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IN THE SUPREME COURT OF OHIO

FRANK P. WOOD,

Relator,

Vs.

JUDGE PATRICIA ANN COSGROVE,

Respondent.

AFO O O

Case No.

Medina County Court Of Common Pleas
Case No. O5CRO365

MOTION FOR DISQUALIFICATION OF
STATE COURT JUDGE AND
CONFLICT-FREE REHEARINGS

MOTION FOR DISOUALIFICATION OF STATE COURT JUDGE

AND

### CONFLICT-FREE REHEARINGS

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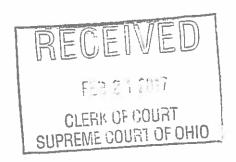
RESPONDENT

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### INTRODUCTION

Relator Frank P. Wood ("Wood") in the previously captioned case and Affiant in the instant matter, by presentation of document, exercising his U.S. 6th Amendment Rights to proceed pro se and his U.S. 1st Amendment Rights to redress of grievances, formally submits his Motion For Disqualification Of State Court Judge And Conflict-Free Rehearings. In tandem, Wood also submits his R.C. 2701.03 Affidavit Of Disqualification with attached Documents and internal Exhibits to justify his cause and clarify his actions. Appropriate Certificate(s) Of Service included.

The above mentioned documents are being submitted to this High Court by Wood to remove an unrighteous Judge from the Bench, vindicate his Constitutional Rights to Due Process and Equal Protection, and to reclaim that which was unlawfully and unethically taken from him: His Human Rights.

No one shall be subject to arbitrary arrest, detention or exile.

-Universal Declaration Of Human Rights, Article 9

### JURISDICTION

Having presented an Original Action, consistent with the Constitution Of The State Of Ohio, under Art. IV, Sec. 2(B)(1)(f) and (g), this Court has Original Jurisdiction

(f) In any cause on review as may be necessary to complete its determination;

and

(g) Admission to the practices of law, the discipline of persons admitted, and all other matters relating to the practice of law.

### STANDARD OF REVIEW

With Original Jurisdiction established over the instant case, Rule 2.11 Disqualification states

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the the following circumstances:
- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of the facts that are in dispute in the proceeding.

Clarifying the above, in <u>In re Disqualification Of Gall</u>, 2013 Ohio LEXIS 902 at HN2, this Court decreed

The proper test for determining whether a judge's participation in a case presents an appearance of impropriety is an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubt about the judge's impartiality. The reasonable observer is presumed to be fully informed of all the relevant facts in the record, not isolated facts divorced from their larger context.

In support, the Code Of Judicial Conduct directs that

"judges should also refrain from using words or conduct that might manifest bias or prejudice. See Jud.Cond.R. 1.2 and 1.3." Citing Esber Bev.Co. v. Labatt USA Operating Co., LLC, 2016 Ohio LEXIS 1466, HN4.

With these lumens cast to show the way, Wood respectfully reminds this Court that

"Action is distilled intent."
-Ken Follett, Author/Philosopher

As an incarcerated pro se litigant who never finished college, Wood beseeches this Court to open its Objective Eye and to recall that pro se litigant's claims are to be "liberally construed" and "held to less stringent standards" than those of a lawyer. <u>Urbania v. Thomas</u>, 270 F.3d 292, 295 (6th Cir. 2001), (citing <u>Cruz v. Beto</u>, 405 U.S. 319 (1972));

Hanes v. Kerner, 405 U.S. 519 (1972) (per curiam).

In harmony, State-court fact findings favoring Wood are entitled to the same presumption of correctness due findings favoring the State (<u>Burden v. Zant</u>, 498 U.S. 433 (1991) (per curiam)), especially when the facts are "undisputed" and "established" by the State-court Record (<u>Browder v. Director</u>, 1978 U.S. LEXIS 253 at [\*\*\*LedHR8A] and Footnotes 10), and the Record flatly contradicts State fact findings (<u>United States ex Rel Ross v. Franzen and Wolf</u>, 668 F.2d 933, 939 (7th Cir. 1982)), as in the case at bar.

As a Reviewing Court, per <u>United States v. Hastings</u>, 461 U.S. 399, 503 (1983), Wood asks this Court to "review the trial record as a whole." Unfortunately this may prove to be quite difficult due to Wood's materially altered and incomplete State-court Record (Affidavit: DOC #1, Exhibit-A and DOC #10).

For this Court's apprisal, all of Wood's Affidavit(s) have gone uncontested in the lower courts; and, as he has submitted an Affidavit to this Supreme Court,

Indeed, no more than affidavits is necessary to make the prima facie case. United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. denied. 50 U.S.L.W. 2169; S. Ct. 1982.

Further, and in accord, should any of Wood's pro se actions be in any error of sorts, this Sagacious Court decreed that

"...res judicata is not to be applied so rigidly as to defeat the ends of justice or as to work an injustice." State v. Simpkins, 2008 Ohio LEXIS 697, HN6; citing Grava v. Parkman Twp., (1995) 73 Ohio St. 3d 397, 386-387.

As this Court is both Federally and Constitutionally empowered to satisfy the Ends Of Justice Doctrine, it is equally empowered to correct a manifest miscarriage of justice. Resting upon this truth,

"[t]he Great Writ's basic objectives" include "protecting the innocent against erroneous conviction." Shriro v. Summerlin, 542 U.S. 348, 362 (2004).

# PROCEDURAL REQUIREMENTS AND CRITERIA

Wood currently seeks the Disqualification of a county court judge. Pursuant to O.R.C. Ann. 2701.031 (2014) Disqualification of municipal or county court judge,

If a judge of a municipal or county court allegedly is interested in a proceeding pending before the judge, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the judge or to a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the judge, any party to the proceeding or the party's counsel may file an affidavit of disqualification with the clerk of the supreme court. The affidavit of disqualification shall be filed and decided in accordance with divisions (B) to (E) of section 2701.03 of the Revised Code, and, upon the filing of the affidavit, the provisions of those divisions apply to the affidavit, the proceeding, the judge, and the parties to the proceeding.

Accordingly, O.R.C. Ann. 2701.03 (2014) Disqualification of common pleas judge; proceedings after affidavit filed against common pleas or appellate judge, Division (A) states, in pertinent part, that

[a]ny party to the proceeding or the party's counsel may file an affidavit of disqualification with the clerk of the supreme court in accordance of division (B) of this section.

Continuing, Division (B) states, in pertinent part, that an affidavit of disqualification

[s]hall be filed with the clerk of the supreme court not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled and shall include all of the following:

- The specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations \* \* \*;
- (2) The jurat of a notary public \* \* \*;

- (3) A certificate indicating that a copy of the affidavit has been served on the \* \* \* judge of a court of common pleas \* \* \*; and
- (4) The date of the next scheduled hearing in the proceeding or if there is no hearing scheduled, a statement that there is no hearing scheduled.

Realized above, and declared via Affidavit, no hearings are scheduled at this time, leaving the "not less than seven calendar days" of Division (B) satisfied. By Rule Of Law, this is the only time frame requirement Wood had to meet.

