Doyle Dolen Lancaster
NDOC #77777 N.N.C.C.
Northern Nevada Correctional Center
PO Box 7000
Carson City, Nevada 89702

Plaintiff Pro Se

United States District Court
District of Nevada

Doyle Dolen Lancaster,

Plaintiff,

vs.

The State of Nevada; Nevada Department of Corrections; Washoe County, Nevada; City of Reno, Nevada; Kenny Guinn, and his successor in office Jim Gibbons, Governor of the State of Nevada; Frankie Sue Del Papa, and her successor in office Catherine Cortez Masto, Attorney General of the State of Nevada; George Togliatti, and his successor in office Jerald Hafen, Director of the Nevada Dept. of Public Safety (NDPS); Amy Wright, and her successor in office Bernard W. Curtis, Chief, Parole and Probation Division of NDPS; James W. Roundtree, Parole and Probation Officer II, Parole and Probation Division of NDPS; Howard Rigdon, Unit Manager, Parole and Probation Division of NDPS; Michael Haley, Sheriff of Washoe County; John Doe, Washoe County Jail Officials; John Doe and Jane Doe, County Government Officials; John Doe, Washoe County Comptroller; Michael Poehlman, Chief, Reno Police Department; Detective Tom Broom, Detective, Reno Police Department; John Doe, Detective, Reno Police Department.; John Doe, Patrol Officer, Reno Police Department; Richard A. Gammick, District Attorney of Washoe County; Kelli Anne Viloria, Deputy District Attorney of Washoe County; David Clifton, Deputy District Attorney of Washoe County; Joseph Plater, Deputy District Attorney of Washoe County; Lee Hotchkin, Attorney; David Houston, Attorney; Robert P. Stuyvesant, M.S.W.; Paul Quade, Attorney; Jerome Palaha, Judge, 2nd Judicial District Court of Nevada; Kenny Guinn and Jim Gibbons, past and present President of the Board of State Prison Commissioners; Ross Miller, Secretary of State and Secretary of Board of Prison Commissioners; Frankie Sue Del Papa and Catherine Cortez Masto, respectively, past and present members of the Board of State Prison Commissioners; Jackie Crawford and her successor in office Howard Skolnick, respectively, Past and Present Director of the Nevada Department of Corrections; Ted De'Amico and Robert Bannister, respectively, past and present Medical Directors of the Nevada Department of Corrections; Donald Helling, former Warden of NNCC and Present Assistant Director of N.D.O.C.; James Benedetti, Warden, and former Associate Warden of Programs NNCC; Tony Corda, Associate Warden of Programs at NNCC; John Does, Members of the Medical Utilization Review Committee; John Perry, Director of Nursing at the Regional Medical Facility at Northern Nevada Correctional Center,

Defendant(s).

Case No.: 3:06-CV-0824-JCM-RAM

Fourth Amended Civil Rights Complaint pursuant to 42 U.S.C. §1983, 42 U.S.C. §§1985, 1986, and Title II of the **Americans with Disabilities Act of 1990, §201, et.seq., 42 U.S.C. §12131 et.seq., and section 504 of the Rehabilitation Act of 1973, 29 U.S.C.S. §794.**

Jury Trial Demand

Seeking for Relief

1) A Declaratory Judgment; 2) A Temporary Restraining Order Preliminary to a permanent injunction; 3) A Permanent injunction; 4) An Award of Compensatory and Punitive Monetary Damages in an amount to be determined by a Jury in Accordance with Guiding Principles of Law.

Comes now the plaintiff Doyle Dolan Lancaster[1], pro se, with voluntary assistance from a fellow prisoner paralegal, Kevin Donald Pope, NDOC # 71628, and files this complaint for monetary damages, a temporary restraining order, injunctive and declaratory relief as aforesaid.

NATURE OF CAUSE OF ACTION

As alleged more fully in detailed particularity below, this is an action by a state prisoner under 42 U.S.C. § 1983, 1985, 1986, and Title II

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[1]The plaintiff is an indigent Pro Se litigant and prisoner who suffers from several qualified disabilities, namely: 1) A disabling mental impairment due to seven (mini) strokes caused from a condition commonly known and recognized by the medical profession as carotid stenosis; 2) A hearing impairment, which for all practical intents and purposes, render him legally deaf in the absence of high quality hearing aids being made available to him for regular use; and 3) A cataract in the left eye which impairs his vision by limiting the ability to focus the eye as well as having an abherent effect of cross-eyedness and double vision when not looking straight ahead.

In the absence of any alternative means of obtaining legal assistance by which to assert his right to "adequate effective and meaningful" court access and thereby challenge existing unlawful and willfully oppressive conditions of confinement which violate fundamental constitutional protections and basic human rights, Mr. Lancaster has sought as a matter of right, and obtained the voluntary assistance of a fellow prisoner who is willing to assist him in drafting the instant Fourth Amendment complaint Sub Judice. Bounds v. Smith, 43 U.S. 817, 821, 97 S. Ct. 1491 (1997). The core holding in Bounds wherein the Supreme Court has stated, "it is now established beyond doubt that prisoners have constitutional right of access to the court," and that access must be "adequate, effective, and meaningful" was affirmed in Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174, and 135 L. ed 606 (1996). Additionally, the court has held that prison authorities may not prohibit prisoners from helping each other with legal matters unless they provide reasonable alternative forms of assistance Wolff v. McDonald, 418 U.S. 539, 578, 79, 94 S. Ct. 2963 (1974)., Johnson v. Avery, 393 U.S. 483, 490(1969) also see, N.D.O.C. administrative regulation 722, et seq. In context of a case involving a state prisoner seeking appointment of counsel in Federal Habeas Corpus proceedings, the Honorable Edward C. Reed, U.S. District Judge, posits gratis dictum, in footnote 21, "The LeGrand affidavit #10. It is not clear whether the respondents contend that the [contingent possibility] that an inmate may find a legally trained inmate to provide meaningful access to the courts. The court trusts that the adequacy of constitutional protections at the institution does not hang by such a gossamer." Koerschner v. Warden, 508 F. Supp. 894, 860, 862 (D. Nev. 2007). It appears at least in the instant case the "adequacy of constitutional protections at the institution does . . . hang by such a gossamer" as the record in these civil rights proceedings attest by the court requiring the plaintiff to file a Fourth Amended Complaint in order to cure the deficiencies noted in prior orders entered regarding the three previous attempts made by Mr. Lancaster to draft and file an acceptable complaint in his own hand. It should be further noted that the paralegal assisting Mr. Lancaster has already been threatened twice with being subjected to discipline and locked up in segregation Unit 7 for doing legal typing for Mr. Lancaster, as well as being prohibited from helping the plaintiff or any other inmate with legal typing.

Up to this point in time, Mr. Lancaster has made what might best be characterized as an admirable, if not a heroic, effort to assert his rights and obtain appropriate judicial relief, despite his severe mental and physical disabilities. He has done so, not only with no real assistance being provided by the institution, but rather has overcome impediments that exist in daily attempting to access the law collection and available resources in place at the NNCC law library. The plaintiff has persisted in his efforts, undaunted, to bring to light travesty of justice that has occurred as a result of his disabilities and the official failure to recognize and provide reasonable accommodations for his disabilities. The fabrication of a criminal case against the plaintiff by police, prosecuting authorities, defense attorneys, and the state courts was due to the plaintiff's disabilities, i.e., mental impairments due to multiple strokes (which defendants knew or should have known raise questions concerning plaintiff's competency), visual impairments caused by cataracts in both eyes, and acute hearing disability (plaintiff was legally deaf at all times relevant herein). This has resulted in an ongoing pattern of practice of irrational disability discrimination that onerously affects all aspects of the plaintiff's life, causing the plaintiff to suffer irreparable physical harm and damage, as well as the conviction and punishment of one who is actually innocent.

of the Americans With Disabilities Act of 1990 (ADA), 104 Stat. 337, as amended 42 U.S.C. § 12131, et seq., (2000) ed. And Supp. II, alleging inter alia:

1) Irrational disability discrimination as a matter of official unwritten policy during a wrongful arrest. Attributable, as a direct or proximate cause, to a lack of adequate police training and therefore a failure to recognize and provide reasonable accommodations for plaintiff's apparent severe disabilities in the course of conducting a criminal investigation, interrogation, and arrest, causing plaintiff to suffer greater injury or degradation in that process than other arrestees, in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada.

2) Irrational disability discrimination due to a failure of defendant jail officials to adequately screen in hiring, train, supervise, and discipline subordinate jail personnel. This resulted in failure to recognize and provide reasonable accommodations for plaintiff's severe disabilities while housed in pretrial and post trial detentive custody for 47 days in the Washoe County Detention Center (jail) Parr Boulevard. Plaintiff was excluded from participating in and receiving the benefit of services, programs, and activities to which he would otherwise benefit as an entitlement, but for his disabilities including, but not limited to: Denial of necessary medical care and/or deliberate indifference exhibited by named jail officials and employees towards plaintiff's serious medical needs and intentional delay or denial of important prescribed treatment and medication, as well as denial of effective communication with immediate family members, friends, bondsmen, and attorneys in violation of the First, Fourth,

Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada, Art. 1, §§ 1, 4, 6, and 8.

3) Irrational disability discrimination and failure to provide reasonable accommodations for plaintiff's physical and mental disabilities by named defendants. This resulted in denial of plaintiff's right to adequate, effective, and meaningful court access during state court criminal proceedings initiated against plaintiff in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada, Art. 1, §§ 1, 4, 6, and 8.

4) Plaintiff further alleges that a conspiracy existed as a matter of official unwritten policy and practice from the inception of the criminal investigation and prosecution initiated in Justice Court of Reno Township case number 02-5108 and Second Judicial District Court of the State of Nevada case number CR 03P0255, to overcharge plaintiff with crimes for which there existed no reliable direct or circumstantial evidentiary basis in either fact or law. They thereby obtained a false or fabricated conviction, which deprived plaintiff of equal protection of the laws and equal privileges under the laws. Other named defendants, having power to prevent or aid in preventing commission of the same, neglected to do so by indifference, an invidious animus, by acquiescence or giving tacit approval of the conspiracy to falsely convict, for self-serving reasons of insular self-interest and political expedience in disposing of an unwanted case, and for the appeasement of an irate and incensed public spirit existing in the community against such crimes, in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments

to the Constitution of the United States and the corresponding provisions of the Constitution of the state of Nevada.

5) Finally, alleging that named defendant state government officials and prison authorities within the Nevada Department of Corrections have put in place and enforce an official unwritten policy, as a matter of practice, of condoning the routine denial of necessary medical care, as well as engage in an ongoing pattern of practice of exhibiting deliberate and callous indifference to serious medical needs of the plaintiff. This includes, but is not limited to, the intentional delay and denial of important prescribed diagnostic attention, (medical specialist recommended heart related surgical procedures, medications, and other treatments (rehabilitative physical therapy), in violation of the Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and the corresponding provisions of the Constitution of the State of Nevada, Art. 1, § 4, 6, and 8.

Plaintiff challenges the named defendants failure by act or omission to uphold the laws and protected rights and privileges of the plaintiff as given, and requests this honorable court declare the unlawful acts or failures to act on the part of the named defendants, as alleged in the instant complaint, to be in violation of the Constitution and laws of the United States and the State of Nevada and enjoin the defendants from any further or other such acts and/or omissions, which run afoul of the respective federal and state constitutional provisions, laws, and protected rights and privileges retained by the plaintiff.

Jurisdiction & Venue

1. This is a civil action authorized by 42 U.S.C. Sections 1983, 1985, 1986, and the Americans with Disabilities act of 1990, § 201, et. Seq., 42 U.S.C. §12131, et. Seq., to redress the deprevation, under color of state law, or rights secured by the Constitution of the

United States. The court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 (a)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. Sections 2201 and 2202. Plantiff's claims for injunctive relief are authorized by 28 U.S.C. Sections 2283 & 2284 and Rule 65 of the Federal Rules of Civil Procedure.

2. The court has supplemental jurisdiction over the Plantiff's state law tort claims under 28 U.S.C. § 1367.

3. The United States District Court for the district of Nevada is an appropriate venue under 28 U.S.C. section 1391 (b)(2) because it is where the events giving rise to the claims stated herein occurred.

II. Parties

4. Plantiff, Doyle Dolen Lancaster, is and has at all times mentioned herein, been either held under custodial constraint during an interrogation and subsequent arrest by the Reno police department, held in detentive custody of the Washoe County Sheriffs Office at the Washoe County detention Center (jail) Parr Boulevard, while awaiting bail and further proceedings on a criminal complaint in the aforementioned cases, or a prisoner of the State of Nevada in the custody of the Nevada Department of Corrections. He is currently confined in the Northern Nevada Correctional Center, in Carson City Nevada.

5. Defendant, Governor Kenny Guin, and his successors in office and those persons acting under his direction or their successors in their respective official capacities, is and was at all times mentioned herein the Governor of the State of Nevada. As Governor and chief executive of the State, he is responsible for the overall operation of the various departments of t State Government under his direct authority and control as well as authority deligated to

subordinate heads o those departments including the Nevada Department of Public Safety and the Nevada Department of Corrections. Defendant Kenny Guinn is being sued in his official capacity.

6. Defendant, Frankie Sue Del Papa, and her successor Catherine Cortez Masto, at al times mentioned herein are or were Attorney Generals of the State of Nevada. As the Attorney General and chief-law-enforcement officer of the State Government, as such, she is responsible for carrying out and enforcing the respective Federal and State Constitutions and laws as well as upholding and enforcing the laws governing and respecting the soverign rights retained by all citizens of the United States and the State of Nevada. Defendant Del Papa and her successors in office and agents are sued in their official capacity.

7. Defendant, George Togliatti, and his successor in office Jerald Hafen are or were at all times mentioned herein the director of the Nevada department of Public Safety. The Nevada department of Public Safety is vested with authority to implement and enforce the laws governing Presentence Investigation Reports requested, and produced at the behest of the district courts in criminal cases. Defendant Togliatti and his successor in office and agents are sued in their official capacity.

8. Defendant, Amy Wright, and her successor in office Bernard W. Curtis, are and were at all times mentioned herein: The Chief of te Parole and Probation Division of the Nevada Department of Public Safety; The Parole and Probation Division is vested with authority to carry out and enforce the laws governing Presentence Investigation Reports generated at the behest of the District courts

in criminal cases. Defendant Wright and her successor in office are sued in their official capacities.

9. Defendant, James W. Roundtree, is employed by the Division of Parole and Probation of the department of Public Safety who is at all times mentioned herein, held the position of Parole and Probation Officer II. Defendant Roundtree is vested with legal powers and duties to investigate all case refered to him by the chief Parole and Probation officer, or by any court including but not limited to the 2nd. Judicial District Court, Department III, in which he is authorized to serve, and to make such reports in writing as the court or the chief Parole and Probation Officer may require including the Presentence Report (PSI #124420), dated February 28, 2003, produced at the behest of the Honorable Jerome Polaha, Dept. III, 2nd. Judicial District Court, in case No. CR03-0255. Defendant, Roundtree is sued in both his individual and official capacity.

10. Defendant, Howard Rigdon, is a unit manager of the Carson City District Office of t Division of Parole and Probation of the Department of Public Safety who, at all times mentioned herein, held a supervisory position within the Division of Parole and Probation of the Department of Public Safety. Defendant Rigdon is vested with the legal powers and duties to supervise all Probation and Parole Officers under his direct delegated authority in the investigation of all cases refered to him by the chief Parole and Probation Officer, or by any court in which he is authorized to serve and to review and approve such reports in writing as t court or the chief Parole and Probation Officer may require including the Presentence Report (PSI #124420), dated February 28, 2003, produced at the behest of the Honorable Jerome Palaha, Dept III, 2nd. Judicial

district Court, in case number CR03-0225. Defendant Rigdon is sued in both his individual and official capacity.

11. Defendant, Michael Haley, is the Sheriff of Washoe County and custodian of Washoe County Detention Center (Jail). He is legally responsible for the operation of Washoe County Detention Center and for the welfare of all inmates, pretrial detainees, and sentenced prisoners awaiting transport to state prisons. Defendant Haley is sued in his individual and official capacity.

12. Defendants, John Doe County Jain Officials, were/are, at all times mentioned herein, line staff, supervisory, or administrative personel employed at the Washoe County Detention Center (Jail)and vested with the authority and duty in their respective capacities, to enforce the laws and policies governing the care, custody, control treatment and welfare of all inmates in their charge. Defendants John Doe County jail officials are sued in their individual and official capacities. The official identities and names of said John Doe County Jail officials will be provided based upon anticipated-accellerated-discovery and inspection.

13. Defendant, John Doe and Jane Doe County Government Officials, were/was, at all times mentioned herein, members of the Board of County Commissioners of Washoe County who are responsible for building, inspecting, repairing and maintenance of the Washoe County detention center (Jail), Parr Boulevard, and the treatment and condition of prisoners housed in the county jail. Defendant John Doe and Jane Doe County Government Officials are sued jointly and severally in their official and individual capacities. The official identities and names of said John Doe and Jane Doe County government officials will be provided based upon anticipated accelerated-discovery and inspection.

14. Defendant, John Doe County Comptroller, is a public officer employed by the Board of County Commissioners of Washoe County who, at all times mentioned herein, was charged with duties in relation to the fiscal affairs of same, including but not limited to making budgetary request and disbursement of county revenues. Defendant, John Doe County Comptroller is sued in his official capacity. The official identity and name of said John Doe County Comptroller will be provided based upon anticipated-accelerated-discovery and inspection.

15. Defendant, Michael Poehlman is chief of the Reno Police Department. The Reno Police Department is vested with authority to enforce the law, including but not limited to, upholding and respecting the fundamental rights of a criminally accused during the investigation of allegations that a crime has been committed, under the Constitution and laws of the United States and corresponding provisions of the Constitution of the State of Nevada. Defendant Poehlman is sued in his official capacity.

16. Defendant Tom Broom is a Detective of the Reno Police Department who, at all times mentioned herein, was vested with authority to enforce the laws of the State of Nevada, investigate crimes and detect criminals, and to uphold and respect the fundamental rights of all citizens within his jurisdiction under the Constitution and the laws of the United States and corresponding provisions of te constitution of the State of Nevada. Detective Broom is sued in his official and individual capacity.

17. Defendant John Doe Detective is a police officer holding the rank of detective with the Reno Police Department who, at all times mentioned herein, was vested with the authority to enforce the laws of the State of Nevada, investigate crimes and detect criminals, and

to uphold and respect the fundamental rights of all citizens within his jurisdiction under the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada. Defendant John Doe Detective is sued in his official and individual capacity. The official identity and name of said John Doe Detective will be provided upon anticipated-accelerated—discovery and inspection.

18. Defendant John Doe Patrol Officer is a police officer with the Reno Police Department who, at all times mentioned herein, was a patrolman and law enforcement officer sworn to enforce the laws of the State of Nevada, and to uphold and respect the fundamental rights of all citizens within his jurisdiction under the Constitution and laws of the United States and corresponding provisions of the Constitution of the State of Nevada. Defendant John Doe Patrol Officer is sued in his official and individual capacity. The official identity and name of said John Doe Patrol Officer will be provided based upon anticipated-accelerated—discovery and inspection.

19. Defendant Richard A. Gammick, is the District Attorney of Washoe County who at all times mentioned herein, was the chief law-enforcement officer prosecuting crimes for the State of Nevada in and for Washoe County, as well as charged with the legal responsibility to perform such other duties as may be required of him by law, including an overriding duty in a criminal case to seek justice. Defendant Gammick is sued in his individual and official capacity.

20. Defendant Kelli Anne Viloria is or was at all times mentioned herein a Deputy District Attorney of Washoe County, who was authorized to transact all official business relating to her duties

of office to the same extent as her principles and perform such other duties as the District Attorney may from time to time direct and to carry out the official policies of the office of the District Attorney of Washoe County by which the deputy district attorney is employed. Defendant Viloria is sued in her official and individual capacities.

21. Defendant David Clifton is or was a Deputy District Attorney of Washoe County who, at all times mentioned herein was authorized to transact all official business relating to his duties of office, to the same extent as his principles and to perform such duties as the District Attorney may from time to time direct and to carry out the official policies of the office of the District Attorney of Washoe County by which the Deputy District Attorney is employed. Defendant Clifton is sued in his official and individual capacities.

22. Defendant Joseph Plater is or was a Deputy District Attorney of Washoe County who, at all times mentioned herein, was authorized to transact all official business relating to his duties of office, to the same extent as his principles and to perform such other duties as the District Attorney may from time to time direct and to carry out the official policies of the office of the District Attorney of Washoe County by which the Deputy District Attorney is employed, Defendant Plater is sued in his official and individual capacity.

23. Defendant Lee Hotchkin is an Attorney at law, who, at all times mentioned herein, was the defense counsel of record for the Plaintiff and a sworn officer of the court, and as such had a professional responsibility and owed a legal duty to vigorously assert, protect and preserve the lawful rights and interest of his client, while the plaintiff was undergoing criminal prosecution, in

an effort to win the case. Defendant Lee Hotchkin is sued in his individual capacity.

24. Defendant David Houston an Attorney at law, who, at all times mentioned herein, was the defense counsel of record for the Plaintiff and a sworn officer of the court, and as such had a professional responsibility and owed a legal duty to vigorously assert, protect and preserve the lawful rights and interest of his client, while the plaintiff was undergoing criminal prosecution, in an effort to win the case. Defendant David Houston is sued in his individual capacity.

25. Defendant Paul Quade an Attorney at law, who, at all times mentioned herein, was the defense counsel of record for the Plaintiff and a sworn officer of the court, and as such had a professional responsibility and owed a legal duty to vigorously assert, protect and preserve the lawful rights and interest of his client, while the plaintiff was undergoing criminal prosecution, in an effort to win the case. Defendant Paul Quade is sued in his individual capacity.

26. Defendant Jerome Palaha is a District Court Judge of the 2nd Judicial District Court of the State of Nevada, in and for the County of Washoe who, at all times mentioned herein, was the presiding Judge in Department III, charged with administering and deciding questions of the law or exercising discretion as the arbiter of justice in each cause properly before the court and sworn to uphold the respective Federal and State constitutional provisions and rights of the parties over which the court has obtained competent jurisdiction, including case number CR-03-0255 in which the plaintiff underwent criminal prosecution. Defendant Palaha is sued in his individual and official capacities.

