

1       CLAIM D.D.

2       THE PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL DUE PROCESS  
3       RIGHTS BY THE GOVERNMENT'S KNOWING USE OF FALSE TESTIMONY/  
4       EVIDENCE IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH  
5       AMENDMENTS OF THE UNITED STATES CONSTITUTION. SEE ALSO CLAIM  
6       J.(a).

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8       I.      THE GOVERNMENT'S EVIDENCE AT THE INCEPTION OF THIS CASE  
9            WHICH NEGATED ANY VERACITY OF THE PROFFER STATEMENT, AND  
10          WHICH EXCLUDED THE PETITIONER FROM ANY INVOLVEMENT IN  
11          THESE CRIMES.

12

13      II.     THE ADDITIONAL EVIDENCE RECENTLY UNCOVERED WHICH FURTHER  
14          SUPPORTS CLAIM J.(a); THAT THE GOVERNMENT KNOWINGLY USED  
15          FALSE EVIDENCE WHEN IT USED THE FALSE PROFFER STATEMENT  
16          IN THE COMMONWEALTH'S CASE-IN-CHIEF AGAINST THE  
17          PETITIONER.

18

19      III.    THE CUMULATIVE REVIEW OF THE EVIDENCE POSSESSED BY THE  
20          GOVERNMENT WHICH CONCLUSIVELY PROVES THAT THE PROFFER  
21          STATEMENT WAS FALSE, AND THE GOVERNMENT KNEW IT WAS FALSE  
22          WHEN FBI S.A. MESSING TESTIFIED AS TO THE SUBSTANCE OF THE  
23          PROFFER STATEMENT AS SUBSTANTIVE EVIDENCE IN THE  
24          COMMONWEALTH'S CASE-IN-CHIEF AGAINST THE PETITIONER.

25

26       By the time of trial, the government knew that the

27 Petitioner's Proffer Statement was false. Therefore, when  
28 FBI S.A. Messing testified about the details of the Proffer  
29 Statement as substantive evidence in the Commonwealth's  
30 case-in-chief against the Petitioner the government  
31 knowingly used false evidence in violation of the Fifth,  
32 Sixth, and Fourteenth Amendments of the Constitution.

33 This independent Claim D.D. also serves as an addendum to  
34 Claim J. with significant emphasis on J.(a). Claim J.(a) has  
35 been, "held under advisement pending the outcome of the plenary  
36 hearing", which is yet to be scheduled. (*ORDER* entered  
37 04/06/2007.)

38 The law and previously known facts relating to the  
39 government's knowing use of false evidence have been well  
40 established throughout the instant habeas petition, and the  
41 instant supplemental pleadings. See Claim J., *supra*.

42 Therefore, for the sake of brevity, and in the interest  
43 of judicial economy, those legal authorities will not be  
44 recited again here, except to the extent necessary for the  
45 specifics relating to this claim. However, the Petitioner makes  
46 clear that, because of the cumulative nature of the errors  
47 and/or prejudice flowing there from, the Petitioner states his  
48 intent that each and every legal authority, assertion, or claim  
49 be deemed competent to incorporate by reference every other  
50 legal authority, assertion, or claim of the petition. And,  
51 because of the inter-related nature of the facts allegations,  
52 claims, and legal authorities the Petitioner hereby

53 incorporates every fact, allegation, claim, and legal authority  
54 into every other fact, allegation, claim, and legal authority.

55 **I. THE GOVERNMENT'S EVIDENCE AT THE INCEPTION OF THIS CASE**  
56 **WHICH NEGATED ANY VERACITY OF THE PROFFER STATEMENT, AND**  
57 **WHICH EXCLUDED THE PETITIONER FROM ANY INVOLVEMENT IN**  
58 **THESE CRIMES.**

59 \_\_\_\_\_  
60 As a preliminary matter it must be underscored that  
61 from the inception of the government's investigation of  
62 this case, the government knew:

63 **1.** The Petitioner was not involved in these crimes. See,  
64 e.g., FOIA Vol. I., pp. 174-175 (When interviewed, one of the  
65 original investigators stated to agents of the government that  
66 "[His] recollection is that, following the arrest of Hood on  
67 cocaine distribution charges, [he] received a telephone call  
68 from [\_\_\_\_\_] advising [him] that Hood was not the right guy.  
69 [His] recollection is that Hood had an alibi for the time of  
70 the offense," and this precluded any prosecution of the  
71 Petitioner). See also Claim F.F., *infra*.

72 **2.** The Petitioner was not the driver of the car involved  
73 in these crimes. See Pet. Ex. 1, at p. 85 (One of the key  
74 eyewitnesses Estelle Johnson, testified on behalf of the  
75 government that the driver of the car had "blond hair." The  
76 Petitioner has never had blond hair. The Petitioner has dark  
77 brown hair, and always has. Thus, the eyewitness testimony,  
78 provided under oath in 1990-1991, precluded any possibility of

79 the Petitioner being the driver of the car involved in these  
80 crimes). See also Claim J.

81       **3.** The Petitioner was not the knife wielding man  
82 involved in these crimes. See Pet. Ex. 1 (During the  
83 investigation and trial of Cox in 1990-1991, the government's  
84 eyewitness, Estelle Johnson, ("Johnson") positively  
85 identified Cox as the knife wielding man; during the viewing  
86 of photo arrays, see Pet. Ex. 1, at pp. 94-106, at Cox's  
87 preliminary hearing, see Pet. Ex. 1, at p. 96, and during the  
88 trial of Cox, see Pet. Ex. 1, at pp. 69, 75, and 77). See  
89 also FOIA Vol. I., pp. 174-175 (One of the original  
90 investigators of these crimes stated to agents of the  
91 government, "If [anyone] had any concern about the guilt of  
92 [Cox] it was dispelled by a number of events. First was  
93 [Estelle Johnson's] reaction when [Cox] was brought into the  
94 courtroom at the preliminary hearing"). The other key  
95 eyewitness for the government, James Corbin ("Corbin"),  
96 positively identified Cox as the knife wielding man outside  
97 the residence of the victim on the night of August 30, 1990,  
98 in the trial of Cox. See Pet. Ex. 1, at p. 121. See also  
99 Claim J. *supra*, and Claim F.F., *infra*.

100       **4.** The knives and sheath owned by the Petitioner in 1990-  
101 1991 were not the ones involved in these crimes. See Pet. Ex.  
102 1, at p.79 (During the investigation and trial of Cox in 1990-  
103 1991, Johnson testified that the sheath Cox wore was, "five  
104 inches." In order to avoid any misunderstanding, the prosecutor

105 asked Johnson to demonstrate for the jury with her fingers what  
106 her interpretation of a five inch sheath was. The able  
107 prosecutor, Learned Barry, concurred for the record that what  
108 Johnson had displayed was, in fact, "five inches"). **But cf.**  
109 Com. Ex. 7, and Pet. Ex. 101: the sheath owned by the  
110 Petitioner is thirteen-plus inches long. Likewise during the  
111 trial of Cox in 1991-1990, Corbin testified that the knife  
112 wielded by Cox was, "five to six inches long;" and that the  
113 knife holder simply, "looked like a knife case." Pet. Ex. 1, at  
114 115, and 137-138. To the contrary, the sheath owned by the  
115 Petitioner is thirteen-plus inches long, nearly triple the size  
116 to which the eyewitnesses testified. See Pet. Ex. 1. **But cf.**  
117 Pet. Ex. 59, 60, 101, and Com. Ex. 7. See also Pet. Ex. 94  
118 (During the questioning of Corbin by Federal agents, "Corbin  
119 was shown a photograph of Stephen Hood's knife sheath and three  
120 knives previously obtained by investigators. Corbin did not  
121 think that the sheath or knives in the photograph were the same  
122 as the one he saw"). See also Claim J., *supra*, Claim F.F.,  
123 *infra*, FOIA Vol. I., at pp. 119, 125, 132, 154, 199, and DFS  
124 Item No. 100.

125 Thus, the government's evidence at the inception of this  
126 case negated any veracity of the Proffer Statement, i.e., (1)  
127 The government knew that the Petitioner had an alibi. To the  
128 contrary, the Proffer Statement put the Petitioner at the scene  
129 of the crime. (2) The eyewitness identified the driver of the  
130 car as being blond haired. To the contrary, the Proffer

131 Statement alleged that the brown haired Petitioner was the  
132 driver of the car. (3) The eyewitnesses were consistent in  
133 their positive identification of Cox as the knife wielding  
134 culprit. To the contrary, the proffer alleged that the knife  
135 wielding individual was Billy Madison. (4) The eyewitnesses  
136 testified that the knife case was five inches long. To the  
137 contrary, the proffer alleged that Madison used the  
138 Petitioner's knife sheath, which is thirteen-plus inches in  
139 length.

140 Accordingly, the government possessed an abundance of  
141 evidence prior to the indictment of the Petitioner and long  
142 before the Petitioner's Proffer Statement which negated any  
143 assertion that the Petitioner was involved in any way with  
144 these crimes.

145 Likewise, prior to the Proffer Statement, the government  
146 possessed an abundance of evidence which dispelled any veracity  
147 of the Petitioner's Proffer Statement. Therefore, when this  
148 exculpatory and impeachment evidence, which was not presented  
149 at trial, is combined with the evidence which was produced  
150 throughout the government's investigation of this case, the  
151 resulting conclusion can be none other than the government knew  
152 the Proffer Statement was false. The obvious corollary then is  
153 the government knew that when Special Agent Messing testified  
154 about the details of the Proffer Statement in the  
155 Commonwealth's case-in-chief against the Petitioner, Messing  
156 was providing false evidence, known to be such by the

157 government.

158

159 **II. THE ADDITIONAL EVIDENCE RECENTLY UNCOVERED WHICH FURTHER**  
160 **SUPPORTS CLAIM J.(a); THAT THE GOVERNMENT KNOWINGLY USED**  
161 **FALSE EVIDENCE WHEN IT USED THE FALSE PROFFER STATEMENT**  
162 **IN THE COMMONWEALTH'S CASE-IN-CHIEF AGAINST THE**  
163 **PETITIONER.**

164 \_\_\_\_\_

165 Additional evidence has recently been discovered by the  
166 Petitioner further supporting the claim that when FBI S.A.  
167 Messing testified about the substance of the Proffer  
168 Statement in the Commonwealth's case-in-chief against the  
169 Petitioner, the government knew that the Proffer Statement  
170 was not true. This new evidence supporting Claim J.(a), and  
171 which supports this supplemental Claim D.D., has been  
172 revealed through the following:

173       **1.** The Petitioner's recent access to the evidence  
174 introduced at trial by the Commonwealth in the underlying  
175 criminal case, and the ability of the Petitioner, through  
176 counsel, to photograph, inspect, and measure said evidence.

177 (Court ORDER 01/21/2008.)

178       **2.** The ongoing release of documents in response to  
179 Petitioner's federal Freedom of Information Act request  
180 ("FOIA") filed June 22, 2006.     See Claim F.F. IV., *infra*.

181       **3.** The Petitioner's recent access, through counsel,  
182 to the Court ORDER entered December 07, 2001, by the

183 Circuit Court of the City of Colonial Heights, temporarily  
184 sealing the affidavit in support of the search warrant for  
185 the Petitioner's residence issued on December 06, 2001,  
186 and executed on December 07, 2001. See Pet. Ex. 111, 112,  
187 43, 44, and 45.

188       **4.** The petitioner's recent access, through counsel,  
189 to the affidavit of Detective George B. Wade in support of  
190 the search warrant which was temporarily under seal by  
191 court ORDER relating to Pet. Ex. 43. See Pet. Ex. 112,  
192 the affidavit, see also Pet. Ex. 112, 43, 44, and 45.

193 **II.(a) THE PHYSICAL IMPOSSIBILITY OF THE 10-INCH FORSCHNER CHEF  
194 KNIFE (431-10), THE 8-INCH FORSCHNER CHEF KNIFE (431-8),  
195 AND THE FORSCHNER SERRATED KNIFE (871-7) AS BEING THE  
196 KNIVES IN THE SHEATH AS FALSELY DESCRIBED IN THE PROFFER  
197 STATEMENT AND THE FALSE TESTIMONY OF SPECIAL AGENT  
198 MESSING.**

199 \_\_\_\_\_  
200       On February 21, 2008, a hearing was held in the Circuit  
201 Court of the City of Richmond on the Petitioner's *Motion to*  
202 *Inspect and Photograph Evidence*. Although the Petitioner, in  
203 good faith, sought a thorough inspection of the evidence in the  
204 custody of the Circuit Court Clerk's office with the agreement  
205 of the Respondent on July 26, 2007, November 27, 2007, and  
206 again on December 31, 2007, the Respondent chose instead to  
207 employ severe dilatory tactics and maneuvers obviating this  
208 good faith effort. Accordingly, the Petitioner was forced to

209 seek the Court's intervention. On December 31, 2007, the  
210 Petitioner filed a *Motion to Inspect Evidence* seeking a Court  
211 order to provide counsel with the ability to photograph the  
212 evidence in the custody of the Clerk's office. This was  
213 necessary due to the Respondent's refusal to agree to such  
214 access, and because the rules of the Richmond Circuit Court  
215 prevented counsel from bringing a camera into the court  
216 building. On February 21, 2008, a hearing was held on the  
217 Petitioner's Motion, and on that date, the Court entered an  
218 ORDER allowing counsel to inspect and photograph the evidence.  
219 On February 26, 2008, counsel for the Petitioner achieved the  
220 task of photographing the physical evidence introduced in the  
221 underlying case. The photographs produced several accurate  
222 measurements of the physical evidence which in turn produced  
223 the following Exhibits pertinent to this claim:

224       **Pet. Ex. 101**, the Petitioner's knife sheath with its  
225 three compartments. See Com. Ex. 7, TR. tr. pp., 133, and 172  
226 ("the sheath") See also Pet. Ex. 81, 94, and 110.

227       **Pet. Ex. 102**, the Petitioner's 10-inch Forschner chef  
228 knife model no. 431-10. See Com. Ex. 11, TR. tr. pp. 173-174  
229 ("10-inch knife"). See also Pet. Ex. 81, 94, and 110.

230       **Pet. Ex. 103**, the Petitioner's 7-inch serrated knife  
231 model no. 871-7. See Com. Ex. 11, TR. tr., pp. 173-174 ("the  
232 serrated knife"). See also Pet. Ex. 81, 94, and 110.

233       **Pet. Ex. 104**, the Petitioner's 6-inch Forschner chef  
234 knife model no. 431-6. See Com. Ex. 11, TR. tr. pp. 173-174

235 ("6-inch knife"). See also Pet. Ex. 81, 94, and 110.

236       **Pet. Ex. 105**, the Commonwealth's 8-inch Forschner chef  
237 knife model no. 431-8. See Com. Ex. 12, TR. tr., pp. 182, and  
238 199 ("8-inch knife"). See also Pet. Ex. 100.

239       **Pet. Ex. 106**, a photographic combination of Pet. Ex. 102,  
240 103, 104, and 105.

241       **Pet. Ex. 107**, a photographic combination of Pet. Ex. 101,  
242 102, 103, and 104. See, e.g., Pet. Ex. 94 ("Corbin was shown a  
243 photograph of Stephen Hood's sheath and three knives previously  
244 obtained by investigators. Corbin did not think that the sheath  
245 or knives in the photograph were the same as the one he saw").  
246 See also Pet. Ex. 81, and 110.

247       **Pet. Ex. 108**, a photographic combination of Pet. Ex. 101,  
248 102, 103, and 105.

249       **Pet. Ex. 109**, a photographic combination of Pet. Ex. 102,  
250 and 105.