### HISTORICAL BACKGROUND

On February 26, 2015 Wood filed a Motion For Disqualification Of Prosecutor And For Retraction Of State's Brief Of Appellee into the Medina County Court Of Common Pleas. The very next day, on February 27, 2015 the Trial Court filed a Journal Entry. A most unusual and unexpected response, here, both Common Pleas Judges (Collier and Kimbler) recused. Later, on May 6, 2015 this Court assigned Judge Patricia Ann Cosgrove, retired judge of Summit County, to preside over and hear pertinent matters regarding State of Ohio vs. Frank P. Wood, Medina County Case No. 05CR0365.

On October 7, 2015 the Cosgrove Court yielded decisions on three separate series of filings that were submitted by Wood. Each of Wood's motions were denied in such a manner as to reveal the Court's possession of esoteric information regarding Wood's case (although imagined) and repeated untruthfulness (unisolated incidents), inter alia. When combined, these elements reveal a vested interest and that the Cosgrove Court acted in aid of the State. People tend to lie to hide, gain and/or protect.

Such Judicial Bias was clearly defined by this Court in State v. Jackson, 2016 Ohio LEXIS 2103, HN1

"...as a hostile feeling or a spirit of ill will or undue

friendship or favoritism toward one of the litigants or his attorney with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinquished from an open state of mind which will be governed by the law and facts."

In the end, the Cosgrove Court's decisions revealed: 1) a lack of Judicial Inquiry, or worse; 2) the perfected presence of Partiality; and a 3) Judicial Bias that was not governed by law and fact.

## CASE OF FIRST IMPRESSION

After studying a numerous amount of Decisions issued by this Court regarding Affidavit(s) Of Disqualification, and on LEXIS they are plentiful, Wood could not find one single case that reflected or even remotely resembled the highly distinguishing facts or the extraordinary circumstances that he has presented in his Motion and Affidavit. All of the cases reviewed had hearings pending and/or ongoing lengthy proceedings with a specific judge in question. By contrast, no hearings are pending in Wood's case and there have been no lengthy proceedings with the Cosgrove Court. Other cases rely on the Affiant knowing of facts prior to a pending motion being ruled upon. Wood's case is based on facts from prior rulings with no motions pending to be ruled upon; for Wood cannot proceed with Unrighteousness on the Bench. In many cases this Court demanded that the Affidavit be filed "as soon as possible after the event" because another hearing is scheduled. Again, consistent with the seven-day rule of R.C. 2701.03 (B)(4), no hearings are scheduled at this time. Having looked at the procedural, with no precedent to serve as a guide, let's look at the factual.

Factually, in some cases a Judge ruled against a Plaintiff in a prior proceeding or a Trial Court was reversed by an Appellate Court and the Defendant feared retaliation. Neither of these are applicable to Wood's case. In many cases the Defendant claimed erroneous rulings or the Judge

treated them harshly. Wood claims neither. Some Affiants were denied relief because they did not provide the necessary context to determine if Disqualification was warranted (In re Disqualification of Gaul, 2016-Ohio-7033, [\*P2]). Such is not the case here. Wood has provided the accompanying plethora of paper to ensure that this Court receives legitimate copies and remains fully informed because

Since the truth is always embedded in a vast network of conditions, the broader your outlook is, the greater the possibility of success at constructing something positive or undoing something negative,

-Tenzin Gyatso, the 14th Dalai Lama

as in the instant case.

Supporting,

Flamm, Judicial Disqualification, Section 5.8, 133-134 (2d Ed. 2007) ("disqualification must ordinarily be viewed from the standpoint of not merely a reasonable observer, but a thoughtful and well-informed one; and in light of the full record, not simply in light of an isolated incident" [footnotes omitted]). (citing In re Disqualification of Gall, 2013 Ohio LEXIS 902, [\*\*P6], HN2), (Supra)).

Regarding the above, Wood again reminds this Court that there is no full record as his Trial Record remains materially altered and incomplete, as will be shown, and he is not claiming an isolated incident, but a repetitive pattern of behavior by Judge Cosgrove.

Having presented some of the typical procedural and factual claims that most Defendants rely upon, the main facts supporting Wood's Affidavit reveal that the Cosgrove Court: 1) held an illegal evidentiary hearing and reached a decision on the merits of Wood's new evidence without the presence of counsel, witnesses or himself; 2) Claimed the possession of esoteric information regarding Wood's case (twice); 3) Ignored uncontested State's proof of factual innocence; 4) Ignored a prosecutorial conflict of interest;

and 5) Repeatedly lied in all three of the Court's decisions. Each main fact is supported by underlying factors in this Motion and accompanying Affidavit.

Although there is no precedence to govern these extenuating and shocking circumstances, this Court released the following decision that grants Wood a full review.

Each case must be determined on its own merits and based on the nature of the perceived conflict. (See Flamm, Judicial Disqualification, Section 21.6, at 633-634 (2d Ed. 2007). In re Favreau, 145 Ohio St. 3d 1212.

With a lack of unisolated incidents, the review and determination will be remarkable.

### ARGUMENT

Wood seeks the immediate Disqualification of Judge Patricia Ann Cosgrove ("Judge Cosgrove") of the Medina County Court Of Common Pleas from presiding over any and all future proceedings regarding the instant criminal case: A case void of DNA, medical evidence, physical evidence of any kind, eyewitnesses, additional charges and a complete Trial record, but replete with

- · an illegally altered and enhanced charging instrument;
- a Court-elected Juror;
- a Court-declared "cynical" Jury;
- Court-acknowledged and State-utilized perjury;
- · implanted memories:
- a lack of subject matter jurisdiction;
- a valid <u>Brady</u> Violation;
- · a Court-declared "untruthful" State-witness; and
- · a "pact" between Prosecutor and State child-witness.

True, all Structural Errors that either went undetected or ignored on Judge Cosgrove's watch (State v. Perry, 2014 Ohio LEXIS 263, HN1 and HN8).

Unable to be waived, these Plain and Structural Errors are further elaborated on in Wood's Affidavit due to Judge Cosgrove's lack of imparitality and vigil.

Compounding the situation, in the first series of filings decided by the Cosgrove Court, Judge Cosgrove

- · Lied about the filing date of Wood's first piece of new evidence;
- Deliberately ignored the timeliness of the filing of Wood's second piece of new evidence: The only legal requirement he had to meet;
- Illegally denied Wood's evidentiary hearing against this Court's ruling in <u>State v. Davis</u>, 2011 Ohio LEXIS 2381, HN11; and
- Assumed the roles of Prosecutor and Jury by conducting an illegal evidentiary hearing, for the Cosgrove Court reached a decision on the merits without the presence of Counsel, witnesses, Wood or legal authority;
- With partiality confirmed, unsupported by charging instrument or testimony, falsely accused Wood of "repeatedly" raping a Temple Virgin (Affidavit: DOC #6; ¶16, ¶26-¶28 and ¶48), revealing the alleged possession of personal esoteric knowledge regarding this case (although imagined). This leaves "repeatedly" subject to charges of libel;
- Repeatedly and deliberately ignored multiple pieces of State's evidence that proves Wood innocent (Let's face it. There's not one piece of State's evidence that points to Wood as one of the perpetrators. See Affidavit at ¶21, ¶35 and ¶78); and
- Ignored Court-acknowledged and State-utilized perjury (Tp.132, Ln.22-Tp.133, Ln.2) with a Court-declared "cynical" Jury (Tp.135, Ln.7-11). A dangerous mix.