27. Defendant Kenny Guinn and his successor in office Jim Gibbons, respectively, past and present President of the Board of State Prison Commissioners who, at all times mentioned herein, were vested with legal powers and duties, inter alia, to prescribe regulations for carrying on the business of the Board and Department, to review and pass on rules and regulations I light of their experience, and knowledge of public affairs, social conscience and expertise in accordance with guiding principles of law, and to delegate t duties of the Board of the State Prison Commissioners to subordinate authorities. Defendants Guinn and Gibbons are sued in their individual and official capacity.

28. Defendant Ross Miller is the Secretary of State and Secretary of the Board of State Prison Commissioners who, at all times mentioned herein, was vested with the legal duty and responsibility to keep full and correct records of all the transactions and proceedings of the Board and to act as a voting member of the Board for determination and disposition. Ross Miller is sued in his individual and official capacity.

29. Defendants Frankie Sue Del Papa and Catherine Cortez Masto, past and present members of the Board of State Prison Commissioners who, at all times mentioned herein, were vested with legal powers and duties, inter alia to prescribe regulations for carrying on the business of the Board and Department, to review and pass on rules and regulations in light of their expertise, in accordance with guiding principles of law, and to delegate the duties of the Board of the State Prison commissioners to subordinate authorities. Defendants Del Papa and Masto are sued in their individual and official capacities.

30. Defendants Jackie Crawford and her successor in office Howard Skolnick, respectively, the past and present Director of the Nevada Department of Corrections who, at all times mentioned herein, were vested with the legal duties and responsibilities for the supervision, custody, treatment, care, security and discipline of all offenders under their jurisdiction; the establishment of regulations with the approval of the Board and to enforce all laws governing the administration of the Department and the custody, care, and training of offenders; and to take proper measures to protect the health and safety of the staff and offenders in the institutions and facilities of the Department. Defendants Crawford and Skolnick are sued in their individual and official capacity.

31. Defendants Ted De'Amico and Robert Bannister, past and present designated Medical Directors of the Nevada Department of Corrections, respectively, who, at all times mentioned herein, were vested with legal authority to act in the name of the Director and by his authority to carry out such administrative and other duties as assigned to them, such as granting or withholding approval of an offender being taken outside of an institution or facility, when necessary for medical evaluation or treatment and whether an offender will receive a course of treatment indicated by a contract or other health care professional in a specialized area of medical practice, as well as a legal duty to provide for necessary medical care and humane treatment of offenders within the Department. Defendants De'Amico and Bannister are sued in their individual and official capacities.

32. Defendant Donald Helling is a former Warden of the Northern Nevada Correctional Center (NNCC), and presently serves as Assistant Director of the Department of Corrections who, at all times

mentioned herein, while serving in the capacity of warden was responsible to the Director for the administration of NNCC, including the execution of all policies and the enforcement of all regulations of the Department pertaining to custody, care and training of offenders under his jurisdiction, as well as the screening in hiring, training and discipline of subordinate administrative, supervisory, and line staff correctional personnel. Defendant Helling is sued in his individual and official capacity.

33. Defendant James Benedetti is the Warden and former Associate Warden of Programs (AWP) at NNCC, who at all times mentioned herein, while serving in the capacity of AWP at NNCC was responsible for administering all programs including the provision of health care programs, and the execution of all policies and the enforcement of all regulations of the Department pertaining to custody, care and training of all offenders housed by the Department at NNCC. Defendant Benedetti is sued in his individual and official capacity.

34. Defendant Tony Corda is the Associate warden of Programs at NNCC who, at all times mentioned herein, is responsible for administering all programs including the provision of health care programs, and the execution of all policies and the enforcement of all regulations of the Department pertaining to custody, care, and training of all offenders housed by the Department at NNCC. Defendant Corda is sued in his individual and official capacity.

35. Defendant John Doe Members of the NDOC Medical Utilization Review Committee who, at all times mentioned herein, are responsible for determining which offenders will or will not receive diagnostic attention and treatment in response to serious medical needs and for implementing an unwritten policy as a matter of practice of denying necessary medical care. Plaintiff will identify and name said John

Doe Members of the NDOC Medical Utilization Review Committee based upon anticipated accelerated discovery and inspection.

36. Defendant John Perry is the Director of Nursing at the Regional Medical Facility located on the NNCC compound who, at all times mentioned herein, is a medical administrator generally responsible for ensuring the provision of medical care to prisoners and specifically for scheduling medical appointments outside the correctional center when an offender needs specialized treatment or evaluation. He is sued in his individual and official capacity.

37. Defendant Robert P. Stuyvesant, M.S.W., is a mental health expert who was hired by defense Attorney David Houston, Esq., to perform a Psychosexual Evaluation on Plaintiff and and Report on his findings, in Accordance with Nevada Law, for purposes of sentencing. He is sued in his individual capacity.

38. The Defendants State of Nevada, Nevada Department of Corrections, Washoe County, N.V., And City of Reno, N.V., are all indispensable parties to this action, as the Alleged 8th Amendment §1983 claims brought Against state, county, and city Agents herein Also independently violate §1 of the Fourteenth Amendment and therefore violate Title II of the ADA, as well. See Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 463, 67 S.Ct. 374, 91 L.Ed. 422 (1947)(The Due Process Clause of the Fourteenth Amendment incorporates the Eighth Amendment guarantee Against Cruel and unusual punishment). See Also, U.S. v. Georgia, 126 S.Ct. 877, 880-884 (2006).

39. All defendants have Acted And continue to Act, under color of state law At All times relevant to this complaint, except As to those named defendants charged pursuant to §§ 1985 And 1986, respectively.

COUNT I

The following civil rights has been violated:

Irrational disability discrimination as a matter of official unwritten policy during a wrongful arrest. Attributable, as a direct or proximate cause, to a lack of adequate police training and therefore a failure to recognize and provide reasonable accommodations for plaintiff's apparent severe disabilities in the course of conducting a criminal investigation, interrogation, and arrest, causing plaintiff to suffer greater injury or degradation in that process than other arrestees, in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada.

1. Plaintiff alleges "irrational disability discrimination" and failure to provide reasonable accomodations during arrest, pre and post trial detentive custody, pretrial, plea, sentencing, and post conviction habeas corpus, as well as, Lozada Appeal proceedings, as will appear more fully herein the following. Title II of the ADA provides that "no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." §12132 (2000 ed.). A "qualified individual with a disability" is defined in the law as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of Architectural, [communication], or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." §12131(2). The Act defines "public entity" to include "any state or local government"

And "any department, agency, ... or other instrumentality of a state," §12131(1). This term includes state prisons. See Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 210, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998). Title II authorizes suits by private citizens against public entities that violate §12132. See 42 U.S.C. §12133 (incorporating by reference 29 U.S.C. §794(a)). (emphasis added). The history of mistreatment leading to Congress' decision to extend Title II's protections to prison inmates was not limited to violations of the Eighth Amendment. See Tennessee v. Lane, 541 U.S. 509, at 524-525, 124 S.Ct. 1978 (2004)(describing "backdrop of pervasive unequal treatment" leading to enactment of Title II); see also, e.g., Board of Trustees of Univ of Ala. v. Garrett, 531 U.S. 356, 391-424, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001)(Appendix to opinion of BREYER, J., dissenting)(listing submissions made to Congress by the Task Force on the Rights and Empowerment of Americans with Disabilities showing for example, that prisoners with developmental disabilities were subject to longer terms of imprisonment than other prisoners); 2 House Committee on Education and Labor, Legislative History of Public Law 101-336: The Americans with Disabilities Act, 101st Cong. 2d Sess., p. 1331 (Comm. Print 1990)(stating that persons with [hearing impairments] "have been arrested and held overnight in jail without ever knowing their rights nor what they are being held for"). And see, e.g., Vitek v. Jones, 445 U.S. 480, 100 S.Ct 1254, 63 L.Ed.2d 552 (1980)(procedural due process violations); May v. Sheehan, 226 F.3d 876 (7th Cir. 2000)(access to judicial process, lawyers, legal materials, and reading materials); Littlefield v. Deland, 641 F.2d 729 (10th Cir. 1981)(access to reading and writing materials);

Holley v. County of Erie, 776 F. Supp. 715 (W.D.N.Y. 1991)(Access to law library).

2. By enacting the ADA, Congress has "invoke[d] the sweep of congressional authority, including the power to enforce the Fourteenth Amendment . . . ." 42 U.S.C. §12101(b)(4). Additionally, the Act provides that "[a] State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this chapter." §12202. This latter statement is an unequivocal expression of Congress' intent to abrogate state sovereign immunity. See Board of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356, 363-364, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001); Accord U.S. v. Georgia, 126 U.S. 877, 878-79, 163 L.Ed.2d 650 (2006).

3. Mr. Lancaster has set forth herein specific facts which clearly show and establish that he is a qualified individual with a disability, in that he suffers from chronic sight, hearing, and mental impairments due to organic brain damage and other complicating medical factors; that he was either excluded from participation in or denied the benefit of some public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and that such exclusion, denial of benefits, or discrimination was by reason of the Plaintiff's disability. Moreover, the named defendant entities and their agents and employees, by reason of Mr. Lancaster's disabilities, either (1) excluded him from participating in or denying him the benefits of services, programs, or activities whose essential eligibility requirements he met, or (2) otherwise subjected him to discrimination. See Weinreich v.

Los Angeles Metro. Transp. Auth., 114 F.3d 976, 978 (9th Cir.), cert. denied, 522 U.S. 971, 118 S.Ct. 423, 139 L.Ed.2d 324 (1997).

11. Title II required Washoe County and the City of Reno to better train its officers (police) to recognize persons with hearing, mental, and other disabilities, and to investigate and arrest such persons in a manner reasonably accomodating their disability. See Gohier v. Enright, 186 F.3d 1216 (C.A. 10 (Colo.) 1999). The following facts and matters asserted herein clearly show and establish that neither Washoe County or the City of Reno complied with the time periods for achieving program accessibility, in compliance with Title II of the Americans with Disabilities Act of 1990. According to the Title II Technical Assistance Manual, Covering State and Local Government Programs and services, "II-5.6000 . . . Public entities must achieve program accessibility by January 26, 1992. If structural changes are needed to achieve program accessibility, they must be made as expeditiously as possible, but in no event later than January 26, 1995. This three-year time period is not a grace period; all changes must be accomplished as expeditiously as possible. A public entity that employs 50 or more persons must develope a transition plan by July 26, 1992, setting forth the steps necessary to complete such changes." Title II Technical Assistance Manual, 1994 Supplement, II-7.0000 Communications, Regulatory references: 28 CFR 35.160-35.164, II-7.1000 governing "Equally Effective Communications." A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others. . . . In order to provide equal access, a public accomodation is required to make available appropriate auxiliary aids and services where necessary to ensure

Effective communication." (p. 38) "ILLUSTRATION 2: Because of the importance of effective communication in State and local court proceedings, special attention [must] be given to the communication needs of individuals with disabilities involved in such proceedings. Qualified interpreters will usually be necessary to ensure effective communication with [parties], jurors, witnesses who have hearing impairments and use sign language. For individuals with hearing impairments who do not use sign language, other types of auxiliary aids or services, such as assistive listening devices or computer-assisted transcription services, which allow virtually instantaneous transcripts of courtroom argument and testimony to appear on displays, may be required." Additionally, as made clear in "ILLUSTRATION 3: A municipal police department encounters many situations where effective communication with members of the public who are deaf or [hard of hearing] is critical. Such situations including [interviewing suspects prior to arrest] (when an officer is attempting to establish probable cause); [interrogating arrestees]; and interviewing victims or critical witnesses. In these situations, appropriate qualified interpreters [must] be provided when necessary to ensure effective communications." Id. at p. 5. (emphasis added)

5. The facts and matters stated in the "BACKGROUND" that follows clearly show and establish that (1) plaintiff was and remains chronically disabled; (2) the named defendants knew or should have known that he was disabled; and (3) the defendants arrested Mr. Lancaster because the police conducting the initial interview under custodial constraints provided no reasonable accomodation to compensate for his hearing and mental impairments (disabilities), which enabled the police to

elicit untrue and misleading statements used to erroneously establish probable cause where none existed, which was only made possible due to Mr. Lancaster's disabilities and therefore his inability to fully form a conscious understanding of what was actually going on, what was being asked of him and for what purpose, in the absence of any essential auxiliary aids necessary in order to enhance his ability to hear and comprehend what was being asked of him and thus, to the extent possible, enable Mr. Lancaster to overcome somewhat his cognitive disability and respond honestly and appropriately under questioning during the police interrogation. Simply stated, the lost, misplaced, or destroyed tapes of the police interrogation of Mr. Lancaster would clearly establish that the police took full advantage of Mr. Lancaster's disabilities, in effect, the interrogators actually "put words in his **mouth**," knowing full well that he had a hearing impairment and mental disability. Had the police inquired, no doubt they would have been fully informed regarding Mr. Lancaster's qualified disabilities.

6. Additionally, the plaintiff wishes to lay the court's uncertainty as to whether or not he is seeking speedier release from prison through this action to rest. In this regard, Mr. Lancaster would aver and assert that his ADA claims do not necessarily imply the invalidity of his continuing confinement. See Bagovich v. Sandoval, 189 F.3d 999, 1004 (9th Cir. 1999); Accord, Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002). (Doc.# 9-1, at p. 3, ¶ 3) In fact, Mr. Lancaster is presently litigating his Lozada Appeal and habeas grounds in the appropriate state court judicial forum.

Background

In actuality, this case evolved from an incident sparked by a grandmother's jelous rage and distorted perception of unrequited love. A case which developed as a result of the granddaughter Tessa, showing great love and affection towards her grandfather, in a very normal and open fashion, which displays of affection were evidently perceived and taken in the wrong way by the grandmother, who then became frustrated and confrontational towards Tessa, and had , in the past, accused the granddaughter of being involved in sexual misconduct or improprieties with her grandfather. The accusations were denied at least three times, on three seperate occaisions by Tessa, and on one prior occaision by the grandfather.

These denials culminated on or about the 14th of September, 2002, Gladys who evidently, disbelieving the denials, confronted Tessa with harsh accusatory words. Then out of apparent self righteous indignation and jelous rage, she started slapping Tessa about the head and face, and Tessa while retreating backwards with her hands covering her face, tripped and fell back on the couch, Gladys then fell on top of her putting both hands around Tessa's throat as if to throttle her.

Immediately following this incident, Gladys told Tessa that she had to leave the house right than, She said that Tessa had to go, but her younger brother Luke could stay, if he wanted to.

As it happend, Gladys Threw Tessa out of the only home the girl had known for more than half of her young lifetime, and her brother Luke chose to go with her after witnessing the entire fracas that had occurred between grandma and Tessa in the living room of the Lancaster home, around 7:00 or 8:00 o'clock in the evening. At the time these events occurred, Mr. Lancaster was standing approximately fifteen feet away, behind the breakfast counter in the kitchen area, and because of his mental impairment and hearing disability Doyle understood little of what was actually being said.

Based upon information and belief, on or about September 15, 2002, when Tessa returned to grandma Gladys and grandpa Doyle's house to pick up her clothes and other personal belongings, while her grandpa was at work, Gladys accused Tessa, again, of sexual improprities, To appease her grandmother, with hopes of resolving the situation and being able to move back home to her room, Tessa told

her grandma that something improper had happend. Despite the fact that Tessa had previously denied any sexual impropriety between her and her grandfather, Gladys was altogether too readily willing to believe that some sexual improprieties between grandpa Doyle and Tessa occurred. After that nothing could persuade Gladys to change her mind, because she had always been very confrontational and stubborn when a real or imagined problem arose in the family or in her relationship with her husband Doyle. When Doyle came home from work that day, Gladys confronted him with what Tessa had told her, Gladys stated that Tessa had confided in her, that some things had happened between her and grandpa.

On or about the 12th or 13th of September, 2002, Doyle's brother Mack Lancaster died and the family attended the funeral and buriel services in Likely, California, on the 18th of September,2002. Doyle was devastated by the loss of his brother as they were very close.

Following his return home from burying his brother, Doyle's wife Gladys called Fred Muster, a former pastor and long time friend, whom the family went to and relied on whenever counselling or spiritual advice was needed. Gladys insisted that Pastor Muster be brought in and informed of the matter of Gladys's suspicions of improprieties and Tessa's supposed confession to her grandmother that some sexual improprieties had occurred between her and her grandfather Doyle.

To illustrate the extent of trust placed by Mr. Lancaster and his family in Pastor Fred Muster a regression is necessary, here, going back in time to a series of events that occurred on 1973, when Gladys Lancaster ran off to Mexico to live with a young hispanic male named Alvino Morales, Who had just turned seventeen years of age at the time.

When the incident occurred Mr. Lancaster was working long hours seven days a week, except to go to church and on occasion taking the day off from work on Sundays. The family regularly attended Calvary Christian Center Church, in Fortuna, California, where Fred Muster was the resident Pastor.

In 1973, Mr. Lancaster had just completed construction on his new home and hired Alvino Morales to help do the landscaping. Gladys Lancaster's older brother Larry had met this young man in Mexico, and being very likeable and hardworking, Larry had brought Alvino

back to Fortuna to work for him, As work slaked off for Larry Willey, who was in the seasonal business of cutting cord wood for sale, during a time when both Alvino and Larry were residing with the Lancaster family, Doyle put Larry to work driving truck and he put Alvino to work doing landscaping around the new Lancaster home, for which Alvino was paid quite well.

During this time, Mr. Lancaster had several of his logging operations going on that required his oversight throughout the day.

While at one of these job sites, approximately one hour distance from his home, Gladys and Alvino showed up one day to visit her older brother Larry Willey, which Doyle thought was rather odd. During this unusual visit Gladys and Alvino spoke with Larry Willey and told him that they were having an affair, Doyle later learned what was said and that Larry told Gladys that he was going to inform Doyle what she had told him, because Larry was very upset with the fact that his sister and the young man he had befriended had betrayed Doyle whose roof they were living under. Gladys asked her brother not to tell Doyle about the affair, then, as she intended to tell him herself that evening.

When Gladys and Alvino left the job site that day, Gladys took Alvino over to Lyle Rock's home and left him there. That same night, Gladys told Doyle about the affair she had been having with Alvino Morales for the past three months. It seemed as though the whole family knew what had happend within the hour.

Gladys's brothers were very upset about the whole affair and took Alvino Morales to the Arcata-Eureka Airport and put him on a plane to San Francisco where Alvino was put on another plane to Mexico.

Even though Doyle had nothing to do with sending Alvino back to Mexico, Gladys was blistering mad and insisted that she was going to Mexico to be with Alvino no matter what. When Gladys's older brother Walter Willey learned of her intention to travel to Mexico to find Alvino Morales he called the Fortuna Police Department and told them to lock her up until she regained her senses. The Fortuna Police told Walter Willey that they had no legal reason or jurisdiction to put Gladys in jail.

Gladys took a pickup truck and withdrew all the money that she could from the joint bank account and left home, bound for Mexico,

while nearing San Francisco she called Larry Willey and told him she was on her way to Mexico to find her lover Alvino. Since she was hell bent on going, Larry was persuaded to accompany Gladys, to watch over her, because she spoke no spanish, whereas, he did speak some spanish.

Gladys and Larry travelled 800 miles, from the border into the interor of Mexico, to the town where Alvino lived, Larry stayed there with Gladys for a couple of days. Realizing that she fully intended to stay, Larry returned to Fortuna.

When Gladys abandoned Doyle and her family, she left her sons Jeff who was four years old and her other boy David who was eight, at the time. Her daughter Susan was age 15 and in boarding school, at the Canyonville Christian Academy, in Canyonville Oregon. Her oldest daughter Barbara was 18 and still living at home with her father Doyle.

A couple of months after she left home, Gladys called her brother Gail in Fortuna, California, and informed him that she missed her kids and wanted to come to see them. The family had a suspicion that she might be coming to take the boys back to Mexico. So Doyle's sister Donna and her husband Lester Choate, who were taking care of the boys, hid them in a motel in Eureka.

Meanwhile, Doyle was in Indio, California, getting ready to cross over into Mexico in search of Gladys, when he learned over the phone that she was returning to see the kids.

At this juncture, Doyle drove to LAX and boarded a plane to go home. He left his truck in L.A. and on arrival in San Francisco boarded another plane for the Arcata-Eureka airport. After boarding the plane for Arcata and awaiting takeoff, Doyle discovered that Gladys was boarding the same late Friday evening flight for Arcata-Eureka airport at Mc Kinleyville California. She took a seat two rows in front of him, totally unaware that Doyle was on the same plane.

Doyle's sister, Donna, took Doyle to the undisclosed Motel where he spent the week end with the boys and his sister and her husband. Gladys called her brother Larry who came and got her and took her home. A couple of days later pastor Fred Muster, who counselled with Doyle several times while Gladys was away, had

promised Doyle that he would see the family reunited together again. Fred Muster was in constant contact with the family during this time and arranged a meeting, together with Doyle and Gladys in their home. After much counselling, she promised that she wouldn't try to take the kids to Mexico when she returned.

At this time, Gladys expressed her intention of not getting back with Doyle then, however, both Gladys and Doyle agreed to maintain an amicable relationship apart, for the sake of the children.

Gladys returned to Mexico with her daughter Barbara. Only after she promised to come back to take care of the boys did Doyle permit Barbara to go along with her mother. Doyle even provided them with their new Oldsmobile Tornado to safely make the trip there and back.

When Gladys and Barbara returned, about three weeks later, Doyle rented a house in Redding California, for Gladys and the boys to live in , and the boys could go to school. Everyone in Fortuna knew what Gladys had done, so it was decided that it would be best if she lived in Redding which was four hours from Fortuna, to spare her and the boys any public embarrassment.

After Gladys went to Mexico, Doyle called his attorney, Francis B. Matthews, known as "moose," and told him what was going on with Gladys leaving, and "Moose" advised Doyle to seek a devorce which he did, having "Moose" file a disllusion of marriage

After Gladys returned and was living with the boys in the home rented for her by Doyle, in Redding California, Doyle spoke with "Moose" again, Doyle asked "Moose" to stop the divorce, however, "Moose" advised him to proceed with the divorce, in effect, stating: "Doyle. If she did it once, she'll do it again, and it will be worse next time.

In spite of what happend after 20 years of marrage, as depicted in the foregoing paragraphs, Doyle has always felt that Gladys was basically a good woman, mother, and loving wife. The couple shared many good years together, until the events occurred which led to Doyle's unlawful conviction and imprisonment for life that could only have and, in fact was obtained due to Doyle's physical hearing and mental impairments, which gross'ly interfered with Doyle's

ability to fully understand and know what was actually going on throughout the various stages of the prosecution, beginning with pastor Muster's suggestion that Doyle go with him to the police for counselling.

