

Update, February 23, 2025 - **Exhibit References in (Red)**

More intentional delays by the Contra Costa Courts and the District Attorney's Office:

The Conviction Integrity Unit (CIU) continues to use resentencing cases as an excuse to delay investigating and overturning wrongful convictions. The evidence of Petitioner's innocence continues to be suppressed by the Contra Costa DA's office and the courts. The CIU staff, judges, prosecutors, and police in his case have no incentive to overturn his wrongful conviction, as they all get to go home to their families every night, something he has been unable to do since 2008.

Now, unbelievably, the CIU is using Petitioner's own resentencing petition, as an excuse to delay overturning his wrongful conviction. After two years of delays, Petitioner's parents were informed that the fastest way to get an attorney assigned to his case, and get back into the courts was to file a resentencing petition.

On January 11, 2024, Petitioner filed his resentencing petition with the court, a public defender was assigned to him in April. For this he was grateful and hopeful that the public defender's office would be able to accomplish what the CIU, has so far, refused to do.

Petitioner asked his newly assigned public defender, if she would contact the CIU, and see if they would cooperate with her, as they have ignored every request for information his parent's and he has made. He stated that if the CIU did thier job, his petition would be unnecessary. The CIU's response, was that they stopped reviewing his case, once his petition was filed, that they are waiting to see what happens with his petition. The CIU, not only, would not be cooperative with his attorney, they used his petition as an excuse to stall his eventual exoneration.

Shouldn't an actual innocence filing, take priority over a resentencing petition? Especially with an agency that collected money from the state, to specifically investigate and overturn wrongful convictions. And, what does a resentencing petition have to do with an actual innocence claim?

So, this has been another excuse for the CIU to stall, knowing that, as you will read, the DA's office would just get his original petition denied in the end.

A court date for the resentencing petition was set for July 12, 2024. On July 11, his attorney told him, definitively, that if he did not have her withdraw his petition on the 12th, it would be denied, and he would be banned from filing another petition on the same grounds. He doesn't know why his attorney waited till one day before his court date to tell him this.

The petition he filed was exhaustive, was specific to his case, covered many new laws, including habeas issues, and requested an evidentiary hearing. He was informed that it had to be replaced by a generic form petition, where he checked four boxes and signed a declaration. This gave the DA's office nothing to deny on a technicality, something his attorney told him they have been doing to other petitions, which was why this new, generic form petition was created.

To be clear, the petition was not going to be denied on its merits, but on a technicality. Even though there is well established case law stating that petitions filed by Pro Se petitioner's (people not trained in law) are to be liberally construed (not held to the same standard as an attorney). In other words judged on their merits and not denied on technicalities unknown to the untrained petitioner.

Every petition and motion Petitioner has filed, since being in prison, has been denied, in violation of this well established case law. [See \(Exhibit G\) Conspiracy to Suppress, \(AD1\) Judge Kennedy – Misconduct – Abuse of Discretion](#)

A new resentencing petition was sent to his attorney on Monday July 15th, she informed him that she would try to get it filed by Friday July 19th, before she left, as she would be gone for three weeks.

On July 19th, the prison phones went down, and he was unable to contact her, his mother was informed that the new petition wouldn't get filed until August 19th, this was more than a seven month delay, since his original filing of January 11, 2024.

By October 17th, his attorney informed him that the prosecutor submitted a motion using:

people v. Hardin from 2022, she said that motion overcame her arguments using people v. Lopez, so his petition will be denied, and he will again be denied an evidentiary hearing. His next court date was set for October 21, 2024.

On October 21st the prison video court call system wouldn't connect, so his court date was moved to October 28th.

On October 28th, the prison claimed to not have been notified of his court date. There was no staff to set up the court call, so his parents and attorney sat in court for the second time till 11:00, waiting for him to appear by Zoom. The court date was rescheduled for November 12th. Ten months after his original filing.

Petitioner continues to be denied any timely and meaningful access to the courts. The resentencing petition which was originally filed, over ten months prior, has only resulted in the CIU, stalling his case further, and now stopping him from getting the discovery which will lead to his eventual exoneration.

On November 12th, Judge Kennedy, his original trial judge, denied the petition, while preventing him from being able to speak during the hearing. When an inmate appears through the prison video system, the correctional officer instructs them that they will be required to press the un-mute, so they can speak during the hearing. Judge Kennedy did not allow this, he instructed Petitioner to give a 'thumbs up' if he could hear the proceedings. He was not given an opportunity to speak with counsel. When Kennedy denied his motion, the call was disconnected.