In this light, it is crystal that Judge Cosgrove elected to discard the Constitutions of Nation and State as if she wrote them herself. It is obvious that Judge Cosgrove does not understand that

"As heat can be released without light, but not light without heat, for a "cynical" Jury to arrive at a reliable verdict has the same potential chance for success as cold fusion. Some things are simply not possible."

-Frank P. Wood, The Innocent Man

So says the U.S. 6th Amendment and Basic Fairness.

Continuing, Judge Cosgrove

- Ignored a lack of subject matter jurisdiction (Tp.247, Ln.7-16) and implanted memories (Tp.301, Ln.1-8); and then
- Assumed the role of Prosecutor with threats of vexatious litigation should Wood file anything else.

Looking at the second series of filings, Judge Cosgrove

- Willfully ignored the fact that Wood is an adverse and hostile witness against the State in another case for Transcript Manipulation, rendering the State a Defendant. The State, having been previously Disqualified from this other case, should also be Disqualified from Wood's case, vis-à-vis:
- Lied when she claimed the Prosecutor's Office has had no involvement with this other case (Affidavit: ¶37); and
- Admitted as "fact" that Wood's Jury Voir Dire was never transcribed, but ignored the **fact** that this alone is Constitutional Grounds for new trial.

In adjudicating the third series of filings, Judge Cosgrove

- · Again ignored uncontested State's proof of Wood's actual innocence;
- As in the first series, again lies about the date of the filing of Wood's first piece of new evidence; and then,
  - · Unsupported by the battered Record, made four bogus Claims:

<u>CLAIM #1</u>: As Judge Cosgrove turned a blind eye to a valid <u>Brady</u>
Violation and illegally denied Wood hearing, she claimed the "Defendant"
objected to the admission of this evidence;

<u>CLAIM #2</u>: Claimed Wood knew of the evidence at the time of Trial, again revealing personal, but false, intimate knowledge of Wood's case;

<u>CLAIM #3</u>: Claimed that Counsel and Wood sought to have the State's exonerating evidence "excluded" from the Trial; and

<u>CLAIM #4</u>: Separately claimed that Wood's Attorney sought to have the exculpatory evidence "excluded" from the Trial.

In failing to cite Transcript Pages and Line Numbers, the vitiated Record confirms that Judge Cosgrove repeatedly lied to deny Wood relief. To do so reveals a vested interest and personal bias. Please remember that people tend to lie to hide, gain and/or protect. Yes? In this light, or dare we say 'shadow,'

# IF WOOD WAS NOT LEGALLY AND FACTUALLY CORRECT, THEN JUDGE COSGROVE WOULD HAVE HAD NO NEED TO LIE.

Again, action is distilled intent.

Specifically regarding the alleged F-3 GSI, as supported by Motions, Exhibits and what's left of the part and parceled Trial Record, Judge Cosgrove never noticed that, post-admonishment, the Trial Court declared, "What I'm hearing her say is, "No, it didn't happen" (Tp.390, Ln.4-5). What more, the Prosecutor made a "pact" with this Child-witness to put her back on the stand (Tp.394, Ln.17-18). True, the Trial Court allowed the Prosecutor to go forward with this coached and manipulated Child-witness post-"pact."

Ethical questions of Constitutional Magnitude have arisen.

Judge Cosgrove also failed to notice that all three State-investigative

agencies (i.e., Children's Services; Akron Children's Hospital; Montville Twp. P.D.) unanimously declared PRE-INDICIMENT that there was neither evidence nor crime (Affidavit: \$163-\$165). So the watered-down Record reveals.

Yes, the State was in the possession of this BEST EVIDENCE prior to securing a bogus indictment. Has anyone ever seen a more pre-meditated display of Malicious Prosecution? They knew and now they know via Wood's presentation of the truth. Still, they elect to leave Wood in prison. We have gone from Malicious to Vindictive Prosecution. Can anyone legitimately contest otherwise?

So fragile are the reputations of Public Officials. Something worth protecting, yes?

To no surprise, Judge Cosgrove also conveniently overlooked the core of the Voir Dire Testimony of the State's Leading Expert: Dr. Douglas M. Reed, Ph.D. (Affidavit: DOC #3, Exhibit-I). As Wood's sole witness, Dr. Reed has unbiasedly and scientifically proven that Wood does not possess the psychological capacities to commit such ignorant and heinous acts.

No. The "cynical" Jury never heard any evidence on Wood's behalf from his Defense Team. Medina County does not acknowledge a Defendant's U.S. 6th Amendment Rights to the Compulsory Process.

As a Visiting Judge, Sitting by Assignment, Judge Cosgrove should have read the Trial Record. Her decisons reveal that: 1) she did not;

2) she did, but acted against law and fact; or 3) sombody else wrote the decisions and she blindly signed. Either way, "Why?" (Affidavit: ¶59, ¶75 through ¶80).

Looking closely at Judge Cosgrove's decisons clearly reveals that she cast State and Federal Law to the wayside. She deliberately disregarded

State's Best Evidence that fully exonerates Wood, and continuously lied to deny Wood relief. Her disrespect for the Law, repeated untruthfulness and bogus claims of esoteric information revealed a vested interest and Judicial Bias. A true lack of impartiality has been exposed and defeated.

### LACK OF SUBJECT MATTER JURISDICTION

Within wood's uncontested Claim Of Actual Innocence (Affidavit: DOC #3, Exhibit-D), State's evidence proves that S.L. (the alleged F-1 rape victim and Temple Virgin) was sexually assaulted while she spent the entire indicted weekend of alleged abuse in Put-In-Bay celebrating her "tenth birthday,"

### "on"

her birthday, with her legal guardian "dad" Scott Sadowsky (Perp #1), and "not at Frank Wood's house" (Testimony of S.L.: Tp.247, Ln.7-16). These undisputed facts were further solidified by two key State witnesses: Scott Sadowsky and Danielle Sadowsky. Utilizing these facts as evidence, Prosecutor Eisenhower later declared to the "cynical" Jury:

"She sat here and told you, "a couple of days before my tenth birthday." And that's evidence. That's evidence. There's been no evidence to the contrary. None." (Closing Arguments: Tp.524, Ln.19-24).

No greater TRUTH need be spoken.

For clarity, Put-In-Bay is in Ottawa County: a place Wood has never been. What more, in the most logical fashion, due to his previous affair with and impregnation of Mrs. Sadowsky, it is highly unlikely that Wood spent the indicted weekend in Put-In-Bay celebrating S.L.'s tenth birthday with Mr. Sadowsky.

Whenever you eliminate the impossible, Whatever remains must be the truth.

-Arthur Conan Doyle, Sign of Four

Unfortunately for Wood, the "cynical" Jury could not crystalize this truth in their malicious minds.

To sally forth, and to the contrary, Wood was indicted and tried in medina County for this charge. Further, there are NO additional indicted charges pertaining to S.L., and this charge is <u>unrelated</u> to K.S. and the alleged F-3 GSI that the Trial Court said "didn't happen."