When Gladys brought Pastor Fred Muster into this matter, Pastor Muster was informed by Doyle that he had done nothing wrong. at this juncture Doyle knew that nothing that had really occurred was the cause of Gladys being so irate. She had never layed hand on any of the children before. Nor had she ever flown off the handle and become both physically and emotionally violent towards anyone as far as Doyle was aware. The couple had been married and, for the most part, living a good life together for the better part of 49 years. Bearing in mind the aforementioned disabilities, Doyle was of a mind to try and appease Gladys by cooporating with her wishes. So he agreed to meet with Pastor Muster and without fully understanding the implications of what may have been said by Tessa to her grandmother he agreed that whatever she said was true.

Neither Tessa or her grandpa Doyle, thought that any of this misinformation would be shared beyond grandma and Pastor Muster.

It followed then that, when Fred Muster told Doyle and Gladys, that Doyle would not go to jail, because Pastor Muster had been involved with dozens of these type of cases as a Pastor in California, Doyle and Gladys both believed him and agreed that Doyle should accompany Pastor Muster voluntarily to the police station for counselling.

Thereafter, during the late evening of September 19th 2002, at approximately 10:30 or 11:00 p.m., Pastor Muster and a uniformed patrol officer in a marked black and white police car came to the house to pick up Doyle and take him to the police station. Although it was an ungodly hour, Doyle voluntarily went to the police station with Pastor Muster and the patrol officer. Had Doyle known then what he was in for on arrival at the police station he would not have gone voluntarily. It is noteworthy here that no arrest warrant was presented or discussed at the house.

On arrival at the police station, Doyle was driven inside a gate, into a secured police compound. He was then escorted directly inside to an interrogation room by detective Tom Broom. Pastor

Muster was not permitted to accompany Doyle when he was taken to an interrogation room which Doyle later learned was equipped with video tape and sound equipment.

In the beginning Detective Tom Broom and another officer were present. The interrogation that ensued took perhaps, two hours. Maybe longer. After a short while the other officer left the room and, Tom Broom continued asking Doyle questions. During the questioning by detective Tom Broom Doyle informed the detective several times that he could not hear what the detective was saying. After a while, another police officer believed to be a Sheriffs Deputy came into the room and stated that he was the arresting officer. Doyle had to ask this man several times what he was saying. Partly due to his hearing impairment and also disbelief because Doyle didn't know and didn't believe that he was there to be arrested. This officer apparently was not supposed to come into the room and make such a declaration because he was quickly ushured back out of the room, not to be seen again until the interrogation was concluded, at which time the same officer came into the room, put handcuffs on Doyle and transported him to the Washoe County Jail.

During the interrogation, Detective Tom Broom left the room several times, leaving Doyle by himself. At no time was Doyle ever read his Miranda rights or asked to sign a waiver card or form.

Much of what was said during questioning of Doyle by Detective Tom broom, was neither heard or understood by Doyle. Doyle does remember denying several things said by Detective Tom Broom because they were perposterous lies in the first place.

Doyle was merily trying to be cooporative with Detective Tom Broom and others who came and went during the interrogation to appease Gladys and pastor Muster, He didn't know what had actually been said by Tessa, and to this day doesn't know with certainty what was said.

Had any official, police or defense investigator spoken with Tessa and ask her if she believed any acts committed by her grandfather were committed "... with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child,..." which is what is required by law in order for a jury or court to make a finding that the accused " is

guilty of lewdness with a child." pursuant to NRS 201.230, there is no doubt that Tessa would have unequivocally answered that Doyle had never committed any such act against her person that could be construed as having such an intent. The thought of such an intention is repugnant to Doyle and entirely out of character.

ACTUAL TYPES OF CONDUCT THAT HAVE BEEN CONSTRUED AS AN OFFENSE AND UPON WHICH THE CONVICTION SUB JUDICE RESTS.

When the Lancaster's lived in Stead, Nevada, Tessa was thirteen and when Doyle came home from work he would sit down in the foyer, on the steps leading upstairs to take off his work boots upon entering the house. This was routine. Tessa loved her grandpa Doyle and was openly affectionate with her grandfather. And Doyle loved the attention and affection shown by Tessa. When he would come home and sit on the steps to take off his boots, Tessa would jump on his sholders and couldn't be put off unless Doyle reached back over his shoulder and tickle her pyayfully. This occurred many times, even when Doyle was tired and didn't want to be bothered with the playful antics of his granddaughter or anyone else after a long and hard days work hauling gravel, rock and sand.

Grandma was always a very staid and proper person, who showed little outward affection, even towards her own children. So the presence of Tessa and her brother Luke, in the Lancaster home, was refreshing from Doyle's perspective, after his own children had grown up and left home. Both Tessa and Luke were less subdued children, and openly affectionate, as children quite often are, For example, if grandpa Doyle didn't tuck the children in, and say good night, and in Tessa's case give her a hug, Tessa insisted on coming into Doyle and Gladys' bedroom for her good night hug and peck on the cheek from grandpa. As Tessa got older, it became apparent that the open display of affection between grandfather and granddaughter were disapproved by Tessa's grandmother Gladys.

At one point, and on several occaisions Doyle told Tessa that she needed to stop with her antics of jumping on his sholders when he got off from work and was sitting on the stairs taking off his boots, because she was going to get him into trouble. The trouble he was talking about was not with the law for doing anything wrong, but rather getting him into hot watter with his wife and her grandmother Gladys.

RECORD SUPPORTED HISTORY OF "IRRATIONAL Disability Discrimination"

The A.D.A., Americans with Disabilities Act, was enacted by congress to prevent Disability Discrimination, A.D.A. of 1990, 42 U.S.C. §§ 12101 thru 12131, § 201, 502; and 42 U.S.C. § 1983 civil rights act of 1964.

Early in 2003, following a stroke in February, 2003, Doctor Jeff Lovett, MD/RD, prescribed a Magnetic Resonance Imaging (MRI) test for Mr. Lancaster. This test reveald a medical condition known as "Critical Carotid Stenosis" and evidence of previous Lacunar Infarcts as well as a Lacuna hole the size of a golf ball in the right frontal lobe of Mr. Lancaster's Brain; Where memory and decision making brain cells are located. Carotid Endarterectomy surgery was performed in February, 2003 by Dr. Gomez, at St. Mary's Hospital, to correct the "Critical Carotid Stenosis" disclosed by the M.R.I.

Dr. Lovett, MD/RD of Spanish Springs Medical Group provided Mr. Lancaster with a letter pertaining to the above which states:

> **Mr. Lancaster had a Carotid Endarterectomy for critical Carotid Stenosis. He has M.R.I. evidence of previous Lacunar Infarcts (Mini Strokes). I believe these events have influenced Mr. Lancaster's thought processes and ability to make decisions.**

See a true and correct copy of letter dated and signed on May 1, 2003 by Jeff Lovett, MD/RD, appended hereto and incorporated herein by reference, marked **Exhibit A:**

Dr. Lovett's expert opinion is dated May 1, 2003, and was filed with the trial court on May 12, 2003. Thus, both trial defense counsel David Houston, Esq., and judge Jerome Palaha were cognizant of the defendant's significant physical and mental impairments.

The "Critical Carotid Stenosis" was apparently the result of injuries sustained by Mr. Lancaster during a logging accident in 1952, because soon after the accident he began having acute headaches, experiencing a great deal of anxiety and anguish, and temporary partial blindness.

Events alluded to in the previous paragraph would last approximately 20 to 30 minutes and would, sometimes, occur one after the other with a brief period of respite or, repeat periodically at any time of the day or night, even while sleeping, quite often awakening Mr. Lancaster. Many times episodes came daily, but seldom more

than a week apart. On rare occasions a month or two would pass without one of these episodic attacks. The torment of these episodic attacks lasted for more than fifty years, and until recent medical breakthroughs the medical profession could offer little help, didn't have a name for these attacks or know their cause. And thier cause is chiefly attributed to "Ischemia", a suppression of blood flow; in this case, constricted blood flow to the brain.

The "Critical Carotid Stenosis" led to a condition known as "Necrosis of the Brain", which means that Brain cells by the thousands, and tissue to die due to the lack of oxygen, which left a "Lacuna Hole" in the right frontal lobe of Mr. Lancaster's brain. as depicted by the M.R.I. causing the "Lacuna Infarcts" referred to by Dr. Lovett, MD/RD, Exhibit A.

The Ischemia, exacerbated by the onset of old age, natural plaque build-up and hardening of the arteries, a disease for treatment of which Mr. Lancaster now takes daily doses of prescribed medication,

were the cause of the "Transit Ischemic attacks" (T.I.A.'s) thus causing "Abulia", which is a condition that causes a concomitant loss of free will and ability to make decisions or to act independently; also known as "Abulla".

On August 16 2005 Mr. Lancaster was administered a hearing test by Jermy Jenkins, M.S. CCC/Audiologist-A-142, who produced an Audiometric report. See 8/16/2005 Audiometric report, appended hereto and incorporated herein by reference, marked, **Exhibit B.** Because Nevada Department of Corrections would only authorize one hearing Aid for Mr. Lancaster's left ear, or patients preferred ear, the cheapest prosthetic hearing aid available at a cost of $850.00, Mr. Lancaster had his wife Gladys Lancaster contact Jan Matthews, the claims adjuster assigned to administer his claim #NH115631 with the Calif. State Compensation Insurance Fund, who approved hearing aids at a cost of $2,500 each; (the best available), even with thoes hearing aids Mr. Lancaster's hearing impairment was little improved. It wasen't until April 4, 2008 that Mr. Lancaster was administered another Audiogram by Mark Weeks, CCC-A Ha552, at hearing care of Carson City, where he was returned on Monday, July 14, 2008 and provided with a set of hearing aids that compensate reasonably well under ideal conditions for his hearing loss due to impairment. Nevertheless, in

order for Mr. Lancaster to effectively hear and communicate, the person with whom he is communicating must be very close to him. See April 25, 2008 Audiogram, appended hereto and incorporated herein by reference, marked, **Exhibit C**. it may be worthy of note, to consider, that on August 16, 2005 Dr. Jenkins advised Mr. Lancaster that he can only understand 72% of what is made loud enough for him to hear in his right ear and 84% in the left ear. The most recent test results from the Audiogram administered by Dr. Weeks on April 25, 2008 indicate 72% in the right ear and 80% in the left ear **(ex. "C")** these hearing test results were obtained under ideal conditions, in a sound proof booth, by Mr. Jenkins (8/16/2005), and Mr. Weeks on (4/25/2008), respectively.

Even with the higest quality hearing aids, such as Mr. Lancater now possesses, he is still unable to hear and understand what is being said to him, unless, there is little or no background noise from any sourse.

During the August 16, 2005 testing, Dr. Jenkins informed Mr. Lancaster, in essence, that in addition to the severe hearing impairment and loss, the strokes he had were the probable cause of Mr. Lancaster's lack of ability to understand much of what is said loud enough to or around him during the normal course of his daily activities.

Additionally, Mr. Lancaster has a vision impairment, a cataract in the left eye which impairs his vision by limiting the ability to see and to focus the eye as well as having an abherent effect of cross-eyedness and double vision when not looking straight ahead.

The record also discloses that Detective Tom Broom was fully aware of Mr. Lancaster's severe hearing impairment and disability during Mr. Lancaster's interrogation by police during the late evening of the 19th and early morning hours of the 20th of September, 2002, Thus making Detective Broom's failure to read and have Mr. Lancaster sign a waiver of his Miranda rights, before conducting the custodial interrogation, which took place at the time of his arrest, a violation of Mr. Lancaster's right to be informed of his Miranda rights by police prior to initiating questioning.

Therefore, Mr. Lancaster's ability to participate fully, with all of his faculties intact, in the investigation and defense preparation of his case was severely limited, from the time of his arrest, throughout the entire prosecution, to the present.

For example, at the time of his arrest and as will appear more fully herein the following, Mr. Lancaster had a pair of hearing aids that for all practical intents and purposes were nearly useless. Even with the hearing aids in place Mr. Lancaster could not hear and distinguish what was being said to him unless the person speaking to him was located directly in front of and very close to him. Additionally, due to the severe strokes that Mr. Lancaster suffered, his ability to mentally process verbal input was extremely limited. These limitations upon Mr. Lancaster's ability to function, normally, were further aggrevated by stresses caused by confusion and frustration as a result of not being able to fully understand and participate, normally, in what was actually, or really going on during the time of his arrest and subsequent prosecution; these stresses, confusion and frustration further distorted his perception and diminished Mr. Lancaster's capacity to fully understand what was being said to or asked of him, and, ultimately, distorted and affected his answers under questioning during his interrogation and court proceedings, as well as, officials and others perceptions and interpretations of what was actually going on with respect to Mr. Lancaster's involvement or lack of any involvement in criminally culpable conduct in this case.

For example, a formal charge can only be brought by the filing of a criminal information or indictment when the State has produced "slight or marginal" evidence of a crime and reliable evidence that the accused is, likely, to have been the person who committed the offense charged, which would establish the corpus delicti, or body of the crime, as it were. In this particular case, there existed neither the actus reus (guilty act) or(wrong full deed), nor the mens rea (guilty mind) essential to form the corpus delicti of a crime which would properly form the basis of criminal liability on the part of Mr. Lancaster. Mr. Lancaster has always known that there was never any crime actually committed by anyone.

Moreover, as will appear more fully herein the following, Doyle was entirely unlearned in law and had no prior involvement or expierence in dealing with police authorities and the courts.

Based on information and belief, Doyle was informally charged, arrested, and placed in detentive custody during the wee early morning hours of September, 20, 2002.

While the named defendant police officers may have properly investigated And Arrested Mr. Lancaster with his disabilities for a crime unrelated to that disability, they failed to reasonably Accomodate Mr. Lancaster's disabilities in the course of conducting the investigation and Arrest, causing him to suffer greater injury or indignity in that process than other Arrestees. Had defendant Tom Broom And John Doe Detective and John Doe Patrol Officer recognized, Acknowledged, and reasonably accomodated Mr. Lancaster's Apparent disabilities during the interrogation, he would have been able to hear what was being said to and Asked of him, which would have enabled Mr. Lancaster to respond more Appropriately and correctly thus obviating any need for an Arrest due to lack of finding probable cause. See Gorman v. Barth, 152 F.3d 907, 912-13 (8th Cir. 1998)(holding such claim viable).

Additionally, inter Alia, based upon the forgoing facts and those facts discoverable based upon Anticipated discovery And inspection, Mr. Lancaster further Alleges ~~that~~ the named defendants, As will Appear more fully herein the following, were And Are culpable factors, in denying the right, to equally effective communications with the police and police investigators As communications with others pursuant to 28 CFR 35.160 - 35-164., As policy makers in their respective supervisory And administrative Capacities, due to their obdurate failure And refusal to implement express mandatory provisions of Title II of the ADA of 1990, for the protection of Americans with qualified disabilities, such as Mr Lancaster, And thereby said defendants

foster and maintain an unwritten policy as a matter of practice of denying individuals with disabilities who have become a criminal suspect undergoing investigation, custodial interrogation and/or arrest, reasonable accomodation for their physical or mental impairments that substantially limit one or more of the major life activities of such individuals, and apparently doing so with an invidious animus and contempt for the class of criminal suspects with qualified disabilities.

Equally as much, the Nevada laws in place for the protection of disabled suspects or arrestees are not complied with by line staff and supervisory police personnel of the Reno Police Department. At the time of his custodial interrogation by Defendant Detective Tom Broom and other John Doe defendants, and subsequent arrest, Mr. Lancaster was legally deaf and had been since the late 80's Mr. Lancaster's hearing impairment and mental disability would have been apparent to anyone who engaged verbally with Mr. Lancaster, in anything more than a greeting in passing, yet no reasonable accomodation to insure Mr. Lancaster's "right to equally effective communication" at the time of his arrest was made by any of the named defendants, despite the fact that Nevada law requires there must be no interrogation or taking of the statement of a person with a disability without the assistance of an interpreter or the knowing and voluntary waiver by the person with a disability executing a written statement indicating his desire not to be assisted. See NRS 171.1536; 171.1537; and 171.1538. Mr. Lancaster was not informed of his right to assistance and executed no knowing and voluntary waiver of his right to be assisted, yet the police engaged Mr. Lancaster in taking a statement and an

interrogation in A locked compound under custodial interrogation conditions without due regard for his "right to equally effective communication" or any reasonable accomodation for his disabilities. Thus, imposing willful oppression upon A citizen who was unwittingly cooperating in A custodial interrogation for prosecution.

Defendants Frankie Sue Del Papa and her successor in office Catherine Cortez Masto, Attorneys General of the State of Nevada, who serve As chief law enforcement officers of the state government qua government sworn to uphold the respective Federal and State constitutions and laws under purview of their Authority, including laws respecting the substantive and procedural rights of All citizens and disabled persons, including the plaintiff); Defendants John And Jane Doe County Government officials (including but not limited to the body of Washoe County Commissioners who Are charged with Administrative and executive supervisory duties, which principally involve the management of the financial affairs of Washoe County, NV., its police regulations, and its corporate business); John Doe County Comptroller (who was charged with the duty to make budget requests for the purposes of training police And implementing mandatory provisions of law under the Americans with Disabilities Act of 1990 And state laws which apply to criminal suspects or arrestees in the State of Nevada); Defendant Michael Poehlman, Chief, Reno Police Department, (who inter Alia was charged with the duty to enforce All laws within purview of his Authority, including but not limited to: Title II of the Americans With Disabilities Act of 1990, §201, et seq., 42 U.S.C. §12131, et seq., And §504 of the Rehabilitation Act of 1973, As well As NRS 171.1536, NRS 171.1537, And NRS 171.1538, And other relevant provisions of state

And federal law governing the treatment of disabled individuals who are suspects involved in a criminal investigation or arrest); Richard A. Gammick, District Attorney of Washoe County (is charged with the duty to uphold all laws within his jurisdiction and under purview of his authority as chief law enforcement officer of Washoe County, a subdivision of the government of the State of Nevada; is a policy making authority for the office and county by which he is employed; and is charged with an overriding duty to uphold the lawful rights of all citizens and to see that justice is done in every case in which he is involved as a public prosecutor); were all directly or proximately the cause and responsible for the irreparable harm and damage that has accrued to Mr. Lancaster by reason of the blatant violation of the substantial rights of Mr. Lancaster, due to their failure to ensure that the police officers, involved in the interrogation and arrest of Mr. Lancaster, were properly trained to recognize and insure that individuals with qualified disabilities "right to equally effective communication" and other rights dependent upon official compliance with the laws in place for the protection of disabled persons subject to official interrogation and arrest are respected and complied with, in all respects, in either or both their supervisory and administrative positions as law enforcement officers and/or state, county, or city officials having policy making and implementation authority, as well.

COUNT II

The following civil rights has been violated:

Irrational disability discrimination due to a failure of defendant jail officials to adequately screen in hiring, train, supervise, and discipline subordinate jail personnel. This resulted in failure to recognize and provide reasonable accommodations for plaintiff's severe disabilities while housed in pretrial and post trial detentive custody for 47 days in the Washoe County Detention Center (jail) Parr Boulevard. Plaintiff was excluded from participating in and receiving the benefit of services, programs, and activities to which he would otherwise benefit as an entitlement, but for his disabilities including, but not limited to: Denial of necessary medical care and/or deliberate indifference exhibited by named jail officials and employees towards plaintiff's serious medical needs and intentional delay or denial of important prescribed treatment and medication, as well as denial of effective communication with immediate family members, friends, bondsmen, and attorneys in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada, Art. 1, §§ 1, 4, 6, and 8.

The facts and matters asserted in support of foregoing Count I, in relevant part, are hereby adopted and incorporated herein by reference in their entirety.

Plaintiff was informally charged, arrested, and placed in detentive custody at the Washoe County Detention Center (jail) on or about September 20, 2002.

Following booking at the Parr Boulevard jail, Mr. Lancaster was given opportunity to make a phone call before being taken back to an Isolation cell and held incommunicado for the better part of at least three days.

Neither the Plaintiff or his wife Gladys Lancaster knew or thought

that he would be going to jail, because Pastor Muster had told them that Plaintiff would be counselled by the police, but would not be arrested or placed in jail.

When Mr. Lancaster attempted to place a phone call to his wife from the jail he didn't get through. There was a Bail Bond telephone number on the wall beside the wall phone at the jail. After attempting to get through to his wife, Mr. Lancaster placed a call to the Bonding Co. number in an effort to post bond at a cost of $5,500.00. Mr. Lancaster wasn't able to fully understand what was said over the phone by the person he was speaking with at the bonding company, but he did understand that he was to call back in a little while to see if the company would go his bail. So, when he hung up the phone and told the deputy sheriff that he needed to call the bondsman back in a few minutes, the deputy hollered in a disdainful manner at Mr. Lancaster ~~that~~ he had had his phone call. The same deputy, who was apparently a supervisor of some rank or tenure, and in charge, then ordered another deputy sheriff present to take plaintiff back to the isolation section of the jail where he was stripped of his personal belongings and clothing, dressed in jail orange jumpsuit garb, and placed in an isolation cell.

The second day in isolation Mr. Lancaster was let out of his cell into a small area that had a shower. Since Mr. Lancaster couldn't hear well at all, and received no written material or other orientation upon entering the isolation section of the jail, he didn't know what was going on or what was expected of him. At that time, Plaintiff was seventy (70) years of age.

Everytime Mr. Lancaster was told to do something by the jailers he ended up getting shoved and physically knocked around by them because he couldn't

hear what they were saying or telling him to do, or even know at times that they were talking to him. He was yelled or cursed at, ridiculed, and shoved around by his jailers dozens of times following his arrival by particularly crude and obnoxious deputy sheriffs working at the jail.

On the second or third day at the jail Mr. Lancaster had an emotional or nervous breakdown brought on by the abuse he had been subjected to, in isolation, and a feeling of desperate helplessness. For much of his teenage and all of his adult life, Mr. Lancaster was a God fearing, hard working, tough man and youth working in the logging and lumber businesses; and driving quarried or riverbed stone for a few years after his strokes began. Unknown to Mr. Lancaster, his wife Gladys and eldest daughter Barbara had been to the jail on several occasions attempting to visit him but were not permitted to see him.

