

ADDITIONAL PAGES – PETITION FOR WRIT OF HABEAS CORPUS
MICHAEL C. SKAKEL v. PETER J. MURPHY

13(f) – Grounds Raised On Direct Appeal

1. Whether the trial court erred in concluding that the prosecution of the Defendant was not barred by the 1975 five-year statute of limitations and pursuant to State v. Paradise?
2. Whether the State's suppression of exculpatory material requires a new trial?
3. Whether the Juvenile Court erred in transferring this matter to the Adult Criminal Division of the Superior Court?
4. Whether the pervasive prosecutorial misconduct which occurred during the State's summation deprived the Defendant of a fair trial?
5. Whether the admission of prior testimony violated the Defendant's right to confrontation?
6. Whether the admission of the Defendant's involuntary Elan statements resulted in a due process violation?
7. Whether the numerous evidentiary errors, including the admission of supermarket tabloids, warrant a new trial?

18(a)(4) – Grounds Raised in Petition For New Trial¹

1. Newly discovered evidence existed of the third party culpability of Adolph Hasbrouck and Burton Tinsley.
2. Newly discovered evidence existed to impeach the State's main witness, Gregory Coleman.
3. Reasonable cause existed to grant a new trial based upon a pattern of non-disclosure of exculpatory evidence.
4. Newly discovered evidence existed regarding a secret pact and book deal between Inspector Garr and author Leonard Levitt that tainted the entire investigation and Garr's threatening conduct toward witnesses.

¹ Additional grounds were raised in the original Petition; however several of these claims were abandoned at or before the trial on the Petition.

CLAIMS

19. Ground One: The Petitioner's conviction was obtained and affirmed in violation of the Ex Post Facto Clause and the Due Process Clause when the Connecticut Supreme Court unexpectedly overruled its own binding interpretation of the applicable statute of limitations in order to authorize the criminal prosecution of the Petitioner that the passage of time had previously barred.

Ground One Supporting Facts

The Connecticut Supreme Court authorized a criminal prosecution of the Petitioner that the passage of time had previously barred. It did so by applying a state statute that eliminates limitations periods for certain offenses, after having ruled twice in the previous 23 years that the statute does not apply to offenses that pre-dated its enactment, such as the one in this case.

The offense for which the Petitioner was convicted (non-capital murder) occurred in 1975. At that time, the limitations period for such offenses was five years. In 1976, one year later, the Connecticut legislature enacted a statute eliminating the limitations period for certain offenses, including non-capital murder. Between 1980 and the time of Petitioner's arrest in 2000, the Connecticut Supreme Court ruled twice, each time unanimously, that the 1976 statute did not apply to pre-enactment conduct. But in this case, the Connecticut Supreme Court announced that it had changed its view on how to interpret the scope of the 1976 statute; it overruled the two prior decisions that had declared that the statute operates prospectively only; and it applied the new interpretation retroactively to the Petitioner.

By applying that new unexpected interpretation retroactively, and reviving a prosecution that had been barred for the previous 25 years, the Connecticut Supreme Court violated the Petitioner's right to due process of law. The Due Process Clause's requirement that no State shall "deprive any person of life, liberty, or property, without due process of law," imposes on state courts many of the same restrictions that the Ex Post Facto clause imposes on state legislatures. These two clauses ensure fundamental fairness, through notice and fair warning, and prevent arbitrary and vindictive use of the law. A judicial construction of a statute may not be given retroactive effect if that construction is unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue. The Due Process Clause prevents courts from expanding criminal statutes retroactively, just as the Ex Post Facto Clause proscribes the enactment of laws that seeks to accomplish the same end. The prohibition against ex post facto laws extends to statutes, enacted after a limitations period had expired, that authorize criminal prosecutions that the passage of time has previously barred. The Due Process Clause of the Fourteenth Amendment prohibits courts from achieving through judicial decision-making many of the

same retroactive changes in criminal law that would be forbidden under the Ex Post Facto Clause.

By applying a new limitations period retroactively to permit a prosecution that the passage of time had previously barred, the Connecticut Supreme Court violated the requirements of notice, foreseeability and fair warning protected by the Due Process Clause.