Now, the U.S. 6th Amendment declares that

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Holding true to the Spirit of this Law, as "district" is synonymous with "jurisdiction," a "court of common pleas has original jurisdiction of all crimes and offenses" (O.R.C. 2931.03) "in criminal cases throughout his area of jurisdiction" (O.R.C. 2931.02). Clearly jurisdiction would give a court the authority to act provided that venue establishes "jurisdiction of the subject matter" (O.R.C. 2901.12 (A)) pursuant to Civ.R. 3(B)(3), which states

(B) Venue: Where proper

Any action may be venued, commenced, and decided in any court in any county. When applied to county and municipal courts, "county," as used in this rule, where appropriate, as the territorial limits of those courts. Proper venue lies in any one or more of the following counties:

(3) A county in which the defendant conducted activity that gave rise to the claim for relief.

Although Wood's affair with and impregnation of Mrs. Sadowsky gave Mr. Sadowsky "rise" to seek relief in Medina County, his uncontested

Claim Of Actual Innocence proves that S.L. was sexually assaulted in Put-In-Bay, Ottawa County. True because these facts are "undisputed" and "established" by the State-court Record (Browder v. Director, Supra).

Exceeding its "territorial limits," the Trial Court prejudiced Wood of his U.S. 5th and 14th Amendment Rights to Due Process and Equal Protection by failing to send him to be tried in a competent "district" by an "impartial" Jury pursuant to his U.S. 6th Amendment Rights. This is specifically because State's Best Evidence proves that the Trial Court forfeited subject matter jurisdiction through lack of venue, leaving Wood's Felony-1 sentence void.

In harmony, this Court decreed that

A void judgment is one rendered by a court lacking subject matter jurisdiction or the authority to act. Pratts. v. Hurley, 102 Ohio St. 3d 81, 2004 Ohio 1980 P12. citing State v. Peeks, 2006 Ohio App. LEXIS 6231, 2006-Ohio-6256, HN5.

In summation, Medina County had neither authority nor legal right to indict and try Wood on the alleged F-1 rape. Therefore, this charge must be <u>vacated</u> in its entirety and the accompanying Life-Sentence rendered moot.

There are three elements that justify this conclusion: 1) S.L. was, in some manner, sexually assaulted in "Put-In-Bay" while she celebrated her birthday with "Dad" and "not at Frank Wood's house" in Medina County;

2) Wood was most definitely not there; and 3) State's Best Evidence (Affidavit: DOC #6) and voluntary in-court testimony prove that "vaginal intercourse," a rape, never happened.

# CONFLICT-FREE REHEARINGS

The Due Process and Equal Protection Clauses of the U.S. 5th and 14th Amendments, respectively, require that all Citizens receive conflict-free indictments, hearings and trials in courts of competent jurisdiction. With

a legally and factually void Felony-1 sentence, Wood was afforded neither of these safeguards as intended by the Framers. Therefore, supported by the previous and justified by what follows, both here and in Affidavit, Wood is seeking conflict-free rehearings on all three series of filings in the Ottawa County Court Of Common Pleas, for these filings pertain directly to the alleged F-1 rape. Wood further prays this high Court for an Order that not only this be so, but that the alleged Felony-1 portion of his bogus Indictment be bonded over and transferred to the Ottawa County Prosecutor's Office.

To be forthright, at this juncture, Wood is also seeking an Order from this Court commanding that he receive a new and conflict-free Trial in Medina County regarding the alleged Felony-3 GSI; a Trial free of the bias, prejudice and inflammatory nature of the alleged F-1, and free from the malevolence of a "cynical" Jury. As Due Process and Equal Protection grant Wood these Constitutional Safeguards and Synergies, this Court is empowered to enforce them.

Wood seeks the above mentioned reliefs due to Judge Cosgrove's lack of impartiality, repeated untruthfulness and libel, the "cynical" Jury and a true lack of subject matter jurisdiction. Further, we are not only dealing with an issue of guilty or **not** guilty, but proof of factual innocence, inter alia. As one can see, it is crystal that Wood's uncontested Claim Of Actual Innocence reveals that he is unlawfully detained on both the alleged F-1 and F-3. Further, relief is warranted because, as noted, these facts are "undisputed" and "established" by the State-court Record (Browder v. Director, Supra). With the presumption of correctness now weighing heavily in Wood's favor, the State cannot molt a single feather to tip the scales back. Their Bird Of Paradise has been plucked.

Wood tugs the forelock and thanks the State for the magnificent boon of its largess in proving his innocence for him PRE-INDICIMENT and through voluntary in-court testimony. With such overwhelming Best Evidence, Wood shattered the axiomatic standards of reasonable doubt, surpass the extraordinary circumstances target by two bow shots, and his complaint establishes solid prima facie grounds for Disqualification and Rehearings. And, although Wood's wrongful conviction proves that one can know the truth pre-indictment and still prove a <u>lie</u> via "cynical" Jury, his undisputed Claim Of Actual Innocence, inter alia, proves that

"...truth, though it may run thin, never breaks, and it always flows over the lie as oil over water."

-Miguel de Cervantes Saavedra, Don Quixote, Part II, Ch.X, ¶1.

With no other adequate remedy at Law to obtain the desired and warranted relief, Wood has a clear and undisputable right to Disqualification, the requested Conflict-Free Rehearings and their synergies. Therefore, the requested Orders must issue.

#### CONCLUSION

For the highly prejudicial and biased reasons stated above and via Affidavit, Judge Cosgrove ultimately failed to remain objective and rule impartially in a repetitive manner. What more, Judge Cosgrove's evidenced bias

- Prevents Wood from filing additional motions into the Trial Court pertaining to the alleged F-3;
- Prevented Wood from receiving conflict-free hearings in a court of competent jurisdiction pertaining to the alleged F-1;
  - · Disqualifies her from Wood's case; and
  - · Renders her decisions moot, thus granting Wood his requested

conflict-free rehearings regarding the alleged F-1 and a conflict-free trial regarding the alleged F-3.

Judge Cosgrove's repeated untruthfulness, alleged esoteric knowledge and blatant unwillingness to obey both State and Federal Law solidifies these facts.

Wood futher requests that this matter be set for First Available Docket.

This is not a waiver of oral argument.

This is a waiver of Court-appointed counsel.

Relief is accordingly sought.

With Honor & Integrity,

Frank P. Wood (#A504-107)

Grafton Correctional Institution

P. Wood

2500 S. Avon Belden Rd. Grafton, Ohio 44044

# CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion For Disqualification Of State Court Judge And Conflict-Free Rehearings has been forwarded via Regular U.S. Mail on this 15th day of February, 2017 to:

Judge Patricia Ann Cosgrove Medina County Court Of Common Pleas 93 Public Square Medina, Ohio 44256.