On or about the third day in the jail Attorney Lee Hotchkin came to visit with Mr. Lancaster at the jail. Mr. Lancaster told Attorney Hotchkin that he couldn't hear what was being heard over the phone, how he was being treated because of his hearing impairment and disabilities. Unfortunately, Mr. Lancaster could not communicate very well with Attorney Hotchkin during his legal visit at the jail, because he couldn't hear and understand much of what Mr. Hotchkin said. There was a lot of background noise in the room where the visit took place. However, since the family wanted to post bail right away and Attorney Hotchkin had assured Plaintiff he would obtain a bail reduction from $55,000.00 to $10,000.00, which he never did because he provided the Court with no good reason or basis for the requested reduction in the Bail Motion, it was decided, at that time, to delay making bail because of the cost,

Every day Mr. Lancaster remained in jail until he was bailed out his "right to equally effective communication" and access to "programs, services or activities" were being violated by jail personel who were not trained to recognize and provide reasonable accomodation for mr. Lancaster's hearing impairment and disability.

The year was 2002. The Americans with Disabilities Act of 1990 and §504 of the Rehabilitation Act of 1973, had, in the first instance, been black letter law with mandatory provisions passed by Congress to protect the rights of disabled individuals from "irrational disability discrimination" for the better part of thirteen (13) years, and in the latter case of the Rehabilitation Act, the better part of twenty-nine years. Yet Washoe County had taken no apparent steps to implement these laws.

Thus, Michael Haley, Sheriff of Washoe County, and subordinate John Doe Washoe County Jail Officials, as well as the John and Jane Doe County Government officials, were all complicit in violating Mr. Lancaster's rights retained as a citizen housed in detentive custody in the Washoe County Detention Center (jail) following his arrest. As the foregoing facts attest, Mr. Lancaster was subjected to "irrational disability discrimination" proscribed under Title II [of the ADA] due to manifold violations of the "right to equally effective communications" by named defendants who knew or should have known that (1) Mr. Lancaster is an individual with a disability; (2) Mr. Lancaster is otherwise qualified to participate in or receive the benefits of some public entity's (the County Jail) services, programs, or activities; (3) the plaintiff was either excluded from participation in or denied the benefits of the public entity's service, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of plaintiff's disability."

Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002) citing Weinrich v. L.A. County Metro. Transp. Auth., 114 F.3d 976, 978 (9th Cir. 1997).

Following sentencing on July 2, 2003, Mr. Lancaster's bail was revoked and he was taken back into custody to await transport to the Nevada Department of Corrections at The Washoe County Detention Center (jail), where he was once again stripped of all of his personal belongings, including important prescribed medications, and placed in isolation by his jailers.

In February of 2003, following the last of seven strokes, Mr. Lancaster had a surgical procedure known as a carotid endarterectomy performed by Dr. Gomez, to restore blood flow to the brain, after which, the doctor prescribed an important drug named plavix to aid in blood circulation as part of the treatment and aftercare. Mr. Lancaster was already taking another prescribed medication named Flomax, prescribed by Dr. Drew for treatment of an enlarged prostate gland.

The week prior to sentencing on July 2, 2003, Mr. Lancaster underwent cataract surgery in his right eye and was scheduled for cataract surgery in the left eye approximately ten (10) days after the first surgery. Both surgeries were fully paid for. However, even though Mr. Lancaster had informed the jail officials and medical personel in the infirmary at the jail that the surgery was scheduled, they made no accomodation for the important prescribed treatment of Mr. Lancasters cataract in his left eye which impairs his vision and is a qualified disability. To this day, Mr. Lancaster has not received the surgery prescribed then for the treatment of the cataract in his left eye.

Plaintiff at no time received either the of the important prescribed circulatory and prostate medications Plavix and Flomax while housed in the

Washoe County Detention Center (jail). It wasn't until he was transported from the jail to Lovelock Correctional Center that he was seen by a doctor and provided the important prescribed medications Flarex and Flomax. In the interim, Mr. Lancaster was denied and forced to do without these medications by line staff, supervisory, and medical jail personnel.

Additionally, following the cataract surgery performed on Mr. Lancaster's right eye the last week in June, 2003, he was prescribed two important eye drop medications believed to have been prednisone (phonetic) based. The doctor stressed the importance to the success of the operation and restoration of sight of using the eye drops as prescribed. The eye doctor emphasized that using the eye drops as prescribed following surgery was the most important part of the treatment. Despite informing the isolation housing unit officers on duty that he needed his eye drop medication because he had just underwent surgery for cataracts in his right eye, Mr. Lancaster was not seen by any medical personnel at the jail. In fact, the jail officials Mr. Lancaster spoke with concerning the need for his eye drops responded derisively, in effect, stating: "That's your problem, not ours!", or with some other remark expressing an attitude of derision. It wasn't until approximately four (4) days after sentencing and being housed at the jail that Mr. Lancaster was released from the isolation section to general population where he could receive visits from his wife Gladys and eldest daughter Barbara, who made the jail authorities take Mr. Lancaster to see his eye doctor at his office where Mr. Lancaster was given a resupply of the prescribed eye drop medications critical to the post cataract surgery performed on his right eye. Nevertheless, going without

the prescribed eye drops for post-surgery treatment caused permanent damage to Mr. Lancaster's right eye in the form of astigmatism which appears as dark spots covering the lens of the right eye and a diagonal line that interferes with his vision.

Thus, the named defendant jail and county officials have engaged in a pattern of practice as a matter of unwritten policy evincing deliberate indifference to legitimate complaints of serious illness as well as intentional delay or denial of important prescribed treatment and medication which violates the 8th Amendment proscription against the infliction of cruel and unusual punishment. Estelle v. Gamble, 429 U.S. 97, 106 (1976). Moreover, Mr. Lancaster has shown, in objective terms, that the alleged deprivations are "sufficiently serious" to state a viable claim for relief cognizable in this Court, and the wanton and wilfull nature of the acts or failure to act on the part of jail and county authorities sufficient to establish the requisite culpable state of mind. Farmer v. Brennan, 511 U.S. 825, 834, 837 (1994) (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Mr. Lancaster's treatment at the hands of authorities in Washoe County appear to have become the norm rather than the exception due to the counties obdurate failure and refusal to recognize and implement the aforementioned laws enacted to prevent "irrational disability discrimination" such as Mr. Lancaster has been subjected to and suffered. Therefore, it should be noted that the violations of right claimed herein also independently violate the equal protection and due process clauses of the Fourteenth Amendment.

COUNT III

The following civil rights has been violated:

Irrational disability discrimination and failure to provide reasonable accommodations for plaintiff's physical and mental disabilities by named defendants. This resulted in denial of plaintiff's right to adequate, effective, and meaningful court access during state court criminal proceedings initiated against plaintiff in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada, Art. 1, §§ 1, 4, 6, and 8.

For purposes of brevity and clarity, the facts and matters asserted in support of foregoing Count I and Count II, in relevant part, are hereby adopted and incorporated herein by reference in their entirety.

ATTORNEYS DAVID HOUSTON, Esq., AND PAUL QUADE, Esq., WERE BOTH FULLY INFORMED REGARDING Mr. LANCASTER'S SEVERE DISABILITIES, INCLUDING HIS MENTAL IMPAIRMENTS CAUSED BY PHYSICAL BRAIN DAMAGE AND HEARING IMPAIRMENT DUE TO BEING LEGALLY DEAF, WHICH IMPAIRMENTS PRE DATED INVESTIGATION, INTERROGATION, ARREST ON SEPTEMBER 20, 2002, AND ALL SUBSEQUENT CRITICAL STAGES OF THE PROSECUTION OF THIS CASE, AS WELL AS ALL POST-CONVICTION PROCEEDINGS AND APPEALS.

In 1995, Mr. Lancaster suffered a stroke that was followed by a series of mini strokes. The last of these strokes occurred in Feburary, 2003. At that time, Mr. Lancaster was hospitalized and underwent an emergency carotid endarterectomy surgical procedure to correct a medical condition diagnosed as critical carotid stenosis.

Following the aforementioned surgery, a medical specialist and treating physician named Jeff Lovett, MD/RD, of the Spanish Springs medical group, provided Mr. Lancaster with a letter, Dated 5/1/03, which states;

> "Mr. Lancaster had a carotid endarterectomy for ctitical carotid stenosis. He has M.R.I. evidence of previous lacunar infarcts (mimi strokes). I believe these events have influenced Mr. Lancaster's thought processes and ability to make decisions."

This letter received from Dr. Lovett which shows that a record

of mini strokes existed was provided to attorney David Houston by Mr. Lancaster. It was subsequently provided to state prosecuting authorities and the District Court as an exhibit appended to and in support of the Statement in Mitigation on 5/12/03.

Besides the mental impairments suffered by Mr. Lancaster from the inception of the prosecution in this case - due to multiple strokes and a Lacuna hole the size of a golf ball in the right frontal lobe of Mr. Lancaster's brain, where memory and decision making brain cells are located, as disclosed by a Magnetic Resonance Imaging (M.R.I.) test, which obviosly should have raised questions concerning Mr. Lancaster's competency in the minds of Mr. Houston, Mr. Quade, State prosecutors and the court, any appearances to the contrary notwithstanding, Mr. Lancaster suffered from a visual impair caused by cataracts in both eyes and an acute hearing disability due to Mr. Lancaster being legally deaf, at the time of his arrest and thruoghout the period of his prosecution, guilty plea, and sentencing proceedings. Even with the higest quality hearing aids, such as Mr. Lancaster now possesses, he was and remains unable to hear and understand what is being said to him much of the time, unless there is very little or no background noise from any source.

At the time of Mr. Lancaster's arrest he was 70 years of age, and although he possessed a pair of hearing aids they did very little to compensate for his hearing loss. In order to be heard, the speaker had to be very close. To compensate for this problem Mr. Lancaster would watch the lips of the speaker to aid in hearing what was being said to him. Additionally, Mr. Lancaster frequently experienced, and still does, difficulty in grasping complex expressions and understanding what is being communicated to him verbally.

Mr. Lancaster's disabilities were not officially recognized by the district court until October 13, 2006, when Judge Palaha entered an order finding "that an interpretive reporter shall be assigned to assist petitioner to understand the proceedings," which followed the court's review of the transcript of a post-conviction relief hearing held July 24, 2006, more than three full years after his conviction and sentence and just three months shy of Four years from the date of his arrest on September 20, 2002. However, the second part of the post conviction relief evidentiary hearing, for which a real time computer was provided by the court reporter, to assist Mr. Lancaster in understanding the proceedings, did not take place until April 6, 2007, nearly a year after the first evidentiary hearing conducted

on Mr. Lancaster,s orginal petition for post conviction relief, which took place on Friday, June 9, 2006. Nevertheless, Mr. Lancaster was still excluded from participating in and understanding what was going on during the evidentiary hearing, since he could not grasp and understand what was going on by using the device because of his mental and vision impairments. Moreover, the device was only used during one segment of the last day of the hearings, When Attorney David Houston, Esq., took the stand. From Mr. Lancaster's perspective, the only device that might have worked for him, adequately, would have been a voice amplification system with head phones. Unfortunately, no one asked Mr. Lancaster what might work for him, and besides being confused he was somewhat intimidated by the whole proceeding because he didn't understand what was going on.

THE RETAINER AND DECEPTION OF Mr. LANCASTER AND COURT BY ATTORNEY DAVID HOUSTON, Esq., ENVINCING AN INHERENT CONFLICT OF INTEREST AND CONSTRUCTIVE DENIAL OF COUNSEL FOR DEFENSE ALTOGETHER.

On November 25, 2002, Attorney David R. Houston, Esq., posted a confirmation of retainer agreement, in letter form, to Mr. Lancaster. The substance of the retainer agreement clearly states what was expected from Mr. Houston, when he agreed to undertake legal representation on behalf of Mr. Lancaster's defense, and when Mr. Lancaster dated, signed, and returned the agreement to Mr. Houston on December 8, 2002, the substance of the agreement is quoted in full as follows:

> Dear Mr. Lancaster:
>
> Thank you very much for retaining the Law offices of David Houston. As per our agreement, I've indicated to you we will charge you a $25,000.00 non-refundable flat fee. The $25,000.00 non-refundable flat fee is assessed by this office to cover any and all cost, save and except expert witnesses and appeals, up and to trial preparation. As explained to you, we will devote a minimum of two weeks of trial preparation for your case. We will bill separately for the trial preparation at $1,500.00 per day. assessing only a five day per week charge. The remaining two days per week will be donated by this office for the purpose of assisting in deferring expenses.
>
> We will also bill a sum total of $2,500.00 per day for each and every day involved in trial, I'm uncertain as to how long the trial may be. As indicated to you, it is our policy to spend at least three to four days of preparation for every one day to be anticipated for trial. Therefore, in this case you might anticipate a sum total of ten days of trial preparation totaling $15,000.00, with a trial in the neighborhood of three or four days, totaling between $7,500.00 and $10,000.00.

As well, there may be expert witness cost. I have discussed with you expert witnesses and what they may accomplish on your behalf. As well,we may need an investigator. Again, I am uncertain as to the cost of the expert witnesses or the investigators.

As stated during our initial meeting, trials are expensive. It is inappropriate to approach a trial on a shoestring and therefore, you should be adequately financed in order to thoroughly protect your rights. In that this is a small firm, we have a limited number of cases that we may take. Therefore, by agreeing to take your case, we are then allotting time that we could not allot to another cliant should they call us. Therefore, the $25,000.00 is a non-refundable retainer.

November 25, 2002
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In that this office has had the opportunity to meet with you and discuss the financial arrangement at length, I am hopeful this letter represents a confirmation of those matters disscused. In the event you have any questions, please do not hesitate to contact me. In the event that all matters are clear to you, I have left a signature line on the last page of this document for your execution. The purpose of providing your signature is to indicate that you understand the terms and conditions of this letter and agree to abide by our financial agreements. If that is true, please excute this document, once you have reviewed, and return the same to my office so that we will have appropriately documented our financial relationship.

I do look foreward to working with you and will assure the best possible job that can be done, will be done by this office. Once again, I thank you for your confidence in the Law Office of David Houston and look foreward to a very productive relationship. **See Appellants EXHIBIT D.**

Clearly, when Mr. Lancaster signed the retainer agreement with Mr. Houston he fully understood that he could expect to receive a fair trial. That his rights and interest in this matter would be fully asserted and protected. Of particular import, is Mr. Houston's caveat that, "[As stated during our initial meeting, Trials are expensive. It is inappropriate to approach a trial on a shoestring and, therefore you should be adequately financed to thoroughly protect your rights.]" **Exhibit D**. p.1,¶3. (emphasis added)

RECORD EVIDENCE OF CONFLICTED DEFENSE REPRESENTATION OF MR. LANCASTER BY Mr. HOUSTON FROM THE INCEPTION OF THE CASE

Mr. Houston was retained by immeadiate members of Mr. Lancaster's family sometime prior to Mr. Lancaster ratifying the written retainer agreement on December 8, 2002, two months after Mr. Lancaster was arrested and taken into custody on September 20, 2002, charged with six counts of sexual assault and lewdness with a minor.

Mr. Lancaster was initialy represented by Attorney Lee Hotchkin. Based upon information and belief, sometime during the last part of September, 2002, Attorney Lee Hotchkin visited Mr. Lancaster in the county jail, for the given reason, to discuss issues to be considered at an upcoming preliminary hearing scheduled, when the defense would have opportunity to cross-examine Tessa's statements. at that time, Mr. Hotchkin told Mr. Lancaster that the preliminary hearing was very necessary, and would help the defense later at trial. The day after Mr. Hotchkin's legal visit at the jail, Mr. Lancaster was transported from the jail to the court where he sat in a holding cell awaiting the preliminary hearing, which did not take place. No one came to the holding cell to tell Mr. Lancaster that the preliminary hearing had been continued until another date. He was just transported back to the jail later that evening. The preliminary hearing was rescheduled for a few days later, but the same thing occurred. To the best of Mr. Lancaster's personal knowledge and belief, there was no further attempt made to have a preliminary hearing. However, Mr. Lancaster later learned that no preliminary hearing had taken place because Tessa did not show up for the hearing as the family would not allow her to be subjected to questioning against her will.

The orginal criminal complaint filed by the Washoe County District Attorney charged Mr. Lancaster in counts I and II with Sexual Assault on a child, felony offense in violation of NRS 200.366; and counts III and IV lewdness with a child under the age of Fourteen years, felony offense in violation of NRS 201.230, alleging events which occurred between Janurary 1, 2000 and September 10, 2002. An amended criminal complaint was filed by the Washoe County District Attorney on November 20, 2002 adding two counts of lewdness with a child under the age of fourteen years and charging Sexual Assault.

On Janurary 30, 2003, Mr. Lancaster signed a waiver of preliminary examination. At the time of signing the waiver of Preliminary Examination Mr. Lancaster was represented by Attorney David Houston. However, to the best of Mr. Lancaster's personal knowledge and recollection, the handwritten notations regarding terms of the proposed plea were not present on this document at the time it was presented to Mr. Lancaster and signed by him, **See Appellant's Exhibit E.** Apparently, Mr, Houston had entered into plea negotations with the District Attorney's Office at this stage in the prosecution which

is the only plausible explaination for the handwritten notation at the bottom of the page of the waiver. The Preliminary Hearing at Reno Justice Court was continued again until Februrary 11,2003.

Instead of having a preliminary hearing on February 11. 2003, Mr. Lancaster was formally charged by **INFORMATION**, in count I and II, with sexual assault on a child, a violation of NRS 200.366, a felony, or in the alternative; Lewdness with a child under the age of fourteen years, a violation of NRS 201.230, a felony, alleged between the 1 st day of January, 2000, and the 10 th day of September, 2002; and, in count III and IV he was charged with an additional two counts of Lewdness with a child under the age of fourteen.

Given the nature of the charge and the fact that Mr. Lancaster had informed Mr. Houston that he was not guilty of any wrong doing, such that he should be charged and tried for a crime, and not really knowing what was actually involved in the case due to being unlearned in law and inexperienced in such matters, as well as having severe mental and hearing impairments which limited Mr. Lancaster's ability to understand and knowingly and intelligently participate in the criminal process from the very inception of the case on September 20, 2002, it was vitally important for the defense to conduct a preliminary examination in Justice Court. The value of the preliminary hearing examination cannot be overstated, in such a case, and any defense attorney would know this. It was because of Mr. Lancaster's disabilities and lack of expierence and understanding of the criminal process that he was denied the benefit of a preliminary hearing, and thus, opportunity to clear up the charges brought against him by bringing out the actual truth during cross-examination of the alleged victim, all of which was denied to Mr. Lancaster due to an inherent conflict existing in recieving a fair trail and adjudication of the case as law and justice require, and Mr. Houston's apparent interest in disposing of an unwanted case and receiving a substantial fee for doing so. This was only made possible by an agreement reached between Gladys Lancaster, Gail Willey, and Mr. Houston, that Tessa (the alleged victim) would not be involved in the prosecution of this case, as a precondition for Mr. Houston's retainer. Mr. Lancaster had no knowledge of this precondition as he was not a participant in the meetings when this

agreement was reached as an unconditional precondition of his employment on this case.

In **United States V. Hunt**, 543 F.2d 162 (D.C. Cir. 1976), the court held that competition between the cliant's interest and counsel's own interest plainly threaten the results of the proceedings, and constitutes a conflict of interest that corrupts the relationship. To find a Sixth Amendment violation based on a conflict of interest, the reviewing court must find: (1) that counsel actively represented conflicting interest, and (2) that an actual conflict of interest affected the attorney's performance. **Cuyler V. Sullivan**, 446 U.S. 335, 348, 100 S.Ct. 1708, 1718, 64 L. ed.2d 333 (1980). Under **Cuyler**, the court must presume prejudice if the conflict of interest adversely affected the attorney's performance. **Id**. Although **Cuyler** involved a conflict of interest between client's, the presumption of prejudice extends to a "conflict of interest between a client and his lawyer's personal interest." **See Mannhalt V. Reed**, 847 F.2d 576, 580 (9th Cir.), Cert. denied, 488 U.S.908, 109 S.Ct. 260, 102 L.Ed.2d 249 (1988).

It wasn't until sometime after the July 24, 2006 hearing conducted on Mr. Lancaster's Petition For Post-Conviction Relief, that he received the transcripts for the hearing held on June 9, 2006, which disclose unequivocal evidence of the agreement alluded to in the foregoing paragraphs, which eviscerated Mr. Lancaster's defense, due to conflicted defense representation. This evidence was adduced in testimony from Joy Adams (formerly Mrs. Gladys Lancaster) and Gail Willey (Doyle Lancaster's brother-in-law).

Beginning at page 14 of the transcript of the Friday, June 9th, 2006, evidentiary hearing conducted on Mr. Lancaster's Petition For Post-Conviction Relief, Joy Adams testified under oath, in pertinent part as follows:

> Q Now, with respect to the situation with Mr. Lancaster, did you participate in finding him an attorney?
>
> A Yes, I did.

Q When was that?

A Well, I guess it would have been in the winter or the fall of '02.

Q And did you participate in the retention of Dave Houston in this matter?

(EH Tr. at p. 14, L. 16-24)

A Yes, not financially. But -- helping to find him.

Q At that point were you having difficulties with the situation with Mr. Lancaster based upon your feelings and the like?

A You mean emotionally?

Q Yes.

A Yes, it was a difficult time. It was very traumatic. But -- I felt that that was the right thing to do.

Q Now, when did you first come in contact with Mr. Houston, as best as you can recollect?

A It was probably in the first part of '03 because -- this was about, I don't know, in the spring probably.

Q Now, this court case began sometime in the fall of 2002, is that right?

A Yes.

Q And Mr. Houston wasn't Mr. Lancaster's first attorney, correct?

A No, he was not.

. . .

Q Do you have any idea when Mr. Houston came to be on the case?

A I can't tell you an exact date. But I think it was in the spring of '03.

(6/9/06, EH Tr. at p. 15, L. 1-24)

Q At some point did you sit down with Mr. Houston and discuss Mr. Lancaster's case with him?

A Yes. Just a moment please.

Yes, shortly after he was retained, we had a meeting with him. Doyle and I and I think my brother Gail was with us.

Q Did you discuss the nature of Mr. Houston's representation at that time?

A We had quite a long, lengthy discussion. We were there for some time.

Q Did you discuss Mr. Lancaster's rights at that time?

A Uhm, mostly what he was charged with and that sort of thing and what we could expect and the regular procedure that the court would be going through.

Q Were there any restrictions placed upon Mr. Houston at that time as far as his representation was concerned?

A Yes.

Q What were those restrictions as far as you were aware and who placed them?

A He asked -- David Houston asked about having Tessa take -- you know, be brought into court.

(6/9/06, EH Tr. p. 16, L. 1-24)

Q And who is Tessa?

A She is my granddaughter. And --

Q She is the alleged victim or the victim in this matter; is that right?

A Yes. And our family had agreed that we did not want that to happen.