Ground Two

The Petitioner's conviction was obtained in violation of his federal constitutional rights to a fair trial and to present a defense, and in violation of Brady v. Maryland, when the trial court denied the Petitioner's Motion For A New Trial and refused to hold an evidentiary hearing regarding the State's suppression of a composite sketch and two profile reports.

Ground Two Supporting Facts

Prior to the trial, the Petitioner served several written discovery requests upon the State seeking, inter alia, any exculpatory information and specifically requesting sketches. Despite these several requests, when the State made its file available for review by the Petitioner pursuant to an open file policy, no sketches were included in the file, and the State also did not include two profile reports it had prepared of prospective suspects, Thomas Skakel and Kenneth Littleton.

After the Petitioner's conviction, the State supplied Petitioner's counsel with a copy of a sketch that was prepared of a man who was seen walking in the neighborhood at around the time that the murder was suspected to have been committed. The sketch resembled Kenneth Littleton, a suspect in the murder. Most importantly, the sketch did not resemble the Petitioner. The Petitioner amended his Motion for New Trial that had previously been filed based on this new development. The trial court denied the Petitioner's Motion for New Trial, ruling, inter alia, that the sketch was not "suppressed" under Brady because two of the 1,800 pages of material in the state's open file referred to the sketch, and that it was not "material" because the sketch was inadmissible unless the guard who provided the description for the sketch testified at trial, which he had not.

The State's failure to provide the sketch to the Petitioner prior to trial violated the Petitioner's constitutional right to a fair trial, and violated the mandates of Brady v. Maryland, 373 U.S. 83 (1963). First, the sketch was favorable to the Petitioner in that it buttressed his third-party culpability defense that Kenneth Littleton may have been the killer. The sketch was also favorable in that it could have been used to impeach Littleton, who had testified at trial that he did not leave the Skakel property when he went outside at 9:30 p.m. on the night of the murder. Second, the sketch was "suppressed" under Brady. Brady imposes affirmative

disclosure obligations upon the state; it does not contemplate a treasure hunt. The state's open file policy did not relieve it of its duty to provide exculpatory information to the Petitioner. Third, the sketch was material. The Petitioner need not show that the evidence, if disclosed, would have resulted in an acquittal. The question is whether the Petitioner, in the absence of the suppressed evidence, received a fair trial. Because of the Petitioner's third party culpability defense, had the jury been able to see the sketch that resembled Littleton and did not resemble the Petitioner, the Petitioner's defense would have been materially assisted. The evidence was also material because it undermined Littleton's version of the events, and thus bore directly on his credibility.

The State also failed to disclose two profile reports of other suspects in the murder. These reports contained incriminating evidence pointing to each as the possible killer of Martha Moxley. Despite Petitioner's pretrial discovery motion that sought all exculpatory evidence, the State did not disclose these reports or make them part of its open file. The Petitioner filed an amended Motion for New Trial on this ground. In considering the Petitioner's amended Motion for New Trial, the trial court reviewed the profile reports in camera and denied the amended motion, ruling that the reports contained work product because they contained the mental impressions of their authors.

The profile reports were not work product but even if they were, that does not trump the State's obligation to disclose exculpatory information under Brady. The State's work product is discoverable if the information is exculpatory. The profiles were favorable to the Petitioner because they would have assisted him with his claim that he was not the killer. The profiles were suppressed under Brady because they were not produced despite a specific request. Finally, the profiles were material to the defense for the same reasons as argued supra pertaining to the sketch.

The State's suppression of this evidence violated the Petitioner's right to a fair trial and violated Brady v. Maryland.

Ground Three

The Petitioner's conviction was obtained and affirmed in violation of his federal due process rights. The Petitioner had a liberty interest in his status as a juvenile offender which could not be taken away without due process of law. The Petitioner was denied due process of law when the Connecticut Supreme Court permitted a state regulation to abrogate the Petitioner's statutory rights under Connecticut General Statutes Sections 17-60a and 17-66.

Ground Three Supporting Facts

The Petitioner, who was 15 years old at the time of the alleged crime but who was not arrested until twenty-five years later, was originally presented in juvenile

court. His case was then transferred to adult court. The Petitioner argued before the trial court that his case was improperly transferred from the juvenile court to the adult docket.

