

1                    ATTACHMENT TO FORM PETITION FOR WRIT OF HABAS CORPUS

2                                    II of II.    (MY VERSION)

3                                    STATEMENT OF FACTS

4                    It was undisputed that Petitioner Floyd Eugene Barnes killed one Michael Land.  
5                    Petitioner has always maintained that the killing was not deliberate or premeditated.  
6                    Because of errors in the trial court and as a result of the failings of petitioner's  
7                    trial counsel, the evidence that the jury received actually misled them and resulted  
8                    in the jury rendering the only reasonable verdict in light of their misinformation,  
9                    finding the petitioner guilty of second degree murder. When facing the problems at the  
10                   trial during the petitioner's motion for new trial, the trial judge stated that while  
11                   the petitioner's issue was apparently well-taken and clearly crucial to the outcome of  
12                   the verdict, relief would be appropriately sought by way of Writ of Habeas Corpus.  
13                   Since that time, Petitioner has exhausted his appellate remedies, and now comes to the  
14                   Superior Court seeking justice. Petitioner is a layperson of law with "NO" training in  
15                   law, petitioner respectfully submit this petition for due process of law as guaranteed  
16                   Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

17                   Petitioner was on state parole and within 120 days to discharge off a four (4)  
18                   year parole, when State Parole Agent Doug Moore and El Cajon Police Detective Carl  
19                   Bloemendaal " Targeted and Stalked " Petitioner with their Parolee and Paid Informant  
20                   Michael Land the deceased, See (Ex "A"). Their motives were in retaliation against me  
21                   for not assisting them as an informant against the Hells Angels, as well as for the  
22                   challenge petitioner made to Parole Agent's and Detective Bloemendaal at the time. For  
23                   refusing to assist them my parole was violated and I was sent back to prison. See (Ex"B",  
24                   Correctional Case Records Analyst P&CSD.

25                   05/26/99, Patrick Blevins told Detective W. Donahue that around April of 1999, he  
26                   received a telephone call from Michael Land, who was in "custody" at the George Bailey  
27                   Detention Facility. Michael Land indicated to Patrick Blevins that he (Michael Land) was  
28                   getting a "deal" on his "parole violation" for turning someone in to the police, which

1 was petitioner. See (Ex "A"). On 4/23/99, Michael Land was released from George  
2 Bailey Detention Facility and moved into Michelle Moore's apartment and stay there  
3 approximately four or five days, when Ms. Moore ask Land to leave because he was  
4 under the influence of heroin. On 4/28/99, Land came into the El Cajon Police  
5 Department to register as a narcotics registrant. See (Ex "C"). On 5/3/99, Detective  
6 Bloemendaal spoke with Land on the telephone. Land told Bloemendaal he would be  
7 intereated in continuing his involvement as an informant with the El Cajon Police  
8 Department. After speaking with Land. Detective Bloemendaal called Parole Agent Doug  
9 Moore, who told Bloemendaal that he would allow Land to continue his relationship as  
10 an informant with the El Cajon Police Department. See (Ex "C"). In Mid-April, 1999,  
11 My assigned Parole Agent Doug Moore transferred petitioner's case over to Parole Agent  
12 Wavelyn Contreras, after three years of supervision and only 120 days to discharge  
13 off parole. This was done for the purpose of luring petitioner into criminal activities  
14 or manufacturing methamphetamine for the purpose to be struck out by the three strikes  
15 law. See (Ex "A"). On 4/28/99, Michael Land moved into Edward "Pinky" Butler residences  
16 to seek out the "Target" and to lure Petitioner into the trap, because Agent Moore  
17 knew that Ed Butler was the only one that knew petitioner at all. Since Mr. Butler was  
18 figting a three strike case, it made it easy for Land and the Agents. See (Ex "D"). On  
19 4/30/99, Petitioner was lured to Ed Butler residences where Michael Land was waiting  
20 for petitioner. On 5/11/99, Detective Bloemendaal declared the information he gave in  
21 his affidavit for a seach warrant No. # 99-104 to be "True", Based on "information" and  
22 "belief". Subject to "penalty of perjury". Executed on the 11th day of May 1999, in the  
23 City of El Cjon, California. Detective Bloemendaal stated in his Affidavit, Addendum  
24 and also in a SDSO case report No. # 99-036556. That Land told him that within the past  
25 10 days, Land met a "subject" named "Dino", who he "later identified" through a  
26 photograph as petitioner, at a local grocery store in El Cajon. That Land provided  
27 petitioner with a ride to a "residence where petitioner was staying" at 20690 Japatal  
28 Road in Alpine, California. Also that Land observed that petitioner was in the process

1 of "salting out some chemicals". See (Ex "E"). Detective Bloemendaal knowingly gave  
2 falsifying information to obtain a Search Warrant against petitioner and seek out  
3 his arrest.