Frank P. Wood

## CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion For Disqualification Of State Court Judge And Conflict-Free Rehearings has been forwarded via Regular U.S. Mail on the 15th day of February, 2017 to:

S. Forrest Thompson/Chief Prosecutor Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

#### IN THE SUPREME COURT OF OHIO

ERANK P. WOOD,	) Case No.
Relator,	Medina County Court Of Common Pleas
vs.	<pre>) Medina County Court Of Common Pleas ) Case No. 05CR0365 )</pre>
JUDGE PATRICIA ANN COSGROVE,	D 0 0704 00 1777711777 07
Respondent.	) R.C. 2701.03 AFFIDAVIT OF ) DISQUALIFICATION

### R.C. 2701.03 AFFIDAVIT OF DISQUALIFICATION

- II I, Frank P. Wood, Relator in the above captioned case and Affiant in the instant matter, having been duly advised of the penalty of perjury under the Laws of the State Of Ohio, by presentation of document, declare that I am fit and competent to testify, that I have direct personal knowledge of the facts contained hereinafter, and that these facts are true and correct to the best of my knowledge and belief.
- 112 Currently I am <u>The Innocent Man</u> who is unlawfully incarcerated at Grafton Correctional Institution, 2500 S. Avon Belden Rd., Grafton, Ohio, 44044 in direct violation of my Human and Constitutional Rights.
- ¶3 This Affidavit and accompanying Documents and Exhibits are being submitted in accordance with R.C. 2701.03 to the best of my nonprofessional abilities.
- 114 Consistent with R.C. 2701.03 (B)(4), at this time, no hearings are scheduled. Supporting, no motions are pending on my behalf in the Medina County Court Of Common Pleas.
- 115 In early 2014 I was put in contact with a retired Federal Law Enforcement Agent: Mr. Paul M. Hartman. Evidently his son is also innocent

and has suffered at the hands of my Trial Judge (Christopher J. Collier),
Stenographer (Donna A. Garrity) and Prosecutor's Office (Medina County).
Through an extensive investigation, Mr. Hartman discovered that both Judge
Collier and Stenographer Garrity have been altering Transcripts, inter alia,
since at least 2003 in order to sustain wrongful convictions and to hide the
wrongdoings of both Court and State.

Mocuments regarding my materially altered and incomplete Trial Record (DOC #1, Exhibit-A) and forwarded them to Mr. Hartman. On November 10, 2014 Attorney Marylin A. Kramer from Cleveland, utilizing my Affidavit as "Exhibit Twenty-Two," eFiled a Motion To Dismiss, With Prejudice, On Grounds Of Prosecutorial And Judicial Bad Faith And Misconduct in State v. Hartman, Medina County Case No. 09CR0229. The Hartman filing that contains 60 Exhibits from multiple victims of Medina County's corruption can easily be viewed by the general public on Mr. Hartman's blog at http://medinacorruptionblogspot.com.

¶7 Hartman's case is still active.

Due to my material participation in <u>Hartman</u> as an adverse and hostile witness against the State, on February 26, 2015 I filed a Motion For Disqualification Of Prosecutor And For Retraction Of State's Brief Of Appellee (DOC #1, Id). The very next day, on February 27, 2015 the Trial Court filed a Journal Entry With Instructions For Service (DOC #10, Exhibit-A). Here, <u>both</u> Common Pleas Judges (Collier and Kimbler) recused. Eventually this Court assigned Judge Patricia Ann Cosgrove to preside over my case (DOC #10, Exhibit-B). Then, on June 24, 2015 I received confirmation from this Court's Office Of Judicial Services that Judge Patricia Ann Cosgrove had <u>also</u> been assigned to the <u>Hartman</u> case (DOC #10,

Exhibit-C).

At this juncture, for the prejudical and biased reasons stated below, I seek the immediate Disqualification of Judge Patricia Ann Cosgrove ("Judge Cosgrove") of the Medina County Court Of Common Pleas from presiding over any future proceedings regarding State Of Ohio vs. Frank P. Wood, Medina County Case No. 05CR0356: A case void of DNA, physical evidence, additional charges, eyewitnesses and an unmolested and complete Trial Record. Having revealed a vested interest and Judicial Bias, I contend that Judge Cosgrove can neither remain impartial nor adjudicate with Judicial Integrity regarding my case, person and evidence. Hence, this Affidavit. ¶10 Judge Cosgrove, via the recusals of Judges Collier and Kimbler, inherited the ethical responsibility of impartially adjudicating three separate series of filings. I will present each one in turn. ¶11 As to the first series, on February 20, 2015 I filed an Application For Order Granting Leave To File Delayed Motion For New Trial Based On Newly Discovered Evidence Pursuant To Crim.R. 33(B) (DOC #2), and a Delayed Motion For New Trial Based On Newly Discovered Evidence Pursuant To Crim.R. 33(B) (DOC #3). These documents were filed due to a second piece of new evidence. On March 27, 2015 the State filed a Brief In Opposition (No DOC), to which I replied on April 9, 2015 with Wood's Response Supporting His Request For Leave To File Delayed Motion For New Trial (DOC #4). On October 7, 2015 Judge Cosgrove filed her Order On Defendant's Application For Leave To File A Motion For New Trial (DOC #5). Within this decision, Judge Cosgrove, without any rational thought process or consideration for Truth & Justice,

112 Stated that I filed my <u>first</u> piece of new evidence in 2014. Irrelevant to the proceedings, Court Records reveal that it was filed in 2013 (DOC #14).

Why lie about this? See ¶46.

 $\P 13$  Judge Cosgrove then deliberately ignored the timeliness of my filing: The  $\underline{ONLY}$  legal hurdle I was required to overcome.

M14 She then illegally denied my evidentiary hearing against this Court's decision in <a href="State v. Davis">State v. Davis</a>, 2011 Ohio LEXIS 2381 at HN11 (DOC #3, p.8); and M15 Conducted an <a href="illegal">illegal</a> evidentiary hearing without the presence of counsel, witnesses or myself. True, the Cosgrove Court assumed the roles of Prosecutor and Jury and reached a decision of the merits of the new evidence. In doing so, Judge Cosgrove "materially assist[ed] one party at the expense of another" in violation of this Court's ruling in <a href="In re Slagel">In re Slagel</a>, 145 Ohio St. 3d 1204, HN3. Ultimately, on behalf of the State, Judge Cosgrove acted <a href="in subsidium">in subsidium</a>.

file Judge Cosgrove then claimed there was ample evidence that I "repeatedly" raped S.L. What evidence? Per Nurse Practitioner Donna Abbott of Akron Children's Hospital, no rape occurred (Tp.262-269; Tp.272-278). What more, Akron Children's Hospital's Physical Examination Data page (DOC #6) that was presented by the State to what the Trial Court declared to be a "cynical" Jury (Tp.135, Ln.7-11), reveals that S.L. was in fact a Temple Virgin at the time of Trial. Pure in every way. As a Reviewing Court, per United States v. Hastings, 461 U.S. 499, 503 (1983), Judge Cosgrove failed to "review the trial record as a whole." Well, this would have been much easier if my Trial Record was whole (DOC #1, Exhibit-A and DOC #10).

Innocence (DOC #3, Exhibit-D). Remarkably, this Claim is not only comprised solely of State's evidence from the materially altered and incomplete Trial Record, it reveals motive, fraud, conspiracy, Court-acknowleged and State-utilized perjury, who committed what crimes, my own actual innocence, a lack

of subject matter jurisdiction pertaining to the alleged F-1 rape, and implanted memories.

118 <u>Fact</u>: S.L.'s legal guardian "mother" Danielle Sadowsky told the Temple Virgin that I raped her (Tp.301, Ln.1-8; DOC #3, Exhibit-D, p.7).

119 As this Claim's core contents have been presented from the Trial Court to the U.S. Supreme Court, it has gone <u>uncontested</u> by the State in <u>every</u> legal proceeding. Why? For the State to challenge its own evidence would merely prove both my Trial and Conviction to be what they are: <u>Fraudulent</u>.