The trial court ruled that the transfer was proper because if tried and found “delinquent” as a juvenile, the Petitioner would be committed to the custody of the Connecticut Department of Children and Families (“DCF”). The trial court determined that the Petitioner would not then be able to be placed in a state institution for the care and treatment of “children” because the Petitioner did not meet the definition of “child” under DCF regulations adopted in 1994, which were not even in place at the time the crime was committed. On appeal, the Connecticut Supreme Court disposed of the Petitioner’s juvenile transfer arguments by relying on the 1994 DCF regulation.

The regulation relied upon by the court provides: “As used in Sections 17a-145-48 to 17a-145-99, except as otherwise provided therein: ... (e) “Child” means any person under eighteen years of age not related to the owner of the child care facility.” Regs. Conn. State Agencies § 17a-145-48. The Connecticut Supreme Court interpreted this regulation to mean that anyone over the age of eighteen is not considered a “child,” and thus is not within the jurisdiction of the DCF.

As a juvenile offender, the Petitioner was statutorily entitled to certain procedures. First, the Petitioner was entitled to a mandatory investigation under Connecticut General Statutes § 17-66 (Rev. to 1975) which was supposed to be conducted prior to transferring any juvenile to the adult docket. The Petitioner also was entitled to a transfer hearing under Connecticut General Statutes § 17-60a (Rev. to 1975). Pursuant to that hearing, in order to transfer the Petitioner to the adult criminal division, the juvenile court was required to find:

(1) the child committed the act for which he is charged and (2) there is no state institution designed for the care and treatment of children to which said court may commit said child which is suitable for his care and treatment or (3) the safety of the community requires that the child continue under restraint for a period extending beyond his majority and (4) the facilities of the superior court provide a more effective setting for disposition of the case and the institutions to which said court may sentence a defendant are more suitable for the care or treatment of such child.

Conn. Gen. Stat. § 17-60a (Rev. to 1975).

The Connecticut Supreme Court relied on the 1994 DCF regulation to conclude that: (1) even though the mandatory investigation under § 17a-66 (Rev. to 1975) was not completely performed in this case, it was of no consequence because the DCF regulation required Petitioner to be transferred to the adult docket simply because of his age; (2) the juvenile court properly relied on the 1994

regulation at the time of the Petitioner's transfer hearing even though it was not in place in 1975 because the transfer statute required the juvenile court to look at current options for placement rather than options that may have existed in 1975; thus, because Petitioner was over eighteen, there were no current options available to him for placement at the time of transfer; and (3) the juvenile court was not required to consider out of state placement of Petitioner because the court could only consider placement for those persons committed, admitted or transferred to DCF; because Petitioner was over eighteen, DCF had no jurisdiction over him and could not place him anywhere, including out-of-state facilities.

In so ruling, the Connecticut Supreme Court improperly relied on the DCF regulation and erroneously determined that the Petitioner's age alone mandated his transfer to the adult docket. The applicable commitment statute, § 17-68 (Rev. to 1975), is completely silent as to what is to occur if a delinquent is over the age of eighteen when he is arrested for a crime committed as a juvenile. Despite this silence, the court relied on a subsequently-enacted administrative regulation to conclude that anyone over the age of eighteen cannot be committed as a juvenile delinquent under § 17-68, even if the crime were committed as a juvenile.

The improper application of the 1994 DCF regulation deprived the Petitioner of due process of law as guaranteed by the federal constitution. State statutes can create a liberty interest in juvenile status. Connecticut's 1975 juvenile statutes created such a liberty interest in the Petitioner, as the statutes provided for mandatory, exclusive, and original jurisdiction in the juvenile court. Transfer from the juvenile court could only occur after a hearing in which certain criteria were established. As a result of the juvenile court's original and exclusive jurisdiction pursuant to the 1975 statutes, the Petitioner had a vested right to juvenile status.

A liberty interest created by statute cannot be taken away without due process of law. The Petitioner was denied due process in that the transfer hearing under § 17-60a was unwinnable by virtue of the application of the 1994 DCF regulation. In order to satisfy due process, the process afforded to a citizen must be meaningful. Because the application of the 1994 DCF regulation rendered the transfer hearing an utterly meaningless exercise in that the Petitioner would never have been able to meet the second statutory factor set forth in § 17-60a, the Petitioner was deprived of his liberty interest in his juvenile status without due process of law.