Kennedy was the same judge that violated Petitioner's due process rights by violating California rules of the court, evidentiary rules, and knowingly allowing false and fabricated evidence during his trial, while permanently concealing and suppressing all exculpatory evidence from the jury and him. Then after deliberations started he illegally removed a juror who asked to review the video evidence that was suppressed from the jury. After that juror was removed, the jury sent a note cancelling the request the juror made for that evidence. Then during a Marsden hearing Kennedy lied stating that he removed the juror over a work related issue. See: [Judge Kennedy – Misconduct – Abuse](#)

of Discretion (AD1)

Discovery Motion (DM1)

The DA's office has been able to get the courts to unlawfully deny every past filing Petitioner has made, Petitioner asked his resentencing attorney to help him with filing a discovery motion based on PC 1054.9. Now that the laws regarding discovery have recently changed, He is legally entitled to the evidence which was intentionally withheld from the jury, appellate attorney, and him for over sixteen years.

Petitioner was hopeful that she and the contra costa public defenders office would not be delayed and stonewalled, as he has been, at every attempt to acquire the proof of his innocence; however, she declined his request for help. She stated that she was not allowed to help with anything outside the scope of his resentencing petition. Petitioner explained to her that it was his understanding that since she was his 'attorney of record', that he would not be allowed to file any motions on his own. She told him that was not true, that he could file his discovery motion while she was assigned as his attorney.

On September 3rd, as required by law, he sent informal requests for discovery to his trial attorney and the district attorney, giving them 15 days to respond, based on penal code 1054.9. As expected his trial attorney, did not respond and the district attorney denied his request. After the 15 days, he sent in a request to the prison mail room, asking for the incoming and outgoing legal mail logs. These show the dates and addresses of legal mail sent and received, so he could present proof to the courts that his trial attorney did not respond to his request.

On September 25th, he sent through legal mail his motion for discovery with affidavit, proof of service, and copies of proof of service for the two informal requests, showing that he fulfilled his legal requirement in asking for discovery and being denied.

Petitioner gave the court more than 30 days to set a hearing for his discovery request.

When the Contra Costa Court's, know they cannot overcome a petition, they will claim to have not received it, or it will get lost. In 2014 Petitioner filed a Habeas Corpus with new evidence that would have required the courts to give him an evidentiary hearing. It also

disappeared, and no record on LEXIS NEXIS from the prison library computers, can be found that it was ever filed. Petitioner made the fatal error of sending them his only copy, when he was at Ironwood state prison.

Contra Costa Court Clerks: Illegal Judicial Decisions in continuing to keep evidence from Petitioner:

On September 30, 2024, the Contra Costa Court received Petitioner's discovery request, based on penal code 1054.9, (DM1). Upon receiving that motion, the clerk of the court made a judicial decision, and refused to file it, they did not notify petitioner of their refusal to perform their legal obligation, and then when both, Petitioner's resentencing attorney and mother asked them about the status of the motion, they were lied to, as every inquiry was met with the same lie, that they could not find it.

Petitioner who is handicapped by being in prison, asked the public defender assigned to him for his resentencing petition, to contact the court clerk to find out the status of his motion. She was told that they could not find it.

On November 8, 2024, Petitioner's mother went to the court to have his discovery motion filed in person, so she could have a copy file-stamped, and get a court date assigned. She told the clerk that she had Petitioner's power of attorney. She was told that she was not allowed to file the motion for him, that any motion filed had to be sent from the prison. After dealing with three different clerks, and showing them the proof of service along with the prison legal mail log, showing that the original petition was sent to their court, she was finally told that they have his original petition. She was then told that it was not filed, because he had an 'attorney of record', therefore, he was not allowed to file any petitions on his own. Petitioner's mother explained to the clerk, that his attorney was only assigned to him for purposes of resentencing, which had nothing to do with a discovery motion in preparation of filing a habeas petition. They told her that doesn't matter.

On Wednesday November 20th, Petitioner's mother went for the 2nd time to the clerk of

the court, this time with the paperwork signed by the judge, showing that Petitioner, no longer had an attorney assigned to his case. This removed the clerks excuse for not filing the discovery motion. Petitioner's mother was told that they will still not file it, and that Petitioner will have to file a Marsden motion, firing his attorney before they will file it.

Imagine Petitioner's frustration, He works in the law library, at Soledad state prison, when he asked his assigned public defender back in September, if she could help him with, or file the discovery motion for him, she told him no. When he explained to her that he was not allowed to file any petitions on his own, as long as she was his 'attorney of record', she told him that was not true. Petitioner is not claiming that the Contra Costa court clerks are following the law. His claim is that, it is their policy and procedure to intentionally misrepresent the law, in order to deprive 'the people' meaningful and timely access to the courts. This, combined with every other tactic used by the courts, to deny Petitioner, the evidence he needs to prove his innocence are RICO violations.

The court actually received his discovery motion on September 30th, refused to file it, and then they didn't notify anyone that it was received. They actually lied to both his public defender and his mother, every time they called to inquire about it, telling them that they couldn't find it. The public defender even made excuses for them, telling him that this just happens, and that they will eventually find it.

On December 5, 2024, Petitioner filed another Discovery motion from prison, while there was no attorney assigned to him. Petitioner received the following response in February of 2025: (DM2), the judges response was not an order, but a correspondence, that was 'file' stamped. This was an intentional delay tactic, as the court has proven that they have no intention of giving Petitioner evidence that can be used to overturn his wrongful conviction.