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5 ARGUMENT

6 I.

7 PETITIONER WAS DENIED THE RIGHT TO A  
8 FAIR TRIAL AND DUE PROCESS OF LAW BY  
9 DEFENSE COUNSEL. INEFFECTIVE ASSISTANCE  
OF COUNSEL AND TO WHOM PETITIONER WAS  
IN TOTAL CONFLICT WITH.

10 INEFFECTIVE ASSISTANCE OF COUNSEL

11 Petitioner asserts that a violation of his right to the effective representation  
12 of counsel will be sufficiently shown upon an examination of the whole record,  
13 petitioner asserts that it is due to a combination of circumstances, not refuted by  
14 the record, which if true precluded the presentation of his available defense to the  
15 court and the jurors through no fault of his own, and thus rendered his trial  
16 fundamentally unfair. Petitioner contends that after investigation and research, trial  
17 counsel made decisions of tactics and strategy injurious to petitioner's cause; the  
18 contention is rather that trial counsel failed to prepare, and that petitioner's  
19 defense was withheld through deliberate, and faulty judgment, and in default of  
20 knowledge that reasonable inquiry would have produced, and hence in default of any  
21 judgement at all. The omissions alleged were not mere mistakes of counsel or error in  
22 the course of the trial they constituted a total failure to present the cause of  
23 petitioner in any fundamental respect, and such a proceeding would not constitute for  
24 the accused the fair trial contemplated by the Due Process Clause. Petitioner contends  
25 that there was ineffective assistance of counsel and an error in judgment not to call  
26 witnesses. For instant, Mr. Bigelow who had told investigators that while incarcerated  
27 with Land, he had been beaten very severely by Land or Mr. Morry Kutniewski who told  
28 investigators that Land had an argument with a person known to Kutniewski as "Fast Eddy"

1 Land pulled a knife on Fast Eddy and threatened to kill him. Investigators made  
2 contact Mr. Mosteller, and the description that he gave investigators is similar to  
3 the description that Mr. Kutniewski gave. See (Ex "F"). There is also an apparent  
4 failure on the basis of the available record that defense counsel did not question  
5 Ms. Lucas or defense investigator T. Buhl, on Direct or Redirect Examination about  
6 her statements to defense investigator's that Land had made comments on two occasions  
7 about "Stabbing" someone and kicked someboby's ass. See (Ex "G").

8 There is also an apparent failure on the base of the available record that defense  
9 counsel "did not" question either Detective Bloemendaal or State Parole Agent Moore  
10 concerning the decedent's past violation; in close proximity to weapons (i.e., a  
11 knife). See (Ex "H"). There is certainly a concern on the part of defense counsel for  
12 presenting evidence of the violent nature of the decedent and weighing against that  
13 the prosecution's ability to bring in the petitioner's record for violence. This can  
14 be a tough question under certain circumstances "But not here" it is believed that it  
15 was clearly an error not to go into the "Violent Nature" of the decedent Land and that  
16 probably this would have had a much more "Dramatic Effect" on the outcome of the trial  
17 if the jury had been able to learn of Land's instances of past violence. See (Ex "H").

18 The petitioner further indicates that petitioner believes he was not properly  
19 served by his defense counsel when his defense counsel hired East County Investigations  
20 for Petitioner's defense investigation, which is owned and managed by Jon Lane. A former  
21 El Cajon Police officer and "Ex-Partner and Friend" of Detective Bloemndaal of the same  
22 El Cajon Police Department. "Since this agency" along with the El Cajon State Parole  
23 Department are the one's who "Targeted and Stalked" petitioner, with their "Paid  
24 Informant and Parolee", the decedent Michael Land. Jon Lane's staff investigator's are  
25 made up of former El Cajon Police officers and associates with the same activity common  
26 interest, and are "Members of the same partnership". Also employed there as a invest-  
27 igator is Thomas Buhl, a previous El Cajon Police officer for 19 years "and a Personal  
28 Friend of State Agent Doug Moore" See (Ex "I"), which includes (R.T. p 649, 650. This

