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 Trial[1]

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 crated 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 of 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 federal due process rights when the trial court improperly admitted coerced confessions made by the Petitioner while he was at the Elan School.

Ground Five 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.

Ground Six

The Petitioner's conviction was obtained in violation of his federal constitutional right to a fair trial and to present a defense when the trial court denied his Petition For New Trial and prevented him from offering the newly discovered evidence as to third party culpability at a new trial.

Ground Six Supporting Facts

On October 30, 1975, the date of the murder of Martha Moxley, Gitano ("Tony") Bryant recently moved to New York City. Bryant had previously attended the Brunswick School in Greenwich from 1972 to 1975, where Michael Skakel was also a student. During his years at Brunswick, Bryant lived in Greenwich at the home of a family friend Esme Dick, who knew him from her work with Bryant's mother. At the hearing on the Petition For New Trial, several former residents of the Belle Haven section of Greenwich testified that they recalled being classmates with Bryant. While Martha Moxley did not attend Brunswick, Bryant knew her as part of the group of friends centered around the Belle Haven neighborhood.

While living in Greenwich, Bryant socialized often with the residents of Belle Haven. Bryant often stayed overnight at the homes of Belle Haven residents Neal Walker and Geoffrey Bryrne, even after moving to New York City. After moving in with his mother in New York City and transferring to a public school in New York, Bryant made friends with two new classmates named Adolph Hasbrouck and Burton "Burr" Tinsley. In 1975, Hasbrouck and Tinsley were 15 years old and were very large for their age. Hasbrouck was African American, 6'2" tall and weighed about 200 pounds. Tinsley, who was of Asian/Indian/Caucasian ancestry, was about the same age and height. In addition to the boys' unusually large physical structure, Bryant also described Hasbrouck as explosive, very strong and unpredictable. Bryant indicated that Hasbrouck had a reputation as someone not to mess with and while Tinsley was not known to have the same temperament, he often served as the "gasoline" that fueled Hasbrouck.

In February 2003, Hasbrouck and Tinsley both confirmed that they were good friends with Bryant in 1975 and that they had visited Neal Walker and Geoffrey Byrne's homes on numerous occasions. Neal Walker also confirmed that Bryant had brought Hasbrouck and Tinsley to his house in Belle Haven on a number of occasions. Bryant indicated that on these occasions, Hasbrouck and Tinsley

would stay overnight at the large, unsupervised Byrne residence while Bryant stayed at the Walker residence.

Bryant indicated that Hasbrouck first met Martha Moxley when he attended a Greenwich street fair with Bryant during September of 1975, and again at a church mixer that he attended with Bryant that fall. While at the same mixer as Martha, Hasbrouck became jealous of other boys talking to her, telling Bryant, "I don't understand why she's spending her time with those guys when she could be with me." Over the month of October, Hasbrouck's obsession with Martha grew to the point that he would make comments about her even when they were not visiting Greenwich. Hasbrouck made comments to Bryant about Martha's beautiful blond hair, and indicated that he really liked her and that she was pretty. As time went on, his comments became more forceful, indicating that he wanted to "fuck the shit out of her" and "go caveman on her," meaning that he would take her, grab her and have her they way he wanted. Bryant would tease Hasbrouck, saying that Martha was not interested in him, but Hasbrouck would reply "she likes me" and that it was "going to happen."

On October 30, 1975, Bryant, Hasbrouck and Tinsley took the train from New York to Greenwich in order to go to Belle Haven on the night before Halloween. On the train ride up, Hasbrouck and Tinsley immediately began talking about "going caveman" on someone that night. As Bryant understood them, "going caveman" meant dragging by the hair and pulling the person away, not just picking the person up. They arrived in Belle Haven between 6:00 and 6:20 p.m. and first stopped by Neal Walker's house at approximately 6:30 p.m. However, the Walkers were always expected to be home at 6:00 for dinner, so Neal could not go out with the trio. After leaving the Walker's house, the three teens went to a neighbor's house and stole about three six-packs of beer from the refrigerator. The boys then went back to Neal Walker's house but he did not join them. The three teens drank beer and smoked marijuana while they wandered around Belle Haven, toilet papering trees and using shaving cream on the windows. At some point, the boys met up with Geoffrey Byrne, who joined them in various pranks. Throughout the course of the evening, Hasbrouck and Tinsley continued to talk about meeting girls in the neighborhood, making comments such as "where are the bitches?", "we've just got to get into something" and "I'm not going out of here unsatisfied."

After toilet papering houses, the boys walked to the Belle Haven Club at the far south end of the Belle Haven neighborhood, but did not go inside. From there, they went back to the meadow behind the Skakel property, where they continued to drink and play pranks. Hasbrouck and Tinsley, who were significantly drunk and high on marijuana, continued to talk about "going caveman" and not leaving Belle Haven unsatisfied.

As they were wandering around the meadow, everyone in Bryant's group picked up golf clubs that were strewn around the Skakel property. Both Hasbrouck and

Tinsley told Bryant that they had their “caveman stick” and that they were going to “grab somebody and pull them by the hair and do what cavemen do.” While hanging out in the field, the boys also saw Helen Ix, Martha Moxley and a few other girls from the neighborhood on at least one occasion. Hasbrouck and Tinsley made sexual overtures towards the girls, but none stayed long enough for Bryant to remember the incidents specifically. Bryant also reported seeing approximately 10-15 neighborhood kids while they were hanging out in the secluded meadow behind the Skakel property.

As the night progressed, Hasbrouck and Tinsley continued to talk about “going caveman” and not leaving Belle Haven unsatisfied. After the two picked up the golf clubs and said that they “had their caveman club and were going to do what cavemen do,” Bryant claims that he became increasingly uncomfortable and decided to leave. Bryant told Hasbrouck and Tinsley that he had to leave due to his mother’s curfew, and claimed that he hitchhiked back to the train station. Bryant then claimed that he took the last train home and returned home that evening.

Bryant claimed that he first learned of the murder from his mother, who confronted her son after reading an article in the Saturday New York Times reporting on the discovery of Martha’s body the previous afternoon. After reading the article, Bryant claimed that his mother was concerned that he would become implicated in the crime if the authorities discovered that he was in Belle Haven that evening. Bryant claimed that his mother ordered him not to speak with anyone about his presence at Belle Haven on the night of the murder and told him that he was forbidden from returning to the neighborhood ever again.

The next time that Bryant saw Hasbrouck and Tinsley was the following Monday at school. Hasbrouck and Tinsley told Bryant that they had spent the night at the Byrne household, and also made the following comments that led him to conclude that one or both of them had murdered Martha: “Well, I got mine,” “We’ve achieved one of our fantasies,” Yeah, we did what we had to do,” “We did it We achieved the caveman,” “We got her caveman style,” and “We satisfied our caveman urge.” While Hasbrouck and Tinsley never mentioned Martha by name, Bryant’s knowledge of their presence in Belle Haven, combined with the news of Martha’s death, made it obvious to him that they were talking about her. Over the course of the school year, Hasbrouck and Tinsley continued to brag to Bryant about murdering Martha, saying that “we grabbed her” and “we got her.” Laughing, Hasbrouck and Tinsley would also say to Bryant, “Hey, when was the last time you saw your favorite Flintstone character do to Wilma” or simply “Grab Wilma.”

Esme Dick testified that after the murder, but before the 1975-76 school year ended, Bryant came to dinner with her and her family. There, the conversation turned to possible suspects in the murder, including Michael Skakel. Bryant told Esme Dick that he knew Skakel did not do it, and that he was in Belle Haven on

the night of the murder. Esme Dick, assuming that the police had interviewed everyone who was in the neighborhood that evening, never told police about Bryant's statements.

The crime scene in Belle Haven revealed strikingly similar details when compared with the statements of Hasbrouck and Tinsley to Bryant. The investigation of Martha's murder showed that she had been clubbed over the head with a golf club that was later linked to the Skakel household. Investigation further revealed that she had been dragged for some distance before being hidden under a pine tree on the Moxley property. At a certain point during the dragging, the individual changed directions, leading investigators to conclude that the perpetrator was disoriented, if not unfamiliar with the location of the houses to each other. Martha's pants had also been pulled down to around her ankles before being dragged to another location.

On a sheet used to wrap Martha's body, two hairs were found. One of the haris was identified as "possessing Negroid characteristics." Hair comparison by the FBI forensic lab concluded that the hair was dissimilar to the hair of the only two African American males known to be in the area, a Greenwich police officer and the son of the Skakel's cook, Larry Jones. Later testing revealed that the second hair on the sheet possessed Asian characteristics. Investigators never identified the contributor of either hair.

The interviews of all of the children in the Belle Haven neighborhood were strikingly brief; in the case of the Skakel family, tape recorded interviews with all six children took a total of just 75 minutes. While investigators asked a number of the neighborhood children if they saw any strangers while they were out that evening, at no time did they ask if anyone they knew from outside the neighborhood had visited that day or night. In some cases, investigators never even interviewed children who were known to have been out that evening, such as Maria Coomaraswamy, who was not only walking around Belle Haven that night, but even walked with Martha on her way home.