The Petitioner was also deprived of his liberty interest in his juvenile status without due process of law in that the mandatory investigation required by § 17-66 in transfer hearing situations was not fully performed. The Connecticut Supreme Court's affirmance of the juvenile court's application of the 1994 DCF regulation effectively eliminated the Petitioner's right to a complete and full investigation as required under § 17-66. Without the thorough completion of this

mandatory investigation, the Petitioner was not provided the full process afforded by law prior to the deprivation of his liberty interest in his juvenile status.

Because the Connecticut Supreme Court improperly permitted an administrative regulation to abrogate the Petitioner's statutory rights, the Petitioner's due process rights were violated.

Ground Four

The Petitioner's conviction was obtained in violation of his federal due process rights. Prosecutorial misconduct so infected the trial with unfairness as to make the conviction a denial of due process.

Ground Four Supporting Facts

Throughout its closing argument, the State engaged repeatedly in pervasive misconduct which denied Petitioner his constitutional right to a fair trial.

First, the State intentionally distorted the chronology of events to fabricate a forensic cover-up allegedly perpetrated by the Petitioner. The State had no forensic or physical evidence linking Petitioner to the murder. The State asserted in its closing argument that Petitioner had told people that he had masturbated in a tree near the murder scene. The State then argued falsely that Petitioner only started telling people this masturbation story after Dr. Henry Lee became involved in the case in the early 1990's. Thus, the State argued that the masturbation story was fabricated by the Petitioner and his family in 1992 as a shrewd anticipatory measure necessitated by the appearance of renowned forensic scientist Dr. Henry Lee, whose participation made Petitioner and his family fear the inevitable discovery of DNA evidence linking Petitioner to the murder scene. The State emphasized this false claim repeatedly over the course of its closing argument. The State's argument carried devastating force, if believed, because it demonstrated that Petitioner possessed a grotesque consciousness of guilt, and simultaneously focused the jury on the State's extreme (and groundless) allegation that Petitioner had masturbated on the victim's lifeless body. The State used this information to inflame the passions of the jury and misdirect its attention, overstepping the bounds of zealous advocacy in the process.

Second, the State also argued that the "Skakel family" had conspired to fabricate an alibi for the Petitioner. The prosecutor repeatedly told the jury in his summation that the Petitioner's father had orchestrated a series of false alibi statements given by the Skakel children and certain Skakel relatives to Greenwich police. The State argued that Petitioner's father ordered the family tutor, Kenneth Littleton, to whisk some (but not all) of the "players" in the conspiracy to the Skakel home in upstate New York to fabricate an alibi for Petitioner. Once this was accomplished, Petitioner's father then "escorted" and

“led” the “rehearsed” alibi witnesses to give their false statements to Greenwich police. This conduct by the State constitutes overreaching.

Third, the State improperly argued to the jury that the “Skakel family” believed Petitioner was guilty of murder – that they “had a killer living under their roof” – and thus obtained a conviction based on the family’s opinion about Petitioner’s guilt. The State asked the jury to conclude that Petitioner was guilty because even his own family thought he was the “killer.” This theory of guilt was improper. Any belief of the Skakel family concerning the Petitioner’s guilt was irrelevant and inadmissible as evidence. If evidence is inadmissible, then any argument premised upon that evidentiary theory is inadmissible. The issue of Petitioner’s guilt was for the jury to decide without consideration of the opinions of others. The prejudice resulting from the State telling the jury that Petitioner’s family thought he was guilty was extreme.

Fourth, the State engaged in prejudicial name-calling in its summation. The State twice called the Petitioner a “spoiled brat” and referred to him as a “killer.” This is highly improper.

Fifth, the State falsely told the jury during its closing argument that the Petitioner masturbated on the victim’s body. There was no semen found on the body or at the scene, which was known to the State. However, the State claimed that Petitioner masturbated on the victim’s body to ensure the jury would be outraged and swayed by passions. The State wanted the jury to believe that Petitioner’s non-inculpatory admission of teenage, peeping-tom masturbation was actually something else entirely: a confession to murder. It also wanted the jury to believe there was actually some forensic support for this fabrication. The State’s argument improperly invited the jury to speculate that the Petitioner had committed the murder.