"When you're right you make a lot of sound.
When you're wrong you make a lot of silence."
-Unknown

1121 What keeps the State at bay regarding this Claim? It's not just the facts and evidence presented, but the <u>timing</u> of the series of events that led to my wrongful incarceration. Yes, perfectly orchestrated while two perpetrators run free. What more, <u>Perp #1</u> testified as a State witness! (see 1135 and 1178).

¶22 Bravo, Medina! Bravo!

¶23 In sync, no Reviewing Court will adjudicate the Claim's merits with a legally valid Evidentiary Hearing.

¶24 The <u>Touchstone Of Truth</u> speaks volumes.

"cynical" Jury to secure a <u>fabricated case</u>. Not only is the <u>altered and</u>

"repeatedly" went <u>undicted</u> for a reason. Not only is the <u>altered and</u>

and the <u></u>

"All energy is borrowed and must be returned."

-Frank P. Wood, The Innocent Man

126 "repeatedly" is impossible when one considers vaginal intercourse

between a full grown healthy man and a nine year-old prepubertal Temple Virgin. Abuse was alleged to have occurred between October 1st-3rd of 2004 (DOC #3, Exhibit-E), and the exam took place on January 26, 2005 (Tp.262, Ln.23); 117 days later. For a better understanding of the impossible, I pose the following.

1927 Query: If a prepubertal hymen, that is easily torn or ruptured like wet tissue paper, can grow back in the 117 days between alleged vaginal intercourse and exam, and a woman can regain her virginity by such means, then why is it deemed so sacred?

1128 Although the State would like to pass over this question in silence, as it has in the past, it's no small wonder it took a "cynical" Jury to find me guilty of "vaginal intercourse" (Jury Instructions: Tp.537, Ln.9-Tp.538, Ln.3).

Supporting the above, Judge Cosgrove failed to acknowledge the Voir Dire testimony of the <u>State's Leading Expert</u>: Dr. Douglas M. Reed, Ph.D. (DOC #3, Exhibit-I). Here, Dr. Reed has unbiasedly and scientifically proven that I do <u>NOT</u> possess the psychological capacities to commit such ignorant and heinous acts.

"Belief determines behavior."
-Max Lucado, Preacher/Author

M31 By now it should be crystal that Judge Cosgrove's "repeatedly" comment, previously used by the State in a plethora of arguments with no validity, reveals a lack of truth via Judicial Bias. Personally, I <u>demand</u> to be indicted on the additional counts of Judge Cosgrove's <u>libel</u>. I look forward to testifying.

¶32 Judge Cosgrove also stated the Facebook transmission was not properly authenticated, willfully avoiding the fact that my witnesses and their

Affidavits for authentication purposes, by operation of law, were to be present at the illegal evidentiary hearing that was held without me.

133 A retired Judge of extensive trial experience does not know this?

134 Then Judge Cosgrove ignored proof of implanted memories (DOC #3, Exhibit-D, p.7); and

M35 Assuming the role of Prosecutor, accused me of filing a frivolous motion and threatened that I could be sued for vexatious litigation if I file anything else. Not only is the Medina County Prosecutor's afraid of the motion's contents, for it clearly defines <a href="Perp #1">Perp #1</a>, Judge Cosgrove resorted to <a href="mobster strong-arm tactics">mobster strong-arm tactics</a> to protect them and their reputations. However, being sued under bogus pretenses in open court would be to my advantage. For me to present my Documents and evidence to the media would create quite the buzz. Not many wrongfully convicted get such a rare opportunity. But, in the end, I'm the <a href="maintenance.">last man Medina County wants to see</a> back in a court room.

filed a Motion For Disqualification Of Prosecutor And For Retraction Of State's Brief Of Appellee (DOC #1). On March 24, 2015 the State filed a Brief In Opposition (DOC #7). On April 3, 2015 I filed Frank P. Wood's Response To State's Brief In Opposition (DOC #8). On October 7, 2015 Judge Cosgrove filed an Order On Defendant's Motion To Disqualify Prosecutor's Office And For Retraction Of State's Brief Of Appellee (DOC #9). Here, with a lack of judicial inquiry and understanding, Judge Cosgrove recklessly fi37 Declared that the Medina County Prosecutor's Office has had no involvement in the Hartman case (Supra). The Cosgrove Court conveniently overlooked the fact that Prosecutor Kern, in challenging my motion, attacked the very credibility of Hartman's Attorney and Investigator, directly

accusing them of fabricating evidence (DOC #7, p.3-4). Supporting,

Hartman's filing (Supra) reveals that a Medina County Prosecutor drove to

Columbus to file an Affidavit Of Disqualification to remove a previously

Assigned Judge from Hartman's case. No involvement? These events took place

after the Media Office was Disqualified. In finality and reality, the

Prosecutor's Office is a Defendant and I am an adverse witness. As

Disqualification if mandatory, Judge Cosgrove lied to ignore the facts.

138 Judge Cosgrove then admits as "fact" that my Jury Voir Dire was never

transcribed (or so I thought). This alone is Constitutional Grounds for

new Trial. Evidently the Cosgrove Court forgot its powers of sua sponte but

recalled them with threats of vexatious litigation.

¶39 As threats are the lowest form of negotiations, Judge Cosgrove then relied on irrelevant case law to deny me relief; and

¶40 Declared that I did not suffer prejudice, deliberately ignoring the Prosecutor's conflict of interest, my rights to Due Process and Equal Protection, and uncontested State's proof of factual innocence.

¶41 I have a surprise for all interested parties involved which reveals that not only are my Transcripts incomplete, but were altered <u>DURING</u> the Appellate Process.

¶42 After Judge Cosgrove's offensive rulings (Offensive to the Constitutions of Nation and State), I began to review old filings. Below is what I found within what's left of the tampered-with Record.

¶43 Post-Trial, Attorney Joseph F. Salzgeber (#0063619) was appointed by the Trial Court to file my Direct Appeal. After a lengthy wait for the Record, Atty. Salzgeber filed my Brief Of Appellant into the Ninth District Court Of Appeals on September 22, 2006. On p.3 of the Brief, Atty. Salzgeber states in a footnote that there are multiple transcript volumes.

Where are they? All pre-trial hearings, from Arraignment on, save one, are missing. The Jury Selection is missing. The Sentencing Hearing is missing, and certain statements have been removed from the Record. Continuing on p.5 he then cites the Sentencing Hearing Transcripts four (4) times. In my original Affidavit (DOC #1, Exhibit-A) to the Hartman Defense Team, I believed my Sentencing Hearing Transcripts were never transcribed (Id @ ¶15). Now I have physical proof that my Trial Record was at one time complete, but has been materially altered. As this gives credibility to my original Affidavit, let it be known that Attorney Joseph F. Salzgeber is a former Assistant Medina County Prosecutor. In support, I have enclosed my second Affidavit as (DOC #10) with Exhibits to verify the above. A copy has been forwarded to the Hartman Defense Team.

¶44 Is not Transcript Manipulation a Federal Crime?