Despite the fact that the murder took place on an evening when it would not have been unusual for friends outside the neighborhood to have visited, there was never a comprehensive survey of everyone who was out in Belle Haven that evening, or even an effort to establish a list of people who visited the neighborhood often. Despite the fact that Neal Walker and Geoff Byrne knew that Bryant was a frequent visitor, neither Bryant, Hasbrouck nor Tinsley were ever interviewed by the police in connection with the case. As a result, investigators never became aware of Bryant's existence or his highly relevant role as a frequent visitor to Belle Haven.

Following high school, Bryant graduated from the University of Houston and the University of Tennessee College of Law, but never formally practiced law. He moved to Los Angeles and worked briefly in the entertainment industry in various

capacities and also wrote several screenplays, one of which was aired on television. Bryant kept in contact with both Crawford Mills (another Belle Haven resident) and Neal Walker, speaking with them by telephone on holidays and birthdays, as well as meeting up when he was visiting New York.

In the late 1980's, Crawford Mills began writing a screenplay based on Belle Haven and the murder of Martha Moxley which utilized fictional composite characters and was focused more on making a statement about the Town of Greenwich than the murder itself. During a conversation with Bryant in September, 2001, Mills mentioned that he had been working on the screenplay, and Bryant offered his assistance and contacts in the entertainment industry. Mills sent the screenplay to Bryant, hopeful that he would be able to assist him in editing and selling his story; however, despite numerous follow up calls from Mills, Bryant was too busy to work on the project.

During late 2001, Mills called Bryant again to inquire about his work on the screenplay. During that telephone conversation, Bryant revealed to Mills for the first time that his friends from New York City were the real killers, and related largely the same details that he later disclosed to defense investigators in 2003. While Bryant asked Mills to keep their conversation private, Mills contacted Neal Walker and asked him to encourage Bryant to come forward with his information. Walker agreed, and Bryant similarly indicated to Walker that while he felt it was important for people to know about Hasbrouck and Tinsley, he did not want Walker to reveal his name to anyone.

Following the Petitioner's conviction for the murder of Martha Moxley, Crawford Mills contacted Bryant and implored him to come forward. Convinced that he would not do so, Mills decided that he would not protect Bryant's name any longer and contacted the press, authorities, and lawyers involved in the case. It was not until Mills contacted the Petitioner's cousin, Robert F. Kennedy, Jr., though, that he received any response. After speaking with Mills, Kennedy contacted Bryant by telephone, ultimately engaging him in five separate telephone conversations between the end of February and March 3, 2003. While Bryant was initially reluctant to talk, he ultimately related to Kennedy an even more detailed account of October 30, 1975 than he had to Mills and Walker.

After speaking with Bryant, Kennedy located Hasbrouck's telephone number in Bridgeport, Connecticut and engaged him in a tape-recorded telephone conversation in 2003. Hasbrouck admitted that he knew Bryant, Neal Walker and Geoffrey Byrne, and that he had visited Byrne's house many times. Hasbrouck further confirmed that he was friends with Tinsley, and that they continued to talk regularly. However, Hasbrouck denied being in Belle Haven with Bryant and Tinsley on October 30, 1975.

Based on the information received from Hasbrouck, Kennedy located Tinsley in Portland, Oregon. In a tape recorded telephone call on March 3, 2003, Tinsley

further corroborated Hasbrouck's recollection of their frequent visits to Belle Haven. While Tinsley acknowledged traveling to Greenwich and spending a great deal of time socializing with Neal Walker and Geoff Byrne in Belle Haven, he denied being in the neighborhood on the night of the murder.

As a result of Kennedy's discussions with Bryant, defense investigator Vito Colucci contacted Bryant in Florida, where he was currently living. Bryant agreed to submit to a videotaped interview. Bryant provided a complete description of his involvement with Hasbrouck and Tinsley on October 30, 1975, as well as their subsequent disclosures to him in school the following week.

After interviewing Bryant, Vito Colucci met with Hasbrouck at his home in Bridgeport on September 2, 2003. During that interview, Hasbrouck acknowledged that he was in Belle Haven on the night of the murder, but gave three conflicting accounts of the time he was there. First, Hasbrouck stated that they arrived in the morning and then returned by train at noontime, then he indicated that they arrived in the morning and went home between 6:00 and 6:40 before it got dark, then he finally said that they went in the morning by train and departed at about 9:00 or 9:30 p.m.

Colucci also spoke with Tinsley twice by phone in September, 2003. In their first telephone call, Tinsley indicated that he recalled being in Belle Haven on the night of the murder, but that he couldn't remember any more details. In the second phone call, initiated by Colucci to set up a meeting in Portland, Oregon, Tinsley recanted, indicating that he had "checked his calendar" from nearly 28 years earlier and determined that he was not in Belle Haven that evening. Hasbrouck also indicated in a follow up telephone call that he too had "checked his calendar" and realized that he was not in Belle Haven on the night of the murder. Hasbrouck also indicated that since their first encounters with defense investigators, he and Tinsley had talked to be sure that their stories to Colucci would match. Colucci sent an associate to Portland to try to meet with Tinsley but he was not successful.

At a deposition on August 25, 2006, Bryant invoked the Fifth Amendment in response to every question posed, including questions inquiring whether he was in Belle Haven on October 30, 1975, whether he murdered Martha Moxley or was present when she was murdered, and whether he made sexual advances towards Martha. Hasbrouck and Tinsley also invoked the Fifth Amendment in response to the same questions posed during their depositions.

At the hearing on Petitioner's Petition For New Trial, the Petitioner argued that Bryant, Hasbrouck and Tinsley were all "unavailable" witnesses due to their invocations of the Fifth Amendment and sought to have their prior statements admitted into evidence. In making its decision, the trial court required the Petitioner to demonstrate that the prior statements were trustworthy in order to come within the hearsay exception under Connecticut Code of Evidence § 8-6(4).

The trial court determined that the Petitioner had met this burden, and had demonstrated that the statements were trustworthy. In so doing, the trial court analyzed the following factors: (1) the time the statements were made and the persons to whom the statements were made; (2) the existence of corroborating evidence in the case; and (3) the extent to which the statements were against the declarant's penal interest. After resolving the issue in Petitioner's favor, the trial court admitted the prior statements. The trial court concluded, "Mr. Bryant's statements were made under circumstances which support admission, are corroborated by sufficient evidence, and are clearly against his penal interest."

However, in contradictory fashion, even though the trial court ruled that the statements were trustworthy enough to be admissible, they were not credible enough to warrant a new trial. Despite the extensive indications of trustworthiness that were cited in detail by the trial court in its ruling, the court found that the Petitioner had not met his burden of proving that the newly discovered evidence would likely produce a different result at a new trial, stating that "Bryant's statements are admissible, but they are not credible."

In articulating how Bryant's statements were not credible, the trial court contradicted almost every factor cited to support the statements' trustworthiness. In rejecting the credibility of Mr. Bryant's statements, the trial court stated that that "on analysis, they are merely claims of information of a crime accompanied by an alibi. The statements appear to be minimally against his interest." In addressing the trustworthiness of the statements for the purposes of admissibility, though, the court came to a completely different conclusion, stating that "one of the reasons Bryant's testimony is trustworthy is because Bryant places himself in Belle Haven, on the night of the murder, in the company of Martha Moxley, discussing assaulting Moxley with Hasbrouck and Tinsley and in possession of golf clubs belonging to the Skakel family. Efforts to explain away possible physical evidence indicate a consciousness of guilt."

In rejecting the credibility of his statement, the trial court also found that "the statements were made to two former junior high school classmates with whom Bryant maintained only casual contact over the years." However, in assessing the statement's trustworthiness for the purposes of admissibility, the Court articulated just the opposite conclusion:

> "[T]he fact that Mr. Bryant's first disclosure regarding the details of his whereabouts on October 30, 1975, was to Crawford Mils supports the trustworthiness of his statement. Bryant and Mills shared a connection to the facts of this case, dating back to their shared experiences at Belle Haven during the time leading up to the murder. Following this disclosure to a friend that he trusted, Bryant repeated the events of October 30, 1975, to Robert Kennedy, Jr. and a defense investigator, which further confirm its trustworthiness.

Considered with the fact that the court failed to address Bryant's disclosures to both his mother and Esme Dick, two individuals with whom Bryant was very close, the trial court's inherent contradiction represents a violation of the Petitioner's constitutional rights.

The court also stated that "[a]lthough Bryant acquired his information within days of the offense, he, as a trained lawyer, kept it to himself for over one quarter of a century." In finding the statements were trustworthy, though, the court already articulated why it was reasonable for Bryant to keep the information to himself:

> Because of the length of the State's investigation, Mr. Bryant had an incentive to keep himself out of a case that he reasonably thought would never be solved. … Combined with Mr. Bryant's knowledge that there is no statute of limitations on murder, his reluctance to tell his story is reasonable.

The trial court's contradictory analysis of the corroboration to Bryant's statements was also a violation of the Petitioner's constitutional rights. These findings included:

- *"The claim that Hasbrouck and Tinsley went 'caveman style' is not supported by the evidence. There was no evidence of the victim being dragged by the hair. Missing from Bryant's statement is anything concerning the breaking of the club or the stabbing of the victim."* (App. A-57.)

