning as you testify, do you believe that Mr. Lapointe killed your grandmother?

A. I don't know whether Richard Lapointe killed my grandmother or not. That's what I believe this whole case is for. I'm as interested as anybody in trying to find out whether he did it or not, because as you can imagine, the mixed feelings in a situation like this, I want whoever did kill my grandmother to be brought to justice. But I don't want the wrong person to be brought to justice, either. So I want to find out as much as anybody who really did kill him -- kill her."

[T.T. 5/27/00, 1778]

103. There are a multitude of other examples of trial counsel's recklessness. For instance, in cross-examining Detective Lombardo he permitted him to repeatedly slam the petitioner through means of his solicitation of Lombardo's opinion and questions concerning "why" he concluded what he did. [T.T., May 18, 1992 - May 21, 1992]

104. In sum, the evidence is overwhelming that the petitioner was denied his right to effective assistance of counsel during his criminal trial which he was prevented from proving during his habeas trial as a result of habeas counsel's incompetence in presenting the claim and habeas counsel's failure to raise all the claims of criminal trial counsel's

ineffectiveness. It is submitted each individual example of criminal trial counsel's incompetence justifies issuance of the writ of habeas corpus and the ordering of a new trial. Alternatively, it is submitted even if any one failure of criminal trial does not compel issuance of the writ of habeas corpus the individual failures in the aggregate mandate issuance of the writ of habeas corpus and the ordering of a new trial.

THIRD COUNT

105. The petitioner incorporates the allegations contained in paragraphs 1 through 104 as if fully set forth herein at length.

106. In Count One of the Fifth Amended Petition for a Writ of Habeas Corpus it was asserted newly discovered scientific evidence, unavailable at the time of trial, established the petitioner lacked, the following: (a) the physical and intellectual ability to carry out and conceal the crimes; (b) the capacity to knowingly and voluntarily participate in the July 4, 1989 interrogation which lead to his alleged confessions; and (c) the capacity to testify at trial.

107. In support of this claim habeas trial counsel produced Dr. Stewart Mostofsky, a neurologist, and Dr. Margaret Dennis, a psycho neurologist. Over the course of three days they testified

about the petitioner's brain malformation, and the consequential physical and mental deficits suffered by the petitioner without ever being asked to relate the petitioner's physical or mental limitations to the facts of the case.[7] The result was the habeas trial court was never presented with either Dr. Mostofsky's or Dr. Dennis' opinion, to a reasonable degree of medical certainty, that the petitioner did not have the physical and mental capacity necessary for him to have had in order to have murdered Bernice Martin within the time available and then cover up the murder for two years.

108. The testimony of the experts detailing the petitioner's physical and mental abnormalities was relevant only if it was connected to the petitioner's ability to, (a) perform the acts committed by the perpetrator; (b) to voluntarily and knowingly engage in questioning by the police; and or (c) to testify reliability.

109. During the examination of Dr. Mostofsky the habeas trial judge clearly stated he expected to hear evidence connecting the petitioner's abnormalities and disabilities to the

[7]Dr. Richard Leo, an expert on the subject of false confessions testified that in his opinion, that the statements of the petitioner to Detective Lombardo on July 4, 1989 have all the earmarks of a false confession.

facts of the case but had not heard any such evidence and that in the absence of such evidence the testimony about the petitioner's condition was irrelevant. Despite being specifically advised by the court of the deficiency in the proofs Attorney Vogt took no steps to cure the defect. The court stated, the following:

> "THE COURT: What is the whole purpose of showing what the MRI is and all of these abnormalities -- what is the purpose other than to show that he has problems performing? Isn't that what the whole -- what the witness is here to tell us? He's been telling us that for two hours.
>
> Now you want to get up and you say at this point you don't know what he's talking about or how it's relevant to this case? I don't know either. But I'm -- certainly I don't know -- like I say, I expect that counsel will somehow show us that relevancy of all this testimony to the issues in this case. And I don't know, frankly, at this point what the relevancy is to the fact that he can't perform certain things. I think he can -- without -- I don't mean to be frivolous about this, but I certainly haven't heard anything from anybody that Mr. Lapointe is incapable of strangling somebody or is incapable of raping somebody or setting a fire. I haven't heard anything of that sort, so I assume he is not talking about that. I assume he's talking about something else, which I haven't heard yet, so I assume that we'll be hearing something about that later.
>
> Is that right?
>
> MR. VOGT: Your Honor, my purpose is simply to get all of Dr. Mostofsky's opinions about Mr. Lapointe's functioning and capabilities."

[3/29/00, P. 74-2 to 75-2]

110. A review of the petitioner's summary judgment motion and the evidentiary hearing makes it clear that the evidence connecting the petitioner's condition to the facts of the case was not presented because counsel was of the mistaken belief that it was legally sufficient if counsel merely asserted, based upon the trial record and the newly discovered scientific evidence, that the petitioner could not have committed the acts alleged. It was almost as if Attorney Vogt confused argument for evidence.

111. In order to prove the petitioner's innocence based upon the newly discovered or available evidence it was essential that either or both Dr. Mostofsky and Dr. Dennis be asked a series of hypothetical questions, to obtain their opinions, to a reasonable degree of medical certainty, whether the petitioner: (a) could have committed or performed the particular act or acts engaged in by the perpetrator within the time available to the petitioner; (b) voluntarily and knowingly submitted to questioning by the police; and (c) possessed the capacity to testify reliably. Foster v Lockhart, 9 F.3d 722, 724-726 (8th Cir. (1993); State v Whitley, 53 Conn. App. 414, 421, 738 A.2d 1212 (1993); State v Zollo, 37 Conn. App. 718, 724, 654 A.2d 359 (1995); Hull v Warden, 32 Conn. App. 170, 173, 628 A.2d 32 (1993).

112. As a result of habeas trial counsel's incompetence the proofs necessary to establish the petitioner's entitlement to relief under Count One of the Fifth Amended Petition were not presented resulting in the wrongful denial of the writ of habeas corpus.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, the petitioner prays that a Writ of Habeas Corpus be issued to bring him before this Court and that the following relief be granted:

(a). An Order issue vacating his convictions under Docket No. Cr. 89-0107933;

(b). An Order issue granting him a new trial;

(c). An Order issue releasing him from custody pending retrial; and

(d). An Order issue granting such other relief as may be just and proper.

THE PETITIONER
RICHARD A. LAPOINTE

_____
W. James Cousins, Esq.
Vizta 3d, Inc.
Merritt on the River

20 Glover Avenue - 3rd Floor
Norwalk, CT 06850
Tel.203-229-2110
Fax 203-229-2199
Juris No. 408509

_____

Paul Casteleiro, Esq.
86 Hudson Street
Hoboken, NJ 07030
Tel.201 656-1000
Fax 201 656-4688

OATH AND VERIFICATION

I am fully familiar with the contents of the application and I believe the petitioner Richard A. Lapointe is illegally confined as a result of the constitutional violations set forth in the application

_____
W. James Cousins

Sworn and subscribed to before me
this 2nd day of August, 2002.

_____

CERTIFICATION

This is to certify that on Tuesday, July 30, 2002 Paul Casteleiro, Esq. spoke with JoAnne Sulik, Assistant State's Attorney and Ms. Sulik agreed to accept service on behalf of the Respondent of the foregoing Petition for Second Writ of Habeas Corpus by regular first class mail. Accordingly on August 2, 2002 I did mail postage prepaid a copy of Petition for Second Writ of Habeas Corpus to Assistant State's Attorney JoAnne Sulik, Office of Chief State's Attorney, 300 Corporate Place, Rocky Hill, Connecticut 06067, (Tel) 860-258-5887

_____

W. James Cousins