Request For <u>Brady</u> Hearing And Dismissal Of Indictment (DOC #11). On April 8, 2015 the State filed a mere token response (No DOC). On April 20, 2015 I filed Wood's Response Vindicating His Request For <u>Brady</u> Hearing And Dismissal Of Indictment (DOC #12). On October 7, 2015 Judge Cosgrove filed an Order On Defendant's Motion For Brady Hearing And To Dismiss Indictment (DOC #13). Against fact and reason, Judge Cosgrove

M46 Again claims my first piece of new evidence was filed in 2014, when, as previously noted (M12), it was filed in 2013. So why lie? Why keep hammering this issue? Simple. Judge Collier's refusal to respond to my initial request for relief (DOC #14) caused an additional <u>nine-month delay</u> in refiling the evidence pursuant to Crim.R. 33(B). The deliberate delay gave the State <u>illegal leverage</u> that rendered me untimely and kept me out of a court room (M35). As <u>INNOCENCE TRUMPS ALL</u>, the State fears this

evidence and the changes it will bring for many.

M47 Judge Cosgrove then ignored State's proof of innocence presented.

Ignoring something neither invalidates it nor makes it go away; and
M48 Claims there is a "plethora" of medical evidence to support the
allegation of rape. With an "intact hymen" and "no abnormalities," so the
molested Record reveals, it is obvious that Judge Cosgrove neither read the
Record nor the Physical Examination Data page from Akron Children's Hospital
(DOC #6), and failed to read my uncontested Claim Of Actual Innocence. If
she read the above Documents and Transcripts, then she lied, again.

M49 My Claim Of Actual Innocence has been cited and/or presented in every
filing since 2011, while its core contents have been presented in every
other filing since 2006. Hard to miss the hot pink elephant with the purple
polka dots in the room. Close your eyes, turn your head and make a wish,
but it's still there.

1150 Judge Cosgrove then ignored the <u>fact</u> that due to the ineffective assistance of counsel, I had no knowledge of the <u>Brady</u> Evidence until I received the dismembered Record post Trial;

¶51 Ignored State, Federal and Constitutional Law presented, denying me every DUPOL and Equal Protection Right known; and

1152 Deliberately misapplied <u>Brady's</u> ruling to the highly distinguishing facts of my case. One would be hard pressed to find a better presentation.

¶53 Continuing, Judge Cosgrove then claimed the "Defendant" objected to the admission of this evidence. Failing to cite a Transcript Page and Line Number, a blatant lie. Why would I object to State's evidence that proves my innocence?

¶54 Judge Cosgrove then admitted the "alleged exculpatory records were discussed during the trial by attorneys and court." Yes, and without the

"cynical" Jury's <u>and</u> my knowledge. It is this very sidebar discussion in which Lead-counsel Green sought to have the evidence admitted and that I cited by Transcript Page and Line Number. Supporting, the butchered Record reveals that I was not privvy to that sidebar against my Constitutional Rights (DOC #15: Tp.1, 339-346, 560).

Miss Judge Cosgrove then went so far as to claim that my Attorney and I knew of the evidence at the time of Trial. At no place in the perverted Record or my filings will one find such a statement. Another blatant lie. The Compounding her biased position, she then claimed that my Attorney and I sought to have the Brady Evidence "excluded" from the Trial. Another lie. So the corrupted Record reveals. If any Defense Lawyer sought to have State's exonerating evidence excluded from a Trial, he or she should be disbarred for life.

¶57 Settling the Brady issue,

158 IF I WAS NOT I

# IF I WAS NOT LEGALLY AND FACTUALLY CORRECT, THEN JUDGE COSGROVE WOULD HAVE HAD NO NEED TO LIE.

1159 Having studied John Milton's <u>Paradise Lost</u>, I learned that the Creator gave us two gifts: 1) The ability to reason; and 2) The ability to communicate. The former was given so we can discern right from wrong, while the latter for the exchange of information. Unfortunately, some reason their way into lying in order to deceive and obtain the vices that lead to their own self-destruction, while others lie in order to hide, gain and/or protect someone or something. Understanding that Judge Cosgrove performed the latter, as will be explained shortly, she repeatedly lied in all three series of filings to deny me relief. Therefore these lies are <u>not</u> isolated incidents, but a repetitive pattern of behavior.

160 Judge Cosgrove is guilty of Abuse Of Power.

M61 Regarding the alleged F-3 GSI, the uncontested Claim Of Actual Innocence reveals that the alleged victim testified <u>TWICE</u> that she doesn't even remember being at an alleged crime scene with me. In sync, the Trial Court removed her from the stand, dismissed the "cynical" Jury, admonished the Prosecutor for testifying for the witness and declared, "What I'm hearing her say is, "No, it didn't happen." What more, the tainted Record reveals that Prosecutor Eisenhower made a "<u>pact</u>" with this child-witness and put her back on the stand (Tp.349, Ln.17-18). Judge Cosgrove missed this completely?

¶62 Ethical questions have risen and Judge Cosgrove failed miserably.

M63 As a Reviewing Court, it is no mystery that Judge Cosgrove failed in her essential duties and to conduct an adequate Judicial Inquiry. Or did she? Her actions, or lack of them, left me suffering under extreme prejudice. For instance, regarding the alleged F-1 rape, the abused Record reveals that all three State-investigative agencies unanimously declared PRE-INDICIMENT that there was neither evidence nor crime. Looking at them one agency at a time:

163 Akron Children's Hospital determined that no rape occurred (Tp.262-269; Tp.272-278), having found a Temple Virgin with an "intact hymen" and "no abnormalities" (116), (DOC #6).

The Office of Medina County Job & Family Services/Children's Services sent the Prosecutor's Office a letter stating there was "no evidence to support the allegations of sexual abuse" (DOC #15; Tp.346, Ln.5-6), and that their Office "closed" the case against me (DOC #15; Tp. 339, Ln.11). It is this very letter that is the CRUX of the Brady Violation, and I want it.

165 After interviewing me without the presence of counsel and searching my home without a warrant (both of my own volition), and interviewing alleged

witnesses, the Montville Twp. P.D. "refused" to file charges and "terminated" the case against me (Tp.47, Ln.15-23). Montville P.D. further shared their negative findings with Job & Family Services (Tp.350-351).

Record and my on line Docket that keeps changing from year to year, the State-court Record reveals that my life was under invest for a year and that I was out on a \$200,000.00 cash bond for six months until it was <a href="fraudulently">fraudulently</a> revoked (DOC #1, Exhibit-A). Under both terms and conditions, I never ran. Only a guilty coward would have run. I am neither!

167 In the most shocking revelation, I now believe that Det. Mark Kollar of the Medina City P.D. and <u>former</u> Assistant Prosecutor Anne Eisenhower <u>lied</u> to a Grand Jury to secure a bogus Indictment. As the above confirms this, the original Indictment (Bill Of Particulars) was for a period that ran from October 1st through October 31st of 2004 (DOC #16). But Asst. Pros.

Eisenhower amended the Bill Of Particluars to cover a period of time that ran from October 1st-3rd of 2004 (DOC #3, Exhibit-E). This changed the identity of the alleged F-1 rape (Tp.17, Ln.12-Tp.18, Ln.23) and enhanced the degree of penalty to a Life-Sentence without a Grand Jury Foreperson's signature against my U.S. 5th, 6th and 14th Amendment Rights. Understand that my Defense Team and I had no idea about the Life-Sentence penalty until the commencement of Trial. Neither Warrant nor Indictment, nor any other Official Document of sorts, stated that such a penalty was on the table and had to be defended. However, like the "cynical" Jury's verdict is disposable, so is the bogus Indictment.