Martha Moxley was clubbed to death with the same golf clubs that Hasbrouck and Tinsley referred to as their "caveman clubs" that night. She was dragged away for some distance before being hidden under a pine tree on the Moxley property. At a certain point during the dragging, the individual changed directions, leading seasoned investigators such as John Solomon to conclude that the perpetrator was disoriented, if not unfamiliar with the location of the houses in the neighborhood. Her pants were pulled down around her ankles before being dragged to another location. These circumstances reveal an intent to sexually assault Martha Moxley, which strongly corroborates Bryant's recall that, in addition to wanting to "go caveman," Hasbrouck indicated that he intended to sexually assault her. At the Petitioner's criminal trial, the State went to great lengths to elicit testimony from Dr. Henry Lee explaining that semen could have been wiped away from the victim's body, as well as testimony from Dr. Wayne Carver explaining that certain parts of the victim's body were not tested for the presence of semen. Therefore, even the State elicited facts to support the inference of an added sexual nature to this crime.

- *"Importantly, witnesses testify as to Martha Moxley's activities until 9:30 p.m. No one has any recall of ever seeing Bryant and his companions in Belle Haven on the night of the murder."*

As discussed supra, due to inexperience and an incomplete investigation, the police never learned that Tony Bryant was a regular visitor to Belle Haven prior to the murder. Indeed, there was never any comprehensive list of regular visitors, or even a central accounting of everyone who was out in the neighborhood that night. Interviews with the children who investigators happened to know were out that evening were strikingly short. In the case of the Skakel children, for example, "in-depth" interviews with all six children in November of 1975 took a total of less than 75 minutes. In other cases, investigators chose to not even speak with witnesses like Maria Coomaraswamy, who was not only out that evening, but also walked around the neighborhood with Martha Moxley.

Further, the mere fact that residents of Belle Haven cannot recall if they saw Bryant in the neighborhood *over thirty years after the fact* does not discount the significant evidence linking all three boys to the scene of the crime. Even in 1975, residents did not recall seeing a number of people who investigators already knew were out that evening, such as Patricia McBride walking her dog, the unidentified man reported by Charles Morganti, or Carl Wold taking his evening walk. To expect those same people, over thirty years later, to recall whether they saw a regular visitor to the neighborhood on that particular night sets an unreasonably high bar for the Petitioner to reach in this case.

Additionally, Bryant's description of their activities on Mischief Night does not suggest a group looking to interact with all of the people running around Belle Haven that evening. Rather, he describes three teens stealing beer, smoking marijuana, vandalizing property, wandering in secluded areas of the neighborhood, and generally doing everything they could to go unnoticed by the majority of the people in the neighborhood who they did not know. The evidence presented regarding the meadow behind the Skakel's property not only establishes corroboration of Bryant's detailed recollection of the "mead" as it existed in 1975, but also provides a reasonable explanation of where the boys could have been out of view.

- *"Not even Martha Moxley's closest friends have any recollection of any association between Moxley and Bryant, Hasbrouck and Tinsley."* (App. A-56.)

Tony Bryant never suggested in any of his statements that there was ever any association between his two friends and Martha Moxley. Instead, Bryant consistently stated that Hasbrouck unilaterally became infatuated after seeing her at large social functions that Hasbrouck attended with Bryant. Bryant has never indicated that Hasbrouck or Tinsley visited Belle Haven enough to become included in its social network, nor has he described any memorable communications that Martha Moxley would have reasonably related to her friends. Under these circumstances, it is reasonable that neither Hasbrouck nor Tinsley would be memorable to Belle Haven residents over thirty years later.

Far more relevant are those objective facts corroborating Hasbrouck's introduction to Martha Moxley. While the State has conceded that Bryant was familiar with Belle Haven and that he attended the same social functions as Martha Moxley, it is equally indisputable that Hasbrouck and Tinsley also were familiar with Belle Haven and its residents through Tony Bryant. Both recalled in recorded conversations with Robert F. Kennedy, Jr. that they socialized with Bryant in Belle Haven and that they attended several events in Greenwich. The Petitioner has corroborated these statements with the testimony of Neal Walker, Crawford Mills, articles confirming the events described, and even entries in Martha Moxley's diary corroborating her attendance. In sum, there is an abundance of corroborating circumstances confirming Hasbrouck's and Tinsley's familiarity with the Belle Haven, as well as opportunities for Hasbrouck to become infatuated with Martha Moxley.

A striking violation of the Petitioner's constitutional rights was the trial court's complete failure to address the corroboration from two hairs found at the crime scene, one "possessing Negroid characteristics," and the other bearing Asian characteristics. In both cases, investigators never identified the contributors of either hair. Today, two of the three newly discovered suspects, Tony Bryant and Adolph Hasbrouck, are African American. The other suspect, Burton Tinsley, is described by Bryant as part-Asian. In a prosecution utterly devoid of physical evidence linking the Petitioner to the crime, the presentation of newly discovered African-American and part-Asian suspects, when hairs matching those races were found at the crime scene in a predominantly white community, would raise reasonable doubt.

The totality of the circumstances surrounding Tony Bryant's admissible statements against penal interest far exceed any minimum threshold of credibility required for a court to decide whether it should be presented to a jury on a new trial. Quite simply, Tony Bryant is a witness who has no discernable motive to inculpate himself in the murder of Martha Moxley. Bryant's statement would be understandably suspect if he had simply come forward to report that his two friends from New York told him that they murdered Martha Moxley. However, the fact that Bryant has placed himself near the scene of the crime with them, carrying the murder weapon on the night of the murder, exposes himself to enormous risk of criminal charges and adds an entirely different level of credibility to his statements. Accordingly, the trial court's conclusion that the Bryant evidence did not pass the minimum credibility threshold violated the Petitioner's right to a fair trial and to present a defense.

Ground Seven

The Petitioner's conviction was obtained in violation of his federal constitutional rights to a fair trial, to present a defense, to confront witnesses against him, and in violation of Brady v. Maryland, when the trial court denied his Petition For New Trial and prevented him from offering the newly discovered evidence of the Frank Garr/Leonard Levitt book deal that was suppressed by the State in violation of Brady at a new trial.

Ground Seven Supporting Facts

Frank Garr begin working on the Moxley investigation as a police detective when the case was reopened in 1991, and took the file with him as lead investigator when he joined the state's attorney's office in 1994. During his investigation of the reopened case, Garr was in charge of virtually all of the witnesses, including investigation of their backgrounds and documenting their interviews, which necessarily included a duty to disclose exculpatory information to the prosecutor. He was also the inspector in charge of complying with discovery requests by copying documents and making them available to the defense in connection with the State's "open file" policy.

Leonard Levitt is a freelance writer and newspaper columnist who covered the Moxley investigation and, as early as 1995, believed that someone from the Petitioner's family was responsible for the murder. Levitt wrote a series of articles during the 1990's that he claims brought the focus of the case away from suspect Kenneth Littleton and toward the Petitioner's family.

Following the Petitioner's conviction, counsel learned for the first time that Levitt and Garr had closely bonded prior to the grand juror's report and the Petitioner's arrest, and as a result, worked together on the case for years. In 1998, former LAPD detective Mark Fuhrman published Murder in Greenwich, a book in which Fuhrman publicly stated that the local Police Department had "botched" the Moxley case, and in which Fuhrman took significant credit for "solving" the crime. The comments infuriated Garr, and in the course of sharing these feelings with Levitt, the two made a secret pact to "tell our story" about the Moxley case. As early as 1995, Levitt and Garr were meeting at a diner to discuss the details of the case; other meetings took place at area restaurants. They met for hours at a time and shared their theories of the case and the possible suspects, including the Petitioner. Their collaboration even continued during the trial, where they met numerous times at a donut shop near the courthouse, sometimes at 9:00 a.m. on days trial was in session. Because of their friendship, Levitt had free reign to wander around the prosecution's basement office during the trial. Following the Petitioner's conviction, Garr revisited the pact with Levitt and vowed that they would make sure the Petitioner was not successful in any post-

conviction proceedings. Prior to publication of his book, Levitt did not tell anyone about either of their secret pacts.

At some time prior to 2002, Levitt began proposing a book about the case to his agent and informed Garr that he was circulating it throughout the publishing community. Garr's status as a detective for the State is highlighted throughout Levitt's book. In February 2003, Garr and Levitt executed a contract in which Levitt agreed to pay Garr one half of the royalties from the sales of the book and any other profits generated. Garr never told his supervisor about receiving compensation for the book; even when his supervisor asked about the book, Garr did not disclose that he was getting paid. The book was eventually published in 2004.

Although Garr received one half of the book's profits, he acknowledged that he did not actually write anything and instead was paid to proofread the final draft of the book and for "ensuring accuracy." In this regard, it is significant that Garr did not suggest changes to statements in the book, including a passage that stated that Garr "had pursued, cajoled, harassed and threatened" witnesses in the Moxley investigation, the passage that stated that at their "lowest ebb," the two made a secret pact to tell their story, the photo caption that identifies the diner where the two met "over the years" as they "worked on the case"; Levitt's description that Garr was "crushed" by Fuhrman's criticism of the Greenwich police department's handling of the investigation, or Levitt's observation that Garr "had virtually single-handedly gotten a grand jury impaneled." According to Levitt, he paid Garr for information. In total, Levitt paid Garr a total of $7,406 out of his own checking account between 2003 and 2005, and to this day, Garr continues to have a financial interest in the book.