251       It is important to note that the dimensions of these  
252 knives have never changed.

253       Likewise, while in the possession of the Petitioner the  
254 dimensions of the sheath have never changed.

255       The Commonwealth's evidence and the Petitioner's Exhibits  
256 relating thereto clearly demonstrate that the sheath was  
257 physically incapable of containing the 10-inch knife, the 8-  
258 inch knife, and the serrated knife all at once; at the same  
259 time. See, e.g., Pet. Ex. 108. But cf. Pet. Ex. 23, at p.6,  
260 and TR. tr. pp. 271-272. Instead, the sheath was uniquely

261 designed and fabricated for the sole purpose of accommodating  
262 the 10-inch knife, the serrated knife, and a small paring  
263 knife. See Pet. Ex. 107, and 101. See also Pet. Ex. 59, 60, 80,  
264 110; and FOIA Vol. I., at 119, 125, 132, 154, and 199.

265 Contrary to the inescapable reality this evidence clearly  
266 demonstrated, the false Proffer Statement intimated that,

267 **At the time of the murder, Hood had the following three  
268 knives in his sheath: A big 12-inch chef's knife, which  
269 had been modified by Ron Landry down to 10-inches to 11--  
270 inches; a plastic handled bread knife; and a medium size  
271 chef's knife. All of the knives were Forschners and were  
272 kept in the sheath. The bread knife is now in possession  
273 of investigators, the large chef's knife is in the  
274 possession of Goodwin. The medium size chef knife is the  
275 one that Madison used to abduct and kill Ilouise Cooper.**  
276

277 Pet. Ex. 23, at p. 6. See also Claims B.B., and C.C., *supra*.

278 The Proffer Statement is wholly contravened by the actual  
279 evidence introduced at trial, and presented to this court. It  
280 is important to underscore that Claims B.B., and C.C., *supra*,  
281 clearly demonstrate that the government repeatedly presented  
282 evidence at trial asserting that the Commonwealth's 8-inch  
283 knife (Com. Ex. 12) was, "the medium size chef knife [that]  
284 Madison used to abduct and kill Ilouise Cooper," and that the  
285 other two knives in the sheath at the time of the offense were  
286 the 10-inch knife, and the serrated knife. The government  
287 introduced an 8 inch knife as the murder weapon in order to  
288 present false evidence which would comport with the known  
289 falsity of the Proffer Statement. Again, the Proffer Statement  
290 is wholly contravened by the government's evidence in this  
291 case. As shown below, the 8 inch, 10 inch and serrated knives

292 could not fit in the sheath, and the Petitioner owned only a 10  
293 inch chef knife, a serrated bread knife and a 6 inch paring  
294 knife.

295 These acts by the Commonwealth are contrary to, and in  
296 violation of, the Constitution through the explicit holdings  
297 of the Supreme Court of the United States in Berger v. United  
298 States, Mooney v. Holohan, Napue v. Illinois, Alcorta v.  
299 Texas, and Miller v. Pate, supra, and progeny.

300 When Messing testified as to the substance of the  
301 Proffer Statement in the Commonwealth's case-in-chief, the  
302 government knew or should have known that Messing was  
303 providing false evidence. This is because the government knew  
304 or should have known that the Proffer Statement about which  
305 Messing testified were false and wholly contravened by the  
306 actual evidence. In pertinent part, Messing testified as  
307 follows:

308 Q: What happened while [Hood] was at his apartment?

309 A: Mr. Madison came over to solicit [Hood] to go with  
310 him to purchase drugs.

311 Q: And what happened after that? What did Mr. Hood tell  
312 you happened?

313 A: Well, Mr. Hood indicated that he really didn't - - he  
314 was hesitant about going to that part of town at  
315 night. He wanted to know whether Madison had any kind  
316 of weapon, like a baseball bat. Mr. Madison said, no,  
317 suggested that they take Mr. Hood's knives that he

318 knew Mr. Hood had.

319 Q: Did Mr. Hood indicate what kind of knives they were?

320 A: Yes. That night, he had two Forschner chef's knives,

321 a large and a medium size, and a bread knife.

322 TR. tr., at p. 271. See also Claims J., G., H., B.B., and

323 C.C.

324 Q: Did he indicate that he took those knives?

325 A: Yes, they did take the knives with them.

326 TR. tr., at p. 273.

327 A: ... Mr. Madison got out, was gone for about five

328 minutes, and then came back to the car. At the time,

329 he was enraged, he was cussing, and he reached down

330 to the floor board of the front passenger seat and

331 picked up the sheath with the knives in it, Mr.

332 Hood's sheath and knives.

333 TR. tr. at p. 275.

334 A: When they got back to the apartments, Mr. Hood

335 got his sheath and two of the knives back, the

336 bread knife and the larger chef's knife. Madison

337 kept the knife that he had in his hand this

338 entire time.

339 TR. tr., at pp. 278-279.

340 Accordingly, based upon the actual evidence in the

341 possession of the government at trial, and the evidence

342 presented to this court, the government knew or should have

343 known that the Proffer Statement was not true, and the

344 testimony and evidence presented by the government relating  
345 thereto was false, including the testimony of Messing cited  
346 above. See Pet. Ex. 1, 23, 28, 37, 38, 43, 46, 47, 50, 54, 55,  
347 59, 60, 93, 94, 99, 100, 101, 102, 103, 104, 105, 106, 107,  
348 108, 109, and, 110. See also FOIA Vol. I., at 173-174, 217,  
349 234, 334, 339-340; FOIA Vol. II., at 125, 132, 154, 217-218;  
350 and 02/07/2001 Motions Hearing tr.; Claims G., H., J., K.,  
351 B.B., C.C., and F.F.

352 The relevance and importance of the Petitioner's  
353 Exhibits 101-109, and 127 begins with '**the sheath**'. Pet. Ex.  
354 101. The sheath is comprised of three separate compartments.  
355 The specific dimensions and purpose of each compartment are  
356 as follows:

357 **The Large Compartment**

358 The sheath's one large compartment was specifically  
359 designed and fabricated at 10-inches in length. The large  
360 compartment is specifically designed and fabricated with the  
361 inner-diameter of the mouth of the opening to be narrow and to  
362 measure 1 7/8-inches in width. See Pet. Ex. 101, 106, and 107.  
363 These specific dimensions were designed and fabricated with  
364 safety in mind in order to accommodate a tight fit of the 10-  
365 inch Forschner chef knife, and that knife only. See Pet. Ex.  
366 101, 102, 107, and 127. The blade of the 10-inch Forschner chef  
367 knife (Pet. Ex. 102 (model no. 431-10)) measures precisely 1  
368 7/8-inches wide at 10 1/8-inches total length. See Pet. Ex.  
369 102, and 127. Therefore, the large compartment was designed and

370 fabricated to carry only one knife, and that one knife was the  
371 10-inch Forschner chef knife. See, e.g., Pet. Ex. 107, and 108.

372 **The Medium Compartment**

373 The sheath's one medium compartment is found along side  
374 the large compartment. The medium size compartment was  
375 specifically designed and fabricated at 7 1/2-inches in  
376 length. The medium size compartment is specifically designed  
377 and fabricated with the inner diameter of the mouth of the  
378 opening to be narrow and to measure 7/8-inch in width. See  
379 Pet. Ex. 101, and 107. These specific dimensions were  
380 designed and fabricated with safety in mind in order to  
381 accommodate a tight fit of a 7-inch Forschner serrated bread  
382 knife, and that knife only. The blade of the 7-inch Forschner  
383 serrated bread knife (Pet. Ex. 103 (model no. 817-7)) is un-  
384 tapered, and measures precisely 7 1/4-inches in total length,  
385 and 7/8-inch wide. See Pet. Ex. 103. Therefore, the medium  
386 compartment was not capable of carrying either a knife longer  
387 than 7 1/2" in length or a knife wider than 7/8". It was  
388 designed to carry only one knife, and that one knife was the  
389 7-inch Forschner serrated bread knife. See, e.g., Pet. Ex.  
390 107, and 108.

391 **The Small Compartment**

392 The sheath's one small compartment is found attached to  
393 the front of the large compartment. The small compartment  
394 was specifically designed and fabricated at 6 1/2-inches in  
395 length. The small compartment is specifically designed and

396 fabricated with the inner-diameter of the mouth of the  
397 opening to be narrow and to measure 1 1/4-inches in width.  
398 See Pet. Ex. 101, 106, and 107.

399       These specific dimensions were designed and fabricated  
400 with safety in mind and to accommodate a tight fit of a 6-inch  
401 Forschner paring knife, and that knife only. The blade of the  
402 6-inch Forschner paring knife (Pet. Ex. 104 (model no. 431-6))  
403 measures precisely 1 1/4-inches wide at 5 3/4-inches total  
404 blade length. See Pet. Ex. 104, and 127. Therefore, the small  
405 compartment was capable of carrying only one knife, and that  
406 one knife was the 6-inch Forschner paring knife. See, e.g.,  
407 Pet. Ex. 107, and 108.

408       The false Proffer Statement, and the false testimony and  
409 evidence presented by the government at trial through the  
410 Assistant Commonwealth Attorney Young, and the government's  
411 witnesses Fierro, Wade, Tapazio, Davis, and especially Special  
412 Agent Messing was that on the night of the abduction and murder  
413 the sheath contained the 10-inch large Forschner chef knife,  
414 the 8-inch, "medium size chef knife," and the Forschner  
415 serrated knife.

416       Contrary to the false Proffer Statement, and contrary to  
417 the evidence presented by the government at trial the sheath is  
418 physically incapable of carrying the knives indicated in the  
419 false proffer, and to which Messing testified. With the large  
420 knife in its large compartment, and the serrated knife in its  
421 medium compartment along side the large compartment, this could

422 only leave the attached small compartment to hold the 8-inch,  
423 "medium size chef knife."

424 Bearing in mind the specific dimensions of the small  
425 compartment, we now turn to the specific dimensions of the  
426 Forschner 8-inch, "medium size chef knife." This comparison  
427 will conclusively demonstrate that the small compartment is  
428 physically incapable of carrying the 8-inch, "medium size chef  
429 knife," contrary to the false Proffer Statement and contrary to  
430 the false testimony of Messing related thereto. As noted above,  
431 the small compartment measured precisely 6 1/2-inches in length  
432 with the inner-diameter of the mouth of the opening measuring a  
433 tight 1 1/4-inches wide. See Pet. Ex. 101, and 107.

434 In stark contrast, the 8-inch "medium size chef knife"  
435 is manufactured with a total blade length of 8-inches. See  
436 Pet. Ex. 105, and 127. The blade width of the "medium size  
437 chef knife" is precisely 1 7/16-inches at 7-inches from the  
438 sharp tip, and 1 3/8inches at 6-inches from the sharp tip.  
439 See Pet. Ex. 105, and 127.

440 Therefore, it is painfully obvious to anyone of  
441 reasonable intelligence that a blade measuring between 1 7/16-  
442 inches and 1 3/8-inches wide at 6 1/2-inches in length is  
443 physically incapable of fitting into a compartment with an  
444 inner-diameter of only 1 1/4inches. Even more obvious, a blade  
445 measuring 8-inches in length is physically incapable of fitting  
446 into a compartment with a length of only 6 1/2-inches.

447 Moreover, none of the sheath's compartment's are physically

448 capable of containing more than one knife at a time.

449 Considering the alleged investigative acumen and  
450 experience of the FBI, the only reasonable conclusion to be  
451 drawn from this evidence is that the government was fully  
452 cognizant of the physical impossibility of the Proffer  
453 Statement, and the testimony of agent Messing. Therefore, when  
454 agent Messing testified that the Petitioner's sheath, "**had two**  
455 **Forschner chef's knives, a large and medium size, and a bread**  
456 **knife,**" on the night these crimes were committed; the  
457 government knew or should have known there was no possible way  
458 that could be true.

459 Moreover, it is important to underscore that the trial  
460 record, Claim B.B., and Claim C.C., *supra*, clearly demonstrate  
461 that the government repeatedly presented evidence at trial  
462 asserting that the Commonwealth's 8-inch Forschner chef knife  
463 (Com. Ex. 12) was the, "medium size chef knife [that] Madison  
464 used to abduct and kill Ilouise Cooper," and the other two  
465 knives in the sheath at the time of the offense were the 10-  
466 inch Forschner chef knife, and the serrated knife. The  
467 government did so in order to present false evidence which  
468 would comport with the known falsity of the Proffer Statement,  
469 and the known falsity of the testimony of Messing related  
470 thereto. Again, the Proffer Statement is wholly contravened by  
471 the actual evidence in this case.

472 Furthermore, the Petitioner hereby certifies that while in  
473 the possession of the Petitioner, the sheath was at all times

474 fully intact, without tear, imperfection, or cut to the  
475 leather, stitches or rivets. Any tear, cut or imperfection is  
476 directly attributable to the government when it disassembled  
477 the sheath for testing. See Pet. Ex. 81, and 111; FOIA Vol., at  
478 217-218.

479 **II.(b) THE RECENT FOIA DOCUMENTS, THE RECENTLY OBTAINED COPY OF**  
480           **THE COURT ORDER FROM COLONIAL HEIGHTS CIRCUIT COURT**  
481           **DATED DECEMBER 07, 2001, AND THE RECENTLY UNSEALED**  
482           **AFFIDAVIT WHICH PROVIDE EVERY INDICATION THAT THE**  
483           **GOVERNMENT KNEW THAT THE PROFFER STATEMENT WAS FALSE**  
484           **WHEN SPECIAL AGENT MESSING TESTIFIED ABOUT THE SUBSTANCE**  
485           **OF THE PROFFER STATEMENT AS SUBSTANTIVE EVIDENCE IN THE**  
486           **COMMONWEALTH'S CASE-IN-CHIEF AGAINST THE PETITIONER.**

487 \_\_\_\_\_  
488       The following sequence of events and evidence provide  
489 this Court with more than a preponderance of evidence that the  
490 government knew, or should have known that the Proffer  
491 Statement was false. It is important to note that many of the  
492 underlying facts were suppressed by the government and  
493 previously undiscoverable by the Petitioner and were only  
494 recently discovered through the Petitioner's due diligence in  
495 vigorously pursuing a federal FOIA request. See Claim F.F.,  
496 section IV., *infra*. Additionally, the court ORDER entered on  
497 12/07/2001 by the Colonial Heights Circuit Court was only  
498 recently made available through the diligent efforts of the  
499 Petitioner, through counsel, on 03/20/2008. See Pet. Ex. 111.

500 Likewise the Petitioner submits that the affidavit in support  
501 of the search warrant issued under seal on December 06, 2001,  
502 has been pursued by the Petitioner with due diligence. See Pet.  
503 Ex. 43, 44, and 45. However, the affidavit was never unsealed  
504 and made available to the Petitioner, through counsel, until  
505 June 5, 2008. See Pet. Ex. 112. Therefore, these facts are not  
506 barred from consideration by this Court because: (1) the facts  
507 were not discoverable by the Petitioner prior to the initial  
508 filing, or the filing of the Petitioner's *Bill of Particulars*;  
509 (2) these facts relate to and are incorporated by reference to  
510 Claim J.(a) which has been taken under advisement pending the  
511 outcome of the plenary hearing by this Court's order entered  
512 April 06, 2007; and, moreover, (3) the inability of the  
513 Petitioner to know of these facts is directly attributable to  
514 the government for (a) failing to disclose under the demands of  
515 Brady, and (b) impeding the Petitioner's due diligence by  
516 suppressing, and placing under seal, the evidence for over six  
517 years. Accordingly, the Petitioner submits that he has  
518 demonstrated due diligence in attempting to obtain these facts  
519 over the course of years.