Q Who brought the fact up that -- that you didn't want to bring Tessa into court or into the proceedings?

A Who brought that up?

Q Yes. Who said that was not okay?

A We did.

Q Who is we?

A Gail Willey, my brother, myself and others. They were not present. But we represented them.

(6/9/06, EH tr. p. 17, l. 1-15)

During **RECROSS EXAMINATION** of Joy Adams, testimony was adduced from this witness by ADA Plater, regarding her understanding of when the appeal was going to be pursued, and further questioned by the court regarding whether Mr. Houston had told her that he had withdrawn from representation following the sentencing on July 2, 2003, and related matters, as follows:

* RECROSS EXAMINATION *

BY MR. PLATER:

Q So it is your understanding that the appeal was going to be pursued based on Mr. Houston's telling you that you had that option of filing it within thirty days after the judgment of conviction?

A Yes.

Q Okay. That's all I have.

MR. QUADE: Nothing further, your Honor.

THE COURT: Ma'am, let me ask you a couple of questions.

When you retained David Houston, did he talk about -- when he was mentioning his fee -- what it would cost for trial and, if there was an appeal, what that would cost?

A I wasn't privy to the first discussion concerning those matters. That would have been my brother Gail.

THE COURT: All right. When you were talking to Mr. Houston after the sentencing, did he ever tell you that he withdrew from representation?

THE WITNESS: Never.

THE COURT: He never did that?

THE WITNESS: Never.

THE COURT: Were you aware on July 2nd that he filed a notice to withdraw as attorney?

(6/9/06, EH Tr. p. 48, L. 1-24)

THE WITNESS: Not until probably seven or eight months later.

* REDIRECT EXAMINATION *

BY MR. QUADE:

(6/9/06, EH Tr. p. 49, L. 1-3 and 23-24)

Q When you talked about -- with Mr. Houston -- the additional work that he was going to do after the sentence, did he ask you for any more money?

A Never.

Q Did anybody else in your presence ask for any more money?

A No.

Q Did he place any restrictions on when his representation was done to you?

A No.

Q To your knowledge, did he say, "I am done representing Mr. Lancaster"?

A No.

Q After -- you weren't aware of the notice of withdrawal that was filed on June 2nd until well after --

THE COURT: July. July 2nd.

MR. QUADE: Thank you.

Q July 2nd until well after, right?

A Right.

Q And you believe that Dave Houston was still making efforts on behalf of Mr. Lancaster?

A Yes, yes, I did.

Q Okay. Nothing further, your Honor.

MR. PLATER: Nothing else.

(6/9/06, EH tr. p.49, L. 1-24)

The following excerpts of sworn testimony adduced under **DIRECT EXAMINATION** of Gail Willey by defense attorney Paul Quade, Esq., during the evidentiary hearing conducted on June 9, 2006, is direct evidence, which is corroborated by the preceding testimony provided by Joy Adams, that there were "nonnegotiable" limitations placed on the defense representation of Doyle Lancaster by Attorney David Houston when Mr. Houston accepted the retainer to represent Mr. Lancaster. As will appear more fully herein the following,

the conditions limiting the defense representation of Mr. Lancaster by Attorney David Houston, were unwittingly made a pre condition of the retainer and legal representation by agreement of immediate family members of the Lancaster family without Doyle Lancaster's informed knowledge and consent. In fact Mr. Lancaster was completely left in the dark with respect to any such agreement. The following excerpts represent clear unequivocal direct testimonial evidence of the existence of a third party agreement reached between members of the Lancaster family and Mr. Houston, to limit the defense representation of Mr. Lancaster by making the alleged victim Tessa unavailable, precluded any possibility to confront and cross-examine Tessa, at a regularly scheduled preliminary hearing or trial and, thereby, bring out the truth establishing Mr. Lancaster's actual innocense by showing the innocent nature of his conduct. Thus, Mr. Lancaster submits that he has shown by a preponderence of the evidence that he was denied any semblance of effective assistance of counsel and due process of law from the inception of the case, due to an actual conflict of interest in the defense representaion which forclosed any possibility of Mr. Lancaster defending himself, or subjecting the States case to meaningful adversarial testing through counsel. The pertinent testimony germane to the issue of inherent conflict of interest amounting to constructive denial of counsel altogether is, as follows:

A No. He was the second one.

Q Now, you retained Mr. Houston. Did you actually pay the bills?

A Yes, I did basically.

Q A lot of your money was used to pay these bills, attorney's fees?

A Yes, sir.

Q When did you first meet with Mr. Houston, as far as you can recollect?

A The latter part of 2002. I don't remember the date exactly.

Q And you actually met with Mr. Houston personally?

A Yes, sir.

Q In his office?

A Yes, sir.

Q Who else was present then?

A I honestly don't remember that first meeting who was with me.

Q When -- did you transfer money at that time to Mr. Houston to retain him?

A As I -- the best I can recall. I remember giving him a fairly good check.

Q Was there any type of conditions that you

(6/9/06, EH Tr. p. 53, l. 1-24.)

placed upon his representation of Mr. Lancaster at that time?

A Well, I stipulated to him very strongly that my personal convictions and our family was that he was not to interrogate or to -- use Tessa in any way to bring her into the equation.

Q Did that mean investigating her or talking to her? What did that mean to you?

A Well, it meant that he would just leave her

alone, She was not to be a part. We wanted to protect her as a family, that she wouldn't have to -- be subject to any of this.

Q At that point did you have any understanding of whether that would be a problem in Mr. Houston's representation of Mr. Lancaster?

A Well, if I recall right, he mentioned that it was -- it would weaken his position. But, as far as we were concerned, it was an absolute -- it was without -- it was not -- it was nonnegotiable.

Q It was a situation though that either you are going to -- was it either a situation that you were going to retain him and he was going to follow that condition or you wouldn't have retained him? Was it that strong of a condition?

A Yes, sir, that is correct.

(6/9/06, EH Tr. p. 54, L. 1-24.)

Q Is that part of the reason you left the first person or Mr. Lancaster switched attorneys? Do you know?

A I don't recall it being -- I know it was an issue with the first attorney. But I don't recall any specific details.

Q Okay. That's fair.

So this meeting the latter part of December, that was face to face in Mr. Houston's office and that is when he was retained, correct?

A I am not sure exactly of the date. You know, positive. But it was in that time frame.

THE COURT: Excuse me, Mr. Quade. Let me ask a question.

MR. QUADE: Yes.

THE COURT: Is it Mr. Willey?

THE WITNESS: Yes, sir.

THE COURT: Sir, when you spoke -- I used to do criminal defense work. Okay. And something is not computing here.

When you went to Mr. Houston's office and you talked about retaining him as the lawyer and then you told him that whatever he does he is not to interrogate or bring Tessa into court?

(6/9/06, EH Tr. p. 55, L. 1-24)

THE WITNESS: Yes, sir.

THE COURT: Okay. Now Tessa was the victim in this case. And she was a necessary player in a trial. So did you talk about trial or did you retain him to represent Mr. Lancaster just at a sentencing and to try to get the best deal that he could? Or did that even come up?

THE WITNESS: Well, our thought -- the reason we got involved, we wanted to see Doyle get a fair trial and we wanted him to get a fair representation.

But, as a family, we were -- somewhat awestruck. We were kind of torn between what to do -- we don't know law. We didn't know the real honest details of things, but we wanted to protect Tessa.

Yet, on the other hand, we wanted -- Doyle is like a brother. We wanted to see him get a fair representation. And we, as a family, just did not want to

see Tessa drug through an awkward situation.

Whether we were right or wrong, that was just our desire.

And I strongly said that -- you cannot do that. We as a family, we don't know the law; but we just made a strong stand that you can't go and get Tessa and -- you know, we know, if the law does something, we don't have any choice.

(6/9/06, EH Tr. p. 56, L. 1-24)

But our perspective was that the attorney we hired, he was not to do anything to hurt her or put her in an embarrassing, awkward situation.

THE COURT: Okay. But, if you go to trial in a case such as this, the State would have to bring the girl to testify. And then the lawyer would have to cross examine the girl, okay, in front of a jury.

THE WITNESS: Okay.

THE COURT: Okay. That's what you are talking about. You did not want that to happen?

THE WITNESS: No, we didn't want -- Tessa to be drug through the courts as a young girl and put her through that. Whether we were stupid or -- we just -- it was our desire.

THE COURT: But then did Mr. Houston explain to you that, if you are going to put that type of limitation on me as a lawyer, that that would mean that there is not going to be a trial. And what that means is he is going to have to plead guilty?

THE WITNESS: No. That was never -- he never said that to us in any form as that way.

The only thing they did -- both attorneys mentioned that it would be difficult. But there was never -- never anything told to us, "You put that stipulation on and that a consequence --"

(6/9/06, EH Tr. p. 57, L. 1-24)

It's just that it would be difficult. It went no further than that.

THE COURT: Now, I notice in the file that on February the 11th, 2003 a waiver of preliminary examination happened and that happened actually on January 30th, 2003.

And here it says that the defendant will plead to four counts of lewdness with a minor. In the event the defendant is given a prison sentence, it is agreed that one of the four counts may run concurrent to the time of the other three counts. Both the State and defendant agree probation is available. However, the State is free to argue for whatever it may deem appropriate. The defendant waives his right to arraignment on the Amended Complaint. All other charges are to be dismissed. And no additional charges will be filed."

Now this was already done January 30th.

And, as I look at the file, David Houston -- well, it doesn't say that he was the attorney at the preliminary hearing stage. I don't know if he was or not. Because his first appearance comes in on February the 3rd.

Did he talk to you about what the process is? What a preliminary hearing was? What a Grand Jury Indictment was?

THE WITNESS: No, we didn't discuss that. If he did,

(6/9/06, EH Tr. p. 58, L. 1-24)

I -- you know -- I didn't --

THE COURT: All right. Did he happen to say that it would be probably impossible to defend a case if he can't cross examine the girl and he had no control in bringing her to court?

THE WITNESS: He didn't to that degree, no, sir.

THE COURT: Now, is Mr. Lancaster on bail all this time?

THE WITNESS: Yes.

THE COURT: All right.

(6/9/06, EH Tr. p. 59, L. 1-10)

family. We are a pretty close family. And I --

Q So that was your position based upon your understanding of the family's position that Tessa could not come and testify at the time of sentencing?

A I did know that she had made some statement that she had talked to the District Attorney and had been -- had went in and talked to some of the District Attorney people. And I knew that that had went on.

Q But nothing from the defense side?

A No, nothing from the defendant's side.

Q Okay. Now was there any discussion about alternatives about having Tessa actually come in and give live testimony at the time of sentencing?

A There was some discussion about maybe doing a tape or a video or something in that respect. And there was also a discussion about timing as to when the -- we should go for the hearing and to try and -- I remember a comment saying we need -- we need to go before the right

(6/9/06, EH Tr. p. 63, L 1-18)

Judge.

And I remember we needed -- there was some things that he wanted that we didn't have. And --

Q Do you know what those were?

A Well, one was a statement from Tessa. And the other thing was -- there seemed to be three things. And,

(6/9/06, EH Tr. p. 63, L. 19-24

I'm sorry, it slipped my mind.

Q But you knew there was something else that needed to get finished before the sentencing could proceed?

A There was some issues that he was -- concerned about and talked about filing for motions, if things didn't come out the way we wanted them to and stuff like that.

Q Let's talk about that.

What was your understanding of Doyle Lancaster's appellate rights prior to the sentencing on July 2nd, 2003.

A Was there another word that's more common for appellate right? Is that like --

Q Right to appeal?

A Right to appeal.

Q What was your understanding before July 2nd?

A Well, I do remember a conversation very clearly that that was something we always could fall back onto.

Q What do you mean fall back onto?

A If things in court didn't go the way we hoped they would, because we were hoping that Doyle would -- at that time I was under -- later on, maybe not -- I have got

the time -- but later on we were understanding that Doyle --

(6/9/06, EH Tr. p. 64 L. 1-24)

if he pled guilty, that he might get off on probation. And that, if not, we always had an opportunity for an appeal.

Q Now, with respect to that discussion -- when did that happen as far as you are aware?

A It was a short time prior to the sentencing. And I honestly cannot put the date. I just know it was maybe thirty days or -- there was a time there when we had a date for the sentencing and then it was set off that I remember. But it was prior to that that we talked about that.

Q Did you talk to Mr. Houston directly?

A Yes.

Q Face to face or on the telephone?

A On the telephone on that one I think.

Q When he mentioned the right to appeal, did he request any more finances out of you, if you were to exercise that right or Mr. Lancaster was?

A No, no, he did not. I assumed in the conversation that the amounts of money I gave him was -- because I was out -- I said I want to know that, you know -- we are digging deep in the well to do this. You know, in this case I felt -- always felt that there was plenty of money on the table to take care of what he needed to do in Doyle's defense and I even felt there was money left over.

(6/9/06, EH Tr. p. 65 L. 1-24)

Q It was your understanding that prior to the sentencing, if things didn't go favorably, Mr. Lancaster had the right to appeal; is that right?

A Yes, yes, sir.
Q Did you ever get a better idea of what Mr. Lancaster's rights to appeal were?
A Well, primarily I really got -- a better understanding after the trial.
Q After the actual sentencing date?
A After the sentencing, I really --
Q Did you come to the sentencing?
A Yes, sir.
Q And what happened? Did you testify at the sentencing?
A No.
Q Was Tessa here at sentencing?
A No, sir.
Q Why is that? Do you know?
A For the very reason I stated. That she was not to be involved.

(6/9/06, EH Tr P.66, L.1-20)

The sixth amendment guarantee of effective assistance of counsel comprises two correlative rights: the right to counsel of reasonable competence, **McMann V. Richardson**, 397 U.S. 759, 770-71, 90 S.Ct. 1441, 1448-49, 25 L. Ed. 2d 763 (1990), and the right to counsel's undivided loyalty, **Wood V. Georgia**, 450 U.S. 261, 272, 101 S.Ct. 1097, 1103-04, 67 L.Ed. 2d 220 (1981). The Supreme Court has articulated the different standards by which to judge the violation of these rights. To establish a sixth amendment violation based on a conflict of interest the defendant must show 1) That counsel actively represented conflicting interest, and 2) that an actual conflict of interest adversly affected his lawyer's performance.

Cuyler V. Sullivan, 446 U.S. 335, 348, 350, 100 S.Ct. 1708, 1719, 64 L. Ed.2d 333 (1980). Unlike a challenge to counsel's competency, prejudice is presumed if the defendant makes such a showing. **Strickland V. Washington**, 466 U.S. 668, 692, 104 S. Ct. 2052, 2067, 80 L. Ed. 2d 674 (1984). Although **Cuyler** involved a conflict of interest between clients, the presumption of prejudice extends to a conflict between a client and his lawyers personal interest. See **United States V. Hearst**, 638 F.2d 1190, 1193 (9th Cir. 1980) (conflict based on attorney's private financial interest) cert-denied, 451 U.S. 938, 101 S.Ct. 2018, 68 L.Ed 325 (1981).

Summary of facts disclosing that an actual conflict of interest existed :

The foregoing excerpts of testimony adduced from Joy Adams at the evidentiary hearing conducted on June 9, 2006, envinces that Mrs. Adams, Gail Willey, and others they represented, had placed restrictions upon attorney David Houston as a condition of his representation of Doyle Lancaster and his retainer, specifically, he was not to bring Tessa into court or into the proceedings. (EH Tr. Pp. 14-17)

Gail Willey's testimony envinces that he met with and retained Attorney David Houston during the latter part of 2002 by giving Mr. Houston a "fairly good check" in payment for his legal services on behalf of his brother-in-law Doyle Lancaster. At the time of retaining Mr. Houston conditions were placed on his representation of Doyle Lancaster as follows: 1)... he was not to interrogate or to--use Tessa (the alleged victim) in any way to bring her into the equasion; 2)"..., it meant that he would just leave her alone.", 3) Tessa was not to be involved or play any part in the case. These conditions were "absolute", "nonnegotionable". The condition placed on Mr. Houston's representation not to involve Tessa in any way was a situation where Mr. Houston had to agree to and follow that condition or Gail Willey and the family would'nt have retained him. (EH Tr. Pp. 53-54)

The members of the Lancaster family who were represented by Joy Adams and Gail Willey when they hired Mr. Houston were not aware of the fact that the precondition and limitations placed on the representation of Mr. Lancaster when they retained David Houston, Esq., would eviscerate any possible defense or trial in the case as well as any semblance of fair representation by defense counsel Mr. Houston because the only available option left open to him was that of pleading his client out in the case. Gail Willey was questioned extensively by Judge Palaha regarding his understanding and intentions when he retained Attorney David Houston to undertake legal representation on behalf of his brother-in-law Doyle Lancaster. Specifically, when asked by Judge Polaha, en quote:"Okay. Now Tessa was the victim in this case. And she was a necessary player in a trial. So did you talk about trial or did you retain him to represent Mr. Lancaster at a sentencing and to try to get the best deal that he could ? or did that even come up ?", Gail Willey testified under questioning by Judge Polaha, as follows: " Well our thought-- the reason we got involved, we wanted to see Doyle get a fair trial and we wanted him to get a fair represtantion," (6/9/06, Eh Tr. P. 56, L. 2-9)

Thus Mr Lancaster has shown by clear evidence that an actual conflict of interest existed from the inception of Attorney David Houston's legal representation of Mr. Lancaster. Mr. Houston knew when he accepted the retainer fee from Gail Willey and others that there existed a significant risk that the representation of Mr. Lancaster would be materially limited by his responsibilities to a third person or persons and by his own financial interest in accepting a substantial fee, in a case that he could not honestly and diligently represent, by agreement with a third party. The conflict of interest involved in this case represents a clear violation N.R.S. R.P.C. 7.1 (formerly Supreme Court Rule 157). When a lawyer knows that his responsibility to a third party may impair representation of a client, the lawyer must decline or withdraw from representation. Duval Ranching Co. V. Glickman, 930 F.Supp. 469 (1996). Attorney David Houston accepted the retainer while knowing full well that the agreement reached with Joy Adams and Gail Willey, not to involve the alleged victim Tessa L.,

in any way, in the criminal prosecution of Mr. Lancaster, left Mr. Houston with no other option than to plead his client out in the case.

additionally, the actual conflict of interest envinced on the record of evidentiary proceedings conducted in this case also clearly violate express provisions of the Nevada Rules of Professional Conduct and former Supreme Court Rules governing a lawyer's professional conduct including, but not limited to, N.R.S. RPC 1,8, (a) (b) & (f), which, essentially, provide that, a) an attorney shall not knowingly acquire a pecuniary interest adverse to a client; etc.; b) a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as otherwise permitted or required by the rules; and (f) a lawyer, shall not accept compensation for representating a client from one other than the client unless; (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6.

Applying the second prong of the Cuyler standard whether the conflict adversely affected counsel's performance. Here, the actual conflict of interest adversely affected Attorney David Houston's representation of Mr. Lancaster in manifold areas of the defense representation as follows:

1) Mr. Lancaster was unaware of the actual conflict of interest until it was disclosed by reading the transcript of the June 9,2006 evidentiary hearing proceedings and, therefore, the actual conflict of interest under which attorney David Houston labored under was not with the informed consent of Mr. Lancaster;

2) By its very nature, the conflict of interest involved in this case undoubtedly, interfered with the independence and professional judgment of Mr. Houston, as well as the attorney-client-relationship, in that (a) Mr. Houston advised Mr. Lancaster in no uncertain terms that if he insisted on going to trial he would be found guilty and would be sentenced to life imprisonment without the possibility of parole, which by any standard is ineffective assistance of counsel based on material misadvice and but for which misadvice Mr. Lancaster would not have pled guilty,

Sparks V. Sowders, 852 F.2d 882 (6th Cir. 1988), but would have insisted on going to trial; (b) after the complaining witness failed to appear for the preliminary examination on at least two seperate occasions, instead of filing an appropriate motion to dismiss, Attorney David Houston improvidently induced Mr. Lancaster to waive the preliminary hearing and opt for a plea of guilty with a promise of probation when the crimes in question had not even been established with any fair degree of certainty and the preliminary hearing testimony of Tessa under cross examination, likely would have established a lack of criminal intent on the part of her grandfather to commit either of the crimes charged in the information in alternative form, because nothing that Doyle Lancaster ever did with his granddaughter was intended to arouse, appeal to or gratify the lust, passions or sexual desires of either himself or Tessa, and Tessa would have testified that she had been forced into making admissions by her grandmother's, in effect, incessant jealous harrassment, threats, and physical abuse, therefore making a threefold showing of reliable slight or marginal evidence sufficient to bind the case over for trial from Justice Court highly improbable, if not impossible, on the actual facts of this case brought to light, therefore, Mr. Houston's total failure to actively advocate his client's cause" had the effect of "provid[ing] [petitioner] not with a defense counsel, but with a second prosecutor. "Rickman V. Bell, 131 F.3d 1150 (6th Cir. 1997), Cert. denied, 118 S.Ct. 1827 (1998). In fact, Mr. Houston committed perjury in his given testimony on the waiver of preliminary hearing and in regard's to when he was retained, in pertinent part, as follows:

> Q Okay. So you were retained?
>
> A Yes.
>
> THE COURT: Was that before or after the prelim, just to put it in --
>
> THE WITNESS: I will have to say it was probably after the prelim. I don't remember, Judge.
>
> THE COURT: I have writing on the waiver of preliminary examination, if that will help.

THE WITNESS: If I could see that?

MR. QUADE: I will stipulate that you can take judicial notice it was prior to prelim because Mr. Houston represented him during the waiver.

[THE WITNESS: I don't recall doing the prelim, so we certainly could have waived that.

BY MR. PLATER:

Q Do you remember waiving the prelim?

A Vaguely.] (emphasis added)

(7/6/07,EH Tr. at P. 73, 2-18);(c) the entire evidentiary hearing testimony of Attorney David Houston as to why he advised Mr. Lancaster to plead guilty was false. An investigator wasen't even hired by the defense until sometime in April, a long time after the Feburary 11, 2003 arraignment and change of plea proceeding at which Mr. Lancaster pled guilty on the advice of counsel. Mr. Houston never went over any discovery material with Mr. Lancaster. He never discussed a motion to supress the uncounselled statements unlawfully obtained during a custodial interrogation by detective Tom Broom, and the whole cock and bull story about the D.E.A. report containing a confession or incriminating statements was entirely false. In fact, no defense investigator ever spoke with Tessa L. (6/9/06, EH Tr. P. 63, L. 2-10) (7/6/07, EH Tr. P. 73-108) Mr. Houston's answer to the court's question "why wasen't she at sentencing?" that the family spirited her away was false and belied by previous 6/9/06 testimony that Tessa was brought to court to speak to the Judge, but according to Mr. Houston Judge Palaha wouldn't talk with her and family members who accompanied her to the court following sentencing on July 2, 2003.