1 defense team was in total conflict with petitioner cause. Petitioner contacted his  
2 previous court appointed attorney and advised her of the situation and conflict. On  
3 10/25/99, Court appointed defense counsel Ms. Monica C. Marquez informed the court  
4 that she wish to withdraw from petitioner,s case, (Reason Stated) was that she had a  
5 "Maintenance Problem". The court granted that request and appointed Defense Counsel  
6 Ms. Sandra Resnick, ex-public and in the "loop". Ms. Marquez informed Petitioner that  
7 she withdraw from petitioner's case, because "The County of San Diego wouldn't give  
8 her enough money to investigate petitioner case and it was to time consuming and to  
9 "STICKY"". With this information petitioner contacted the Private Conflicts Counsel  
10 who represented petitioner and spoke with Ms. Patricia W. Robinson, (Program Director).  
11 Ms. Robinson stated that she didn't believe that to be the situation, because that  
12 would be a "Ethical Violation" and said no more.

13 The petitioner further indicates that he believes he was not properly served by  
14 his defense counsel when she had petitioner trying on trial clothes and failed to have  
15 petitioner present during his readiness conference, when defense counsel "KNEW" that  
16 petitioner was going to make "a timely Faretta motion. Petitioner contends that it was  
17 "Deliderate" by his defense counsel. Petitioner also contends that it was error by his  
18 defense counsel not to take up the issue that while petitioner was arrested for murder  
19 and a parole hold, no action was taken for three months. There was no motion a dismissal  
20 or a demurrer filed during this period. Petitioner further contends that certain other  
21 witnesses who petitioner believes were available to be called and could have provided  
22 information on his behalf were not called based on errors in defense counsel's judgment.

23 Petitioner further indicates that he believes he was not properly served by his  
24 defense counsel when the court put on the record the relationship between the District  
25 Attorney and the Court, "Judge Allan J. Preckel". Defense counsel waived any conflict  
26 against petitioner previous request and wish's to challenge the court, and defense  
27 counsel talked petitioner out of what he wanted to do.

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1     INEFFECTIVE ASSISTANCE OF COUNSEL

2           The Sixth Amendment of the United States Constitution guarantees [i]n criminal  
3     prosecutions, the accused shall [have] the right... to have the [a]ssistance of  
4     [c]ounsel for his defense. (Gideon v. Wainwright (1963) 372 U.S. 335, 339[9L.Ed.2d  
5     799, 83 S.Ct. 792, 93 A.L.R.2d 733].) This includes the right to effective assistance  
6     of counsel. (United States v. Cronin (1984) 466 U.S. 648, 655 [80 L.Ed.2d 657, 104  
7     S.Ct. 2039].)

8           It is undisputed in this case that petitioner had a fight with Michael Land on  
9     May 26, 1999, killing him. The crux of the issue and the point of contention was the  
10    state of mind of the petitioner at the time of the killing. Because of his trial  
11    counsel's numerous, profound and significant failures, the petitioner was nullified  
12    in any attempt to put on a defense negating the alleged malice aforethought.

13    FAILURE TO CONSULT/ENGAGE EXPERT OR TO CONDUCT MEANINGFUL INVESTIGATION.

14           Effective assistance of counsel includes the assistance of experts in preparing  
15    a defense (Corenevsky v. Superior Court (1984) 36 Cal.3d 307, 319, 320 [204 Cal.Rptr.  
16    165, 682 P.2d 360]) and communication with them in confidence (Jones v. Superior  
17    Court (1962) 58 Cal.2d 56, 61 [22 Cal.Rptr. 879, 372 P.2d 919, 96 A.L.R.2d 1213]).  
18    Effective assistance of counsel similarly includes effective assistance during  
19    preparation of a case for trial. (Barber v. Municipal Court (1979) 24 Cal.3d 742, 750  
20    [157 Cal.Rptr. 658, 598 P.2d 818]). The right to counsel includes the right to use  
21    experts such as psychiatrists or psychologists, or any other expert who can assist  
22    counsel in preparing a defense. (Torres v. Municipal Court (1975) 50 Cal.App.3d 7788,  
23    783-784, 123 Cal.Rptr. 553; see Ake v. Oklahoma (1985) 470 U.S. 68, 105 S.Ct. 1087,  
24    84 L.Ed.2d 53; United States v. Bass (9th Cir. 1973) 477 F.2d 723, 725-726)..

25           The claims asserted in this petition allege that the petitioner was deprived of  
26    his constitutional right to the effective assistance of counsel, as well as the  
27    related claim that evidence showing petitioner's factual innocence was not presented  
28    to the jury. These claims are of constitutional proportion and cannot be presented