520 **II.(b)(i) THE RECORDINGS MADE BY THE GOVERNMENT OF NUMEROUS**  
521 **TELEPHONE CALLS BETWEEN THE PETITIONER AND LOUISE**  
522 **BRANSON PROVIDED THE GOVERNMENT WITH EVIDENCE THAT**  
523 **THE PROFFER STATEMENT WAS FALSE. SEE FOIA VOL. I.**  
524 **pp., 339-340.**

525 \_\_\_\_\_

526       On November 06, 2001, the Petitioner was picked up from  
527       the Richmond City Jail by agent Messing and Det. Wade, and  
528       transported to the FBI building on Parham Road, Henrico,  
529       Virginia. Once there, the Petitioner was hurried into a room  
530       where defense counsel, Steven Goodwin ("Goodwin") was waiting.

531       Goodwin told the Petitioner to hurry up and sign a  
532       document, advising the Petitioner that there was no need to  
533       read it, just to trust that, "This is to ensure that they  
534       cannot use anything you tell them against you in court. You  
535       have immunity." The Petitioner was not allowed to read the  
536       document. However, the Petitioner followed the instruction of  
537       Goodwin and signed the document, and wrote the same date used  
538       by Goodwin in doing the same. See Claim G. see also Pet. Ex.  
539       86, and 23. The morning of November 06, 2001 was the first  
540       time the Petitioner ever saw this document, even still the  
541       Petitioner was not allowed to read the document or have the  
542       document fully and accurately explained.

543       At this time, A.U.S.A. Trono, Assistant Commonwealth  
544       Attorney Young, FBI S.A. Messing and Det. Wade entered the  
545       room. Goodwin advised the Petitioner to say "all the things  
546       we have agreed upon." The Petitioner obeyed the instructions  
547       of counsel and proceeded to tell the false story concocted by  
548       Goodwin. See Claims G., and H. see also Pet. Ex. 23.

549       On November 07, 2001, the Petitioner was taken to the  
550       Richmond Circuit Court. Goodwin and another attorney, David  
551       Gammino ("Gammino") were present at defense table. The apparent

552 purpose for this appearance was the addition of Gammino as a  
553 defense counsel, and for both parties to agree upon a  
554 continuance. At the conclusion of the hearing, a brief meeting  
555 was held between the Petitioner, Goodwin, and Gammino in the  
556 "Bull-pen" off to the side of the courtroom. See Claim G.  
557 Without returning to the Richmond City Jail, and without any  
558 advance notice to the Petitioner, the Petitioner was taken that  
559 day (11/07/2001) to the Henrico County Jail. See Claim G.(a).

560 On May 29, 2007, FOIA Vol. I., p. 340 revealed the  
561 government's unlawful attempt to cover up the failure to  
562 disclose evidence favorable to the defense. This evidence was  
563 favorable to the defense both because it was exculpatory, and  
564 because of its impeachment value. See Brady, and Claim F.F.,  
565 *infra*.

566 FOIA Vol. I., p. 340 states,

567 **Synopsis:** Late submission of ELSUR evidence.  
568 **Enclosure(s):** Enclosed is an FD-302 regarding the  
569 collection of ELSUR evidence in this case.  
570 **Details:** The enclosed FD-302 describes the  
571 circumstances surrounding the collection of ELSUR  
572 **evidence** in this case. Specifically, the  
573 collection of eight compact disks (CDs) with  
574 recorded inmate telephone calls from Henrico  
575 County Jail (HCJ). These CDs were made from  
576 original recordings maintained by the HCJ during  
577 normal course of operation. Due to inadvertence on  
578 the part of Case Agent, these CDs were never  
579 entered into ELSUR.

580  
581 FOIA Vol. I., p. 340. This document was not generated until  
582 February 18, 2003; well after the trial in the underlying  
583 criminal case on April 03, 2002. This document is an attempt to  
584 excuse the government from disclosing the CDs mentioned here to

585 defense counsel under the demands of Brady, and progeny. It  
586 does not so excuse the government. Whether the non-disclosure  
587 was inadvertent or deliberate, the rule of Brady applies.

588 Unbeknownst to the Petitioner, and undisclosed by the  
589 government to defense counsel FOIA Vol. I., p. 339 revealed  
590 that,

591 The following investigation was conducted by S.A.  
592 [Messing] Federal Bureau of Investigation (FBI), [Det.  
593 Wade], Richmond Police Department, and members of the  
594 Henrico County Sheriff's Office, between November 12,  
595 2001, and January, 4, 2002: Copies were made of numerous  
596 telephone calls made by Stephen James Hood to [Louise  
597 Branson] between November 7, 2001, and January 4, 2002.  
598 The copies were made from original recordings of inmate  
599 telephone calls which the Henrico County Jail records as  
600 part of their standard operating procedure. The  
601 recordings were made on eight separate occasions.  
602

603 FOIA Vol. I., p. 339.

604 This undisclosed document further revealed that during  
605 this "investigation" the government's investigators made the  
606 following eight recordings:

607	<b>Date of recording</b>	<b>Dates recorded</b>
608	CD#1: 11/12/2001 .....	11/07/2001 - 11/12/2001 (5 days)
609	CD#2: 11/16/2001 .....	11/13/2001 - 11/16/2001 (4 days)
610	CD#3: 11/26/2001 .....	11/16/2001 - 11/26/2001 (11 days)
611	CD#4: 11/30/2001 .....	11/26/2001 - 11/30/2001 (5 days)
612	CD#5: 12/05/2001 .....	11/30/2001 - 12/05/2001 (5 days)
613	CD#6: 12/10/2001 .....	12/05/2001 - 12/10/2001 (6 days)
614	CD#7: 12/20/2001 .....	12/10/2001 - 12/17/2001 (8 days)
615	CD#8: 01/04/2001 .....	12/17/2001 - 01/04/2002 (19 days)

616  
617 See FOIA Vol. I., p. 339. This document was not generated  
618 until February 18, 2003, even though the "investigation" was  
619 performed between "November 12, 2001, and January 4, 2002."  
620 It is important to note here that several CD recordings  
621 coincide with certain issues raised in the instant petition:

622           First, CD numbers 1-5 encompass the telephone  
623       conversations between the Petitioner and Louise Branson  
624       beginning on the day after the first proffer session, and  
625       ending on the day before the government sought a search warrant  
626       for the residence of Louise Branson and the Petitioner, with  
627       the affidavit under seal. During these particular telephone  
628       conversations, the Petitioner repeatedly told Ms. Branson that  
629       the Proffer Statement was false concoctions of Goodwin, and  
630       that the Petitioner only gave the false proffer at the  
631       insistence of Goodwin.

632           Furthermore, during these telephone calls the Petitioner  
633       informed Ms. Branson that Goodwin stated that the Petitioner  
634       had complete immunity - the extent of that immunity, the  
635       Petitioner was told, was that nothing the Petitioner said could  
636       ever be used against him in Court. Moreover, during these  
637       telephone calls the Petitioner reminded Ms. Branson to read and  
638       re-read the Petitioner's letters to Ms. Branson to ensure that  
639       she understood that (a) the proffer was false, (b) the proffer  
640       had been only made at the insistence of Goodwin, and (c) the  
641       Petitioner had complete immunity. See Pet. Ex. 37 (The Fax  
642       transmission from Messing containing two of the Petitioner's  
643       letters to Ms. Branson, written contemporaneously with these  
644       recorded telephone calls. One letter is dated November 13,  
645       2001, another letter is dated November 20, 2001 - November 23,  
646       2001. Both of these letters reiterated the information detailed  
647       in several of the recorded telephone calls beginning 11/07/2001

648 through 12/05/2001 see CDs #1-#5).

649 Second, the CDs of telephone calls - CDs #6 - #8  
650 contain conversations between Ms. Branson and the Petitioner  
651 revealing that the Proffer Statement was false. The FOIA  
652 documents provide every indication that the government  
653 obtained copies of these telephone conversations to confirm  
654 or dispel the veracity of the Proffer Statement.

655 The government's listening to and investigating the above  
656 referenced telephone conversations, particularly CDs #1 - #5,  
657 provided the government with information that the statements  
658 were false. The government's knowledge that individuals in  
659 addition to the government, Goodwin, and the Petitioner knew  
660 the statements were false precipitated the need to search the  
661 residence of 103 Yew Avenue in order to seize and suppress the  
662 evidence which proved that the Proffer Statement was false. In  
663 the alternative, the purpose of the search warrant was to seize  
664 evidence in order to charge Steven Goodwin, Esquire with,  
665 "obstruction of justice." See Pet. Ex. 43.

666 **II.(b)(ii) THE RECENTLY OBTAINED COPY OF THE COURT ORDER**

667 **ENTERED DECEMBER 07, 2001 BY THE CIRCUIT COURT OF**  
668 **THE CITY OF COLONIAL HEIGHTS TEMPORARILY SEALING THE**  
669 **AFFIDAVIT OF DETECTIVE WADE IN SUPPORT OF THE SEARCH**  
670 **WARRANT ISSUED ON DECEMBER 06, 2001, DEMONSTRATES**  
671 **THAT THE AFFIDAVIT OF DETECTIVE WADE WAS PREMISED**  
672 **UPON THE RESULT OF THE GOVERNMENT'S INVESTIGATION OF**  
673 **THE PETITIONER'S TELEPHONE CALLS WHICH EXPLICITLY**

674                   **STATED THAT THE PROFFER STATEMENT WAS FALSE. SEE PET**  
675                   **EX. 112.**

676 \_\_\_\_\_

677                  As previously noted, the government investigated the  
678 telephone calls made by the Petitioner from the Henrico County  
679 Jail. See section II.(b)(i), *supra*. During the course of the  
680 government's investigation eight CDs were made of the  
681 Petitioner's telephone calls. As a result of the government's  
682 investigation of the Petitioner's telephone calls, evidence was  
683 revealed that the Proffer Statements were false. Pursuant to  
684 this evidence, the government was unavoidably made aware that  
685 others, in addition to the government, Goodwin, and the  
686 Petitioner knew that the Proffer Statement was false. In  
687 relying on the result of the government's investigation of the  
688 Petitioner's telephone calls from Henrico County Jail, the  
689 government sought to obtain a search warrant to seize certain  
690 property and instrumentalities which would support a charge of,  
691 "violations of Virginia Code Section 18.2-460, Obstruction of  
692 Justice of the murder trial of Stephen Hood." See Pet. Ex. 43.  
693 See also, section II.(b)(v), *infra*.

694                  The government, through Detective Wade, provided an  
695 affidavit to Magistrate Darryl K. Sheley in support of a search  
696 warrant directed at, "the dwelling house of 103 Yew Avenue,  
697 Colonial Heights, Virginia." Pet Ex. 43. For years the  
698 Petitioner exercised due diligence in trying to obtain a copy  
699 of the affidavit provided by Detective Wade. See Pet. Ex. 44.

700 The due diligence of the Petitioner was met with resistance and  
701 only resulted in learning that, "The information .. ha[d] been  
702 sealed and can only be opened by an order of this [Circuit  
703 Court of the City of Colonial Heights]." Pet. Ex. 45.

704 Many years later, on March 20, 2008 the Petitioner,  
705 through counsel, finally obtained a copy of the Court  
706 ORDER entered December 07, 2001, temporarily sealing the  
707 affidavit.

708 The December 07, 2001, Court ORDER confirmed the  
709 position of the Petitioner. The ORDER states in pertinent  
710 part,

711 This day came the Special Assistant Attorney for the  
712 Commonwealth and represented to the Court that a search  
713 warrant has been issued commanding the search of a  
714 residence in Colonial Heights, based upon the affidavit  
715 of Detective Wade, a police officer for the City of  
716 Richmond.

717 **The Special Assistant Attorney for the Commonwealth  
718 further represented that the affidavit of Detective  
719 George Wade refers to phone calls intercepted from the  
720 Henrico County Jail.** The Special Assistant Attorney for  
721 the Commonwealth further represented that, if the  
722 identity of the source of the information is revealed  
723 or discerned, valuable investigative information and  
724 leads may be imperiled.  
725 The Court has examined such affidavit, and has determined  
726 that the affidavit in support of the search warrant  
727 should be **temporarily sealed** as authorized by Virginia  
728 Code Ann. 19.2-54<sup>1</sup>.

729  
730 Pet. Ex. 111 (emphasis added)

731 Accordingly, it is clear that based on the government's

---

<sup>1</sup>Va. Code § 19.2-54 states in pertinent part, "such affidavit  
may be temporarily sealed by the appropriate court upon  
application of the attorney for the Commonwealth for good cause  
shown in an ex parte hearing ... and the burden of proof with  
respect to the continued sealing shall be on the Commonwealth."

732 own admissions during the ex parte hearing, in large part, the  
733 affidavit supporting the search warrant was based on, "phone  
734 calls intercepted from the Henrico County Jail." Pet. Ex. 111.  
735 The reasonable inference then, is that the phone calls  
736 referenced in the affidavit can be none other than the ones  
737 discussed in section II.(b)(i), *supra*. See FOIA Vol. I., pp.  
738 339-340. Again it is important to note that the above  
739 referenced phone calls between the Petitioner and Ms. Branson  
740 originating from the Henrico County Jail repeatedly contained  
741 conversations which revealed (1) the specific nature of the  
742 contacts between the Petitioner and the investigators; (2) the  
743 involuntary and unintelligent nature of the Proffer Agreement;  
744 (3) the Proffer Statement was false; (4) the false Proffer  
745 Statement was concocted by Goodwin; (5) Goodwin insisted that  
746 the Petitioner provide the government with the false  
747 statements; (6) based on the Petitioner following the  
748 instructions of Goodwin, the Petitioner would not be convicted  
749 of a felony, plead guilty to two misdemeanors, and be home by  
750 Thanksgiving, 2001; and (7) Cox was erroneously released based  
751 upon the known false Proffer Statement. This reality is  
752 supported, in that, the result of the search warrant produced  
753 Pet. Ex. 37. See Claims G., H., I., J., and K., *supra*.

754

755 **II.(b)(iii) THE AFFIDAVIT OF DETECTIVE WADE GIVEN UNDER**  
756 **OATH TO MAGISTRATE DARRYL K. SHELEY,**  
757 **COLONIAL HEIGHTS, VIRGINIA ON DECEMBER 06,**

758                   **2001, PROVIDES EVERY INDICATION THAT THE**  
759                   **GOVERNMENT KNEW THAT THE PROFFER STATEMENT**  
760                   **WAS FALSE. SEE PET. EX 112.**

761 \_\_\_\_\_

762                 On April 02, 2008, the Petitioner, through counsel, filed  
763                 with the Circuit Court for the City of Colonial Heights a  
764                 *Motion to Unseal Affidavit*. The affidavit to which this motion  
765                 referred was the affidavit submitted on December 06, 2001 by  
766                 Wade in support of a search warrant issued on December 06,  
767                 2001. See Pet. Ex. 43, 45, 46, and 111. Pursuant to Virginia  
768                 Code Section 19.2-54, the affidavit was placed under seal on  
769                 December 07, 2001, by Order of the Colonial Heights Circuit  
770                 Court after an ex parte hearing by the Special Commonwealth's  
771                 Attorney Robert Trono. See Pet. Ex. 111.

772                 On April 21, 2008, the Petitioner, through counsel, filed  
773                 with the Circuit Court for the City of Colonial Heights a  
774                 *Notice of Hearing* relating to the previously filed *Motion to*  
775                 *Unseal Affidavit*.

776                 On May 05, 2008, a hearing was held regarding the *Motion*  
777                 *to Unseal Affidavit*, and the *Motion to Unseal* was granted. See  
778                 Case No. CM08-60. On May 19, 2008, the Judge entered an *Order*  
779                 directing that the affidavit be unsealed and the Clerk was  
780                 directed to send a certified copy of the *Order*, as well as the  
781                 unsealed affidavit, to all concerned counsel. Notwithstanding  
782                 the court's *Order*, the Petitioner was not provided a copy of  
783                 the unsealed affidavit until June 5, 2008. See Pet. Ex. 112.