Inspector Garr's financial interest in the outcome of this case was not the only new evidence revealed in the book. On the very first page, Levitt writes,"[T]he case was all Frank's. He had found all the witnesses. Many hadn't wanted to testify. Frank Garr, they related, had pursued, cajoled, harassed, or threatened them." The book also provides remarkable insight into Garr's conduct with regard to the State's key witness, Gregory Coleman. Coleman firs spoke to Garr on June 7, 1998, after a reward for the case had been advertised in People magazine. While aware that Coleman was a serious drug user and also that there were numerous individuals who considered him a liar, Garr indicated that he "really liked" Coleman and that he "was one of the most believable guys" he had ever talked to. Indeed, Garr eventually concluded that Coleman was "mentally sick," but never disclosed that opinion in writing or to the defense. In fact, after the first day of testifying at the probable cause hearing, Coleman was suffering from heroin withdrawal. Garr went to great lengths to get Coleman treatment so that he would be able to testify the next day. Garr was aware that Coleman had a trust fund that was overseen by an executor and that the executor insisted that Coleman appear before him prior to releasing any funds since the executor was aware of Coleman's drug habit. Beyond that information,

though, Garr failed to conduct any further investigation regarding the background of the State's most critical witness.

Petitioner's trial counsel, following up on unsubstantiated rumors, attempted numerous times to gather evidence that Garr was involved in a book deal, the most direct of which were the Petitioner's motions for discovery which requested all evidence that any agent of the state had a "pecuniary or other interest in the case" including "any contract, agreement or on-going negotiations which relate to the preparation of any book … or which relate to contracts or agreements pertaining to future employment…." As a result of the State's failure to respond to the discovery request, the Petitioner's trial counsel had no evidentiary foundation upon which to pose questions to Garr about a book deal, which he attempted to do but was dissuaded from pursuing.

The evidence that Garr and Levitt made a secret pact to tell their story is of vital significance and would be material at a new trial. Their close relationship and pact is unequivocally material to the case, at it involves collaboration between the lead investigator in the case and a reporter admittedly biased against the Petitioner and his family. It would be highly relevant evidence of the investigator's credibility and potential bias against the Petitioner.

The State presented and relied heavily on a variety of questionable witnesses who offered circumstantial evidence of the Petitioner's guilt, the most relevant of whom was the State's key witness who was specially protected by Garr. The new evidence undermines Garr's credibility in his selection, investigation and use of these witnesses, and therefore substantially dilutes the already tenuous probative value and effect of the circumstantial evidence presented through them at the original trial.

It is not reasonable to infer that Garr was paid solely for his "proof-reading" and "accuracy-checking" services. Thus, Garr was being paid for the information he gave Levitt before and during the trial. A jury presented with the suppressed evidence of the book deal would probably conclude that Garr was paid for the information he provided to Levitt during the course of their collaboration. The fact that the two men were savvy enough to avoid drafting a contract that documented their arrangement until after sentencing does not absolve Garr from violating the Connecticut Code of Ethics, which proscribes using one's state position for financial gain and using state time to further private work. Garr and Levitt should not be rewarded for crafting a paper trial that does not begin until after the Petitioner's sentencing.

The foregoing undermines the credibility of the case's lead investigator, and of the prosecution as a whole. The jury would be entitled to find that the lead investigator in the case was either less than wholly candid or less than fully informed. The prosecution's failure to disclose that Garr was involved in a collaborative effort with an author predisposed against the Petitioner's family – an

effort that was launched before the Petitioner's arrest and continued through the trial and all the way through the Petitioner's conviction – was a clear violation of Connecticut General Statutes Section 54-86c.

Accordingly, the State's suppression of this information violated the Petitioner's Sixth Amendment rights as well as his rights under the rule in Brady v. Maryland.

Ground Eight

The Petitioner's conviction was obtained in violation of his federal constitutional rights to a fair trial, to present a defense and to confront witnesses against him when the trial court denied his Petition For New Trial and prevented him from presenting newly discovered evidence in a new trial that directly contradicted the criminal trial testimony of the State's star witness.

Ground Eight Supporting Facts

At the Petitioner's trial, Gregory Coleman was the State's only witness who testified unequivocally that the Petitioner confessed to him that he killed Martha Moxley. During his probable cause testimony, Coleman said that a fellow Elan classmate was presented when the Petitioner allegedly confessed – either "Everette" James, John Simpson or Cliff "Reubin." Neither the State nor the Petitioner's trial counsel was able to contact any of these three witnesses prior to trial, despite reasonable efforts to do so. After the Petitioner was convicted, his present counsel located all three individuals with extraordinary efforts. These witnesses, *Alton* Everette James, John Simpson and Cliff *Grubin*, exposed the lie told by Coleman: the Petitioner ***never*** confessed to murder. This material, if presented to a jury, would likely change the outcome of the trial. Therefore, the trial court's decision in failing to allow a new jury to hear this evidence in a new trial violated the Petitioner's Sixth Amendment rights to a fair trial, to present a defense and confront witnesses against him.

Gregory Coleman was a key witness for the State at the Petitioner's criminal trial in 2002, and undoubtedly central to its case because he was the only witness to say without equivocation that the Petitioner admitted to killing Martha Moxley. In fact, two alternate jurors told reporters that it was Coleman who provided the most believable testimony against the Petitioner.

Coleman attended Elan with the Petitioner. Coleman came forward at least 20 years post-Elan after watching a television news magazine story. Coleman, a 20-25 bag a day heroin addict, and convicted felon, testified before the grand jury one hour after shooting up. He was unable to focus at the probable cause hearing because he was under severe heroin withdrawal that required him to go to the hospital after testifying. He admitted that his recall was questionable because of his ingestion of drugs and alcohol over a long period, because of the passage of time, and because he had been exposed to television tabloid shows

and read about the case. Coleman died of a drug overdose in 2001 about four months after he testified at the probable cause hearing. The jury was permitted to hear Coleman's transcribed – and hence sanitized – testimony without ever having the opportunity to observe those matters that are crucial in assessing credibility: the give and take of cross-examination, the hesitancy in a witness's response, the witness's reaction when impeached by a prior inconsistent statement or testimony, or a witness's body movements while testifying.

While at Elan, Coleman – armed with a baseball bat – stood guard over the Petitioner with another person in the dining room after the Petitioner attempted to escape the facility but prior to his first general meeting. Mr. Coleman was singled out for guard duty because of his intimidating size. The rules mandated absolutely no talking. Nonetheless, Coleman testified at the probable cause hearing that the 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 his advances, and he drove her head in with a golf club. According to Coleman, the Petitioner said that he hit her so hard that the golf club broke in half and that tow days later he returned to the body and masturbated on it.

Coleman indicated that another Elan student was present when the Petitioner allegedly confessed that he murdered Martha Moxley, and he named that person as being either "Cliff Reubin, Everett James or John Simpson." State's Inspector Frank Garr testified that he may have tried to locate these witnesses, but he was unsuccessful. Thus, the State did not call any of these individuals to corroborate their star witness during the criminal trial in 2002.

After the Petitioner's conviction and present counsel were hired, Mr. Vito Colucci, a private investigator who also worked on this matter for Petitioner's trial counsel, was given the task of locating Mr. James, Mr. Simpson, and Mr. "Reubin." Colucci was unable to locate either Simpson or "Reubin," but he was able to locate and contact Mr. James in the Spring of 2004.

In 2005, the other individuals were located an interviewed due to the extraordinary efforts of Keith Weeks, an investigator hired by Petitioner's present counsel who specializes in locating people. All three witnesses directly contradict Coleman's allegation that the Petitioner confessed to killing Martha Moxley in their presence. Simpson recalled that he did guard the Petitioner with Coleman on the stage at Elan. While guarding the Petitioner with Coleman, Simpson recalled that "all of a sudden Greg just went, 'I can't believe it,' to which Simpson said 'What?'" According to Simpson, Coleman then said that the Petitioner "just admitted that he killed this girl." Simpson looked at the Petitioner and asked him if he just told Coleman that he killed this girl, and the Petitioner responded, "No." Simpson then said the Coleman, "Greg, what are you talking about. He just said that he didn't say that he killed this girl." Coleman responded that the Petitioner 'did answer yes or no" but that he had "this shit-eating grin on his face." Simpson replied, "How could you say, yes, he just admitted it?", to

which Coleman said “Well, it was his reaction, the fact he didn’t say no.” While guarding the Petitioner on the stage with Coleman, Simpson testified that he never heard the Petitioner make any of the specific statements claimed by Coleman. James testified that he recalled guarding the Petitioner on more than one occasion but the Petitioner never confessed to murdering Martha MOxley, nor did he ever hear the Petitioner confess to murdering Moxley at any point. Grubin testified that he knew both the Petitioner and Coleman at Elan, and did not recall ever guarding the Petitioner with Coleman after a general meeting. When Grubin lived with Coleman toward the ends of his time at Elan, Coleman told him that he (Coleman) was a very good liar. Grubin testified that he never heard the Petitioner confess to committing murder while at Elan; however, he did recall that the Petitioner expressed concern that one of his brothers may have been involved.