Finally, the State showed a transcript to the jury during its rebuttal closing argument. The transcript altered the evidence in the case by showing gruesome pictures of the victim’s body at the murder scene while simultaneously playing an edited audiotape of the Petitioner’s admission of “guilt” that was about a completely different event. Prior to his arrest, the Petitioner had given a taped interview to writer Richard Hoffman in which he discussed having masturbated on the night of the murder. The Petitioner expressed fear of having been seen masturbating and said, “Oh my God, did they see me last night? ... I remember just having a feeling of panic Like my worry of what I went to bed with” The State deceptively edited out the portion of the tape where the Petitioner explained that he was referring to the masturbation episode, and played this “confession” alongside the graphic photographs of the victim’s body, essentially turning Petitioner’s admission of masturbation into a confession to murder. The State also created deceptive video connections by simultaneously showing a transcript of the edited interview with highlighted selections for emphasis in connection with the gruesome photos. The State’s use of this audio-visual

display vastly distorted the meaning and import of the images presented and improperly appealed to the passions, prejudices and emotions of the jury.

Prosecutorial misconduct of constitutional proportions may arise during the course of closing argument. The issue is whether the prosecution's conduct so infected the trial with unfairness as to make the conviction a denial of due process. A prosecutor's arguments may not be based on acts not in evidence. A prosecutor may not appeal to the emotions, passions and prejudices of the jurors or otherwise inject extraneous issues into the case that divert the jury from its duty to decide the case on the evidence. A prosecutor may not attack the character of the defendant by stigmatizing him using name-calling. A prosecutor may not express his own opinion, directly or indirectly, as to the credibility of witnesses or the guilt of the defendant. In this case, the State used all of these improper prosecutorial tactics. The State's conduct so infected the trial with unfairness, and the Petitioner's due process rights and right to a fair trial were violated.

Ground Five

The Petitioner's conviction was obtained in violation of his Sixth Amendment right to confrontation when the trial court improperly admitted the prior testimony of a witness.

Ground Five Supporting Facts

At trial, the State sought to introduce the prior testimony of Gregory Coleman, a convicted felon and long term heroin addict, from the hearing in probable cause that took place April 18 and 19, 2001. The State also introduced testimony Coleman gave before the one-man grand jury, which testimony was admitted for impeachment purposes rather than for its truth. Coleman died of an overdose prior to trial. Coleman had come forward 20 years after the murder after hearing a television story about the case with the far-fetched claim that Petitioner had "confessed" to Coleman late one night in 1978 at the Elan School while he, the head "gorilla," was standing guard over Petitioner with a baseball bat.

The Petitioner filed a Motion in Limine seeking to exclude the prior testimony as violative of his constitutional right to confrontation because it did not carry any "indicia of reliability". The Petitioner also argued that the admission of the prior testimony violated state hearsay rules. The trial court admitted the evidence by ruling that it was admissible under a hearsay exception, and did not consider the more restrictive rules under the Confrontation Clause.

The evidence was introduced by the staged reading of the transcript by one of the prosecutors. The jury never observed Coleman themselves, the State's most crucial witness, who was literally under the influence of heroin, or in active

withdrawal, when he gave the prior testimony, which consisted of multiple versions of admittedly “mistaken” story-telling.

In order for an unavailable declarant’s prior statements to be admissible under the Confrontation Clause, the prosecution must either produce or demonstrate the unavailability of the declarant and the declarant’s statement is admissible only if it bears adequate “indicia of reliability” which serve to afford the trier of fact a satisfactory basis for evaluating the truth of the prior statement. The reliability aspect is not satisfied merely because former testimony is given under oath and subject to cross-examination.

The trial court failed to perform the necessary “reliability” analysis required by the constitution. Coleman’s testimony was unreliable for the following reasons: (1) a twenty to twenty-five bag a day heroin addict, Coleman testified before the grand jury one hour after shooting up with heroin; (2) Coleman testified at the probable cause hearing under severe heroin withdrawal requiring him to go to the hospital after testifying; (3) Coleman testified that he was unable to focus during his probable cause testimony due to heroin withdrawal; (4) Coleman testified that his testimony at the probable cause hearing was unreliable because “my recall at times would be questionable” on both days of the testimony; (5) Coleman was forced to recant his earlier testimony that the Petitioner spoke about the murder at Elan many times, that the Petitioner was at Elan because the authorities were investigating his brother for the crime, and that the Petitioner had confessed to him personally five or six times.

Because Coleman’s prior testimony lacked the required indicia of reliability, its admission violated the Petitioner’s confrontation rights.