784 In Detective Wade's sworn affidavit Wade stated,

785 Between the dates of November 7th, 2001, and December  
786 5th, 2001 recorded telephone conversations between  
787 Stephen James Hood, an inmate at the Henrico County Jail,  
788 and Louise Branson were intercepted and reviewed by the  
789 affiant. Review of the conversations revealed that Louise  
790 Branson is presently utilizing her computer systems  
791 located at her residence to process and transcribe hand  
792 written notes from Stephen Hood. **According to their**  
793 **telephone conversations, these notes/documents describe**  
794 **Stephen Hood's involvement of the murder and abduction of**  
795 **Ilouise Cooper that occurred in the City Richmond**  
796 **Virginia, on August 31, 1990.**

797  
798 I have personal knowledge of the facts set forth in this  
799 affidavit.

800  
801 I have been employed by the Richmond Police Department  
802 for the past twenty one years and I am presently  
803 investigating the Ilouise Cooper homicide. **In my review**  
804 **of the taped conversations between Stephen Hood and**  
805 **Louise Branson both discuss utilizing hand written notes**  
806 **and computer systems to document Hood's involvement into**  
807 **the murder and abduction of Cooper.** The Ilouise Cooper  
808 murder and abduction occurred on August 31, 1990, within  
809 the jurisdiction limits of the City of Richmond and are  
810 referenced as Richmond Police case numbers 900831520339  
811 Murder, and 9008310335314 Abduction.

812  
813 The statements above are true and accurate to the best of  
814 my knowledge and belief.

815  
816 Pet. Ex. 112. The sworn attestations of Wade within this  
817 affidavit are belied by the actual content of the recorded  
818 conversations, "between November 7th, 2001, and December 5th,  
819 2001," to which Wade referred. Pet Ex. 112. Those recorded  
820 telephone conversations were copied onto CDs and are currently  
821 in the possession of the FBI. See FOIA Vol. I., at 339-340. See  
822 also, FOIA Vol. III., at 579-586. In violation of Brady, and  
823 progeny, the government withheld and continues to withhold,  
824 these CDs from the Petitioner and defense counsel. See Claim

825 F.F.(c) ("The government withheld evidence favorable to the  
826 defense with regard to the known falsity of the Proffer  
827 Statement and FBI S.A. Messing's testimony relating thereto").

828       The actual content of the recorded telephone  
829 conversations between the Petitioner and Louise Branson  
830 discussed Ms. Branson utilizing hand written notes and computer  
831 systems to document the government's wrong doing in this case.  
832 More importantly, the discussions between the Petitioner and  
833 Ms. Branson clearly revealed Ms. Branson's use of her computer  
834 to transcribe the Petitioner's hand written notes onto her  
835 computer system in order to document the Petitioner's complete  
836 lack of involvement in the murder and abduction of Ilouise  
837 Cooper. The purpose of this endeavor was to try to have the  
838 information documented and sent to government agencies; media  
839 outlets; law firms, and the like in order to obtain assistance  
840 in the underlying criminal case; reveal the corruption of Wade,  
841 Messing, and Trono; and, to reveal the actual innocence of the  
842 Petitioner. See Pet. Ex. 128.

843       This transcription of the Petitioner's hand written notes  
844 was generated on the laptop computer belonging to Ms. Branson.  
845 See FOIA Vol. I., at 334 item # 5. See also FOIA Vol. III., at  
846 127. That electronic transcription was then e-mailed to Lynnice  
847 Randolph by Louise Branson. Eventually, Lynnice Randolph mailed  
848 that transcription to the Petitioner. See Pet. Ex. 128.

849       This affidavit clearly indicates that the government knew  
850 that the Proffer Statement was false. However, Wade willingly,

851 and knowingly provided an affidavit to an officer of the court,  
852 Magistrate Darryl K. Sheley, in order to conceal this fact.

853        Wade listened to and investigated the telephone calls  
854 between the Petitioner and Ms. Branson which revealed: (1) the  
855 specific nature of the contacts between the Petitioner and the  
856 investigators; (2) the involuntary nature of the  
857 cooperation/immunity agreement; (3) the Proffer Statement was  
858 false; (4) the Petitioner is innocent of any involvement with  
859 these crimes; (5) the false Proffer Statement was concocted by  
860 Goodwin; (6) Goodwin insisted that the Petitioner provide the  
861 government with the false statements; (7) based on the  
862 Petitioner following the instructions of Goodwin, the  
863 Petitioner would not be convicted of any felony, plead guilty  
864 to two misdemeanors, and be home by Thanksgiving, 2001; (8) Cox  
865 was erroneously released based upon the known false Proffer  
866 Statement; and (9) the corruption and wrong doing of the  
867 government throughout this case. These realities are supported  
868 by the actual content of the recorded telephone calls (see FOIA  
869 Vol. I., 339-340; FOIA Vol. III., at 579-586); the actual hand  
870 written notes/letters (see Pet. Ex. 37 see also FOIA Vol. III.,  
871 at 127); and the actual transcription of several of the hand  
872 written notes/letters onto the computer systems of Louise  
873 Branson (see Pet. Ex. 128). Clearly, the government knew or  
874 should have known that the Petitioner is actually innocent, and  
875 that the Proffer Statement is false.

876

877 II.(b)(iv) THE SEARCH WARRANT PROVIDES EVERY INDICATION THAT  
878 THE GOVERNMENT SOUGHT TO SEIZE EVIDENCE RELATING TO  
879 THE FALSITY OF THE PROFFER STATEMENT. SEE PET. EX.  
880 43.

881 \_\_\_\_\_  
882 The search warrant issued on December 06, 2001, and  
883 executed on December 07, 2001, states,

884 You are commanded in the name of the Commonwealth to  
885 forthwith search either in day or night:  
886 The dwelling house at 103 Yew Avenue, Colonial Heights,  
887 Virginia.  
888 To include the curtilage, detached garage, and vehicles  
889 parked upon the curtilage ... for the following property,  
890 objects and/or persons:  
891 Computer systems (including computer hard drives) hand  
892 written documents, records, recordings and other  
893 instrumentalities **related to violations of Virginia Code**  
894 **Sections 18.2-460 Obstruction of Justice of the murder**  
895 **trial of Stephen Hood, and Code Section 18.2-32, the**  
896 **murder of Ilouise Cooper.**

897 You are further commanded to seize said property,  
898 persons, and/or objects if they be found and to produce  
899 before the Colonial Heights Court an inventory of all  
900 property, persons and/or objects seized.<sup>2</sup>

901  
902 Pet. Ex 43 (emphasis added). In 2001, Louise Branson and the  
903 Petitioner were engaged to be married, and the residence of 103  
904 Yew Avenue was to be their marital home. Accordingly, 103 Yew  
905 Avenue contained both Ms. Branson's property as well as the  
906 Petitioner's belongings. The essence of the search warrant  
907 then, was obviously to obtain evidence from the possessions or  
908 property belonging to Louise Branson and/or the Petitioner

---

<sup>2</sup> Contrary to the command to produce an inventory of the items seized to the Colonial Heights Circuit Court, the government instead chose to follow its pattern of violating the laws of the Commonwealth and the command of the Supreme Court of the

909 pursuant to the information revealed through the, "phone calls  
910 intercepted from Henrico County Jail." Pet. Ex. 111. The search  
911 warrant described the items sought with relative specificity  
912 and purpose:

913 Computer systems (including computer hard drives) hand  
914 written documents, records, recordings and other  
915 instrumentalities related to violations of Virginia Code  
916 Section 18.2-460 Obstruction of Justice in the murder  
917 trial of Stephen Hood.

918  
919 Pet. Ex. 43. (emphasis added) The government was  
920 obviously seeking documents or similar instrumentalities  
921 which would serve as evidence to prove that someone  
922 either accomplished the obstruction of justice, or was  
923 attempting to obstruct justice in the murder trial of  
924 Stephen Hood.

925 In 2001, Virginia Code Section 18.2-460 provided:

926 **A.** If any person without just cause knowingly obstructs a  
927 judge, magistrate, justice, juror, attorney for the  
928 Commonwealth, witness or any law-enforcement officer on  
929 the performance of his duties as such or fails or refuses  
930 without just cause to cease such obstruction when  
931 requested to do so by such judge, magistrate, justice,  
932 juror, attorney for the Commonwealth, witness, or law-  
933 enforcement officer, he shall be guilty of a Class 1  
934 misdemeanor.

935 **B.** If any person, by threat or force, knowingly  
936 attempts to intimidate or impede a judge, magistrate,  
937 justice, juror, attorney for the Commonwealth, witness,  
938 or any law-enforcement officer, lawfully engaged as  
939 such, or to obstruct or impede the administration of  
940 justice in any court, he shall be deemed to be guilty  
941 of a Class 1 misdemeanor.

942 **C.** If any person by threats of bodily harm or force  
943 knowingly attempts to intimidate or impede a judge,  
944 magistrate, justice, juror, witness, or any law-

---

United States by withholding evidence. See Pet. Ex. 43.

947 enforcement officer, lawfully engaged in the discharge  
948 of his duty, or to obstruct or impede the administration  
949 of justice in any court relating to a violation of or  
950 conspiracy to violate § 18.2-243 or subdivision (a)(3),  
951 (b) or (c) of § 18.2-248.1 or § 18.2-46.2 or § 18.2-  
952 46.3, or relating to the violation of or conspiracy to  
953 violate any violent felony offense listed in subsection  
954 C of § 17.1-805 he shall be guilty of a Class 5 felony.

955  
956 § 18.2-460.

957 Professor Costello provides an instructive treatise on  
958 this Code Section. See Virginia Criminal Law and Procedure, 3d  
959 ed., § 27.1-2. Professor Costello states that subsection (A)  
960 now a Class 2 misdemeanor, was added in 1989. In its terms, it  
961 punishes knowing, completed obstructions; subsection (B) and  
962 (C) involve a unique kind of attempt by threats of force. This  
963 division apparently leaves open the possibility of punishment  
964 for an attempt to obstruct in violation of subsection (A).

965 However, the Court of Appeals has characterized attempts in  
966 subsection (B) and (C) as unique offenses. They are akin to  
967 attempt, but prosecution does not require the showing of  
968 commencement of the consummation typical of criminal attempts.

969 See Polk v. Commonwealth, 4 Va. App. 590, at 595, 358 S.E.2d  
970 770, at 773 (1977). Accordingly, they are statutory definitions  
971 of inchoate offenses far closer to acceptable behavior than the  
972 usual threshold of criminal responsibility, and attempt to  
973 commit a violation of subsection (B) or (C) should be charged.

974 In contrast, subsection (A) punishes only completed  
975 obstruction.

976 Accordingly, the search warrant itself provides every  
977 indication that the government, having recorded and

978 investigated the telephone conversations between the Petitioner  
979 and Ms. Branson, had every reason to believe that obstruction  
980 of justice had occurred with respect to the trial of the  
981 Petitioner and that the Proffer Statement was not true. The  
982 government intended to seize evidence to that effect during the  
983 execution of this search warrant. See Pet. Ex. 43 see also  
984 FOIA Vol. I. pp. 334, 339-340. In not coming forward with that  
985 information, someone may have obstructed justice in the murder  
986 trial of the Petitioner. This is particularly exacerbated by  
987 the fact that the government had released a convicted murderer  
988 on November 14, 2001, based solely upon these same false  
989 Proffer Statement. It became necessary for the government to  
990 conceal this reality from the citizens of the Commonwealth.

991 **II.(b)(v) THE ITEMS SEIZED FROM THE HOME OF MS. BRANSON**

992 **AND THE PETITIONER, AND THE CONTEMPORANEOUS**  
993 **INTERROGATION OF MS. BRANSON BY INVESTIGATORS**  
994 **PROVIDE EVERY INDICATION THAT THE GOVERNMENT**  
995 **SOUGHT TO SEIZE, AND IN FACT DID SEIZE,**  
996 **EVIDENCE THAT THE PROFFER STATEMENT WAS FALSE.**

997 **SEE FOIA VOL. I., P. 334 SEE ALSO PET. EX. 37.**

998 \_\_\_\_\_

999 The items seized from the home of Ms. Branson and the  
1000 Petitioner, along with the contemporaneous interrogation of Ms.  
1001 Branson by the investigators provide every indication that the  
1002 government had reason to believe that the Proffer Statement was  
1003 false. See FOIA Vol. I., p. 334. Undisclosed to the Petitioner,

1004 his defense counsel or the Circuit Court of Colonial Heights  
1005 the government did make an inventory of the items seized. See  
1006 FOIA Vol. I., p. 334. See also, FOIA Vol. III., p.127.

1007 On May 29, 2007, FOIA Vol. I., at 334 provided an  
1008 abundance of previously undisclosed information. This federal  
1009 document (FD-302) was not generated by the government until  
1010 April 04, 2002; the second day of the trial of the Petitioner  
1011 even though the investigation by the federal agents was  
1012 performed on December 07, 2001. See FOIA Vol. I., at 334. In  
1013 this way, the government obviously believed that it would be  
1014 able to avoid the demands of Brady, because the document did  
1015 not exist (was not generated) until after the trial of the  
1016 Petitioner. However, this maneuver does not relieve the  
1017 government of its obligation under Brady, and progeny. Instead,  
1018 it further demonstrates the government's broader scheme of a  
1019 pattern of withholding evidence favorable to the defense. See  
1020 Claim F.F., *infra*. Nevertheless, this FOIA document provides  
1021 two previously undisclosed revelations.

1022 **First**, the government did make an inventory of the items  
1023 seized on December 07, 2001, and withheld this inventory from  
1024 the Petitioner, his defense counsel, as well as the Colonial  
1025 Heights Circuit Court. FOIA Vol. I., at 334 states in pertinent  
1026 part,

1027 The following items were seized in connection with the  
1028 formal execution of this warrant:

1029 1. Mid-Tower CPU, Generic, No Serial Number

1030           2. One Lot of Compact Disks  
1031           3. One Lot of Floppy Disks  
1032           4. Toshiba Laptop Computer, Serial Number 6129455PU  
1033           5. One Carry Bag and Kwik Kopy Bag  
1034                 containing documents miscellaneous  
1035                 papers  
1036           6. Three boxes and one plastic file box containing  
1037                 documents - miscellaneous papers.  
  
1038 FOIA Vol. I., at 334. See also, FOIA Vol. III., at 127. Some of  
1039 the items listed were owned by the Petitioner, e.g., items #1,  
1040 #2, #3, #5, and #6. Item #4 was owned by Ms. Branson. Some of  
1041 the, "documents-miscellaneous papers," within item #5, and #6  
1042 were owned by both Ms. Branson and the Petitioner. FOIA Vol.  
1043 III., at p. 127 clearly reveals that the government seized  
1044 volumes of "letters" from the Petitioner to Ms. Branson which  
1045 contain further compelling evidence that the Proffer Statement  
1046 was false. However, thus far the government has still not been  
1047 forthcoming in disclosing those documents in its continuing  
1048 violation of Brady, and progeny.