The sentencing hearing was continued three times from 4/29/03 to 5/13/03, from 5/13/03 to 5/21/03, and from 5/21/03 to 7/2/03, Tessa L. was brought to the court for the first sentencing, but it was continued. Attorney David Houston's response to Judge Polaha's questioning of why Tessa L. did not appear in court for the sentencing on July 2, 2oo3, is also belied by statements made to the court by Mr. Houston and Kelli Anne Viloria, Esq., Deputy District

Attorney, as disclosed by the transcribed stenographic notes from the sentencing hearing conducted on Tuesday, May 23, 2003. As previously shown in the testimony adduced from Joy Adams and Gail Willey during the evidentiary hearing proceedings conducted on June 9, 2006, Mr. Houston had agreed, as a "nonegotiable" condition of accepting his retainer, in essense, that he would not bring Tessa L. into court or involve her in any way in the proceedings. Nevertheless, on May 13,2003, Mr. Houston represented to the court, in pertinent-part, that, " Apparently the victim is not present.... As A consequence, there is a request, I believe mutually from both sides, that we move this until such time as the victim can [actually be present]. [Because I think that is also part of the healing process for the victim, and my client agrees with that as well."] after which ms. viloria, in pertinent part, stated: :Judge, we have been in contact with the person who has guardianship over her. [We did expect him to be here.] He did have some concerns he expressed this morning. He's no longer answering his cellular telephone. I can't verify thoes concerns. Mr. Houston has agreed to continue. What we would like to do, because of the nature of the offense, is set it for a special setting especially since we do have a child victim."
(5/13/ 03, SH Tr. Pp 2-3) (emphasis added) Knowing that he had agreed to limit his defense representation of Mr. Lancaster as a condition of being retained by Gail Willey and other members of the Lancaster family, Mr. Houston is merely putting on an appearence of propreity while perpetrating a fraud upon the court.

Judge Palaha was fully informed in the premises that an actual conflict of interest existed in the trial defense representation of Doyle Lancaster by Attorney David Houston, from the inception of the case, when it was disclosed through the given testimony adduced from Joy Adams and Gail Willey during evidentiary hearing proceedings conducted before Judge Polaha on Friday, June 9, 2006. yet the court failed to recognize and correct the glaringly apparent cancer of injustice which had infected the case, thus, in light of other record evidence and testimony adduced at the Monday, July 24, 2006, and Friday, April 6, 2007, evidentiary hearing proceedings, clearly showing, that collusion existed between defense Attorneys, State prosecuting authorities, and the court, for self-serving reasons of insular self-interest and political expedience in obtaining a conviction and disposing of an unwanted case.

Judge Jerome M. Polaha presided over the Arraignment on the criminal Information filed on February 11, 2003. The Arraignment of Doyle Lancaster was continued twice from the 13th to the 20th of February, 2003, with the Arraignment and change of plea proceedings finally being conducted on February 25, 2003,

Deputy District Attorney David Clifton, Esq., appeared on behalf of the State, and Attorney David Houston, Esq., appeared for Mr. Lancaster, at the Arraignment.

According to the aforementioned testimony of Joy Adams and Gail Willey, under examination by collateral counsel Paul Quade, Esq., Joseph Plater, Esq., Deputy District Attorney, and extensive questioning by the court, as well, it was clearly proven by a perponderance of direct evidence in the given testimony of the witnesses that Attorney David Houston, Esq., knew that there could be no trial in this case and that he fully intended to plead Doyle Lancaster out because he had agreed to the "nonnegotiable" limitations placed upon the defense representation of Mr. Lancaster, as a precondition of being retained by Joy Adams and Gail Willey who represented, themselves, and other members of the Lancaster family when retaining Mr. Houston, specifically, Mr. Houston was prohibited from involving Tessa L. in any way in the proceedings or bringing her into court and subjecting her to cross-examination by the defense, therefore, making any meaningful adversarial testing of the States evidence and theory of prosecution virtually impossible. Mr. Houston had agreed not to involve Tessa L. in the case, as aforesaid, long before he coerced, misadvised and improvidently induced Mr. Lancaster to sign the waiver of preliminary hearing on January 30, 2003 andplead guilty on the advice of counsel.

Mr. Lancaster did not hear much of what was being said during the arraignment and the change of plea proceedings on February 25,2003. Nor did he fully understand what he did hear. This is made evident in the transcript of Tuesday, February 25, 2003, Arraigment, at p. 4,L. 6-12,

Both Mr. Houston and the court were made fully aware of Mr. Lancaster's mental disability due to seven strokes caused by carotid stenosis-a constriction of the carotid artery-that was corrected by surgery following the last stroke in February, 2003, and the hearing disability which Mr. Lancaster had suffered from for many years, as he was legally deaf, the Jeff LOvett, MD/RD, letter dated 5/12/03, long before the sentencing hearing conducted on July 2, 03. See attached Exhibit F. A defense counsel's failure to investigate, inter alia, his clients brain damage constitutes ineffective assistance of counsel. Caro V. Woodford, 280 F.3d 1247 (9th Cir. 2002).

It wasen't until nearly four years and one month from the date of Mr. Lancaster's arrest on September 20, 2002, that the trial court recognized and entered an Order "that an interpretive reporter shall be assigned to assist petitioner to understand the proceedings." See Order dated and signed October 13, 2006, by Jerome M. Palaha, District Judge, appended hereto and incorporated herein by reference in its entirety, Marked Exhibit G. However, the only time the screen print-out was used to assist Mr. Lancaster's understanding of the proceedings, occurred approximately (6) months later during the Friday, April 6, 2007, evidentiary hearing conducted on Mr. Lancaster's Petition For Post-conviction Relief that was continued from June 9th and July 24, 2006, when testimony was taken from Attorney David Houston. The screen print-out machine provided did not work very well because it took time for the visual images to register as Mr. Lancaster read and tried to keek up with the images appearing on the screen, for comprehension. Many of the words appearing on the screen were abbreviated, making it necessary for Mr. Lancaster to try to figure out what was being said in the courtroom. Unfortunately, however, Mr. Lancaster's mind did not work fast enough to enable him to keep up with the abbreviated testimony and what was being said between the court and counsel as it passed across the screen printout. therefore, in light of

Mr. Lancaster's mental and hearing impairments it was impossible for him to keep up with and understand even Attorney David Houston's evidentiary hearing testimony. The only kind of device that might have been effective to reasonably accommodate Mr. Lancaster's disabilities would have been some type of headphones that would work in conjunction with hearing aids, for the purpose of voice audible sound amplification, to assist Mr. Lancaster in directly hearing what was being said in the courtroom and therefore aid in his understanding, to the extent he was capable of understanding what was going on during the proceedings at that time.

In fact, the record discloses that Judge Polaha, Attorney David Houston, and Attorney Paul Quade colluded in defeating the ends of justice by seeing to it that Mr. Lancaster was left, largely, in the dark as to what was going on and what was being said during the evidentiary hearing proceedings conducted on Friday, April 6, 2007. Judge Palaha, Attorney Paul Quade, and Attorney David Houston were all aware of Mr. Lancaster's impairments due to several strokes, including brain damage, and his hearing disability, as well.

During the July 2, 2003 sentencing hearing Mr. Houston in pertinent part, argued, en quote; "And I then have asked the Court to factor in other things about Mr. Lancaster that I made your Honor aware of. ¶ I can't stand before you and say this issue concerning a medical condition played into it. Nobody can. ¶ Nobody can tell you about the brain or the complexities of it. But I can tell you that it is consistent with the time frame. " (7/2/03, S.Tr. at P. 22, L.5-12) Then during his evidentiary hearing testimony Mr. Houston, in pertinent part, testified as follows; "He had these medical issues. I think he had the mini strokes. He had some other issues involved that could explain that. He had some psychological issues involved because his wife had cheated on him with I think the gardener. There are all these things in the mix that I felt kind of represented a very unique situation. And I felt badly for Mr. Lancaster. He was a good man that made a terrible mistake. Q Did his mental issues, his difficulty with hearing, did that ever interfere--A NO." (4/6/07, EH TR. P.82, L. 12-23) Shortly after this testimony Attorney David Houston is seen giving false testimony on two material points. In one instance, Mr. Houston testifies

that Mr. Lancaster never told him that he could not hear what Mr. Houston was saying. (4/6/07 Eh. Tr. Pp. 83, L.8-10 and 18-24; and P. 84, L. 11-17.) Then testifying to the contrary that Mr. Lancaster did tell him "I didn't hear what you said" when he couldn't hear. The other instance of Mr. Houston giving false, misleading and perjered testimony on a material point concerns which of the doctors was retained by the defense to do the psychosexual evaluation. Mr. Houston is seen giving false evidentiary hearing testimony when testifying that the defense hired Dr. Nielsen. When in fact, the record discloses that Mr. Houston hired Dr. Stuyvesant. at "page 1" of Robert P Stuyvesant, M.S.W., Psychosexual Evaluation/Risk Assessment (14 pages, under "referral Source:") it clearly stated: "David Houston, Attorney at law, Reno Nevada, This report is dated 4/20/03 and is part of the court record in this case. Yet Attorney David Houston testified, falsely to the contrary as follows:

15 But I am saying that we retained Nielsen, I
16 believe, and the State had provided through P&P Stuyvesant.
(4/5/07, Eh. Tr. P. 86, L. 15-16)

Attorneys Lee Hotchkin, Esq., David Houston, Esq., and Paul Quade, Esq., all Three defense Attorneys retained by Joy Adams (formerly Mrs. Gladys Lancaster) and brother-in-law Gail Willey, labored under the same actual conflict of interest while serving as trial defense counsel and collateral appeal counsel, respectively. All three of them were aware of the "nonnegotiable" condition of there retainer that they were not to involve the alleged victim, Tessa Lancaster, in the trial proceedings conducted in Doyle Lancaster's case, in any way, when they were hired by the family. As previously pointed out and testified to during the June 9, 2006 evidentiary hearing proceedings, Joy Adams and Gail Willey both believed and expected that Doyle Lancaster would still receive a fair trial despite their insistence on the pre-condition that Tessa not be involved in the case. Moreover, the record supports the obvious conclusion that neither Joy Adams or Gail Willey knew any better. Their sole concern was to protect Tessa from any unnecessary embarrassment or discomfort that would necessarily result from involving her in the prosecution or defense of the case, from its inception.

pertinent facts pertaining to Attorney Lee Hotchkins Represention

Attorney Lee Hotchkins was relieved of defense counsel because he didn't want to talk with Mr. Lancaster about any defense in the case.

As the record reflects, Attorney David Houston was substituted in place of Lee Hotchkins, Esq.. This substitution of counsel occurred because Mr. Lancaster voiced his complete dissatisfaction with Mr. Hotchkins representatoin to his wife Gladys Lancaster (Joy Adams) and other Family members.

According to Lee Hotchkins, Esq., he was a former prosecutor in Dick Gammick"s office, and professed to be able to get Mr. Lancaster a good deal. Mr. Hotchkins said that he could get the bail bond reduced from $55,000.00 to $10,000.00, and would obtain a reduction in the charges, including the sexual assault counts, was obviously false.

Attorney Lee Hotchkins did file a bail reduction motion but failed to provide the court with good reason for the reduction requested. After 47 days in jail Mr. Lancaster, with help from family and friends, pulled together the resources to put up the full amount of $55,000.00, for the bail bond, since Lee Hotchkins hadn't performed as he had said that he would by obtaining an appropriate reduction in the bail bond.

In effect, Attorney Lee Hotchkins told Mr. Lancaster that he could get the charges reduced and a deal for a plea of guilty to attempt sexual assault and could guarantee a sentence of no more than five years imprisonment as the State would agree to it. Doyle Lancaster told Mr. Hotchkins "no way", and the search for substitute counsel began..

Unknown to Doyle Lancaster, until just recently, when he was able to read and comprehend the testimony adduced from Joy Adams and Gail Willey at the evidentiary hearing proceedings conducted on June 9, 2006, Attorney Lee Hotchkin was laboring under the same actual conflict of interest in accepting his retainer and defense representation on behalf of Mr. Lancaster as David Houston, due to the same uncohditional limitations having been placed upon the defense by members of the Lancaster family responsible for hiring these attorneys for Doyle Lancaster's defense. In fact Leland Rock and

Gail Willey, jointly, paid Lee Hotchkins a substantial retainer in the amount of $15,000.00 for his defense representations in the case. (6/9/06, Eh Tr. Pp 52,L.16 thru 59, L.10)

While Lee Hotchkin may have tried to earn his money by attempting to induce Doyle Lancaster to plead out in the case, in light of the restriction's unwittingly placed on his defense effort by the people paying his retainer, he actually did nothing legally required of him as an attorney and sworn officer of the court on behalf of Doyle Lancaster's defense.

When David Houston was rtained, and Mr. Lancaster spoke with him, the topic of discussion was a trial. Initially, Mr. Lancaster was vehemently against and had no intention of pleading guilty because he didn't feel as though he had really done anything wrong such that it would warrant a trial, much less imprisonment.

Moreover, the waiver of preliminary hearing signed by Mr. Lancaster on January 30, 2003 and filed in Justice Court on February 11, 2003, [redacted], was put before him by Mr. Houston for his signature at a time when he had no idea of the real significance of what he was signing, the document deffinitely did not have the conditions of the plea agreement inscribed on the bottom of the document at the time it was presented to Mr. Lancaster by Mr. Houston for his signature. In fact, although Lee Hotchkin had explained the need for a preliminary hearing to Mr. Lancaster, Mr. Lancaster did not really understand what a preliminary hearing was, it's purpose or the significance to his case of the waiver Mr. Houston presented and had him sign as a necessary part of his conflicted defense representation of Mr. Lancaster.

Mr. Lancaster was denied effective assistance of counsel on the Lozada appeal filed in the district Court due to appellate counsel Paul Quade, Esq's, failure to raise and argue the record supported significant and obvious viable issues of ineffective assistance of trial counsel based upon an actual conflict of interest inherent in the trial defenae representation afforded by retained counsel David Houston from the inception of the case, in violation of the Fifth, Sixth and Fourteenth amendments to the Constitution of the United States and corresponding provisions of the Constitution of the State of Nevada, article I, §8,

Based upon information and belief Attorney Paul Quade, Esq., first visited Mr. Lancaster in June, 2004, at the Northern Nevada correctional Center, Carson City Nevada. Mr. Quade had been retained

by Mr. Lancaster's brother-in-law Gail Willey to represent Mr. Lancaster as collateral counsel in the proceedings conducted on Mr. Lancaster's Pro Se Petition for writ of Habeas Corpus (post conviction) filed on July 1, 2004. During said visit Attorney Palu E. Quade, Esq., read the orginal petition for writ of habeas corpus and advised Mr. Lancaster to file it as is with the District Court, and further advised that he would supplement the orginal Petition for Writ of Habeas Corpus later on. Attorney Paul Quade, Esq., entered his NOTICE OF APPEARANCE on behalf of Doyle Lancaster on July 16, 2004.

It wasn't until May 31, 2006, (22½ months later) that Attorney Paul Quade, Esq., actually filled a supplemental petition with points and authorities which was dismissed by the court granting the States Motion to dismiss on grounds that Mr. Quade had faild to file a reply. Said dismissal of the, supplemental petition occurred during evidentiary hearing proceedings conducted April 6, 2007.

Even more remarkable is the fact that the notice of ENTRY OF ORDER filled June 29, 2007, giving notice that the court had entered its Findings of fact, Conclusions of law, and Order rendered by District court judge Jerome Polaha on June 6, 2007, in conclusion, held that Mr. Lancaster "[was afforded effective assistance of counsel except for his right to direct appeal based upon the evidence and testimony presented at time of hearing on this matter April 6, 2007.] The court further holds all other issues, including those raised in the States motion to dismiss are rendered moot by this order". See June 6, 2007 Order filed June 13, 2007, at P. 13, The aforesaid findings of fact, conclusions of law and order filed June 13, 2007, and Order Dismissing Appeal rendered by Judge Polaha in regard to the Lozada appeal on March 6, 2008 and filed in the District Court on March 7, 2008, both rely on judicial fact findings, based on testimony adduced from Doyle Lancaster, and Lancaster's 2nd. Attorney David Houston, Esq., at the evidentiary hearing conducted on April 6, 2007. Yet neither of the two Orders take into account the matter and evidence in the given testimony adduced from Joy Adams and Gail Willey which clearly and unequivocally established that an actual conflict of interest existed in the trial defence representation of Doyle Lancaster by Attorney David Houston from the inception of the case, which Mr. Lancaster was not privy to and was kept entirely in the dark with respect to,

by both the family and retained counsel David Houston, Esq.,

The First evidentiary hearing conducted on Mr. Lancaster's Petition for writ of Habeas Corpus (post conviction commenced at 1:30 P.M. on Friday, June 9, 2006, and was concluded sometime before 4:00 P.M., because Mr. Quade had to pick up his son by 4:45 P.M. and catch a flight out of town. The State was represented at the evidentiary hearing by Deputy District Attorney Joseph Plater, Esq., during which the issues were discussed and testimony taken from Joy Adams and Gail Willey, both of whom gave quite extensive testimony under oath that supports an obvious inference that the trial defense representation in this case was conflicted from the very beginning.

Both the Findings of Fact, Conclusions of Law and Order rendered by Judge Polaha on Mr. Lancaster's original Petition for writ of Habeas Corpus (post conviction) filed June 13, 2007, and Judge Polaha's Order Dismissing Appeal filed March 7, 2008, failed to take into account the testimony adduced from Joy Adams and Gail Willey at the June 9, 2006 evidentiary hearing proceeding which clearly establish that an actual conflict of interest existed in the trial defense representation of Mr. Lancaster by Attorney David Houston from the moment that he accepted payment for his services as defense counsel in the case from Gail Willey under the nonnegotiable condition that Mr. Houston not involve Tessa Lancaster in anyway, and thus obviating any need or possibility of presenting a defense. By accepting the retainer Mr. Houston had no other option or intention available to him, while laboring under such conflicted condition limiting the defense, other than to plead his client out.

Once Mr. Houston accepted his retainer under the condition that he was not to involve the alleged victim Tessa Lancaster in any way in the case, unknown to Mr. Lancaster the defense became an absurd pretense, a charade. And once collateral counsel Paul Quade, Esq., the prosecutor Deputy District Attorney Joseph Plater, and trial court Judge Jerome Polaha became aware of the blatant and obvious conflict of interest that existed in Mr. Houston's defense representation of Mr. Lancaster it became incumbent upon them as sworn officers of the court to take the necessary steps to cure the cancer of injustice that had infected the case by reason of an unscrupulous defense attorney accepting a retainer under false pretenses

and thereafter prepetrating a complete fraud upon the court which caused the conviction of one who is actually innocent.

Due process guarantees a defendant the right to effective assistance of counsel on his first direct appeal of right. Evitts V. Lucey, 469 U.S. 387, 83 L.Ed.3d. 821, 105 S.Ct. 830 (1985). The Strickland standard applies to appellate counsel ineffectiveness claims. Strickland V. Washington, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064-74, 80 L.Ed.2d 674 (1984). Under Strickland ineffective assistance of counsel will be found when "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result". Strickland, 104 S.Ct. at 2064. The Strickland standard establishes a two-prong analysis. First, counsels performancas must have been deficient, and second, the deficiency must have prejudiced the defense. Id. Had appellate counsel failed to raise a significant and obvious issue, the failure could be viewed as deficient performance. If an issue, which was not raised, may have resulted in a reversal of the conviction, or an Order for a new trial, the failure was prejudicial. Id. at 352.

Ineffective Assistance of counsel claims may be resolved on direct appeal where defendant relies on trial court record to support ineffective claims. Guihan V. U.S., 6 F3d 468 (7th Cir. 1993). Moreover, appellate counsel's failure to raise A "dead bang winner", constitutes ineffective assistance and establishes "cause" for failure to raise the error. U.S. V. Cook 45 F3d 388 (10 Cir. 1995).

During the June 9th 2006 evidentiary hearing proceedings conducted on Mr. Lancaster's Petition for writ of habeas corpus filed July 1. 2004, retained counsel Paul Quade, Esq., adduced testimony under direct examination from both Joy Adams and Gail Willey which clearly established that Attorney David Houston was laboring under an actual conflict of interest by excepting the retainer from Gail Willey and members of the Lancaster family, whom Joy Adams and Gail Willey represented when they hired David Houston, under the condition that the victim not be involved in the case, in any way. The conflict of interest created by limiting the defense counsel in this way had the effect on Mr. Houston's representation of Mr. Lancaster, of representing the victim and victims families interest in not being involved in the case which violated Mr. Houston's duty

of loyalty owed his client. Obviously, Mr. Houston could not represent both the interest of the victim by not involving the alleged victim in the case and the interest of his client Mr. Lancaster in receiving a fair trial or disposition of his case, even in a plea context.

In Wood V. Georgia, 450 U.S. 261, 67 L. Ed. 2d. 220, 101 S.Ct. 1097 (1981), The Supreme Court held that a conflict of interest issue, where a third party retains counsel, requires an evidentiary hearing.

The standard governing conflict of interest in defense representation claims is governed by Cuyler V. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). In order to find a Sixth Amendment violation based on a conflict of interest, the reviewing court must find: (1) that counsel actively represented conflicting interests; and (2) that an actual conflict of interest adversely affected the attorneys performance. Id. at 348, 100 S.Ct. at 1718. Under Cuyler, the court must presume prejudice if the conflict of interest adversely affected the attorneys performance. Id. although Cuyler involved a conflict of interest between clients, the presumption of prejudice extends to a "conflict between a client and his lawyer's personal interest." See Mannhalt V. Reed, 847 F.2d 576,580 (9th. Cir.), cert. denied, 488 U.S. 908, 109 S. Ct. 260, 102 L.Ed. 2d 249 (1988). However, worthy of note here, The Fifth Circuit in Beets held that the Strickland standard test, rather than the Cuyler test, offers a superior framework for addressing conflict of interest outside the multiple or serial client context. Beets V. Scott, 65 F.3d 1258 (5th. Cir. 1995).