Ground Six

The Petitioner’s conviction was obtained in violation of his federal due process rights when the trial court improperly admitted coerced confessions made by the Petitioner while he was at the Elan School.

Ground Six Supporting Facts

From 1978 to 1980, Petitioner was physically and emotionally brutalized at Elan, a residential “treatment” facility for adolescents and young adults in Maine. One of the most glaring examples of Elan’s technique of persecution was the “general meeting.” The general meeting was typically attended by over 100 people. A staff person stirred up the crowd, almost like a pep rally, against the person for whom the general meeting was called. The “victim” of the general meeting was hidden in a back room and only displayed before the crowd once the assembly had become sufficiently frenzied. A staff member always asked whether anyone had any feelings towards the target, inevitably resulting in a barrage of 20-30 out of control people rushing and screaming at the person. The target inevitably

received some type of punishment at the general meeting. If the founder of Elan, Joseph Ricci, did not like how the target of the general meeting answered a question, he would continue to confront them and abuse them emotionally, have them spanked or placed in a boxing ring where he would be beat by fellow residents until he said what was expected of him.

Petitioner was forced to undergo a general meeting after trying to escape from Elan. During the meeting, Joseph Ricci accused Petitioner of murdering Martha Moxley. When Petitioner denied his involvement in the murder, Ricci became more agitated, verbally intolerant and abusive. Petitioner was crying throughout Ricci's bullying. After repeated denials, Ricci ordered Petitioner into the boxing ring where he was brutalized. At the end of each round, Petitioner was asked if he killed Martha Moxley. For hours, Petitioner denied any involvement and was placed back in the ring for another round against a fresh fighter. The assault finally ended after hours, when Petitioner responded "I don't know" to Ricci's accusation that he murdered Martha Moxley. Whenever Petitioner was confronted after the general meeting about the murder, he responded that he just didn't know. For weeks after the general meeting, Petitioner was required to wear a chest-to-floor cardboard sign 16 hours a day that said confront me on why I murdered Martha Moxley. Petitioner was also confronted about the murder in therapy, and he would say that he didn't know. Petitioner was told repeatedly that he would never be permitted to leave Elan unless he confessed to the murder.

At trial, an Elan resident, John Higgins, claimed that he was supervising the Petitioner one night, when Petitioner had a conversation with himself in which he first said he did not know whether he murdered Moxley, then that he may have done it, then he did not know what happened, then that he must have done it, then that he did it. Higgins, who had a reputation for untruthfulness, came forward with this information about 20 years post-Elan, after learning about a reward being offered for the Moxley murder in People magazine. Higgins never reported Petitioner's "confession" to Elan staff or authorities.

Another Elan resident, Gregory Coleman, one of the most aggressive Elan tormentors, also came forward 20 years post-Elan after watching a television story about the case. Coleman, a long time heroin addict and convicted felon, had been hospitalized for mental illness several times. Coleman testified (through prior testimony – see Ground Five, supra) that he stood guard over Petitioner at Elan with a baseball bat after Petitioner's failed escape attempt and prior to the general meeting. The guarding rules mandated absolutely no talking. Nonetheless, Coleman claimed that Petitioner told him, "I am going to get away with murder because I am a Kennedy" and then said he had made advances to this girl, she spurned him, and he drove her head in with a golf club. According to Coleman, Petitioner said he hit the girl so hard that the golf club broke in half and that two days later he returned to the body and masturbated on it.

The trial court admitted these various “confessions” of the Petitioner at trial. The use of an involuntary confession in a criminal trial is a denial of due process of law. In order to be voluntary, a confession must be the product of an essentially free and unconstrained choice by the maker. If the accused’s will has been overborne and his capacity for self-determination critically impaired, the use of the confession offends due process. The due process clause of the Fourteenth Amendment also prohibits confessions that are obtained by torture or beating. Due process is offended when the confession is obtained by pressure exerted by a police officer or a private individual. Further, “state action” occurs when a trial court permits the prosecution at a jury trial to utilize as evidence of guilt a confession which is extracted under circumstances that so overbear the individual’s will as to render the statement involuntary, that is not the product of a rational intellect and a free will.

The trial court’s admission of the alleged “confessions” made to Elan residents violated Petitioner’s right to due process.