1049           **Second**, and vital to this Claim D.D., and Claim J.(a),  
1050 this FOIA document reveals the nature of the government's  
1051 interrogation of Ms. Branson during the execution of the  
1052 search warrant. The generalized memorialization of the  
1053 interrogation provides a person of reasonable intelligence  
1054 with every indication that the purpose of the search warrant  
1055 and the contemporaneous interrogation of Ms. Branson was to

1056 determine whether there was any indication or evidence that  
1057 others, in addition to the Petitioner, the government, and  
1058 Goodwin knew that the Proffer Statement was false. The  
1059 document, FOIA Vol. I., at 334, further states,

1060 [Ms. Branson] was asked about any statements made to her  
1061 by Stephen Hood regarding the abduction/murder for which  
1062 he is currently incarcerated. [Ms. Branson] advised that  
1063 Hood has always told her that he is innocent of the  
1064 charges against him. Though [Ms. Branson] is aware that  
1065 Hood has had some recent contact with investigators, she  
1066 is unaware of the specific nature of those contacts. Hood  
1067 has never indicated to [Ms. Branson] that he was lying to  
1068 investigators.

1069  
1070 FOIA Vol. I., at 334.

1071 Notwithstanding the government's generalized  
1072 description of the interrogation of Ms. Branson, and to the  
1073 contrary, the result of the search warrant produced Pet. Ex  
1074 37 (the FBI Fax Transmission; see Claims G.(a), J.(a), and  
1075 K.(a)). Pet Ex. 37 consists of only two of the volumes of  
1076 letters from the Petitioner to Ms. Branson which explicitly  
1077 stated: (1) the specific nature of the contacts between the  
1078 Petitioner and the investigators; (2) the involuntary and  
1079 unintelligent nature of the Proffer Agreement; (3) the  
1080 Proffer Statement was false; (4) the false Proffer Statement  
1081 was concocted by Goodwin; (5) Goodwin insisted that the  
1082 Petitioner provide the government with the false Proffer  
1083 Statement; (6) based on the Petitioner following the  
1084 instructions of Goodwin, the Petitioner would not face felony  
1085 charges, plead guilty to two misdemeanors, and be home by  
1086 Thanksgiving, 2001; (7) Cox was erroneously released based

1087 upon the known false Proffer Statement. Id. see also, Pet.  
1088 Ex. 38, affidavit of Louise Branson, and Pet Ex. 50,  
1089 affidavit of Rev. John Newell.

1090 The execution of the search warrant resulted in the  
1091 seizure of several pieces of evidence revealing that the  
1092 Proffer Statement was false. See, e.g., Pet. Ex. 37, and FOIA  
1093 Vol. III., at p. 127. The government, therefore, continued to  
1094 obtain evidence demonstrating that the Proffer Statement was  
1095 false, and that the Petitioner was in no way involved with  
1096 these crimes. The government, therefore, knew or should have  
1097 known that the Proffer Statement was false. It is important to  
1098 underscore that the government seized volumes of letters  
1099 revealing that the statements were false. See FOIA Vol. I., at  
1100 334; FOIA. Vol. III, at 127. However, Messing only disclosed  
1101 two of those letters. See Pet. Ex. 37. Likewise, as part of its  
1102 investigation, the government made CD recordings of numerous  
1103 telephone conversations between the Petitioner and Ms. Branson  
1104 which further confirmed that the Proffer Statement was false.  
1105 However, the government never disclosed this evidence to the  
1106 defense. See Claim F.F., *infra*, see also subsection II.(b)(i),  
1107 *supra*. Further evidence of the government's intent to suppress  
1108 this evidence favorable to the defense is not only evinced by  
1109 the sealing of the affidavit in support of the search warrant,  
1110 but by the government's failure to comply with the lawful  
1111 command of the search warrant to produce an inventory of the  
1112 items seized to the Colonial Heights Circuit Court. See Pet.

1113 Ex. 43, 111, and 112.

1114 Further, the government did not generate the FD-302  
1115 relating to the December 07, 2001 execution of the search  
1116 warrant until April 04, 2002, - after the trial and some four  
1117 months later. Similar tactics were employed by the government  
1118 with regard to the CD recordings made between November 12, 2001  
1119 and January 04, 2002, which, "due to inadvertence on the part  
1120 of Case Agent, these CDs were not entered into ELSUR," until  
1121 February 18, 2003 - some ten months after the trial of the  
1122 Petitioner. FOIA Vol. I., at 339. See also, subsection  
1123 II.(b)(i), *supra*.

1124 The purpose for all of these machinations by the  
1125 government was two fold: (1) to suppress the abundance of  
1126 evidence which demonstrated that the government knew that the  
1127 Proffer Statement was false, while it fabricated more known  
1128 false evidence against the Petitioner which would illegally  
1129 comport with the false Proffer Statement, and (2) to prevent  
1130 the public from becoming aware that the government released a  
1131 convicted murderer based solely on the known false Proffer  
1132 Statement.

1133 **III. THE CUMULATIVE REVIEW OF THE EVIDENCE POSSESSED BY THE**  
1134 **GOVERNMENT WHICH CONCLUSIVELY PROVES THAT THE PROFFER**  
1135 **STATEMENT WAS FALSE, AND THE GOVERNMENT KNEW IT WAS FALSE**  
1136 **WHEN SPECIAL AGENT MESSING TESTIFIED AS TO THE SUBSTANCE**  
1137 **OF THE PROFFER STATEMENT AS SUBSTANTIVE EVIDENCE IN THE**  
1138 **COMMONWEALTH'S CASE-IN-CHIEF AGAINST THE PETITIONER.**

1139 III.(a) THE GOVERNMENT'S EVIDENCE PRIOR TO THE PROFFER SESSIONS

1140 WHICH WHOLLY CONTRAVENE THE FALSE PROFFER STATEMENT.

1141 \_\_\_\_\_

1142       1. On September 9, 1990, the Henrico Police Department's  
1143 investigation produced the County of Henrico Police Incident  
1144 and Crime Report # 900904073. Pet. Ex. 28. This investigation  
1145 and official report contradicts the Proffer Statement which  
1146 intimated that, "Madison wanted to go downtown to make a drug  
1147 deal with [Roberto] Steadman, ... Hood remembers asking Madison  
1148 if he and Steadman were all right with one another as this is  
1149 **after** the incident wherein Madison took Steadman's bicycle."  
1150 Pet. Ex. 23 (emphasis added). On September 09, 1990, contrary  
1151 to the Proffer Statement, and contrary to the government's  
1152 theory of prosecution, the Henrico Police Report (Pet. Ex. 28)  
1153 established that the incident in which Madison took Steadman's  
1154 bicycle, and Steadman retrieved his bicycle, occurred on August  
1155 31, 1990 between the hours of 7:30 a.m. and 7:30 p.m., which  
1156 was after the crimes against the victim in this case. The  
1157 victim of these crimes was abducted and killed during the  
1158 nighttime hours of August 30, 1990. See Pet. Ex. 1, at 12, 53-  
1159 54, 80; TR. tr., at 111, 129, and 150. Accordingly, the  
1160 government knew that the bicycle incident could not have been  
1161 the motive for the crimes. A motive for a crime cannot occur  
1162 **after** the crime. See, e.g., Black's Law Dictionary, 6th ed.  
1163 (motive is defined as, "cause or reason that moves the will and  
1164 induces action").

**Deleted:** Steadmen

1165       The theory of prosecution the government and Goodwin  
1166   intended to present though the false proffer was that the  
1167   crimes against the victim were motivated by retaliation for  
1168   Steadman's retrieving his bicycle from the Petitioner's  
1169   apartment. See Claims G., H., I., J., K., R., and S., *supra*.  
1170   Contrary to this theory of prosecution, and contrary to the  
1171   false proffer, the Henrico County Police Report states that the  
1172   breaking and entering committed by Steadman, and the apartment  
1173   complex supervisor, Ronald Hopkins, in order to retrieve  
1174   Steadman's bicycle from the Petitioner's apartment, occurred  
1175   between the hours of 7:30 a.m. and 7:30 p.m. of August 31,  
1176   1990. Therefore, Pet. Ex. 28 strongly tended to negate the  
1177   veracity of the Proffer Statement. Again, it is important to  
1178   note that the bicycle incident occurred after the crimes were  
1179   committed against the victim. Therefore, the Proffer Statement  
1180   was known by the government to be false.

1181       The testimony of Roberto Steadman even more definitively  
1182   confirmed the government's knowledge that the Proffer Statement  
1183   was false. The Proffer Statement intimated that, "Madison  
1184   wanted to go downtown to make a drug deal with Steadman ...  
1185   Hood remembers asking Madison if he and Steadman were all right  
1186   with one another, as this is after the incident wherein Madison  
1187   took Steadman's bicycle." Pet. Ex. 23. Steadman testified that  
1188   he and the, "maintenance man," retrieved his bicycle the same  
1189   day he noticed it was missing (TR. tr. 46-47) which the Henrico  
1190   Police Report demonstrates occurred on August 31, 1990; the day

1191 after the crimes against the victim. Steadman went on to  
1192 testify that he paid Madison \$98.00 "24-72 hours" after he  
1193 retrieved his bicycle. TR. tr., at 59, and 305-306.

1194 The government knew that the bicycle incident occurred  
1195 after the crimes against the victim. With regard to the  
1196 prosecutor's knowing use of false evidence and the prejudice  
1197 incurred by the Petitioner; the trial judge ruled that the  
1198 payment of \$98.00, "was not enough to end that animosity." TR.  
1199 tr., at 342-343. However, the government's actual evidence was  
1200 that the \$98.00 payment to Madison occurred several days after  
1201 the bicycle incident, which the government knew all occurred  
1202 **after the crimes.** Thus, the government knew that the Proffer  
1203 Statement was false, and the government knew it presented false  
1204 evidence regarding a motive though its use of the false  
1205 proffer.

1206 The testimony of Steadman confirmed the falsity of the  
1207 Proffer Statement. The Proffer Statement intimated that after  
1208 the payment of \$98.00 the Petitioner and Madison picked up  
1209 Steadman in order for Madison to purchase marijuana. See Pet.  
1210 Ex. 23. Contrary to the Proffer Statement, Steadman testified  
1211 that he never saw the Petitioner or Madison again after the  
1212 payment of \$98.00. TR. tr., at 306-307. Steadman was adamant.  
1213 He was, "absolutely positive," that he never saw or had any  
1214 interaction with the Petitioner or Madison after the payment of  
1215 \$98.00. TR. tr. at 320-321. See also Claims G., H., I., J., K.,  
1216 R., and S., *supra*.

1217           **2.** On February 13, 1991, during the trial of Cox, the  
1218 government negated any veracity of the Proffer Statement.

1219           **(a)** Contrary to the false Proffer Statement which  
1220 directly said that the Petitioner was the driver of the car  
1221 involved in these crimes, the government's eyewitness, Estelle  
1222 Johnson ("Johnson"), testified that the driver of the car had  
1223 "blond hair". Pet. Ex. 1, at 85. However, the Petitioner has  
1224 never had blond hair. To the contrary, the Petitioner has dark  
1225 brown hair; and always has. Accordingly, the government knew  
1226 that the Proffer Statement was false. The eyewitness' testimony  
1227 precluded any possibility of the Petitioner being the driver of  
1228 the car, and thus, the government knew that the Proffer  
1229 Statement was not true. See section I. *Supra*. See also Claims  
1230 G., H., I., J., and K., *supra*.

1231           **(b)** Contrary to the false Proffer Statement which  
1232 directly said that Madison was the knife wielding abductor and  
1233 killer involved in these crimes, the government's eyewitness,  
1234 Johnson, positively identified Cox as the knife-wielding  
1235 culprit during the viewing of a photo array; again at Cox's  
1236 preliminary hearing; and again during the trial of Cox. See  
1237 section I., *supra*. This positive identification of Cox is  
1238 further emphasized by the description of that event by one of  
1239 the original investigators. When questioned by agents of the  
1240 government on May 08, 2000, the original investigator stated,  
1241 "If [anyone] had any concern about the guilt of [Cox] it was  
1242 dispelled by a number of events. First was [Johnson's] reaction

1243 when [Cox) was brought into the courtroom at the preliminary  
1244 hearing." FOIA Vol. I, at 174-175.

1245       Likewise, the other government eyewitness in the trial  
1246 against Cox, James Corbin ("Corbin"), positively identified Cox  
1247 as the knife wielding man outside the residence of the victim  
1248 on the night of August 30, 1990. See Pet Ex. 1, at 121. See  
1249 also section I., *supra*, and Claims G., H., I., J., and K.,  
1250 *supra*.

1251       (c) Contrary to the false Proffer Statement which  
1252 intimated that Madison used the Petitioner's knife sheath to  
1253 abduct and kill the victim in this case, the government's  
1254 eyewitness, Johnson, testified with specificity that the sheath  
1255 Cox wore was, "five inches." This testimony was not due to any  
1256 flawed estimation of what five inches may look like. The  
1257 prosecutor, Learned Barry, asked Johnson to demonstrate for the  
1258 jury by using her fingers exactly how long the perpetrator's  
1259 sheath was. Upon Johnson's demonstrating the size of the sheath  
1260 for the jury the prosecutor concurred for the record that what  
1261 Johnson had displayed was, in fact, "five inches." Pet. Ex. 1,  
1262 at 79. In contrast, the Petitioner's sheath measures thirteen-  
1263 plus inches in length. See Pet. Ex. 101; Com. Ex. 7. The  
1264 Petitioner's sheath is nearly triple that of Johnson's sworn  
1265 eyewitness testimony, and demonstration. See sections I., and  
1266 II., *supra*. See also Pet. Ex. 60 (When questioned by agents of  
1267 the government on September 29, 1999, Paul Stillman stated,  
1268 "Hood wore three knives in a sheath that was attached to a

1269 belt, he stated the sheath hung down on Hood's right leg  
1270 approximately three quarters of the way down his thigh."); See  
1271 Pet. Ex. 110, FOIA Vol. II., at 217-218, and DFS Item number  
1272 100. See also Pet. Ex. 101.

1273 Likewise, contrary to the Proffer Statement which  
1274 intimated that Madison used the Petitioner's knife sheath and  
1275 knives to abduct and kill the victim, the government's other  
1276 eyewitness, Corbin, testified that the knife wielded by Cox  
1277 was, "five to six inches long," and that the knife holder worn  
1278 by Cox simply, "looked like a knife case." Pet. Ex. 1, at 115,  
1279 and 137-138. This eyewitness testimony contradicts the false  
1280 Proffer Statement, and the government's actual evidence. See  
1281 Pet. Ex. 59,60,.101, 107; FOIA Vol. II., at 217-218. See also  
1282 Pet. Ex. 94 (During the questioning of Corbin by Federal  
1283 agents, "Corbin was shown a photograph of Stephen Hood's knife  
1284 sheath and knives previously obtained by investigators. Corbin  
1285 did not think that the sheath or knives in the photograph were  
1286 the same as the one he saw.") See sections I., and II.(a);  
1287 Claims G., H., I., J., and K., *supra*. Accordingly, the  
1288 government knew that the Proffer Statement was not true.

1289 3. On May 19, 1999; May 25, 1999; May 28, 1999; June 04,  
1290 1999; and July 21, 1999, the government's interviews of Johnson  
1291 provided the government with evidence which contradicted the  
1292 Proffer Statement. The false Proffer Statement intimated that  
1293 Madison made a drug deal with Roberto Steadman in the street of  
1294 Parkwood Avenue. See Pet. Ex. 23. Contrary to the Proffer

1295 Statement, Johnson stated to agents of the government that,

1296 Jackie Steadman told Johnson that she had done a deal  
1297 with some white males in the park a short time before the  
1298 incident and felt this was somewhat related to the  
1299 abduction and murder.  
1300 Pet. Ex. 54, (emphasis added).

1301 Approximately one week after the police interviewed  
1302 Jackie Steadman, she moved out of the area. Before she  
1303 left, Detective Woody told her that she could not leave  
1304 the area ... After she left there were rumors that Jackie  
1305 Steadman did have something to do with the abduction and  
1306 murder due to the fact that she had ripped off the white  
1307 males in a drug deal. Testimony given on June 4, 1999  
1308 says that Jackie Steadman told Estelle Johnson herself  
1309 that she did in fact rip off the white males in the park.  
1310 Pet. Ex 54 (emphasis added).