Applying the Cuyler standard to the facts of this case, there can be no doubt that an actual conflict of interest existed, by representing the interest of the victim Tessa LancASTER IN NOT BEING BROUGHT INTO COURT and not being involved in the case, because the potential for diminished representation is so great. In fact the record supported conflict of interest eviscerated any possible defense. Applying the second prong of Cuyler, the conflict of interest adversly affected Attorney David Houstons performance in several areas, inter alia, which includes: 1) counsel accepted the States version of the facts and failed to file any appropriate pretrial motions because he relied on the governments version of facts,

and not based on his own reasonable investigation, any representation to the contrary not withstanding, see U.S. V. Matos, 905 F.2d. 30 (2nd Cir. 1990); and Woodard V. Collins, 898 F.2d 1027 (5th Cir: 1990); 2) counsel advised Mr. Lancaster to sign a waiver of preliminary examination when he should have filed an appropreate motion to dismiss for the States failure to produce the complaining witness for the preliminary hearing on three separate occasions and thereby abandoned his client to the mercies of the State; 3) Attorney David Houston conceded his client's guilt and advised Mr. Lancaster and members of his family that he would receive probation if he received a good result on the psychosexual evaluation that he must undergo, but in order to receive probation and resolve the case with the least amount of embarrassment and trouble for everone involved, Mr. Lancaster could not completely deny the accusations made against him and he must admit guilt, but for which material misadvice which induced the plea Mr. Lancaster would not have pled out, but rather would have insisted on going to trial, Hill V. Lockhart, 474 U.S. 52, 88 L. Ed. 2d 203, 106 S. Ct. 366 (1985); 4) Mr. Houston failed to investigate the obvious defense of diminished capacity or insanity at the time of the alleged offenses due to Mr. Lancaster's cognitive incapacity caused by seven lacunar infarcts (strokes), a hole in his brain the size of a golf ball, and being legally deaf at the time of the alleged offenses, see Clark V. Arizona, 548 U.S. 735, 126 S.Ct. 2209 (2006); 5) by conceeding Mr. Lancaster's guilt throughout the proceedings while Mr. Lancaster could not hear and fully understand for the mostpart what was actually going on Mr. Houston, in effect, became a second prosecutor; 6) Mr. Houston argued against the interest of his client for a finding of guilt and sentence on four counts of lewdness with a child under the age of 14 for which Mr. Lancaster received a sentence of 4 ten to life terms of imprisonment, when in fact, Mr. Lancaster only admitted to one instance of lewd conduct and that only on the advice of counsel; 7) the State was only able to fabricate the case against Mr. Lancaster due to Mr. Lancaster's inability to hear and comprehend the proceedings, and due to the multiple misrepresentations of fact presented by Mr. Houston and the State prosecutor Mr. Clifton which amounted to fraud upon the court and collusion, as will more fully appear

herein the following.

Under these circumstances Mr. Lancaster was constructively denied counsel alltogether and prejudice is presumed under both Strickland, and U.S. V. Cronic standards. Yet, when the conflict of interest, in question was disclosed through the testimony of Joy Adams and Gail Willey, Attorney Paul Quade, Esq., ADA Plater, and Judge Polaha, all acted and, or agreed in concert to sweep the matter under the rug, to cover up the evidence of conflicted defense representation that had surfaced in the case, this was accomplished by Judge Polaha assigning Attorney Paul Quade to do the Lozada appeal as court-appointed counsel and, therefore, due to colusion between retained collateral counsel Paul Quade, Esq.,(who also served as court appointed counsel on the Lozada appeal,) Assistant District Attorney Plater, and Trial court Judge Jerome Polaha, this significant and obvious viable issue available for appellate review on the record was not briefed. See, U.S. ex rel. Duncan V. O'Leary, 806 F.2d 1307 (C.a. 7 (111.) 1986).

Thus substantial evidence existed in the record prior to sentencing on July 2, 2003 regarding Mr. Lancaster's mental disabilities and hearing impairment. More importantly, retained trial defense counsel David Houston, Esq., had been fully informed concerning Mr. Lancaster'a physical and mental impairments when he was retained by members of Mr. Lancaster's family, and two close personal friends and associates, who paid substantial portions of Attorney David Houstons flat fee of $25,000.00, Including Leland Rock and Richard Schluter. Doyle told David Houston on several occasions that he could not hear what was being said during court proceedings, however, Mr. Houston told him, "it doesn't matter, I'll take care of everything,it's going to be O.K., so don't worry about it." Doyle did not feel that it was right that he couldn't hear what was being said durings these proceedings, but could do nothing about it, because he knew nothing of his rights to the contrary until several years after his conviction and subsequent incarceration.

Mr. Lancaster was charged and undergoing criminal prosecution, in state district court proceedings, for felony offenses which exposed him to multiple life sentences that, ultimately, were imposed on a plea of guilty entered on the advice of counsel of record Attorney David Houston, a prominent Attorney and talk show host on the T.V. Channel 4 program "Lawyers, Guns and Money" featured on Sunday Afternoons at 4:30 p.m., and co-hosted by Attorney Scott Friedman.[2]

It is settled law that a criminally accused may not be tried unless he is competent and may not waive his right to counsel or [plead guilty] unless he does so competently and intelligently. Godinez v. Moran, 509 U.S. 389, 113 S.Ct. 2680 (U.S. Nev. 1993). Relying on Dusky, infra, the Godinez Court held: "The competency standard for pleading guilty or waiving the right to counsel is the same as the competency standard for standing trial: whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and a "rational [as well as factual understanding of the proceedings against him,"] Dusky v. United States, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960)(per curiam)(emphasis added). Id 113 S.Ct at 2681. The Court goes on in dicta to further explicate its holding, in relevant part, as follows: "A finding that a defendant is competent to stand trial, however, is [not all that is necessary before he may be permitted to plead guilty] or waive his right to counsel. In addition to determining that a defendant who seeks to plead guilty or waive counsel is

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[2] Many prominent state government and public officials have appeared as guests of Attorney David Houston including governors, congressman and senators, judges, state legislators, and educators, which makes Mr. Houston a very powerful and influential individual in Nevada, and explains the collusion and cover-up of his malfeasant conduct amounting to malpractice and crimes committed against Mr. Lancaster including grand theft by fraud. 85

competent. A trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary. Parke v. Raley, 506 U.S. 20, 28-29, 113 S.Ct. 517, 523, 121 L.Ed.2d 391 (1992)(guilty plea); Faretta, supra, 422 U.S., at 835, 95 S.Ct., at 2541 (waiver of counsel). In this [509 U.S. 401] sense there is a "heightened" standard for pleading guilty and waiving the right to counsel, but it is not a heightened standard of competence".

Simply stated, the focus of the competency inquiry is defendant's mental capacity, i.e., the question whether he has the ability to understand the proceedings, whereas purpose of "knowing and voluntary inquiry" is to determine whether the defendant does actually understand the significance and consequences of the particular decision [and] whether that decision is uncoerced. Moreover, a defendant waives fundamental constitutional rights when he pleads guilty; the privilege against compulsory self incrimination, the right to jury trial, and the right to confront one's accusers.

On the foregoing facts, there can be no question or doubt, that the plaintiff is an individual who suffers from qualified disabilities including (1) a mental disability stemming from organic brain damage apparently caused by carotid stenosis, (2) a hearing impairment that is a qualified disability that renders plaintiff legally deaf, in the absence of provision of high quality hearing aids and/or other auxiliary devices necessary for hearing under circumstances involving background noises and which interfere with hearing even given the best of high quality hearing aides available, caused by exposure to high levels of environmental noise from industrial machinery and equipment, i.e., operating planer mills, chain saws, saw mill machinery, etc.,

And (3) a visual impairment attributable to both cataracts and Astigmatisms due to intentional delay and denial of important prescribed treatment and medications by named jail and Washoe County defendants As previously explained in foregoing "Count II".

Equally as much, it is true on these facts, that Mr. Lancaster is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities, specifically: in the Justice Court of Reno Township, County of Washoe, State of Nevada, and in the Second Judicial District Court of the State of Nevada, In And for the County of Washoe, by virtue of facts that Mr. Lancaster was subjected to "irrational disability discrimination" by the named defendants violation of his right to "equally effective communication" and, thereby, unconstitutional treatment in the administration of justice due to interference with access to the judicial process, procedural due process violations, and denial of equal justice under law. See, e.g., Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980)(procedural due process); May v. Sheahan, 226 F.3d 876 (C.A.7 2000)(Access to judicial process).

Moreover, the plaintiff was excluded from participation in and denied the benefits of the aforesaid public entity's services, programs, or activities, and was otherwise discriminated against by the public entity. The Due Process Clause and Confrontation Clause of the Sixth Amendment, made applicable to the States through the enabling Articles of the Fourteenth Amendment, both guarantee to a criminal defendant such as plaintiff Mr. Lancaster the "right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings." Faretta v. California,

442 U.S. 806, 819, n. 15, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). In the instant case, although Mr. Lancaster was physically present, no doubt he was not present to participate fully in the proceedings where it has clearly been shown that his "right to equally effective communication" was violated by the defendants failure to provide any "reasonable accommodation" for plaintiff's severe chronic disabilities of which the defendants knew or should have known. The Due Process Clause also requires the States to afford litigants a "meaningful opportunity to be heard" by removing obstacles to their full participation in judicial proceedings. Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); M.L.B. v. S.L.J., 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996).

And lastly, such exclusion, denial of benefits, or discrimination in the administration of justice by defendants was by reason of plaintiff's disabilities. The judges and judicial officers are bound by Oath or Affirmation to uphold the Constitution and laws of the United States and the several states, including Nevada. U.S. Const., Art. VI, §§2-3, and corresponding provisions of Nevada Const., Art I, §1, pursuant to the Supremacy Clause. Thus, defendant officials have violated clearly established statutory and constitutional rights of which they knew or should have known in their official position, that their conduct violated plaintiff's clearly established rights sub judice. Butler v. City of Prairie Village, Kan., 172 F.3d 736 (C.A. 10 (Kans.) 1999). Additionally, Title II of Americans with Disabilities Act (ADA), prohibiting discrimination by a public entity, validly abrogated Eleventh Amendment immunity through enforcement of the Fourteenth Amendment, as applied to cases implicating the fundamental right

of Access to courts. U.S.C.A. Const. Amends. 11, 14, §5; ADA of 1990, §§ 201, 502, 42 U.S.C.A. §§ 12131, 12202. Tennessee v. Lane, 541 U.S. 509, 124 S.Ct. 1978 (U.S. 2004).

The Court, in Tennessee v. Lane, in part, held:

"As it Applies to the class of cases implicating the fundamental right of Access to the courts, Title II constitutes a valid exercise of Congress' Authority under §5 of the Fourteenth Amendment to enforce that Amendment's substantive guarantees. Pp. 1984-1994.

COUNT IV

The following civil right has been violated:

Plaintiff further alleges that a conspiracy existed as a matter of official unwritten policy and practice from the inception of the criminal investigation and prosecution initiated in Justice Court of Reno Township case number 02-5108 and Second Judicial District Court of the State of Nevada case number CR 03P0255, to overcharge plaintiff with crimes for which there existed no reliable direct or circumstantial evidentiary basis in either fact or law. They thereby obtained a false or fabricated conviction, which deprived plaintiff of equal protection of the laws and equal privileges under the laws. Other named defendants, having power to prevent or aid in preventing commission of the same, neglected to do so by indifference, an invidious animus, by acquiescence or giving tacit approval of the conspiracy to falsely convict, for self-serving reasons of insular self-interest and political expedience in disposing of an unwanted case, and for the appeasement of an irate and incensed public spirit existing in the community against such crimes, in violation of the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and the corresponding provisions of the Constitution of the state of Nevada.

For purposes of brevity and clarity, the facts and matters asserted in support of foregoing Count I, Count II, and Count III, in relevant part, are hereby adopted and incorporated herein by reference in their entirety.

At first blush, it should be clear without more, that Plaintiff is a member of a protected class of individuals with qualified disabilities under Title II of the Americans with Disabilities Act of 1990, which Congress enacted intending to remedy or prevent unconstitutional discrimination and to carry out the basic objectives of the Equal Protection Clause, including providing a remedy for unconstitutional treatment of individuals in the administration of justice and assuring equal justice under law. Tennessee v. Lane, 541 U.S. 509, 124 S.Ct. 1978 (U.S. 2004).

The factual allegations asserted in the foregoing clearly establish that a conspiracy existed involving defendants Judge Bliath, Assistant District Attorney Plater and others out of Defendant Grammicks office involved in the prosecution and collateral post-conviction proceedings conducted in this case, as well including Attorneys Lee Hotchkin, Attorney David Houston, Attorney Paul Quade, Robert P. Stuyvesant, M.S.W., George Togliatti, and his successor in office Jerald Hafen, Director NDPS, Amy Wright, and her successor in office Bernard W. Curtis, Chief, Parole and Probation Division of NDPS, James W. Roundtree, Parole and Probation Officer II, Parole and Probation Division of NDPS, Howard Rigdon, Unit Manager, Parole and Probation Division of NDPS, and Kelli Anne Viloria and David Clifton, Deputy District Attorneys of Washoe County.

The conspiracy began with the State charging Plaintiff with six counts of sexual assault against a child under the age of fourteen when, in fact, the prosecutors involved in the charging process knew that there was never any allegation of sexual assault made by anyone against Mr. Lancaster. Both Attorney David Houston and Deputy District Attorney David Clifton concurred in the presence of the Court presided over by District Judge Jerome Polaha at the time of sentencing.

The object of the conspiracy was to deprive Mr. Lancaster of equal protection of the laws, and equal privileges and immunities under the law as a criminally accused undergoing prosecution for spurious charges brought against him with an invidious animous by State actors and agents.

Both Attorneys Lee Hotchkin and David Houston, Esq., accepted retainers to represent Plaintiff while knowing full well that the complaining witness would not and could not be involved in the case or proceedings in any way as a nonnegotiable condition of their retainer.

During evidentiary hearing proceedings conducted on June 9, 2006, before Judge Polaha, defense Attorney Paul Deeds adduced testimony from Joy Adams (formerly Gladys Lancaster) and her brother Gail Wiley which clearly established that a conflict of interest existed due to Attorney Lee Hotchkin and David Houston both accepting a retainer from a third party which was unwittingly entered into by the third party without Mr. Lancaster's knowledge or consent, which placed the interests of Mr. Houston in obtaining a

financial interest and benefit in seeing ~~that the~~ third parties and the alleged victim's interests were protected over the interests of Mr. Lancaster receiving a fair trial and disposition of the case. In essence, both Attorneys Agreed to represent, but not defend Mr. Lancaster Against the serious offenses charged in the criminal complaint and subsequent criminal informations. See facts, supra, Pp. 46-88.

When the evidentiary hearing was continued and Actually conducted nearly a year later, on July 6, 2007, when both Mr. Lancaster and former Defense Attorney David Houston, Esq., were both called upon to give testimony, the Actual conflict of interest brought out in the testimony of Joy Adams and Gail Willey the year before, on June 9, 2006, was covered up by Attorney Paul Quade, Deputy District Attorney Plaster, and Judge Polaha, which was only made possible by virtue of Mr. Lancaster's mental and hearing disabilities, for which there had been no "reasonable Accomodation" to insure "equally effective communication" As required by law.

Prior to and At the time of retaining Mr. Houston there was no discussion of pleading plaintiff out in the case. To the contrary, Mr. Lancaster was given to understand And fully expected to go to trial on the formal charges brought Against him because the charges were wrong. Nevertheless, Some time late in January Mr. Lancaster was informed by Mr. Houston that if he proceeded to trial he could not win the case and would most likely receive A sentence of twenty years to Life imprisonment.

See Exhibit D Mr. Lancaster was staunchly against pleading out in the case because he knew he had not committed a sexual assault. Mr. Houston then advised Mr. Lancaster that the best way of disposing of this case was on a plea because the matter needed to be resolved for all involved And that Mr. Lancaster would receive a sentence of probation. Once Mr. Lancaster decided to plead out on the advice of counsel, Mr. Houston advised Mr. Lancaster that he would have to undergo an evaluation (psychosexual), and counsel set up an appointment for Mr. Lancaster with Robert T. Stuyvesant, M.S.W., for the purpose of conducting a Psychosexual Evaluation/ Risk Assessment as required by law in order to receive a probated sentence. Even though Mr. Lancaster staunchly denied the charge to Mr. Houston, Mr. Lancaster was advised by Mr. Houston that he must make some Admission of guilt both to the Court and Mr. Stuyvesant in order for the Court to accept his plea and in order to receive probation. The only apparent reason Mr. Houston had for pleading Mr. Lancaster out in this case, Against the wishes of his client, was the fact that he had entered into a third party Agreement as aforesaid to, in effect, represent Mr. Lancaster, but not to defend him in this case. Mr. Lancaster, most unfortunately and regrettably was not privy to the Agreement which left no other option Available to Mr. Houston than to persuade Mr. Lancaster to plead out in the case. This is the obvious reason why Mr. Houston didn't file a motion to dismiss for failure to conduct a timely preliminary hearing examination. Three times a preliminary hearing was scheduled, between the time of

the date of arrest on September 20, 2002, and January 30, 2003, when Mr. Lancaster was unwittingly and improvidently induced to waive his preliminary hearing based on material misadvice provide by Attorney David Houston, Esq., to do so. Under Nevada law a criminally accused is entitled to a prompt preliminary examination, at which time the defendant has the right to cross-examine witnesses against him and to produce evidence in his behalf. NRS 171.196. Additionally, if no indictment is found or information filed against a person within 15 days of his initial appearance before the magistrate judge or justice to answer for a public offense which must be prosecuted by indictment or information, the court may dismiss the complaint. NRS 178.556. The reason given for continuing the preliminary examination was that the complaining witness Tessa L. had failed to appear. Based on information and belief, the State prosecuting authorities failed to issue a subpoena for Tessa L., and were indifferent to whether she made an appearance or not, because Attorney David Houston had approached the State seeking a plea agreement for his client knowing he could not try the case because he could not involve Tessa L. in any way in the proceedings. As part of the "non-negotiable" condition of his retainer entered into with Joy Adams and Coral Lilley. Essentially, Attorney Lee Hotchkin had done the same until relieved as counsel. No attorney would endeavor to plead his client out in a case where he or she knew there was no complaining witness available to testify against the client in a trial, unless in a case involving an exception to the

hearsay rule, which is not the case here. TESSA L. did not make an appearance for the regularly scheduled preliminary examination three times, over a period of nearly four whole months time, yet no appropriate motion to dismiss was filed by Attorney David Houston, for the obvious reason that it would have forced the State prosecuting Authorities hand through ADA Kelli Viloria, ADA Joe Plater, And/or David Clifton, ADA, to produce TESSA L., the alleged victim, And thus make it more difficult for Mr. Houston to foster the fraud-inherent in the Actual conflict of interest existing in the defense representation - upon Mr. Lancaster, the Magistrate Judge or Justice in Justices Court, And the District Court in the person of Judge Pelsha.

Because of the Aforementioned Actual conflict of interest inhering in the Defense representation in this case from its inception, Mr Houston Assumed the role of A second prosecutor, which is Apparent throughout the trial court proceedings in pleadings, papers, and both written and oral Arguments throughout, i.e., during sentencing Judge Pelsha stated correctly how this case came to the Attention of Authorities for prosecution through Pastor Muster And the sequence of events that followed, yet David Houston, Esq, purportedly corrected the judge by Adding his own imaginary twist to the facts that was not true At All; And Attorney David Houston, Esq., filed A motion for reconsideration of sentence which entirely states A false version of how this case came About, And states many facts unsupported by evidence, Against the interest of Mr. Lancaster, for the sole purpose of creating An Appearance of propriety for both Mr. Lancaster And members of his family who persisted in pressing Mr. Houston

to fulfill his unkept promise to appeal the sentence in 30 days.

As previously stated, Mr. Houston informed Mr. Lancaster that in order for the court to accept his plea of guilty and sentence him to probation he must make some admissions of guilt to Robert P. Stuyvesant, M.S.W. and the court itself. On the basis of Mr. Houston's advice, Mr. Lancaster admitted to one act of lewd conduct during the plea colloquy and made a similar admission to Robert P. Stuyvesant, M.S.W., and doctor Nielsen for purposes of their Psychosexual Evaluation/Risk Assessment reports required by statute in order to be considered for probation at the time of sentencing. However, presumably, based upon discussions between Mr. Houston and Mr. Stuyvesant the one admission was embellished falsely to increase the appearance of criminal culpability, by stating "rubbing" her clitoris which Mr. Lancaster never said, and adding "six to eight times over the past years," which was entirely false. Mr. Lancaster originally told the police that one incident occurred in Nevada and the California allegations were false. Moreover, Mr. Lancaster contends and herein reasserts that Tessa L. could only date one incident in Nevada, the same as Mr. Lancaster admitted to detective Tom Brown during his unlawful interrogation of Mr. Lancaster, but that incident could quite easily have been deemed nonsexualized in nature had Mr. Lancaster not been deprived of his constitutional right to confront and cross-examine his accuser, during a preliminary examination, by waiver of same, improvidently induced on the basis of material misadvice of Mr. Houston to do so, and the change of plea from "not guilty" to "guilty" at the time of arraignment, in district court. See Exhibit H, at P 2, ¶ 1.

Under "Offense Engagement Strategies" much of what is stated is pure nonsense, i.e., "And keeping the door open made it possible to listen" is absurd in light of fact that Mr. Lancaster was legally deaf which salient fact is glaringly absent from Stuyvesant's "Significant Medical History" at Pp. 3-4 of his report. Significantly, and remarkably, Mr. Stuyvesant reports at p. 8, ¶1, that Mr. Lancaster "denies sexual fantasies of this behavior," and further reports that "His responses to the sexual behavior and L fantasies ratings within the questionnaire revealed no arousal to, or fantasy about, any of the sexual behaviors listed, including sexual behaviors with a child.," yet on the same page states: "Mr. Lancaster registered severe concerns, as he admitted to masturbatory fantasies of sex with girls 13 years of age or younger since he turned 18." which is an entirely false statement included in the report that he did not make to Robert P. Stuyvesant, M.S.W., in any form or fashion. Nevertheless, Stuyvesant made this statement and extrapolated on this statement under his Initial Diagnostic Impressions, at p. 4, ¶2, of the report, in which he states: "Mr. Lancaster meets the criteria for a diagnosis of Pedophilia in that for over a period of six months he experienced recurrent, intense, sexually arousing fantasies, sexual urges or behaviors involving sexual activity with a prepubescent child. . . . etc., which leads Mr. Lancaster to believe and concludes that the reason Mr. Houston wanted to obtain the services of Mr. Stuyvesant right away was because he would cooperate with Houston and report what Mr. Houston wanted him to report. Thus, Stuyvesant colluded with Houston and other malfactors in assuring Mr. Lancaster's conviction and imprisonment for life at the behest of Attorney David Houston.