The trial court concluded that the evidence could have been discovered prior to the trial through the exercise of due diligence by the same methods by which they were found after the trial. However, even if the witnesses could have been discovered by the same methods, those efforts were so extraordinary so as to go far beyond the “due diligence” required by trial counsel. The Petitioner is not required to take extraordinary steps to investigate his case at the time of trial. He should not be punished for taking those extraordinary steps after his trial.

According to Mr. Colucci, trial counsel did not ask him to locate John Simpson or Cliff Grubin. Nevertheless, when he was asked to do so by the present counsel in 2004, he was unable to locate either witness. He performed computer searches using a search engine that yielded hundreds of results for both “John Simpson’ and “Cliff Reubin.” Thus, even if trial counsel had requested him to locate these two witnesses prior to the Petitioner’s criminal trial, the computer searches would have yielded the same unwieldy results as it did in 2004. These two witnesses were only located by the extraordinary efforts of Keith Weeks, an investigator who specializes in locating hard-to-find people.

As to John Simpson, Weeks testified that locating him “was the most difficult person I have ever had to locate. I have never had another locate that took me more or less a solid month to find someone.” Weeks indicated that it took him five to six hours a day, five to six days a week for a month before he was eventually successful in locating the witness. After online search databases yielded negative results, he spoke to numerous former Elan students, and while many remembered Simpson, they could not provide any information about him such as where he was from. As a result of speaking with the Elan students, he “took bits and pieces of information… to make a puzzle and make something appear.” He eventually learned that Simpson had graduated from Penn State, so he found an alumnus who was able to access the school’s alumni website which eventually led him to the John Simpson in this case.

As to Cliff Grubin, Weeks testified that he began his search for Cliff "Rubin" by accessing an internet message board where former Elan students posted messages. He indicated that the message board "was quite long, it was screens and screens long" and he just happened upon a posting by a "Cliff Grubin." Since the message board identified "Cliff Grubin" as having attended Elan from 1978-1980, Mr. Weeks deduced that the "Cliff Reubin" identified by Coleman in his prior testimony was actually "Cliff Grubin." It was posted in February of 2005 and identified his location as Teaneck, New Jersey. Weeks was unable to locate him in New Jersey, so he expanded to a national search and eventually located a Cliff Grubin in California, who was the father of the Cliff Grubin who attended Elanin 1978-1980. After speaking with his father, Weeks learned that Grubin was living in Spain. He asked the father to let his son know that Weeks was trying to contact him. After not receiving any contact, Weeks reached out to Grubin's father a second time, and was informed that his son was a grown man and it was up to him to contact Weeks. Weeks testified that "I literally gave up because I didn't have any other options," but then he wrote an email to the address on the Elan message board and Grubin responded seven days later.

Thus, Keith Weeks' approach of "leaving no stone unturned" far exceeds the due diligence standard of "reasonable efforts." Due diligence does not require omniscience. It means doing everything reasonable, not everything possicle. The fact that Weeks was able to locate Simpson and Grubin by performing extraordinary investigative work after the Petitioner's conviction does not translate into a finding of a lack of diligence by Petitioner's trial counsel.

In contrast to this established standard of due diligence, the trial court instead applied a different standard and indicated that if defense counsel put on a "scant search" for the witness, then a petitioner could not prevail on a petition for new trial. Thus, based on the circumstances of this case, including the fact that the State also was unable to locate two of the witnesses and unable to interview the third witness, the Petitioner's trial counsel conducted a reasonable investigation prior to trial such that their discovery in 2004 and 2005 constitutes newly discovered evidence.

The trial court also concluded that the fact that both James and Grubin testified that they had never heard the Petitioner confess to the murder is cumulative because other trial witnesses also testified that they never heard the Petitioner confess to murder. However, Coleman never identified those other witnesses as having been present when the Petitioner confessed to him. Therefore, the fact that those five witnesses testified that the Petitioner did not confess to murder while he was at Elan is irrelevant to this issue. Since Coleman specifically identified either James, Grubin or Simpson as being present during the alleged confession, and none of them testified at the criminal trial, their testimony would not be merely cumulative.

The trial court's conclusion that the evidence presented by James, Simpson and Grubin – in which they directly contradict Coleman's testimony – provides only minimal impeachment value ignores the central role that Coleman had as a State's witness in the Petitioner's criminal trial. Coleman was the only witness who testified unequivocally that the Petitioner confessed to him that he killed Martha Moxley. As such, the Petitioner's alleged confession to Coleman was the linchpin of the State's case.

Coleman's credibility was a central issue in the case. Coleman himself identified these three witnesses and therefore, testimony from the directly contradicting his claim would be extremely powerful evidence casting doubt on his credibility. If a jury were to disbelieve Coleman, then it is likely that the jury's verdict would be an acquittal or a mistrial.

Accordingly, the trial court's decision, refusing to grant a new trial on this ground, violated the Petitioner's federal constitutional rights to a fair trial, to present a defense and to confront witnesses against him.

Ground Nine

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 his Petition For New Trial and ruled that the State's pattern of nondisclosure of exculpatory evidence and suppression of profile reports and the time lapse data did not warrant a new trial.

Ground Nine Supporting Facts

Prior to the Petitioner's criminal trial, four extremely important, relevant and exculpatory documents were denied to the defense: a composite sketch of a person seen near the crime scene on the night of the murder that resembled long-time police suspect, Kenneth Littleton; suspect profile reports prepared by the lead investigators in the case detailing powerful evidence against two other suspects, Littleton and Thomas Skakel; and, a time lapse data that documented *inter alia* numerous other murders that could be traced to Littleton's travels. These documents provided the tools by which the Petitioner could have supported his third party culpability and alibi defenses. As a result of the State's withholding of evidence, the Petitioner was deprived of a fair opportunity to defend himself, which resulted in the injustice of his conviction. The State's failure to produce exculpatory evidence regarding the composite sketch, profile reports, and the time lapse data, as well as its egregious pattern of nondisclosure of exculpatory evidence, constitutes a violation of the Petitioner's federal constitutional rights.

John Solomon was the Supervisory Police Inspector for the State's Attorney's Office for the Judicial District of Fairfield from 1973 to 1995. He was involved in

the investigation of the Moxley murder from the very date of the homicide in 1975, and participated in the investigation when it was reopened in 1991. In 1991, Frank Garr was a detective with the Greenwich Police Department and assigned to work with Solomon on the renewed investigation. When Garr retired from the police department in 1994, he began as an inspector for the State's Attorney's Office and continued to work with Solomon on the case.

Prior to the Petitioner's criminal trial, trial counsel requested exculpatory information by way of several discovery motions. These motions supplemented the State's established "open file" policy in connection with the Petitioner's criminal trial. Mr. Garr was in charge of complying with the policy by copying documents and making them available to the defense. Garr's understanding of the open file policy was that "everything is available to the defense."

Trial counsel's discovery motions specifically included requests for any documents showing that anyone other than the Petitioner was the focus of the State's investigation, in particular, Kenneth Littleton and Thomas Skakel. Solomon and Garr had authored profile reports of suspects in the Moxley murder, including separate reports regarding Thomas Skakel and Littleton around 1991 or 1992. However, these profile reports were never provided to trial counsel during discovery in the Petitioner's criminal case, and were only provided to the defense shortly before the Petitioner's hearing on the Petition for New Trial in 2007.

The Thomas Skakel profile states that around 9:30 p.m. on the night of the murder, the Petitioner left the Skakel home with his brothers Rushton, Jr. and John and his cousin James Terrien and that Martha Moxley remained at the Skakel residence. The Thomas Skakel profile also states that Dr. Jachimczyk concurred that the time of death was approximately 10 p.m. on the night of the murder.

The Littleton profile states conclusively that on the night of the murder, the Petitioner left his home around 9:30 p.m. with his two brothers to drive his cousin home in the north section of the Town of Greenwich. The Littleton profile indicates that several facts were "established," according to the authors, such as the fact that the Petitioner left the Skakel residence around 9:30 p.m., prior to the time of the murder. If trial counsel had the Littleton profile prior to the criminal trial, he would have questioned Garr and Solomon as to these "established" and clearly exculpatory points.

Solomon also prepared a document entitled "Kenneth Littleton – Time Lapse Data" in the course of considering Littleton a suspect in the Moxley case and as a possible serial killer. The Time Lapse Data was prepared concurrently with the profile reports, and much of its data is incorporated by reference into the Littleton profile report. The Time Lapse Data contains information about many other homicides and crimes against women that occurred in areas where Kenneth Littleton was known to frequent, as well as biographical information about

Littleton, including psychiatric information, arrests, addresses and work information. Specifically, the Time Lapse Data documents a number of criminal and/or sexual incidents committed by Littleton within a year of the Moxley murder. Captain George Risendez of the Nantucket Police Department described Littleton as being weird, sadistic and self-centered. The episodes set forth in the Time Lapse Data that occurred within a year of the Moxley murder in part led Solomon to believe that Littleton was the possible killer. Moreover, Littleton failed two polygraph examinations about the killing of Martha Moxley.

Once again, the Time Lapse Data was not included as part of the State's open file policy and defense counsel only received a copy during discovery on the Petition For New Trial. If trial counsel had had the Littleton Time Lapse Data during the Petitioner's criminal trial, he would have investigated the unsolved murders listed in the report in order to find out if Littleton was involved or otherwise followed up on the information contained in the report. Additionally, he would have put its authors on the stand to testify that they felt this information about Littleton was significant and that they believed that Littleton may have committed the crime.