1311 Accordingly, the government's evidence contradicted the  
1312 Proffer Statement. The Proffer Statement which intimated that  
1313 Madison made a drug deal on the street of Parkwood Avenue with  
1314 Roberto Steadman, are wholly contravened by the government's  
1315 evidence that the abduction and murder was subsequent to a drug  
1316 deal between two white males and Jackie Steadman which occurred  
1317 in the park. See Pet. Ex. 23, and 54. Therefore, the government  
1318 knew that the Proffer Statement could not be true. See also  
1319 Claims G., H., I., J., and K.

1320 4. In 2001, the government's interview of Corbin provided  
1321 the government with evidence which contradicted the Proffer  
1322 Statement. On April 13, 2000, the Petitioner turned over his  
1323 knives and sheath to Detective Wade and FBI S.A. Messing in  
1324 order to assist in the government's investigation. See FOIA  
1325 Vol. II, at 217-218. The false Proffer Statement intimated that  
1326 Madison used the Petitioner's knives and sheath to abduct and  
1327 kill the victim in this case. Corbin was an eyewitness for the

1328 government relating to the knife wielding man whom he  
1329 positively identified as Cox. Contrary to the false Proffer  
1330 Statement, the interview in 2001 by the government agents  
1331 revealed that,

1332 Corbin was shown a photograph of Stephen Hood's knife  
1333 sheath and three knives previously obtained by  
1334 investigators. Corbin did not think that the sheath or  
1335 knives in the photograph were the same as the one he saw.  
1336 Pet. Ex. 94.

1337 Accordingly, the government's eyewitness contradicted the  
1338 false Proffer Statement, in that, contrary to the proffer, the  
1339 Petitioner's knife sheath and knives could not have been the  
1340 ones used in these crimes. Thus, the government knew that the  
1341 Proffer Statement was not true. The Proffer Statement is wholly  
1342 contravened by this eyewitness. See Claims G., H., I., J., K.,  
1343 and section I., *supra*.

1344 5. At some point during 1999-2001, prior to the false  
1345 Proffer Statement, agents of the government interviewed Andrea  
1346 Hackett ("Hackett"). At the time of the crimes committed  
1347 against the victim Hackett was the girlfriend of Corbin. Corbin  
1348 and Hackett resided at 2605 Parkwood Avenue, apartment A. See  
1349 Pet. Ex. 1, at 113, 129; TR. tr., at 128-129, 131; Pet. Ex. 55,  
1350 and 94. Hackett's apartment was in the same four apartment  
1351 building as the victim in this case, in fact, Hackett and  
1352 Corbin lived downstairs from the victim. See Pet. Ex. 1, at  
1353 113. Hackett was, therefore, also Johnson's neighbor. Contrary  
1354 to the false Proffer Statement which intimated that Madison  
1355 made a drug deal with Roberto Steadman on the night of August

1356 30, 1990, Corbin's description to Hackett of the events  
1357 which occurred the night of August 30, 1990 is in direct  
1358 contradiction to the Proffer Statement. In pertinent part,  
1359 Hackett stated to the interviewing government agents that,

1360 Corbin told Hackett that he observed a black female, who  
1361 he later identified as Jackie Steadman, exit the corner  
1362 apartment on Parkwood Avenue, which was 2601 Parkwood  
1363 Avenue. 2601 is Estelle Johnson's home. [Jackie] Steadman  
1364 then got into a red small car appearing to be a Ford  
1365 Escort occupied by two white males. A short time later,  
1366 Corbin stated that he observed the same car return to the  
1367 2600 block of Parkwood Avenue and park in front of 2605  
1368 Parkwood Avenue. He then saw the black female, who he  
1369 thought to be Jackie Steadman, leave the vehicle and run  
1370 into the residence of Ilouise Cooper. (The Coopers would  
1371 often leave their apartment open and allow individuals to  
1372 come into their home freely.) Corbin told Hackett that he  
1373 went to his mother's house (2611 Parkwood Avenue) and  
1374 stood on the front porch and watched what was going on.  
1375 The red car left and returned soon after. A white male  
1376 got out of the car and went up to the apartment that  
1377 Jackie Steadman had gone into and knocked on the door. He  
1378 then dragged out a black female, whom Corbin thought was  
1379 Jackie Steadman, and put her in the red car. When Corbin  
1380 met Hackett a block away from home, the police were  
1381 there.

1382 Pet. Ex. 55 (emphasis added).

1383 This contemporaneous description of the eyewitness'  
1384 account of the events surrounding the abduction of the victim  
1385 directly contradicts the false Proffer Statement in almost  
1386 every key area. See Pet. Ex 23. Accordingly, the government's  
1387 evidence prior to the proffer sessions provided the government  
1388 with an abundance of evidence which wholly contravened the  
1389 false Proffer Statement. Therefore the government knew, or  
1390 should have known, that the Proffer Statement was not true.

1391 Likewise, when the agents of the government interviewed  
1392 Hackett, Hackett revealed what Johnson had told Hackett that

1393 which transpired on the night of August 30, 1990. Like all of  
1394 the other evidence possessed by the government, Johnson's  
1395 description of the events directly contradicted the  
1396 Petitioner's false Proffer Statement in almost every regard.  
1397 Hackett informed the agents of the government that,

1398 Estelle Johnson told Hackett that Jackie Steadman had  
1399 been in her apartment in the early morning hours of  
1400 August 31, 1990. [Jackie] Steadman told Johnson that she  
1401 had to leave and take care of some business with two  
1402 guys. Estelle Johnson also told her Jackie came back to  
1403 the apartment and exited through the back door. That is  
1404 when a male approached Ms. Johnson's door and yelled,  
1405 'Where is that, black bitch; I'm going to kill her.'  
1406 Johnson advised to the man that the woman he was looking  
1407 for did not live in her apartment.

1408 Pet Ex. 55.

1409 This description of the personal account by the  
1410 government eyewitness of the events surrounding the abduction  
1411 of the victim directly contradicts the Proffer Statement on  
1412 several key points. See Pet. Ex. 23. The proffer intimates that  
1413 the person with whom Madison made a drug deal was Roberto  
1414 Steadman. In contrast, both Corbin and Johnson consistently  
1415 told Hackett that it was a female with whom the culprits made a  
1416 drug deal; that is Jackie Steadman. The Proffer Statement  
1417 intimate that Roberto Steadman was the drug dealer, by contrast  
1418 Johnson told Hackett that Jackie Steadman ripped off **the** two  
1419 males and then entered Johnson's apartment through the front  
1420 door, "and exited through the back door." It was at this time  
1421 that the culprit went looking for a female at Johnson's  
1422 apartment stating, "Where is that black bitch, I'm going to  
1423 kill **her'.**" Johnson responded that, "**the woman** he was looking

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1424 for did not live in her apartment." Pet Ex. 55 (emphasis  
1425 added). Not only does this evidence demonstrate the  
1426 government's knowing use of the false evidence through Johnson  
1427 and Corbin during the trial of the Petitioner, but it also  
1428 establishes the government's knowledge that the Proffer  
1429 Statement was not true. See Claims G., H., I., J., and K.,  
1430 *supra*.

1431         **6.** Contrary to the false Proffer Statement which  
1432 intimated that Madison used the Petitioner's sheath and knives  
1433 to abduct and kill the victim in this case, and that the sheath  
1434 contained a large 10-inch chef's knife, a plastic handled bread  
1435 knife, and a 8-inch "medium size chef knife" (Pet. Ex. 23); the  
1436 sheath was physically incapable of containing those three  
1437 knives all at once, at the same time. See Pet Ex. 108. See also  
1438 section II.(a) *supra*, and TR. tr., at 271, 273, 275, 278-279.  
1439 On April 13, 2000 the Petitioner voluntarily turned over his  
1440 sheath and knives for testing in order to assist in the  
1441 government's investigation. See FOIA Vol. II., 217-218. See  
1442 also FOIA Vol. II., 119, 125, 132, 154, 220, 125, 336, 338-340,  
1443 and Pet. Ex. 81 and 110; D.F.S. Item #100. D.F.S. Item #100,  
1444 the sheath and knives owned by the Petitioner, were submitted  
1445 to the Division of Forensic Science ("DFS") on April 28, 2000  
1446 by Detective Wade to Lisa Schiesmier and not relinquished to  
1447 Wade until January 23, 2001. See Pet. Ex. 110. It is worthy  
1448 noting that FOIA Vol. II., at 336, 338-340 reveal drastic  
1449 discrepancies in the chain of custody regarding the sheath and

1450 knives owned by the Petitioner, and tested by the government.

1451 See Claim F.F. Nevertheless, these Exhibits establish that the

1452 government possessed the sheath for an extended period of time

1453 prior to the Proffer Statement. It is obvious after reviewing

1454 Pet Ex. 101; Com. Ex. 7; Pet. Ex. 107, Com. Ex. 11; and Pet.

1455 Ex. 108 that the government knew that the sheath was physically

1456 incapable of containing a large 10-inch knife, a medium 8-inch

1457 knife, and a serrated knife all at once; all at one time.

1458 Instead and contrary to the Proffer Statement, the sheath was

1459 uniquely designed and fabricated for the sole purpose of

1460 accommodating a 10-inch chef's knife, a serrated knife, and a

1461 small paring knife. See section II.(a) *supra*. See also Pet. Ex.

1462 107, and 101. See also Pet. Ex. 59, 60, 81, 110, and FOIA Vol.

1463 II., at 119, 125, 132, 154, 199. Accordingly, prior to the

1464 proffer sessions the government possessed the forensic,

1465 physical evidence which negated the veracity of the Proffer

1466 Statement. Therefore, the government knew that the Proffer

1467 Statement was not true. Especially since, contrary to the

1468 proffer statements, it was a physical impossibility for the

1469 sheath to contain the large 10-inch knife, the, "medium size,"

1470 8-inch knife, and the serrated knife all at once; at the same

1471 time. It must be underscored that the forensic, physical

1472 evidence is absolutely contrary to the testimony of Messing

1473 found on TR. Tr., 271, 273, 275, 278-279. See section II.(a),

1474 *supra*, and Claims G., H., I., J., and K, *supra*.

1475 **III.(b) THE GOVERNMENT'S AND THE PETITIONER'S EVIDENCE OBTAINED**

1476                   **SUBSEQUENT TO THE PROFFER SESSIONS WHICH DEMONSTRATES**  
1477                   **THAT THE GOVERNMENT AND OTHERS KNEW THAT THE PROFFER**  
1478                   **STATEMENT WAS FALSE.**

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1479

1480                 **1. Due to the overwhelming abundance of evidence**  
1481                 possessed by the government which negated any veracity of the  
1482                 Proffer Statement, demonstrated in points 1-6 of section  
1483                 III.(a), *supra*, and the erroneous release of a convicted  
1484                 murderer, one Jeffrey David Cox, the government became  
1485                 desperate to find any evidence which might support the Proffer  
1486                 Statement. In the government's desperation, CD recordings of  
1487                 the Petitioner's telephone calls were made and investigated.

1488                 See FOIA Vol. I., at 339. See also section II(b)(i), *supra*.  
1489                 After listening to, and investigating the recordings of the  
1490                 Petitioner's telephone calls, the government heard more  
1491                 evidence indicating that the Proffer Statement was false. While  
1492                 incarcerated at the Henrico County Jail, the Petitioner  
1493                 repeatedly told Louise Branson over the telephone in the  
1494                 visitation room; over the telephone on which inmates make  
1495                 collect calls; and in many letters that the Proffer Statement  
1496                 was false. See e.g., Pet. Ex. 37. The information discovered by  
1497                 the government through its investigation of the Petitioner's  
1498                 phone calls caused the government to search the home of Louise  
1499                 Branson and the Petitioner alleging "Obstruction of Justice in  
1500                 the murder trial," of the Petitioner. See subsection II.,  
1501                 *supra*, Pet. Ex. 111, 112, and 43. Instead of finding and

1502 seizing evidence which may have supported the Proffer  
1503 Statement, the government seized an abundance of evidence  
1504 negating any veracity of the Proffer Statement, and reiterating  
1505 what the government learned via its investigation of the  
1506 recordings of the inmate telephone calls. See FOIA Vol. I., at  
1507 334. See also FOIA Vol. III., at 127. The result of the search  
1508 and seizure is particularly emphasized in Pet. Ex. 37, and FOIA  
1509 Vol. I., 334.

1510 All of the evidence seized by the government, confirmed  
1511 what its prior evidence proved - (a) the Proffer Agreement was  
1512 involuntarily and unintelligently entered; (b) the Proffer  
1513 Statement was false; (c) the false Proffer Statement was  
1514 concocted by Goodwin; (d) the false Proffer Statement was made  
1515 by the Petitioner only at the insistence of Goodwin; (e) based  
1516 on the Petitioner providing the government with the Proffer  
1517 Statement, the Petitioner would not be tried for any felony,  
1518 instead the Petitioner would plead guilty to two misdemeanors  
1519 and be home by Thanksgiving, 2001; (f) Cox was erroneously  
1520 released from prison based on the false Proffer Statement; (g)  
1521 others in addition to the government, Goodwin, and the  
1522 Petitioner knew that the Proffer Statement was false; and (h)  
1523 the Petitioner was innocent of any involvement of these crimes.  
1524 See Pet. Ex. 37, 38, and 50; sections II.(b), II.(b)(i), (ii),  
1525 and (iii) , *supra*. See also Claims G., H., I., J., K., and Z.  
1526 The government faxed a portion of this evidence to Trono  
1527 and Goodwin on December 10, 2001. See Pet. Ex. 37. On December

1528 11, 2001, Goodwin called Ms. Branson to his office. Upon  
1529 arriving at Goodwin's office, Ms. Branson was informed that the  
1530 sole purpose of the meeting was to allow Goodwin to ascertain  
1531 how much Ms. Branson knew with respect to the deal, the Proffer  
1532 Agreement, the Proffer Statement, and Goodwin's providing the  
1533 false statements for the Petitioner to give to the government  
1534 in order to facilitate the deal. See Pet. Ex. 38, and 93.

1535 During this meeting Ms. Branson informed Goodwin that she was  
1536 aware of the entire corrupt situation. See Pet. Ex. 38, and 93.  
1537 In response, Goodwin replied, "Oh my God, I'm going to lose my  
1538 license." See Claims G., H., I., J., and K., *supra*.

1539 Accordingly, the government knew that the Proffer Statement was  
1540 false when Messing testified as to the details of the Proffer  
1541 Statement as substantive evidence against the Petitioner in the  
1542 Commonwealth's case-in-chief.

1543       **2.** On December 17, 2001, Goodwin came to the Henrico  
1544 County Jail to visit the Petitioner, after not accepting any  
1545 phone calls from the Petitioner or Ms. Branson for ten days.  
1546 During this visit few words were spoken. Instead, Goodwin  
1547 simply slid two documents under the glass. See Pet. Ex 46, and  
1548 47. The first document was a "Privileged and Confidential"  
1549 letter from Goodwin to the Petitioner. Pet. Ex. 46. The  
1550 privileged and confidential letter, in pertinent part states,

1551           The Commonwealth has provided me with copies of two of  
1552 the letters you wrote to Louise Branson, which the  
1553 Commonwealth seized from her pursuant to a search  
1554 warrant. **From my review of these letters, and from**  
1555 **subsequent discussions I have had with you and others, it**  
1556 **is apparent to me that you have not been truthful in your**

1557        **debriefings with the Commonwealth.** Further, you have  
1558 implied in these letters that I instructed you to lie, or  
1559 at least that I had knowledge of your **untruthful**  
1560 **statements.** Ethically, I cannot **continue** to assist you  
1561 with any possible fraudulent conduct.  
1562 Pet. Ex. 46.