Thus, Mr. Stuyvesants' statements alluded to in the foregoing constituted an injurious falsehood, which is actionable as slanderous libel, which was highly prejudicial to the substantial rights of Mr. Lancaster during sentencing when used by ADA David Clifton in his Argument for Aggravation of sentence. At that time, Mr. Lancaster was totally unaware of the reported false statements and as they were used to enhance Mr. Lancaster's sentence to a ten year to Life term by ADA Clifton due to his disabilities.

Additionally, defendant James Roundtree, Parole and Probation Officer II, and Howard Rigdon, Unit Manager, unknown to Mr. Lancaster due to Mr. Houston's concealment and plaintiff's disabilities, presented material false information to the court and counsel in the Presentence Report, dated February 28, 2003, under "V. Offense Synopsis", at P. 3, ¶ 3. Contrary to the PSI report Mr. Lancaster did not make any admissions of sexual misconduct with his granddaughter to Pastor Muster. In fact, Mr. Lancaster did not know what Tessa L. had said in response to her grandmothers harrassment and bullying, which led to Pastor Muster being brought into this matter by Joy Adams (formerly Mrs. Gladys Lancaster). Mr. Lancaster never made any statement that could be interpreted to mean that he "wished to speak with officers regarding his actions." The only reason Mr. Lancaster cooperated was to appease Gladys Lancaster and because Pastor Muster said he would only be seeing the police for counseling and no other reason. Plaintiff stated to Pastor Muster that nothing had really happened. Nor does Mr.

Lancaster believe that Tessa L. reported that Mr. Lancaster touched her vagina with his middle finger and rubbed it until it hurt, or incidents where the defendant had performed oral sex on her while she resided in California, because these things never happened. See Exhibit I, at Pp. 2-3. In light of the false facts alluded to in the foregoing, the fact that P & P recommended A 10 year to life sentence on each of 4 counts, where there was actually only one admission, and that made only due to material misadvice of counsel David Houston, Esq., And the P&P recommendation for A sentence of life imprisonment went Against the State's own expert opinion of Dr. Earl S. Nielsen, Ph.D., Clinical Psychologist, in the Psychosexual Risk Assessment, dated April 17, 2003, in which he states: "Mr. Lancaster is not psychotic, mood disordered, or disturbed. [He is not A pedophile or likely to commit further sexual crimes. Based upon standards of measure recognized for risk assessment, Mr. Lancaster is not A high risk to reoffend.] He is Amenable to participate in A sex offender specific treatment program, And would benefit from participation in A sex offender specific treatment group for A period of two to five years, dependent upon his progress. He would not be difficult to supervise if granted probation., (Exhibit J, At P. 6, ¶ 2), it Appears likely, if not probable, that Mr. Houston conceded with Stuyvesant to produce the defense Psychosexual Evaluation / Risk Assessment that gave the State prosecutor such damaging false information used by ADA David Clifton in Argument for Aggravation of sentence during the sentencing hearing proceedings conducted on July 2, 2003. Also see, Exhibit I, At p. 2, "Risk of Dangerousness to the Community: Based on measures recognized As standards for risk Assessment, Mr. Lancaster is not A high risk to reoffend."

A comparative same case study will disclose that most of those individuals charged and convicted on a plea of guilty for the same or similar conduct in Washoe County are given to understand, lead to believe, or promised probation, yet actually receive life terms of imprisonment, and are told by counsel ~~that~~ they will receive a very harsh sentence if they persist in trying the case to a jury, because they can't win.

Similarly, as a matter of unwritten policy and practice Washoe County prosecutors overcharge individuals with offenses for which they possess no reliable direct or circumstantial incriminatory evidence against the accussed and have been known, as in this case, to take out all of the stops, and prosecute by any manner of unlawful means to convict. See Exhibit K, a true and correct copy of the deceased's Declaration of Rene Botello (12 pages) (Doc. 107) filed on October 13, 2006, in U.S. District Court Case No. 3:03-cv-00195-RLH-VPC, and a copy of Botello v. Gammick, 413 F.3d 971 (C.A. 9 (Nev.) 2005).

Section 1985(3) of Title 42, United States Code, permits a civil action against private individuals who conspire to deny another's constitutional rights. 40 Fordham L. Rev. 635, 1972.

The actions of the named defendants were committed either under color of state law or "under color of state constitutional right". State action is not required under section 1955(3) of Title 42; action "under color of state constitutional right" satisfies the "color of law" requirements of section 1983. 23 Vand. L. Rev. 413, 1970.

Without doubt, Judge Polaha, ADA Joe Plater, and collateral counsel Paul Clausen, Esq., all knew of the actual conflict of

interest that existed following the given testimony of Joy Adams and her brother Gail Willey on the record of evidentiary hearing proceedings conducted on June 9, 2006, yet failed to Act to prevent the ongoing conspiracy to violate Mr. Lancasters fundamental rights which deprived Mr. Lancaster of virtually all of his pretrial rights and trial rights protected under express provisions of both state and federal constitutional provisions and law, including his constitutional guarantees of due process and equal protection of law. Thus, Judge Polaha engaged in a specie of judicial tyranny by recognizing but failing to correct a manifest miscarriage of justice and both Attorney Paul Quade and ADA Joe Plater aided in the commission and concealment of same.

COUNT V

The following civil rights have been violated:

Finally, alleging that named defendant state government officials and prison authorities within the Nevada Department of Corrections have put in place and enforce an official unwritten policy, as a matter of practice, of condoning the routine denial of necessary medical care, as well as engage in an ongoing pattern of practice of exhibiting deliberate and callous indifference to serious medical needs of the plaintiff. This includes, but is not limited to, the intentional delay and denial of important prescribed diagnostic attention, medical specialist recommended heart related surgical procedures, medications, and other treatments (rehabilitative physical therapy), in violation of the Fifth, Sixth, Eighth, Ninth, and Fourteenth amendments to the Constitution of the United States and the corresponding provisions of the Constitution of the State of Nevada, Art. 1, § 4, 6, and 8.

For purposes of brevity and clarity, the facts and matters asserted in support of foregoing Counts I-IV, in relevant part, are hereby adopted and incorporated herein by reference in their entirety.

A. Defendants State of Nevada and Nevada Department of Corrections, through the acts and/or failure to act on the part of their principles, agents, correctional and medical administrators, supervisors and line staff correctional personnel, systematically fail to treat prisoner's, including plaintiff's serious medical needs causing exacerbation of existing medical conditions and significant injury placing plaintiff at grave risk of premature death and unnecessary and wanton infliction of pain, anxiety and human suffering.

NNCC lacks the most basic elements of an adequate prison health care system: including ready access to adequate medical care; a medical staff competent to examine prisoners and diagnose illnesses; adequate, accurate, up-to-date medical record keeping; an ability to treat medical problems or to refer prisoners to others who can, including reasonably speedy referrals and access to other physicians within the prison, or to physicians or facilities outside the prison; and adequate policies and procedures for responding to emergencies, including adequate facilities and staff to handle emergencies within the prison.

Every person incarcerated at NNCC is subject to the following policies and practices which subject all of them, including the plaintiff, to a significant risk of injury and unnecessary and wanton infliction of pain and human suffering:

(a) Defendants policy and practice of refusing to provide necessary medical care for serious medical needs, including illness or serious injury that a reasonable doctor or patient would find important and worthy of comment or treatment, medical conditions, including catastrophic illness(es), involving chronic or substantial pain.

(b) Defendants policy and practice of failing to maintain

An adequate system to provide prescription medication refills and to ensure continuity of treatment;

(c) Defendants' policy and practice of failing to make timely referrals for specialty care;

(d) Defendants' policy and practice of failing to provide specialist recommended diagnostic and surgical procedures based upon anticipated cost of treatment, budgetary concerns, and/or actuarial table age factors, E.g., prisoners 65 years of age or older can expect routinely to be denied diagnostic procedures and surgeries for various serious illnesses including, inter alia, heart, lung, kidney, and liver related diseases that may, or likely will result in premature death in the absence of receiving adequate diagnostic attention and treatments available from specialists and facilities in the community; various types of cancer; eye diseases that result in blindness when left untreated for a prolonged period of time.

(e) Defendants' policy and practice of failing to keep professionally adequate, accurate and up-to-date medical records;

(f) Defendants' policy and practice of failing to monitor prisoners with chronic conditions adequately;

(g) Defendants' policy and practice of refusing to treat chronic pain;

(h) Defendants' failure to ensure adequate coverage by a qualified physician at NNCC; and

(i) Defendants' failure to ensure that medical co-payment charges for medical visits are unrelated to illness or injury involving chronic care issues.

B. Defendants Are Aware of and, in Fact, Have Implemented the Policy and Practice of Intentionally Delaying and Denying Necessary Medical Care to the Elderly and Other Similarly Situated Prisoners and Have Deliberately Failed to Take Adequate Action to End Medical Abuse at the Northern Nevada Correctional Center.

In the spring of 2006 the Legislative Commission's Subcommittee formed to study Sentencing and Pardons, Parole and Probation heard testimony from a number of Nevada citizens regarding grossly

inadequate medical care for seriously ill prisoners. As a result of this hearing, on October 6, 2006, the Subcommittee sent a formal request to the Governor's Office to have the Executive Branch carry out an evaluation of the adequacy of inmate access to medical care in Nevada.

The Governor's Office took no action on the Legislature's request.

The Board of State Prison Commissioners, whose membership is made up of Governor Gibbons, Secretary of State Miller and Attorney General Cortez Masto, has either failed to require semiannual reporting on the provision of medical services in state correctional facilities or failed to review and take action on such reports. The Board of State Prison Commissioners dereliction of duty in this matter directly contributed to the current state of medical abuse at NNCC and endemic to the system.

In May 2007, the Americans Civil Liberties Union (ACLU) informed Defendant Howard Skolnick of the grave medical situation at Ely State Prison and the need for immediate intervention.

The ACLU retained a qualified medical expert, Dr. William K. Noel of Boise, Idaho, to review prisoner medical records at ESP. Dr. Noel reviewed the medical records of the thirty-five ESP prisoners that Defendant Skolnick made available for his review.

Dr. Noel prepared a report (the "Noel Report"), which was promptly provided to Defendant Skolnick and Defendant Bannister, detailing his findings in particular cases and a summary of his conclusions as to the status of the health care being provided to prisoners at Ely.

The Noel Report found overwhelming evidence that the grossest possible systemic medical abuses at ESP are occurring and have been occurring there for years. Dr. Noel's review of the records found that not only are prisoners at ESP in imminent danger of death or grave irreparable medical injury, but that they are being callously

And wantonly subjected to needless physical agony inflicted by grossly improper and inhumane medical treatment.

As will appear more fully herein the following, the same or quite similar cases of medical abuse and grossly improper and inhumane medical treatment exist at NNCC and have existed for many years at NNCC.

Plaintiff asserts that he can show and establish by clear and convincing evidence that he and others similarly situated are being denied necessary medical care with full knowledge of the named defendants and that such denial is part of a system wide plan, scheme, or design, implemented by the named defendants to save money, at the expense and to the extreme detriment and harm and damage of prisoners entrusted to their care, custody, and control, for self-serving reasons of insular self-interest and political expedience in gaining popular approval of their savings to the State and, thus, securing their employment.

An article appearing in the Thursday, February 10, 2005, Las Vegas Review Journal, from THE ASSOCIATED PRESS wire service, states, en quote:

> CARSON CITY -- Lawmakers were told Tuesday that Nevada prisons are ranked 50th nationally in spending on food, clothing and, health care for inmates, the prison population has doubled since 1990, and the state ranks 45th in its use of probation." (emphasis supplied)

A public meeting of the BOARD OF PRISON COMMISSIONERS was convened on October 14, 2008, and Chaired by Secretary of State Ross Miller, in the absence of Governor Jim Gibbons. Defendants Skolnik and Deputy Director Don Helling were present. The official minutes of that BOARD OF PRISON COMMISSIONERS MEETING had on its agenda Item VII, which is summarized in the MINUTES of the meeting, as follows: "VII. Discussion regarding the Legislative Counsel Bureau Access to Health Care Audit of the Department of Corrections.

> Director Skolnik stated there was a lot of concerns expressed regarding accessibility to medical care in the DOC. There were some minor findings but the ultimate consequences of the audit was the

Department is in fact meeting the needs on being responsive to the medical needs of inmates. All of the Audit recommendations were accepted by the Department. A copy of this Audit can be obtained through the Legislative Counsel Bureau's website, via email to the Audit Division. The Board had no questions regarding Item VII."

Defendants Skolnik and Helling, being the Director and Deputy Director of the NDOC, both have personal knowledge and are complicit in the long standing policy as a matter of practice of denying necessary medical care to elderly prisoners, including plaintiff, as evinced by the numerous grievances regarding deprivations of health care on file with the NDOC, which reflect a systemic failure to appropriately respond to complaints of serious illness or injury and a deliberate and callous indifference towards the basic needs of prisoners (citizens) entrusted to their care.

C. Factual Background and Additional Specific Allegations of "Irrational Disability Discrimination" Evincing Deliberate Indiffence to Legitimate Complaints of Serious Illness and Intentional Delay and Denial of Important Prescribed Treatment, which has Caused Irreparable Injury, Harm, and Damage to Plaintiff as a Direct or proximate result of the Defendants' Acts and/or Failure to Act, in the Absence of Serving any Legitimate Penological Goal or Interest.

DENIAL OF SPECIALIST RECOMMENDED SURGERY FOR CONGESTIVE HEART FAILURE

On 12/9/04 Plaintiff addressed an Informal Grievance (DOC 3091) Log Number 2004-1-2828 to prison officials concerning the undue delay and denial of coronary artery surgery recommended by Dr. Chryssos, M.D., Cardiologist, in February, 2004. Prison Authorities responded on 2-2-05 with the following "Grievance Response: The Utilization Review Committee Denied your Surgery." Thereafter, Plaintiff filed a First Level Grievance on 2/2/05 which stated: "I am being denied, a vital medical treatment, to correct a life threatening condition, as diagnosed and prescribed by Dr. Chryssos in Feb. 2004, he called it acute coronary (Artery) disease; I want and need the treatment." On 2/16/05 prison officials provided Plaintiff with their First Level Response: Outside Consultants can only recommend medical treatment. These recommendations

are reviewed by the Department's Medical Utilization Review Committee. A decision is reached about the recommendation. This is what occured in your case. It was determined that the medical treatment recommended was not necessary." The final, Second Level Grievance required for exhaustion of available administrative remedies was submitted on 3/2/05, however, no response was forthcoming. In that Central Office of the NDOC Appeal, Mr. Lancaster stated: "I live in constant threat of heart attack as evidenced by frequent pain in chest and left arm. While the Medical Review Committee continues to deny me proper prescribed medical treatment; this is cruel and unusual punishment, and has caused me much needless pain and suffering." When Mr. Lancaster received no Second Level Response to Grievance Log Number 2004-1-2878, he addressed a request to the caseworker on 12/7/05, to which he received a response dated 12/12/05. See Exhibit 2.

UNDUE DELAY AND DENIAL OF SPECIALIST RECOMMENDED NUCLEAR STRESS TEST, A DIAGNOSTIC PROCEDURE NEEDED TO DETERMINE APPROPRIATE TREATMENT FOR CORONARY ARTERY DISEASE

On 3/22/05 Mr. Lancaster filed Informal Grievance Log Number 2005-1-3152 which states: In January, 2005 Dr. Chryssos ordered stress test performed on me; to help determine what type of treatment would be appropriate to treat my acute coronary (heart) disease the state denied me this test, therefore denying me my right to fair medical treatment 8th Amend." On 4/25/05 Patricia McGaffin provided the "Grievance Response: The Utilization Committee denied the request for a nuclear stress test, as it is not medically necessary. You have had a previous positive stress test. Therefore the test is not needed."

Proceeding to the First Level Grievance Plaintiff stated why he disagreed with the informal response as follows: "I have ongoing and uncorrected signs of heart failure. In my view it will take more than an Aspirin to correct this problem. My incarceration does not include suffering from the lack of medical treatment." Associate Warden James Benedetti's First Level Response states: "You have received medical treatment. It is beyond the scope of this office to determine the best course of medical treatment or what medical tests are necessary. Qualified medical staff have made this determination, you disagree. Grievance denied." Going on to the Second Level Grievance Appeal Plaintiff stated, inter alia, as follows: "In my view Dr. Chryssos is the qualified doctor. He said I needed the test to determine what treatment is necessary. If I didn't have an ongoing life-threatening problem, I wouldn't be complaining. Grey Cox provided the Central Office Administrator response as follows: You are being treated according to standard medical practice. Non NDOC Consultant Physicians recommended and the treating physicians make the decisions on what is appropriate, and medically necessary."

Dr. Karorkian was sentenced to prison for Euthanasia which is the painless killing of a person who has an incurable disease or who is in an irreversible coma and wishes to die. The Plaintiff's condition, known as congestive heart failure, is a treatable condition and he does not wish to die. Dr. Chryssos recommended heart surgery to correct this problem. A NDOC Medical Utilization Review Committee denied Plaintiff the needed surgery. This, in

Plaintiff view, is a not so subtle form of genocide. The decision not to allow Mr. Lancaster to receive the surgery need to correct his congestive heart failure and coronary artery disease conditions is a decision to deny life prolonging necessary medical treatment recommended and ordered by a medical specialist. This type of treatment and callous indifference to serious medical needs of this nature evinces correctional Administrators and personnel making decisions which ultimately lead to or most likely lead to the person affects premature demise. In effect, these Defendants are imposing a death sentence on prisoners by fiat. This is the "standard medical practice" referred to, in actuality, by the Central Office Administrator Greg Cox, in his Second Level Grievance response, which, in pertinent part, states: "You are being treated according to standard medical practice." See Exhibit M. Many prisoners have died of just this cause and type of callously indifferent and inhumane treatment of citizens who happen to be prisoners held in custody of the Defendants. To name just a few; Larry Pruett (phonetic) died earlier this year in mid January. He was receiving Hepatitis C treatment from the Veterans Hospital in Las Vegas when he was Arrested. He was Abruptly discontinued from this life saving treatment At the Clark County Detention Center jail and also refused this treatment when committed to the custody of the NDOC And up to the time of his untimely demise on or About January 17, 2009. Larry was a "Grunt" in Vietnam And A decorated war hero whose only wish before he died

was to have a fair opportunity to exhonerate himself and hold those accountable for the gross abuse and mistreatment he was subjected to by police and prison authorities. Towards that end he had filed a §1983 civil rights complaint and was endeavoring to pursue collateral post-conviction appeals via habeas corpus proceedings pursued in this Court; Ralph Savarese complained of pain in his leg for months before receiving any diagnostic attention when it was discovered he had a blood clott in his lower leg which led to amputation and death on or about the day following his return to RMF from the outride hospital; Royal Ream experienced pain in his head and complained on sick call where he was prescribed Ibuprofin which did nothing towards alleviating the pain, yet no further diagnostic attention or treatment was given when he experienced a severe stroke in Unit 3 and died. This sort of treatment in response to serious complaints occurs time and time again. Several people living in the unit have been permitted to go blind. Stroke victims such as Ivan Bean and Oliver Harness receive no immediate response or diagnostic attention and treatment following strokes, nor did they, like many others, receive any therapy to help them recover from the strokes. Both men were recently diagnosed with terminal cancers. Had they received any normal diagnostic attention and treatment following their strokes last year the cancer would likely have been discovered then and treatable.

DENIAL OF EYE CATARACT SURGERY SCHEDULED AND PAID FOR BEFORE BEING INCARCERATED

On August 1, 2006, Plaintiff initiated Grievance Log Number 2006-1-12519 with an Informal Grievance which states: "Eye Cataract surgery was scheduled and paid for before being

incarcerated. Eye will no longer focus properly. Therefore, At this time I request ~~that this~~ surgery be made available to me." The Informal Grievance response might best be characterized as a non response in ~~that~~ there was no investigation of this matter whatsoever before some unknown personnel, presumably AWP James Benedetti, responded with, "It appears you are trying to grieve something that occurred in 2003? Also, this appears to be a request? Must attempt to resolve informally first", when it was quite clear ~~that~~ plaintiff was grieving an informal denial of cataract surgery ~~that~~ had already been prescribed by an eye doctor, scheduled, and paid for prior to being committed to the custody of the NDOC. See Exhibit N. The First Level Grievance states: "The [L]aw clearly states that, if a person is previously scheduled for a medical procedure or surgery before being incarcerated, then that procedure or surgery must be made available to that person. I have previously informed NNCC medical of this, to no avail." The "First Level Response:" stated; "Your grievance is untimely. You were incarcerated in July, 2003. Continue to work with medical staff to resolve." The absurdity of the foregoing response becomes at once glaringly apparent when considering the fact ~~that~~ the surgery was prescribed and scheduled in 2003, and in August of 2006 Plaintiff is still wrestling with the problem because he receives nothing more than a callously indifferent response from both medical personnel of the NDOC at RMF and through the grievance procedure. Proceeding to the

Second Level Grievance on this issue, Plaintiff informed the Central Office NDOC Administration that, "Medical staff has been aware of this problem since 2004, to no avail. I Am on the list to see eye doctor and have previously informed him of scheduled eye surgery also to no avail. . . . , to which Bruce Bannister responded as follows: "Mr. Lancaster, To be considered for cataract surgery you must first see a physician at the infirmary at NNCC for an assessment. If it is determined the surgery is needed, it will be considered." This last response makes it clear that the Department personnel responding at the Central Office Appeal level are merely playing a paper game in which Mr. Lancaster's health and well being plays no part as a real consideration. See Exhibit N. And the illegably signed response to the Inmate Request submitted on December 19, 2006, regarding this issue makes the latter point clear and unequivocal, indifference with a callous or invidious animus is the norm rather than the exception in a system where the personnel are trained to perform their jobs in this fashion by denying even the most serious of needs. If you fail to diagnose it, you can't treat it, so denial and avoidance of the serious medical needs of prisoners is the norm. See Exhibit N.

"IRRATIONAL DISABILITY DISCRIMINATION" DUE TO DEFENDANTS FAILURE TO MAKE A "REASONABLE ACCOMODATION" FOR PLAINTIFF'S HEARING LOSS WITH PROVISION OF A TELEPHONE COMPATIBLE WITH THE USE OF HEARING AIDS TO PROVIDE EQUALLY EFFECTIVE COMMUNICATION

On September 29, 2006 Plaintiff filed an Informal Grievance which states: "I am a disabled person, I have made two separate requests for a telephone to accomodate my hearing loss, a phone that is compatible with the use of my hearing aids." This Grievance