Police determined that Littleton's activities on the night of the murder were "questionable," particularly during the time period when Martha Moxley left the Skakel property. Littleton initially informed investigators on October 31, 1975 that upon returning to the Skakel home after dinner at the Belle Haven Club, he went up to the second floor master bedroom to watch television and he told investigators that he neither heard nor observed anything suspicious during the evening hours. He repeated this same story again on November 5, 1975.

During an interview on December 10, 1975, Littleton for the first time told investigators that he recalled exiting the Skakel home via the front door at around 9:15 p.m. or 9:30 p.m., walking to the north side of the house adjacent to the driveway, and reentering the house via the side door. Littleton claimed he went outside to check on the activities of the Skakel boys. On April 22, 1976, Littleton was interviewed again. This time, he stated that he came downstairs and the nanny requested that he check out the driveway area because she had overheard a "fracas" there. Littleton claimed that he went out the front door of the residence, where he encountered Julie Skakel and her friend Andrea Shakespeare, and walked across the front lawn to the area of the driveway where Mrs. Sweeney had reported overhearing the "fracas." Littleton stated to investigators that after checking the area, he did not observe anyone, but that he had heard rustling noises in the bushes that he could not identify, then re-entered the house through the front door. Investigators noted that this April 22, 1976 interview was significant because it placed Littleton, by his own admission, outside of the Skakel residence at the same time that it was believed that Martha Moxley was en route from the Skakel property to her home.

Charles Morganti, a private Belle Haven security guard, saw a person walking near the victim's home around 10:00 p.m. on the night of the murder. Morganti described a white male in his twenties with a stocky build, around six feet tall, blonde, with glasses, wearing a fatigue jacket and tan trousers. Within a day or two of the murder, Morganti assisted police in creating a composite sketch of the man he described. With the exception of the hair color, Morganti's description of the person that he saw was similar to the appearance of Kenneth Littleton. In fact, the sketch resembles Kenneth Littleton. Most importantly, the sketch does not resemble the Petitioner.

Prior to the Petitioner's criminal trial, defense counsel made a formal, written discovery request for all photographs, composite sketches or other media replications that depicted the likeness or physical attributes of the alleged perpetrator of the crime. Counsel did not receive any sketches of anybody in connection with the murder prior to the Petitioner's criminal trial. In response to counsel's request between early June and late August of 2002, the sketch was finally produced after Petitioner's criminal trial and before his sentencing.

During the course of the investigation, Greenwich Police prepared an arrest warrant application for Thomas Skakel, and it was brought to the State's Attorney's Office between 1975 and 1976. A copy of the application was kept at the State's Attorney's Office since that time. Both Garr and Solomon testified at the Petitioner's criminal trial that the Thomas Skakel arrest warrant application had been in the state's file. Nevertheless, counsel did not receive the application before the criminal trial. He finally received it when the criminal trial was in its fifth day of evidence, well after a number of police officers had already testified. Trial counsel would have used the arrest warrant application during his examinations of these police officers. The application included the oath of two Greenwich police officers swearing that they believed Thomas Skakel committed the murder. If trial counsel had had this application prior to the criminal trial, he would have attempted to introduce evidence of the officers' opinion that Thomas Skakel had committed the crime, and he would have spent more time looking into the background of the investigation.

In the present case, the trial court merely concluded that the Petitioner did not meet his burden of proving that the profile reports and composite sketch were newly discovered evidence warranting a new trial. However, the Petitioner also argued and fully briefed the issue of whether the State's pattern of nondisclosure constituted "reasonable cause" to grant the Petitioner a new trial. Indeed, as a result of the State's withholding of evidence, the Petitioner was deprived of a fair opportunity to defend himself, which resulted in the injustice of his conviction. The unconscionability of the State's conduct and the necessity of granting a new trial is mandated by the fact that not merely one exculpatory document was withheld. Rather, in this case, four extremely relevant and exculpatory documents were denied to the defense. All of the documents provided the tools

by which the Petitioner could have supported his third party culpability and alibi defenses.

First, the sketch was a highly probative piece of evidence that would likely have changed the outcome of the trial. One of the cornerstones of the Petitioner's defense at trial was a claim of the third party culpability of Kenneth Littleton. The sketch uncannily resembled Kenneth Littleton. Had the Petitioner had the sketch prior to trial, Attorney Sherman would have introduced it at trial through the appropriate witness and would have argued that it was in fact Kenneth Littleton that Mr. Morganti had seen wandering around the neighborhood at the time of the crime, around 10 p.m. At the very least, Attorney Sherman would have highlighted for the jury that the sketch in no way resembled the Petitioner, which in and of itself would have been very probative evidence.

In addition to using the sketch to prove that Kenneth Littleton committed the crime and that the sketch did not resemble the Petitioner at all, trial counsel also could have used the sketch to cross examine and impeach Littleton as to his claim that he did not leave the Skakel property when he went outside at 9:30 p.m. on the night of the murder. Littleton gave conflicting statements on the issue of leaving the Skakel house on the night of the murder, and Julie Skakel testified that she saw a shadowy figure walking on the Skakel lawn on the night of the murder around the time period that Littleton is believed to have been outside. Therefore, the sketch was crucial evidence to support the fact that Littleton lied to police about being outside around the time that Mr. Morganti saw the person whom he described for the sketch, and it could have been used to significantly question Littleton's credibility on the stand.

Finally, the Petitioner could have used the sketch to discredit the State's claim that there was no evidence tying Littleton during the murder. The State argued during its summation that "[t]he only evidence that remains against Ken Littleton … is that 11 years after the crime he was diagnosed as being manic depressive." Tr. 6/3/02 at 115. If the defense had the sketch prior to the criminal trial, it could have diffused this argument advanced by the State and could have highlighted that, in fact, there was evidence tying Littleton to the area of the murder at the time the murder was believed to have been committed, as well as the fact that Littleton had lied to police about his whereabouts. Therefore, the sketch could reasonably have changed the outcome of the Petitioner's criminal trial. This withholding of evidence deprived the Petitioner of a fair opportunity to be heard and violated his federal constitutional rights to a fair trial and to present a defense and violated Brady v. Maryland.

The profile reports amassed data as well as the conclusions of the authors supporting the fact that persons other than the Petitioner committed the murder of Martha Moxley. These profile reports also set forth determinations of the investigators that were highly relevant and probative as to the Petitioner's alibi defense. For example, the Thomas Skakel profile indicates in several instances

that around 9:30 p.m. on the night of the murder, the Petitioner left the Skakel residence with his brothers Rushton, Jr. and John, and his cousin James Terrien, and that Martha Moxley remained at the Skakel property when they left. Additionally, the Kenneth Littleton profile report states that Littleton's statement that he went to the driveway area at around 9:30 p.m. at the request of the nanny and was unable to locate anyone in the area "clearly establishes" that the Skakel vehicle had already left the driveway, "occupied by the SKAKEL boys (Rushton, Michael and John) along with their cousin JAMES TERRIEN …."

These statements regarding the Petitioner's whereabouts on the night of and at the time of the murder bear the imprimatur of Mr. Garr and Mr. Solomon as the authors of the reports. Thus, the defense could have used these statements in the profile reports to substantially bolster the Petitioner's alibi defense. If trial counsel had the profile reports prior to the criminal trial, he would have examined Mr. Garr and Mr. Solomon about their conclusions in the report as to the fact that the Petitioner's whereabouts had been "clearly established." Attorney Sherman would have also argued to the jury that Mr. Garr and Mr. Solomon had apparently put enough credence into the reports about the Petitioner's whereabouts that they were included as clearly established facts in the reports that attempted to prove that someone else committed the murder.

Therefore, these two profile reports contained information that had not been available to the defense through other sources. The Thomas Skakel and Kenneth Littleton profile reports, if they had been available to the defense prior to trial, reasonably would have changed the outcome of the Petitioner's criminal trial. This withholding of evidence deprived the Petitioner of a fair opportunity to be heard and violated his federal constitutional rights to a fair trial and to present a defense and violated Brady v. Maryland.

Finally, the document entitled "Kenneth Littleton – Time Lapse Data" is another vital piece of evidence that was withheld by the State that would likely have affected the outcome of the Petitioner's criminal trial. The Time Lapse Data contains information about criminal and sexual misconduct by Kenneth Littleton that occurred within a year of the Moxley murder. The Time Lapse data also contains information about fifteen murders, one attempted murder, and three disappearances, all involving young women, that took place between 1976 and 1991 in areas where Kenneth Littleton was known to frequent.

One of the Petitioner's defenses at trial was the third party culpability of Kenneth Littleton. Mr. Solomon testified in the instant trial that the criminal and sexual episodes set forth in the Time Lapse Data that took place within a year of Martha Moxley's death led Mr. Solomon to conclude that Kenneth Littleton had committed the crime. Attorney Sherman would have used the Time Lapse Data during the Petitioner's criminal trial to question its authors as to the fact that they found this information about Littleton significant and that it led them to believe that Littleton had committed the crime.