1563        Notwithstanding Goodwin's denials of any involvement in  
1564 the facilitation of the, "untruthful statements," Goodwin  
1565 indicated that he had investigated the matter of the falsity of  
1566 the proffer statements, much like the government. And, much  
1567 like the government's investigation, which should have led to  
1568 the same conclusion: "From my review of these letters, and from  
1569 subsequent discussions I have had with you **and others, it is**  
1570 **apparent to me that you have not been truthful in your**  
1571 **debriefings.**" Pet. Ex. 46. Goodwin acknowledges that the  
1572 statements are, "**untruthful statements.**" The remaining portions  
1573 of the letter are also tempered by Goodwin's statement that he,  
1574 "cannot **continue** to assist [the Petitioner] with any possible  
1575 fraudulent conduct." Pet. Ex. 46. It is also worthy of noting  
1576 that Goodwin immediately retained the services of Murray Janus,  
1577 Esquire, to defend Goodwin of any criminal charges pursuant to  
1578 the government's knowledge of his unethical, and criminal  
1579 conduct. No matter how one interprets Goodwin's statement that  
1580 he, "cannot **continue to assist,** the Petitioner in the  
1581 fraudulent act - of which Goodwin actually insisted - one  
1582 cannot find ambiguity in the previous statement which  
1583 demonstrates that Goodwin's investigation determined that the  
1584 Proffer Statement was, "untruthful statements." Pet. Ex. 46.  
1585        The second document Goodwin slid under the glass during

1586 this visit was a *Motion to Withdraw as Counsel*. Pet. Ex. 47.

1587 Within this document Goodwin admits that he has discussed the

1588 issue of the known falsity of the Proffer Statement with the

1589 government, and because of his implication in the known

1590 falsity of the Proffer Statement the government agreed that

1591 Goodwin must withdraw. In pertinent part, Goodwin's Motion

1592 states, "**the Commonwealth is aware** of the existence of and **of**

1593 **the nature of the conflict, and agrees** that counsel **must**

1594 **withdraw** from representation of the defendant." Pet. Ex. 47.

1595 Accordingly, it is self-evident, by his own admission to the

1596 court, that Goodwin discussed with the government the fact,

1597 "that it **is apparent** to [Goodwin] that [the Petitioner] ha[d]

1598 **not** been truthful in [the] debriefings with the Commonwealth,"

1599 because "the Commonwealth is aware of the **existence of, and**

1600 **nature of** the conflict, and agree[d]" with Goodwin. Pet. Ex.

1601 46, and 47 (emphasis added). Again, notwithstanding Goodwin's

1602 repeated denials of inducing the false Proffer Statement,

1603 Goodwin unequivocally determined, "From [his] review of these

1604 letters, and from subsequent discussions [Goodwin had with the

1605 Petitioner] and **others** it is **apparent** that [the Petitioner]

1606 **ha[s] not been truthful** in [the] debriefings with the

1607 Commonwealth." Pet. Ex. 46 (emphasis added). What was,

1608 "apparent," to Goodwin surely must have been, "apparent," to

1609 the Government, i.e., the Proffer Statement was, "untruthful

1610 statements" (Pet. Ex 46), even assuming arguendo that Goodwin

1611 was uninvolved in their falsity. See Claims G., H., I., J.,

1612 and K.

1613       **3.** On February 07, 2001, court appointed counsel informed  
1614 the court that the Proffer Statement was only made at the  
1615 insistence of Goodwin, and that Goodwin told the Petitioner  
1616 what to say. During motions hearings, court appointed defense  
1617 counsel, David Lassiter, stated the following:

1618       And the reason why Mr. Goodwin is not in this case now is  
1619 because my client is saying he only made the proffer  
1620 because he was supposed to take a plea agreement and, in  
1621 essence, go home and, basically, not get any time or a  
1622 little time or something like that. And the reason why  
1623 Goodwin is not here is my client said, basically,  
1624 Goodwin, basically, told him what to say and that's why  
1625 he made the proffer.  
1626 02/07/2002 M.H. tr., at 21.

1627       Oddly, although Mr. Lassiter never said that, "the  
1628 statements were not true," the trial judge already knew that  
1629 was the claim and responded,

1630       All right. I will consider that and the explanation given  
1631 by Mr. Lassiter **that those statements were made** at the  
1632 request of his lawyer and **your client will currently say**  
1633 **that the statements were not true.**  
1634 02/07/2002 M.H. tr., at 22.

1635       Notwithstanding that Lassiter never proffered that the  
1636 statements were not true, Lassiter concurred with the trial  
1637 judge's assessment of the issue that the Proffer Statement was  
1638 claimed to be not true, and that the statements were only made  
1639 at the insistence of Goodwin and responded, "Yes." 02/07/2002  
1640 M.H. tr., at 22. See Claims G., H., I., J., K., O., P., Q., and  
1641 T.

1642       **4.** Counsel for the Respondent, the Office of the Attorney  
1643 General for the Commonwealth of Virginia, has conceded this

1644 issue by admitting its knowledge that the Proffer Statement was  
1645 false. Accordingly, the Respondent cannot, in good faith, take  
1646 the contrary position in the instant *habeas* proceedings. On May  
1647 30, 2003, counsel for the Respondent raised the falsity of the  
1648 Proffer Statement in its *Brief in Opposition* filed in the Court  
1649 of Appeals of Virginia stating,

1650 When [the Petitioner] declared that his intent had been  
1651 to obtain the benefits of a plea agreement by **fraud...**  
1652 [the Petitioner] cannot now claim that the Commonwealth  
1653 was bound by an agreement [the Petitioner] **never had**  
1654 **fulfilled** and which he was refusing to be bound.  
1655 Id., at 11.

1656 Counsel for the Respondent has previously conceded that  
1657 the Petitioner claims the Proffer Statement was false, and  
1658 raised the government's knowledge of the falsity of the Proffer  
1659 Statement as grounds for the Court of Appeals to consider in  
1660 determining whether the Petitioner or the government breached  
1661 the terms of the agreement. See Id., at 2, and 11.

1662 And again, on November 05, 2004, counsel for the  
1663 Respondent admitted its knowledge that Petitioner claims the  
1664 Proffer Statement was false in its *Brief in Opposition* filed in  
1665 the Supreme Court of Virginia.

1666 In that Court, counsel for the Respondent cited case law  
1667 to support the proposition that the, "**trial court did not abuse**  
1668 **its discretion by revoking immunity of defendant who lied**  
1669 **during his proffer.**" Id., at 18. Counsel for the Respondent  
1670 cited as an analogy that a, "party who obtained insurance  
1671 policy by **fraud** had no standing in equity to interpose a plea  
1672 of estoppel." Id., at 18 (emphasis added throughout) (citing

1673       Pennsylvania Casualty v. Simpaulous, 235 Va. 460, 369 S.E.2d  
1674       166 (1998)). Accordingly, counsel for the Respondent has raised  
1675       and admitted the alleged falsity of the Proffer Statement in  
1676       both of the higher appellate courts for the Commonwealth and  
1677       cannot be allowed to disavow itself of that knowledge in the  
1678       instant *habeas* proceedings. See Claims G., H., I., J., and K.,  
1679       *supra*.

1680           **5.** On March 24, 2006, the Petitioner filed with this  
1681       court Petitioner's Exhibit 38; an affidavit of Ms. Branson. In  
1682       her affidavit Ms. Branson made several attestations under the  
1683       penalty of law relevant to this issue. Specifically, Ms.  
1684       Branson attested that

1685           I was aware that the statements Mr. Hood had been  
1686       providing to the government were all lies and that these  
1687       lies were created by Mr. Goodwin to provide Mr. Hood a  
1688       plea bargain for two misdemeanors. By Mr. Goodwin  
1689       facilitating these false statements, Mr. Hood would be  
1690       home any day pursuant to the deal Mr. Goodwin had made  
1691       with Robert Trono. Additionally, I knew of Mr. Goodwin's  
1692       plan to have Mr. Hood give false statements to the  
1693       government from the beginning.  
1694       Pet. Ex. 38 (executed August 28, 2004).

1695           **6.** Additionally, on March 24, 2006, the Petitioner filed  
1696       with this Court Petitioner's Exhibit 50, an affidavit of the  
1697       Reverend John Newell. In his affidavit Reverend Newell made  
1698       several attestations under penalty of perjury relevant to this  
1699       issue. Specifically, Reverend Newell attested that,

1700           during the time subsequent to Mr. Hood's arrest, I spoke  
1701       frequently and at length with Mr. Hood's fiancée, Ms.  
1702       Branson. These discussions concerned a variety of issues,  
1703       however, the majority of our conversations were related  
1704       to the plight of Mr. Hood and the untenable actions of  
1705       the government and Mr. Goodwin in the course of Mr.  
1706       Hood's prosecution. On or about November 2, 2001, I

1707 received a phone call from Ms. Branson at the request of  
1708 Mr. Hood. Ms. Branson indicated that Mr. Hood's attorney  
1709 had asked him to testify against another man whose guilt  
1710 was unknown to Mr. Hood, and in exchange for doing so Mr.  
1711 Hood's attorney promised that he would be home by  
1712 Thanksgiving. Ms. Branson went on to say that Mr. Hood  
1713 was confused and did not know what to do or who to trust.  
1714 In response, I recall that I told Ms. Branson something  
1715 to the effect that sometimes in life we have to chose the  
1716 lesser of two evils.

1717  
1718 At some later date, while visiting Mr. Hood at the  
1719 Henrico County Jail, Mr. Hood indicated to me that he  
1720 would be home any day because of the deal his attorney  
1721 had worked out. The deal was such that based on Mr.  
1722 Hood's telling the government whatever his attorney told  
1723 him to say; he would be home soon. The specifics were not  
1724 gone into in great detail except that Mr. Hood was  
1725 innocent of any involvement with the crimes and his  
1726 attorney's instructions were for Mr. Hood to tell the  
1727 government what ever his attorney told him to say. In  
1728 exchange for Mr. Hood complying with his attorney's  
1729 instructions, Mr. Hood would be free.  
1730 Pet. Ex. 50 (executed on January 19, 2006).

1731 Accordingly, others in addition to the government,  
1732 Goodwin, the Respondent, and the Petitioner knew that the  
1733 Proffer Statement was false when Special Agent Messing  
1734 testified about the details in the Proffer Statement as  
1735 substantive evidence in the Commonwealth's case-in-chief. See  
1736 Claims G., H., I., J., K., L., and M.

1737 7. On May 29, 2007, the Petitioner received several pages  
1738 in response to his federal Freedom of Information Act request  
1739 ("FOIA Vol. I.") See F.F., section IV., infra. FOIA Vol. I., at  
1740 174-175 revealed that when questioned by agents of the  
1741 government, one of the original investigators stated,

1742 If [anyone] had any concern about the guilt of [Cox] it  
1743 was dispelled by a number of events. First was  
1744 [Johnson's] reaction when [Cox] was brought into the  
1745 courtroom at the preliminary hearing. [The original  
1746 investigator's] recollection is that, following the

1747 arrest of Hood on cocaine distribution charges [he]  
1748 received a phone call from [ ] advising [him] that  
1749 Hood was not the right guy. [His] recollection is that  
1750 Hood had an alibi for the time of the offense.  
1751 FOIA Vol. I., at 174-175 (dated 05/08/2000).

1752 Additionally, FOIA Vol. I., at 120 revealed the following  
1753 information which was undisclosed to the Petitioner, and/or his  
1754 defense counsel, in violation of Brady, *supra*, and progeny.  
1755 This document provided both exculpatory, and impeachment  
1756 evidence, as well as evidence proving that the Proffer  
1757 Statement was false and the government knew it was false. In  
1758 pertinent part FOIA. Vol. I., at 120 states,

1759 Numerous interviews continue regarding this investigation  
1760 and during a meeting on September 27, 1999, Assistant  
1761 United States Attorneys James Comey and Robert E. Trono  
1762 advised that the FBI would basically have to prove that  
1763 [Madison] and Hood were the actual killers of Cooper and  
1764 even though previous witnesses against [Cox] have since  
1765 recanted or changed their testimony from the time **in** 1990  
1766 of the trial to the present time, **this would not make any**  
1767 **difference in that their identifications of [Cox] in 1990**  
1768 **were not recanted.**

1769 FOIA Vol. I., at 120 (dated 09/28/1999).

1770 On August 22, 2007, the Petitioner received another  
1771 interim volume of documents in response to the federal FOIA  
1772 request. The second volume of documents ("FOIA Vol. II.")  
1773 contained other interviews of original investigators by agents  
1774 of the government. These interviews contained, among other  
1775 things, that Cox had a knife in a brown case but that the  
1776 Commonwealth Attorney's Office lost the brown leather case, and  
1777 the buck knife. See FOIA Vol. II., at 199. Additionally, the  
1778 original investigator stated that he remembers the small  
1779 reddish orange car, with a console in the middle. Witnesses

1780 told the original investigator that the culprits had a hard  
1781 time pushing the victim over the console. See FOIA Vol. II., at  
1782 199. This description fits Cox's Mustang, but is contrary to  
1783 the false Proffer Statement. Likewise, the description of the  
1784 knife case and buck knife that Cox had is congruent with all of  
1785 the evidence against Cox, however, it is contrary to the false  
1786 Proffer Statement.

1787 On May 05, 2008, the Petitioner received an additional  
1788 interim volume of documents in response to the federal FOIA  
1789 request. The fourth volume of documents ("FOIA Vol. IV.")  
1790 revealed more evidence favorable to the defense. This evidence  
1791 was favorable to the defense not only because of its  
1792 exculpatory value, but also because it demonstrated the  
1793 government's awareness that the Proffer Statement was not true.

1794 As part of the government's pattern of withholding evidence  
1795 favorable to the defense in violation of Brady and progeny, the  
1796 following evidence was not disclosed to the Petitioner or to  
1797 his defense counsel. FOIA Vol. IV., at 168 reveals that the FBI  
1798 had been told that the, "police took Hood to a public place,"  
1799 and the eyewitnesses, "did not identify him." See also FOIA  
1800 Vol. III., at 29, and 34.

1801 This same document reveals that the FBI felt it important  
1802 to note that, "Steve has brown hair." FOIA Vol. IV., at 168.  
1803 Again, this evidence, which is clearly exculpatory, reveals two  
1804 vital pieces of information: (1) Neither of the eyewitnesses  
1805 identified the Petitioner with any involvement in these crimes,

1806 specifically, the eyewitnesses negated any possibility that the  
1807 Petitioner was the knife wielding culprit that abducted Mrs.  
1808 Cooper, as early as 1991; and (2) the Petitioner was eliminated  
1809 as the driver of the car (contrary to the false Proffer  
1810 Statement) as early as 1991, because the government's  
1811 eyewitness testified in 1991 that the driver of the car  
1812 involved in these crimes had "blond hair. See Pet. Ex. 1, at  
1813 85. Accordingly, the government's eyewitness eliminated the  
1814 Petitioner as being either of the culprits in this case. The  
1815 government's evidence, therefore, reveals that the government  
1816 was aware that the Proffer Statement was not true long before  
1817 agent Messing testified. Moreover, the government knew that the  
1818 Petitioner was actually innocent well before the multi-  
1819 jurisdictional grand jury was convened, without a court  
1820 reporter, in violation of Virginia Code Section 19.2-215.9 in  
1821 Judge Nance's courtroom at the Manchester Circuit Court.