Petitioner continues to be deprived of his liberty, while impeachment and exculpatory evidence are withheld from him. It is now late in February of 2025, and every attempt to

acquire Petitioner's proof of innocence has been blocked by the Contra Costa Court's.

Trial Attorney – Dirk Manoikian (Counsel) suppression of exculpatory and impeachment evidence: See (Exhibit G) Conspiracy to Suppress, (AD1) Judge Kennedy – Misconduct – Abuse of Discretion

Counsel who now works at another district attorney's office, ignored Petitioner's informal request for discovery. The evidence Petitioner is still trying to acquire in 2025, has been illegally concealed and/or suppressed, from the jury and him since 2008. Evidence which Counsel falsely told the courts, state bar, and many attorney's, that he turned over to Petitioner's mother after the trial was over. Counsel's previous false claim, stopped Petitioner from obtaining the evidence through the courts, and prevented him from having the evidence for post conviction relief. Counsel claimed the district attorney, made him sign a confidentiality agreement to keep this material evidence from Petitioner, his own client: See Exhibit: (CA1).

Counsel's latest attempt to stop Petitioner from acquiring the evidence to prove his innocence:

Senate Bill 97 (SB97) introduced by Senator Wiener, signed into law on October 7, 2023, amended section 1473 of the penal code which relates to habeas corpus.

This bill was passed in order to allow the wrongly convicted to bring "newly presented evidence" through a habeas corpus petition. This combined with the changes to penal code 1054.9, no longer allow the courts to deprive the wrongly convicted of evidence that was withheld or has been lost. This means that the courts can no longer deny Petitioner evidence, because of counsel's previous false claim that he already gave it to him. With this in mind, Counsel contacted Petitioner's resentencing public defender, and told her he had two boxes of evidence for him. He claimed to not know what was in them.

Counsel tried to get her to sign off, stating that he turned over the evidence, in order to again stop Petitioner from getting the actual "untampered", evidence through the court. Petitioner's resentencing public defender informed him, that she would have nothing to

do with picking up discovery for her client, that Counsel would have to contact Petitioner's mother.

On Friday, November 1st, 2024, Petitioner's mother and a witness, went to Counsel's local office, to pick up the two boxes of discovery. The witness recorded the contents on their phone.

After Petitioner's mother arrived home, she opened an envelope which was marked 'original 911 calls'. In the envelope were three 120 minute cassettes. On one side of each tape, written in black marker was: Original 911 call, on the other side, one was marked: 911 call with Sean Mendell. (This tape was blank). Two tapes marked: 911 call with Beverly Rhoads. (These tapes both had static noise and beeping added to them in order to conceal Rhoads statements that prove she did not see the assailant before being pepper-sprayed. (DT1) Envelope - Tapes

Re: Sean Mendell's 911 call: Just minutes after Mendell's contact with an assailant, an assailant which he stated that he had never seen before. He called 911, this call has been concealed, it was never made available, and wasn't given an exhibit number. Petitioner wasn't surprised to find out this tape was blank.

911 Call – Trial Testimony by Detective McColgin - Presented to show that Rhoads' original 911 call had audio that could be heard:

P129 L14-17 Another gunshot ran out in the room during this time Beverly Rhoads was on the phone with police dispatch, basically, asking for help describing the events.

P129,130 L22-25 L1- A brief period later she heard another bang, which sounded like a gunshot. The police dispatcher was telling her to leave the room. She says I couldn't leave the room because Joshua's body was lying in front of the door and prevented the door from being opened.

P130 L7-11 Q. Did she tell you that during this time that she was on the phone with 911 that she was whispering as so as not give away her presents?

A. She didn't tell me that but in the tape she is whispering.

(None of this can be heard on the 911 calls marked "original", from Counsel).

The 911 Rhoads tapes we received had been tampered with, the two tapes had very loud static noise and beeping sounds added to them. The evidence of this is that what Detective McColgin heard on the original recordings cannot be heard on the tapes we received. You cannot even hear the gunshot or small part that was played in court. All you can hear is very loud static and beeps that were not in the original recordings.

There were also notes from counsel about the police planting evidence in a jacket that was taken from Petitioner's home. (Counsel never told Petitioner about this, and it was never brought up at trial).

Every stall tactic and delay they use, cost Petitioner more time in prison, time he will never get back. There is no accountability for the extra suffering they intentionally cause, while he is illegally deprived of his liberty, and his family continues to suffer, because of his false conviction.

Petitioner's mother informed Brian Feinberg, head of the Contra Costa Conviction Integrity Unit, that she was just given new material recorded evidence which was tampered. She received no reply. Brian Feinberg, head of the Contra Costa Conviction Integrity Unit, has repeatedly shown that he is not interested in any evidence which exonerates Petitioner, as he has had Petitioner's actual innocence claim since January of 2022, along with all evidence proving Petitioner's conviction was based on fabricated evidence. (CIU)