Further, if Attorney Sherman had had the information about the fifteen murders, the attempted murder, and the three disappearances of other young women prior to the Petitioner's trial, he would have investigated these matters in an attempt to link them to Kenneth Littleton. Upon further investigation of these other crimes, Attorney Sherman could have argued to the jury that Littleton was involved in these crimes, evidencing a pattern that tended to show that he committed the Moxley murder. The Connecticut Supreme Court did not consider the issue of the Time Lapse Data in its opinion regarding the Petitioner's direct appeal. See generally State v. Skakel, 276 Conn. 633. Therefore, there are no prior findings as to this issue to affect this court's decision.

The State's conduct throughout the Petitioner's criminal trial evidences a clear pattern of nondisclosure of exculpatory and relevant information. In addition to the documents discussed supra, the State also withheld from the defense an arrest warrant application that was prepared regarding Thomas Skakel. This document was not disclosed until the fifth day of the Petitioner's criminal trial and is further evidence of the State's pattern of egregious conduct throughout the criminal case.

While each of the acts of withholding of evidence in itself constitutes a federal constitutional and a Brady violation, the sum of the State's five egregious acts adds up to a pattern of nondisclosure that clearly violates the Sixth Amendment and the rule in Brady. For these reasons, the trial court 's decision denying the Petitioner a new trial on these grounds amounts to a constitutional and a Brady violation.

The profile reports and Time Lapse Data are favorable to the Petitioner because they would have assisted him with his third party culpability and alibi defenses and with the impeachment of key witnesses. Additionally, there is no doubt that the profile reports and Time Lapse Data were suppressed because they were not produced to the defense despite a specific request for the type of information contained in the profile and despite a discovery order from the trial court.

Finally, the profile reports and Time Lapse Data were material. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. The defendant need not show that the evidence, if disclosed, would have resulted in his acquittal. The documents were material because they provided critical information and conclusions regarding the Petitioner's alibi defense, as well as conclusions of the authors supporting the fact that others committed the crime and important impeachment evidence.

Because the State violated Brady v. Maryland by failing to turn over the profile reports and the Time Lapse Data, the trial court's failure to grant a new trial on

that basis violated the Petitioner's federal constitutional rights and the rule in Brady.

Further, the profile reports and Time Lapse Data constituted newly discovered evidence. In the present case, the profile reports, which include the Time Lapse Data, could not reasonably have been discovered prior to trial with the exercise of due diligence. Nevertheless, the trial court ruled that the Supreme Court held that petitioner was aware of the profile reports during trial, yet failed to make a timely request for them and that in light of the criminal trial record regarding when petitioner became aware of the reports, and his untimely request for them, this evidence cannot be considered "newly discovered."

However, the Connecticut Supreme Court's holding regarding the profile reports was only that the trial court correctly rejected the Petitioner's claim relating to the reports on the ground that it was not raised in a timely manner under Practice Book Section 42-54. State v. Skakel, 276 Conn. 633, 710 (2006). The Court's statement regarding the fact that the Petitioner was aware of the profile reports during the trial is merely dicta.

Therefore, there has been no "holding" by the Supreme Court regarding whether or not the profile reports are newly discovered evidence. Thus, the trial court's reliance on the Supreme Court's discussion should not have prevented the trial court from finding that the profile reports, which included the Time Lapse Data, constitutes newly discovered evidence. Indeed, there is no evidence that trial counsel had any reason to believe that the profile reports, including the Time Lapse Data, even existed prior to the Petitioner's criminal trial. During pre-trial discovery, counsel had requested any documents showing that anyone other than the Petitioner was the focus of the State's investigation, specifically Kenneth Littleton or Thomas Skakel. Because the profile reports, including the Time Lapse Data, were not produced either in response to the Petitioner's specific discovery request or as part of the State's open file policy, it was reasonable for trial counsel to conclude that no such documents existed.

In this case, the profile reports, which included the Time Lapse Data, are clearly material because they go to the heart of the Petitioner's main defenses at trial: third party culpability and alibi. The materiality of the profile reports, including the Time Lapse Data, is discussed at length, supra. As argued supra, the profile reports, including the Time Lapse Data, contain critical information supporting the fact that someone other than the Petitioner committed the crime. Further, the documents include important conclusions of Mr. Garr and Mr. Solomon establishing conclusively facts relative to the Petitioner's alibi. Moreover, the documents contain invaluable information that would have been used to cross-examine and/or impeach several witnesses, namely Kenneth Littleton, Mr. Garr and Mr. Solomon.

In the instant case, the profile reports, including the Time Lapse Data, contain crucial information that is not merely cumulative of other evidence at the Petitioner's criminal trial. Although the Petitioner had some of the information contained in the reports and Time Lapse Data prior to the trial from other sources or documents, there was considerable information in these documents which the Petitioner did not have from any source. For example, the two profile reports set forth the conclusions of Mr. Garr and Mr. Solomon that certain facts supporting the Petitioner's alibi defense had been "clearly established."

Further, much of the information contained in the Time Lapse Data was unknown to the Petitioner prior to his criminal trial. Although trial counsel may have been aware from other sources of certain misconduct of Kenneth Littleton, the defense was by no means aware of the fact that fifteen murders, an attempted murder, and three disappearances, all of young women, had occurred in the years following the Moxley murder in places where Littleton was known to frequent. Further, the Petitioner could not have been aware that all of this information was put together by investigators in a timeline, and that investigators were thus led to believe that Littleton may have been involved in these other crimes.

No evidence was introduced during the Petitioner's criminal trial regarding the fact that Mr. Garr and Mr. Solomon believed certain facts relating to the Petitioner's alibi defense were conclusively established. No evidence was offered at the criminal trial regarding Mr. Garr's and Mr. Solomon's belief that Littleton had committed the murder based upon his other misconduct and potential involvement in numerous other crimes. Therefore, this newly discovered evidence cannot be viewed as cumulative.

In this case, the newly discovered evidence would probably have changed the outcome of the trial. The profile reports, including the Time Lapse Data, go to the very heart of the Petitioner's two defenses at trial, third party culpability and alibi. The two lead investigators in this case amassed data in these reports clearly supporting the fact that someone other than the Petitioner committed this crime. The information set forth in the Time Lapse Data led Mr. Solomon to believe that Kenneth Littleton committed the murder. The two lead investigators also believed that the facts underlying the Petitioner's alibi defense had been clearly established. The credibility and importance of this evidence is undeniable. Had the jury heard these conclusions Mr. Garr and Mr. Solomon, the result of the trial most likely would have been different. Therefore, the trial court, in denying the Petition For New Trial, denied the Petitioner his federal constitutional right to a fair trial and to present a defense

Ground Ten

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

in that the State suppressed exculpatory evidence that pointed to a third party as the killer of Martha Moxley.

Ground Ten Supporting Facts

In June of 1993, a woman named Julia Wilson contacted police in Madison, Connecticut to discuss her brother, Andrew Wilson. She spoke with Sergeant Allen Gerard. Ms. Wilson claimed that Andrew was psychotic and may cause trouble at her father's home, and she wanted police to be aware of it. Ms. Wilson told Madison police that her brother was addicted to alcohol and drugs and had received psychiatric treatment in the past.

Thereafter, on July 19, 1993, Ms. Wilson wrote a letter to James Cameron, the Chief of Police in Madison, informing him of her conversation with Sergeant Gerard. This letter was carbon copied to Kenneth Moughty, the Chief of Police in Greenwich, Connecticut. In the letter, Ms. Wilson informed police that her brother was seriously mentally ill and, in her opinion, was a danger to others. She stated that Andrew had been having paranoid delusions, had made recent threats, had shown overt anger with loud voices and angry verbal content, had a past history of an explosive temper, and ongoing alcohol and drug use. Ms. Wilson stated that her brother had specifically targeted his threats to a father and son, Jack and Dirk Peters of Greenwich, which was the Wilsons' former hometown. Ms. Wilson attached a history of Andrew Wilson's behaviors as well as several letters written by Andrew.

In the attached history, Ms. Wilson wrote that Andrew Wilson was born on September 9, 1960 (which would make him 15 years old on the date of the murder of Martha Moxley). Andrew had been unemployed since February 1992 after being laid off from his job as assistant producer at New Haven Teletrack. Andrew had an intermittent job history since then. Ms. Wilson also wrote that Andrew had a long-standing relationship with marijuana and alcohol. He had been smoking marijuana consistently since high school, at times an everyday user. He had a DUI in approximately 1983 or 1984 in Massachusetts as a result of trauma due to a breakup with is girlfriend. He had used less alcohol since that time but had continued his marijuana use. He used psilocybin mushrooms with Dirk Peters (the person whom he threatened) in approximately 1981. Other drug use was unconfirmed, however his friends acknowledged that he had smoked a lot of pot and on occasion became paranoid and sweated profusely. Ms. Wilson suspected that her brother's drug use continued to the date of her letter to police.

Ms. Wilson reported that her father, Tom Wilson, was 76 at the time and spent winters in California for the last several years. This had left Andrew living alone winters in Madison, alone and unemployed. Ms. Wilson also stated that their mother had died of lung cancer in 1982, and had a history of paranoid feelings and mental illness with one psychiatric hospitalization in approximately 1966. Ms. Wilson indicated that her family had been concerned about Andrew's

situation but recent events had made them realize the gravity of the situation. In the spring preceding the writing of Ms. Wilson's letter to police, her father had returned to Madison from California in April, 1993 to find every dish dirty, and the house and car were filthy. Andrew had obsessively barraged their father about how he was drugged against his knowledge with methamphetamine and brainwashed in 1981 by Dirk Peters, a high school friend, from Greenwich, and that the toxins from the methamphetamine were still in his body, and that he was drinking vinegar to counteract their effect.