1822 The May 05, 2008, release of documents, FOIA Vol. IV.,  
1823 also contained a copy of the transcript of Cox's plenary  
1824 hearing held on March 31, 1999, before the Honorable Judge  
1825 Stout III. This transcript was previously provided to Goodwin  
1826 in the early stages of the underlying criminal case. See  
1827 08/21/2001 M.H. tr., at 96-97 ("Mr. Goodwin has been provided  
1828 in this case and has the particular luxury in this case of  
1829 having an entire box full of transcripts dealing with this case  
1830 from the Cox trial itself and the various motions that were  
1831 heard in that case as well as the extensive habeas corpus

1832 proceeding that was held before Judge Stout"). See also

1833 Commonwealth's Response to Defendant's Motion to Compel

1834 Discovery, 08/03/2001: Pet. Ex. 81.

1835       The Petitioner has exercised extreme diligence in his  
1836 every attempt to obtain a copy of this document for years  
1837 believing it contained valuable exculpatory information and  
1838 evidence. See Pet. Ex. 10, 11, and 12. When the underlying  
1839 criminal case concluded, and before the Petition for Appeal was  
1840 filed in the Court of Appeals, one of the Petitioner's trial  
1841 counsel, Lassiter, produced the entirety of the Petitioner's  
1842 case file in his possession to Louise Branson. Ms. Branson, in  
1843 turn gave the entire "box of documents" to Lynnice Randolph.

1844       See Pet. Ex. 38, and 73. Missing from the case file, however,  
1845 was the Cox habeas transcripts. See Pet. Ex. 12, 38, and 73. On  
1846 June 01, 2004 the Petitioner wrote to Goodwin requesting the  
1847 Cox habeas transcript. See Pet. Ex. 12. On June 17, 2004,  
1848 Goodwin responded that the Petitioner's case file, in its  
1849 entirety, was turned over to Lassiter. See Pet. Ex. 12.

1850       Likewise, on June 1, 2004, aware that when Lassiter turned over  
1851 the entire case file to Louise Branson the Cox habeas  
1852 transcript was not contained in the, "box of documents," the  
1853 Petitioner wrote to Lassiter and Hunter requesting the Cox  
1854 habeas transcripts. See Pet. Ex. 12.

1855       Both Lassiter and Hunter denied having the Cox habeas  
1856 transcript. The Petitioner then filed a complaint with the  
1857 Virginia State Bar alleging that one or all of the attorneys

1858 had mishandled the Petitioner's case file. See Pet. Ex 12. The  
1859 Virginia State Bar did nothing to assist the Petitioner and  
1860 simply stated that they saw no reason why the Petitioner's file  
1861 would contain the transcript of someone else's case. The  
1862 Virginia State Bar found that no violation of the rules was  
1863 shown by, "clear and convincing evidence." Pet. Ex. 12.

1864 The Petitioner then turned to the Circuit Court of the  
1865 City to of Richmond. The Petitioner twice filed motions for  
1866 production of documents in his attempt to obtain a copy of  
1867 Cox's *habeas* transcript, and twice Judge Spencer denied the  
1868 Petitioner's motions. See Pet. Ex. 10 and 11. Even though Judge  
1869 Spencer was the trial judge in the case, she too failed to  
1870 understand why the Petitioner would need the transcript of  
1871 Cox's *habeas* hearings. See Pet. 10 and 11.

1872 All of the Petitioner's due diligence was founded on his  
1873 information and belief that the Cox *habeas* transcript contained  
1874 valuable exculpatory evidence. On May 05, 2008, it became clear  
1875 why Goodwin, Lassiter, and the government resisted the  
1876 Petitioner's every attempt to obtain this document. Although  
1877 the copy of the Cox *habeas* transcript which the Petitioner was  
1878 provided through the FOIA request is riddled with arbitrary  
1879 redaction, this document revealed testimony, under oath, that  
1880 the Petitioner was eliminated as a suspect due to a thoroughly  
1881 investigated and confirmed alibi. In addition to the original  
1882 investigator's statement to the FBI that, "Hood was not the  
1883 right guy," and that, "Hood had an alibi for the time of the

1884 offense," (FOIA Vol. I., at 174-175), the government's  
1885 knowledge of the Petitioner's alibi was corroborated under oath  
1886 by a witness in the Cox *habeas* hearing. More importantly, this  
1887 witness testified that two private investigators hired by Cox  
1888 investigated and confirmed the fact that the Petitioner had an  
1889 alibi "after the fact" and thus, the Petitioner was,  
1890 "eliminated [] as a suspect." Cox v. Warden, case no LB-2811,  
1891 March 31, 1999, at 271: FOIA Vol. IV., at 483.

1892 By reason of the size of the excision of the name of the  
1893 witness, and the nature of the questions and answers, the  
1894 witness' testimony appears to be that of John F. McGarvey. The  
1895 only logical alternative is that the witness is Robert P.  
1896 Geary. In either event, one of Cox's trial attorneys after  
1897 being duly sworn testified as follows:

1898 My recollection was that Mr. Hood had -- was either in  
1899 jail at the time or there was something that eliminated  
1900 him as a suspect. And I can't say specifically that but I  
1901 do remember that was one of the things that was  
1902 determined -- the two private investigators -- after the  
1903 fact. But I believe that we had that information prior to  
1904 that time.

1905 Cox v. Warden, case no. LB-2811, March 31, 1999, at 271. FOIA  
1906 IV., 483.

1907 One of the original investigators stated to the FBI that  
1908 "Hood had an alibi for the time of the offense." FOIA Vol. I.,  
1909 at 174-175. Additionally, the original investigator's statement  
1910 to the federal agents regarding the Petitioner having an alibi  
1911 is corroborated by one of Cox's trial attorneys under oath at  
1912 Cox's *habeas* hearing. Moreover, the Petitioner's alibi was  
1913 further investigated and confirmed by the two private

1914 investigators hired by Cox -- after the Cox trial. It is hard  
1915 to imagine a person having such an alibi established and  
1916 confirmed by a police officer, an attorney, and two private  
1917 investigators, all of whom would rather have found evidence to  
1918 the contrary.

1919 Clearly, the government knew of the Petitioner's actual  
1920 innocence - clearly the government knew or should have known  
1921 that the Proffer Statement was not true when Special Agent  
1922 Messing testified. It is with no less force and effect that  
1923 Lassiter and Goodwin both knew that the Proffer Statement was  
1924 false.

1925 Thus, the evidence proving that the Petitioner is innocent  
1926 of these crimes; that the Proffer Statement was false; and that  
1927 the government knew or should have known that the Proffer  
1928 Statement was not true when Special Agent Messing testified as  
1929 to the Proffer Statement as substantive evidence in the  
1930 Commonwealth's case-in-chief is overwhelming and  
1931 incontrovertible.

1932 **III.(c) THE FOREGOING PROVIDES THIS COURT WITH THE REQUISITE**  
1933 **SHOWING OF THE PETITIONER'S ACTUAL INNOCENCE WHICH IS**  
1934 **SUFFICIENT TO OVERCOME ANY ASSERTED STATE PROCEDURAL**  
1935 **BAR RELATING TO ANY CONSTITUTIONAL CLAIM WITHIN THE**  
1936 **INSTANT HABEAS PETITION, AND SUPPLEMENTAL/AMENDED**  
1937 **PLEADINGS.**

1938 \_\_\_\_\_  
1939 The Petitioner clearly accompanies his claim of actual

1940 innocence with assertions of constitutional error at trial. For  
1941 that reason the Petitioner's conviction may not be entitled to  
1942 the same degree of respect as one such as found in Herrera v.  
1943 Collins, 506 U.S. 390 (1993) which was the product of an error-  
1944 free trial.

1945 The government has argued that many of the Petitioner's  
1946 Claims within the instant Petition are barred under the rule of  
1947 Slayton v. Parrigan, 215 Va. 27, 205 S.E.2d 680 (1974). The  
1948 Petitioner has provided the independent and parallel claims of  
1949 ineffective assistance of counsel with regard to every due  
1950 process claim which would otherwise be barred. For example, the  
1951 Petitioner has raised as cause to excuse this Claim D.D., and  
1952 by analogy and incorporation Claim J.(a), *supra*, the  
1953 ineffective assistance of counsel Claims of E.E., *infra*, and by  
1954 incorporation Claim K.(a), *supra*. Moreover, with regard to this  
1955 Claim D.D., the Court has ruled that Claim J.(a), and  
1956 therefore, by analogy and incorporation, the instant Claim  
1957 D.D., has been, "held under advisement pending the outcome of  
1958 the plenary hearing." (ORDER , April 06, 2006).

1959 The Supreme Court has recognized at least three  
1960 categories of "cause" which are sufficient to over come any  
1961 state procedural bar: (1) counsel's inability to know of a  
1962 legal or factual issue; (2) interference by the prosecution  
1963 with the habeas Petitioner; and (3) ineffective assistance of  
1964 counsel. See Murray v. Carrier, 477 U.S. 478 (1986). More  
1965 importantly, any state procedural bar is overcome when the

1966 Petitioner shows that, "a constitutional violation has probably  
1967 resulted in the conviction of one who is actually innocent."  
1968 Carrier, 477 U.S., at 496.

1969 Indeed, concern about injustice that results from the  
1970 conviction of an innocent person has long been at the core of  
1971 our criminal justice system. That core concern is reflected,  
1972 for example in the, "fundamental value determination of our  
1973 society that it is far worse to convict an innocent man than to  
1974 let a guilty man go free." In re Winship, 397 U.S. 358, at 372  
1975 (1970) (Harlan, J. concurring); Schlup v. Delo, 513 U.S. 298,  
1976 at 325 (1995). See also, T. Stake, Evidence, 756 (1824) ("The  
1977 maxim of law is ... that it is better that ninety-nine ...  
1978 offenders should escape, than one innocent man should be  
1979 condemned"); Friend, The Law of Evidence in Virginia, 6th ed. §  
1980 9-10, at 343 ("it is far better that one hundred guilty persons  
1981 go free than one innocent person should be convicted").

1982 This overriding importance of the greater interest merits  
1983 protection by imposing a somewhat less exacting standard of  
1984 proof on a habeas petitioner alleging a fundamental miscarriage  
1985 of justice than one alleging that his sentence is too severe.  
1986 Schlup, 513 U.S., at 325. As such, the standard is such that  
1987 the petitioner must only demonstrate that a constitutional  
1988 violation has, "'probably resulted' in the conviction of one  
1989 actually innocent," instead of the, "clear and convincing  
1990 evidence standard." Schlup.

1991 The Court in Schulp held, "to be credible, such a claim

1992 [of actual innocence] requires petitioner to support his  
1993 allegations of constitutional error with reliable evidence -  
1994 whether it be exculpatory scientific evidence, trustworthy  
1995 eyewitness accounts, or critical physical evidence - that was  
1996 not presented at trial." Schlup, 513 U.S., at 324; House v.  
1997 Bell, 126 S.Ct. 2064, at 2077 (2006).

1998       The Carrier standard requires the habeas petitioner to  
1999 show that, "a constitutional violation has probably resulted in  
2000 the conviction of one who is actually innocent." 477 U.S., at  
2001 496. "To establish the requisite probability, the petitioner  
2002 must show that it is more likely than not that no reasonable  
2003 juror would have convicted him in light of the new evidence."  
2004 Schlup, 513 U.S., 327. The Schlup court noted, "finally that  
2005 the Carrier standard requires a petitioner to show that it is  
2006 more likely than not that 'no reasonable juror' would have  
2007 convicted him. The word 'reasonable' in that formulation is not  
2008 without meaning. It must be presumed that a reasonable juror  
2009 would consider fairly all of the evidence presented." Id.

2010       Under the Carrier standard then, the *habeas* court must  
2011 consider what reasonable triers of fact would do in view of the  
2012 evidence presented at trial combined with the evidence  
2013 presented on *habeas* which was not presented at trial. As the  
2014 Schlup Court held, the *habeas* court, "must assess the probative  
2015 force of the newly presented evidence in connection with the  
2016 evidence of guilt adduced at trial." Schlup, 513 U.S., at 332.

2017       Over a decade later the Supreme Court revisited this

2018 issue in House v. Bell, 126 S.Ct. 2964 (2006). The Court  
2019 reiterated the principle that as a general rule, claims  
2020 forfeited under state procedural bar may support *habeas* relief  
2021 only if the prisoner demonstrates cause for the default and  
2022 prejudice from the asserted error. House, 126 S.Ct., at 2076  
2023 (citing Murray v. Carrier, 477 U.S. 478, at 485 (1986)). The  
2024 Court in House found, "[t]he bar is not, however, unqualified."  
2025 In support, the Court reiterated that it has recognized a  
2026 miscarriage-of-justice exception. "'In appropriate cases,' the  
2027 principles of comity and finality that inform the concepts of  
2028 cause and prejudice must yield to the imperative of correcting  
2029 a fundamentally unjust incarceration." Id. (citations and  
2030 punctuations omitted).

2031 Under the actual innocence exception to procedural bar  
2032 rule, *habeas* petitioners asserting innocence as a gateway to  
2033 defaulted claims must establish that, in light of new evidence,  
2034 it is more likely than not that no reasonable juror would have  
2035 found the petitioner guilty beyond a reasonable doubt. Id.  
2036 Although to be credible, a gateway claim by a *habeas* petitioner  
2037 seeking to invoke the actual innocence exception to procedural  
2038 bar rule requires new reliable evidence that was not presented  
2039 at trial, the *habeas* court must assess the likely impact of all  
2040 the evidence on reasonable jurors. Id.

2041 Rather than requiring absolute certainty about guilt or  
2042 innocence in a *habeas* case in which actual innocence is  
2043 invoked, a *habeas* petitioner's burden at the gateway stage is

2044 to demonstrate that more likely than not, no reasonable juror  
2045 would find him guilty beyond a reasonable doubt. Id.

2046 Furthermore, the standard for invoking actual innocence  
2047 exception to the procedural bar rule in *habeas* cases is not  
2048 equivalent to the standard of Jackson v. Virginia, 443 U.S. 307  
2049 (1979) which governs insufficient evidence claims. Instead,  
2050 because a gateway claim involving the actual innocence  
2051 exception involves evidence the trial court did not have before  
2052 it, the inquiry requires the *habeas* court to assess how  
2053 reasonable jurors would react to the overall, newly  
2054 supplemented record.

2055 In the instant case the Petitioner has made the requisite  
2056 showing to invoke the actual innocence exception to the  
2057 procedural bar rule. Had the trial court heard all of the  
2058 reliable exculpatory evidence; scientific evidence; physical  
2059 evidence; eyewitness testimony; admissions of the Attorney  
2060 General's Office; sworn attestations; proof of the knowing use  
2061 of false evidence at trial by the government; evidence that the  
2062 Proffer Statement was false, prosecutorial misconduct; and the  
2063 abundance of evidence not presented at trial that refuted the  
2064 Commonwealth's entire case, "it was more likely than not that  
2065 no reasonable juror viewing the record as a whole would lack  
2066 reasonable doubt." House. This is especially true where the  
2067 Petitioner's evidence negated any veracity to the Proffer  
2068 Statement which was central to connecting the Petitioner to the  
2069 murder, and the Petitioner's evidence put forward substantial

2070 evidence pointing to different suspects. See House v. Bell,  
2071 *supra*.

2072           **WHEREFORE**, based on the facts and the authorities cited  
2073 herein, the Petitioner prays that this Honorable Court will  
2074 grant the Writ of Habeas Corpus or, in the alternate, take this  
2075 claim under advisement until the conduct of the plenary hearing  
2076 on the Petitioner's habeas claims, and after the taking of said  
2077 evidence, issue the Writ with prejudice, along with whatever  
2078 relief the Court may deem appropriate.

2081 \_\_\_\_\_  
2082 Robert M. Lorey

2083 I ASK FOR THIS:

2084

2085 \_\_\_\_\_  
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