On April 23, 1993, Jack Peters of Greenwich, father of Dirk Peters, called Ms. Wilson's father to tell him that Andrew was making threats to himself and his son and making numerous other phone calls to at least eight former friends and associates. Andrew had called the Peters, both Dirk and Jack, and made threats such as "It's time for retribution, the bullshit stops here, it's payback time and we're all going to be living with the consequences" and that he had a "remedy." When questioned what the remedy was, Andrew told the Peterses, "They'll find out."

Ms. Wilson reported to police that Andrew had made numerous other phone calls to friends and associates, including to the mayor of Greenwich, who was the father of Wilson's ex-girlfriend, stating that Dirk Peters must be stopped from continuing to drug and brainwash people and stating that Dirk's father, Jack Peters, was an accessory to Dirk. Andrew also made calls to Greenwich Police, Bridgeport FBI, and the security director of Citibank, which was Dirk Peters' employer. On June 7, 1993, Andrew Wilson followed up his phone call to Citibank with a package of letters, telephone transcripts and audiotapes to the security director. When Ms. Wilson telephone the security director, he told her that Andrew had stated in a conversation to him that Dirk was "the destroyer, Dirk was no good and Dirk continues to mind alter people." Ms. Wilson confronted Andrew about the Citibank letters, and Andrew screamed at her on the phone that the Peterses were extremely dangerous and that if she ever spoke with them again, he (Andrew) would never speak to her again. Since that time, Andrew did not answer or return any of his sister's phone calls.

On May 13, 1993, Andrew told Ms. Wilson that "the best therapy would be to blow Dirk, Jack and Todd Peters sky high." He also stated on another occasion to Ms. Wilson that "Dirk and his father should be taken out to the public courtyard and executed."

On May 28, 1993, the Peterses received a macabre note from Andrew, which he signed "Nick." The note contained a psychiatric chart of some sort and Andrew had handwritten on the bottom, "Look familiar? You know you want to crash the plane. I'm sorry you feel that way. Things have changed. Nick."

On June 17, 1993, Andrew phoned Jack Peters stating that “their karma was going to come back around to them” and “we’re going to be living with the consequences” and yelling at him with profanities before hanging up.

On June 30, 1993, Andrew Wilson had a conversation with his brother, Ted Wilson. Ted described Andrew as vicious, swearing 30 seconds into the conversation, proclaiming what a shitty brother Ted was, and what a shitty father their father was. Andrew charged that Dirk Peters had murdered Martha Moxley and stated that he “knows Dirk killed the girl even though Dirk passed a lie detector test.” Andrew blamed Ted and his father for letting him associate with the murderer, that Andrew was killed as a boy and these manipulators got a hold of him. Andrew further stated that “this is a point of no recovery and pretty soon everyone will know the truth” and that “soon this will be taken to a new level.”

On approximately July 7, 1993, Andrew, who was living in Nantucket at the time, told his father he was “anxious to get back to Connecticut to get on with the retribution.”

Ms. Wilson reported that Andrew had had one psychiatric contact at New Haven Veteran’s Administration Hospital the week of April 26, 1993. Drs. Krystal and Karper interviewed him but as the threats were unknown to them at the time, Andrew’s situation was treated more casually with a planned follow-up in two weeks. Upon Ms. Wilson’s discussion of Andrew’s condition, Dr. Karper told her that Andrew was mentally ill, had delusions and had paranoid tendencies. Andrew was not a veteran, but they did see him. Andrew did not seek follow up treatment as he went to Nantucket on May 1st.

Andrew discussed his marijuana habit with Ms. Wilson and claimed to be quitting in approximately November 1992. He was trying to lose weight, exercise, and generally improve his life. By early spring 1993, the delusions about being drugged were established. All of the problems in Andrew’s life were being blamed on Dirk Peters: that Dirk manipulated the breakup of Andrew and his girlfriend, that the karma was causal to their mother’s death from lung cancer in 1982, etc. Dirk Peters had become the central source of all Andrew’s misfortunes in his mind.

Ms. Wilson’s last conversation with Andrew took place the third week of June, 1993, which she described as venomous. Their brother Ted described his last conversation on June 30, 1993 as vicious. Ms. Wilson noted that Andrew was a formidable person at 6’4” and approximately 240 pounds. Given the information that they knew of, that Andrew had made recent threats, had had overt anger, loud voices and angry verbal content, a past history of explosive temper, alcohol and drug use and paranoid delusions, Ms. Wilson opined that Andrew was a danger to others, most notably Dirk Peters, Jack Peters, and perhaps the Wilsons’ father, and that Andrew was potentially a danger to himself. Ms. Wilson

indicated that she wanted to put this information on the record because she felt Andrew was a danger to the community.

On or about August 5, 1993, Sergeant Gerard received a telephone call from Detective Haug of the Greenwich Police Department. Det. Haug informed Sgt. Gerard that Andrew Wilson had been arrested for the murder of Jack Peters in Greenwich and requested that Sgt. Gerard inform Andrew Wilson's family who were residing in Madison.

Despite the fact that Ms. Wilson's letter and attached information was provided to Greenwich Chief of Police Kenneth Moughty and Detective Haug, the information and documents were never disclosed to the Petitioner at any point prior to, during or after the Petitioner's criminal trial. The information contained in Ms. Wilson's letter would have been vital to the Petitioner's defenses of third party culpability and alibi. Although Andrew Wilson alleged that Dirk Peters committed the murder of Martha Moxley, it is just as possible that Andrew Wilson was the perpetrator or was involved in some way. Andrew Wilson was a resident of Greenwich at the time of the murder, had been involved in drugs, had a history of having an explosive temper, had an extremely large build and could have been capable of inflicting the types of injuries that were inflicted upon Martha Moxley. This information should have been provided to the Petitioner so that he could have investigated the possible involvement of both Dirk Peters **and** Andrew Wilson. The withheld information was favorable to the defense, was suppressed, and was material to the outcome of the case.

The State's failure to provide this information to the Petitioner constitutes a violation of the Petitioner's Sixth Amendment right to a fair trial and to present a defense, and also constitutes a violation of Brady v. Maryland.

This claim has not yet been presented to any court because the Petitioner's undersigned counsel only recently became aware of this information.

Ground Eleven

The Petitioner's conviction was obtained in violation of his Sixth Amendment right to a fair trial and the right to effective assistance of counsel due to the actions and conduct of the Petitioner's trial counsel.

Ground Eleven Supporting Facts

During the Petitioner's criminal trial, and during pre-trial and post-trial proceedings, the Petitioner's trial counsel made several errors that resulted in the deprivation of the Petitioner's federal constitutional rights.

Ground Twelve

The Petitioner's conviction was obtained in violation of his Sixth Amendment right to a fair trial, to confront witnesses against him and in violation of the rule in Brady v. Maryland due to the State's suppression of highly valuable impeachment evidence relating to the State's star witness, Gregory Coleman.

Ground Twelve Supporting Facts

John M. Regan, Jr. is an attorney in New York who has represented Gregory Coleman and various members of his family over the course of many years throughout the 1990's. In that role, Attorney Regan has gotten to know Mr. Coleman and his family. Attorney Regan has personal knowledge that Mr. Coleman was an incorrigible drug addict who would routinely lie in order to get money for drugs. Attorney Regan knew that Mr. Coleman had accused Michael Skakel of "confessing" to killing Martha Moxley while Coleman and Mr. Skakel had attended Elan together. Attorney Regan, at the time that he learned of Coleman's accusations, did not believe that they were worthy of the slightest confidence.

Some time in 1998, Attorney Regan received a call from a man who identified himself as a prosecutor in Connecticut. This man was seeking Coleman's contact information. Attorney Regan, fearing that Coleman was being investigated for a crime, inquired as the purpose of the inquiry. The man responded that he was going to use Coleman in a grand jury proceeding seeking to charge Michael Skakel with the murder of Martha Moxley. Attorney Regan was incredulous, and stated to the man that he hoped that the prosecutor was not serious about using Coleman's testimony to accuse someone of murder. The man responded by telling Attorney Regan not to worry, that they had plenty of evidence, and that they were going to "get this guy."

Attorney Regan later became aware that Mr. Skakel had been convicted of the crime, and he was disturbed to see that Coleman's role as a witness had been prominent. Attorney Regan had assumed there must have been a lot of other solid evidence. Attorney Regan later learned from reading an article written by Robert F. Kennedy, Jr. in the Atlantic Monthly that there had been little other evidence.

Despite being aware of this impeaching evidence regarding Mr. Coleman, the State did not make it known to the defense at any time before, during or after the Petitioner's criminal trial that this evidence existed. This evidence is favorable, material, and was suppressed. Impeachment evidence is always favorable. The evidence is material because Coleman was the State's star witness and was the only witness who testified without equivocation that the Petitioner confessed to the crime. Therefore, the Petitioner's conviction was obtained in violation of his federal constitutional rights and the rule in Brady v. Maryland.