168 Now this High Court can see why the <u>Brady</u> Evidence is so critical to correcting this manifest miscarriage of justice. Judge Cosgrove's rulings and <u>lies</u> have allowed the Trial Court's unconstitutional refusal to allow

the <u>Brady</u> Evidence into Trial to stand. Consider not only the "cynical" Jury, but the <u>Court-elected Juror</u> (DOC #1, Exhibit-A, ¶8).

¶69 This is justice?

Mockery that Medina County has made of my case and the Judicial System. That Judge will fully engage his or her powers of sua sponte and set straight that which has been made crooked. That Judge will truly have earned the title of "Honorable." And that Judge will have truly earned the deep respect and confident admiration of many; especially from me.

171 Does not "honor" mean respecting ourselves <u>and</u> others in our thoughts, speech and actions? By all that is Sacred & Holy, these are the garments of our souls!

172 Let it be known that the perpetual incarceration of an innocent man proves that he has been consistently denied every Human and Constitutional Right known - be they expressed or implied - and only serves to validate any claims of Human and Constitutional Rights Violations alleged or pending before a Reviewing Court.

¶73 In light of the facts and evidence presented thus far, Judge Cosgrove

- · Twice lied about the filing of my first piece of new evidence;
- Displayed some sort of personal esoteric knowledge with "repeatedly"
   (although imagined) and when she claimed there was a "plethora" of
   medical evidence to support the false allegation of rape (also
   imagined);
- Revealed a vested interest and protected others by lying repeatedly throughout all three series of filings;
- Perfected a personal bias by assuming the roles of Prosecutor and Jury when she held an illegal evidentiary hearing with threats of vexatious litigation;
- · In doing so she acted on behalf of the State and two perps at my

expense, thus enhancing and perfecting her bias;

- · Lied four times about a valid Brady Violation;
- · Carelessly and repeatedly discarded State's proof of actual innocence;
- · Turned her nose up to State and Federal Law;
- · Offended the Constitutions of both Nation and State; and
- · Left an Innocent Man in prison.

### 174 A Framer just rolled over.

175 Judge Cosgrove perfectly and repetitively displayed an inability to remain impartial and perform her duties in a Constitutional Manner. The all-probing question that must be asked is "Why?"

176 Think about this, with uncontradictable State's evidence proving my Actual Innocence, the axiomatic standards of Reasonable Doubt have not only been surpassed, they have been shattered. Therefore, to answer "Why," we must turn to Socratic Thinking and utilize the surgical question posed by Ancient Rome's Greatest Prosecutor, Cicero: "Cui bono?"

177 Indeed, "Who benefits" from my wrongful conviction and perpetual incarceration?

178 I know for a <u>fact</u> that the Beneficiaries are: Judge Christopher J.

Collier, Court Reporter Donna A. Garrity, dismissed Lead-counsel F. Harrison

Green, former Assistant Prosecutor Anne Eisenhower, former Assistant

Prosecutor Joseph F. Salzgeber, Scott Sadowsky (Perp #1), Danielle Sadowsky

(n.k.a. "Smith"), Robyn Spencer-Speelman and Ryan Spencer (Perp #2).

179 An in-depth study of Documents and Exhibits presented will verify the above and explain how they all had, and still have, something or someone, to hide, gain and/or protect. This, in turn, will explain "Why" Judge Cosgrove lied to protect them. You see, while careers and reputations are at stake

for some, freedom is at stake for others. So fragile are the reputations of Public Officials. So desperately those who know they don't deserve it cling

to their freedom.

¶80 Like all slippery slopes,

"The pole of power is greasy."
-Max Lucado, Preacher/Author

In <u>State v. Moore</u>, 2013 Ohio LEXIS 920, HN2, this Court declared that A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality.

¶82 With serious doubt and a lack of impartiality well established, Judge Cosgrove must be Disqualified from my case without delay.

¶83 Further, as I am legally and factually entitled to conflict-free rehearings on all three series of filings, her decisions must be rendered moot.

184 As the Code Of Judicial Conduct demands Disqualification, failure to Disqualify Judge Cosgrove would result in the continued deprivation of my U.S. 1st Amendment Rights to redress of grievances, my U.S. 6th Amendment Rights to proceed pro se, and my U.S. 14th Amendment Rights to Due Process and Equal Protection.

In harmony, Disqualification would further enable me to pursue and redeem what's left of my Human Rights as I struggle to end this <u>Insolent</u> <u>Injustice</u> and break the chains of Penury & Poverty that were forged in the <u>Crucible Of Lies</u>. So rightfully admitted by the Trial Court (Tp.132, Ln.22-Tp.133, Ln.2).

¶86 Supporting, claiming no political party allegiance,

"The Law should suffer for no one, and no one should suffer for the Law." -Hillary Clinton, 2016 Presidential Debate

187 Suffering for Law to the benefit of others, I am unlawfully detained. I have presented sufficient Law and operative fact to warrant relief. With no other remedy at law, requested relief (Motion) must be granted. 188 "Evil triumphs when good men [and women] fail to act."
-Tears Of The Sun

189 Judge Cosgrove deliberately and repeatedly lied to ensure the perpetual incarceration of an Innocent Man. I call for the indefinite disbarment of Judge Patricia Ann Cosgrove.

190 Due to the close professional and personal ties between the Medina and Summit County Court Officials, I request that a Judge be Assigned to my case from Cuyahoga County, Ohio.

¶91 An Affidavit Of Indigency has been submitted with this Affidavit Of Disqualification.

192 This Affidavit Of Disqualification is being submitted with the purest Honor & Integrity.

193 I SHALL DULL EVERY QUILL AND DRAIN EVERY INKHORN UNTIL THIS FRAUDULENT SHAME IS REMOVED FROM THE LEGACY OF MY FAMILY.

¶94 Until then,

1195 DURABO!

196 But only for the moment,

1197 AFFIANT FURTHER SAYETH NAUGHT.

Frank P. Wood (#A504-107)

Affiant

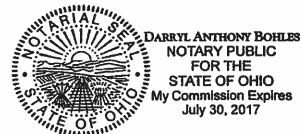
Grafton Correctional Institution

2500 S. Avon Belden Rd. Grafton, Ohio 44044

Sworn to, or affirmed, and subscribed in my presence on this 107k day of Macamber, 2016.

Notary Public Public

My Commission expires:



#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing R.C. 2701.03 Affidavit Of Disqualification (and accompanying Documents and Exhibits) was sent via Regular U.S. Mail on this  $15^{\frac{1}{15}}$  day of February, 2017 to:

Judge Patricia Ann Cosgrove Medina County Court Of Common Pleas 93 Public Square Medina, Ohio 44256

Frank P. Wood

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing R.C. 2701.03 Affidavit Of Disqualification (and accompanying Documents and Exhibits) was sent via Regular U.S. Mail on this  $15\frac{+h}{}$  day of February, 2017 to:

S. Forrest Thompson/Chief Prosecutor Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

# File-Stump-Return

#### Exhibit-70

COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

2013 AUG 27 AM 11: 20

FRANK P. WOOD, Defendant, Case No. 05-CR-0363AVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

-v-

: Judge Collier

STATE OF OHIO, Prosecutor.

: NOTICE OF DISMISSAL OF COUNSEL OF RECORD

#### NOTICE OF DISMISSAL OF COUNSEL OF RECORD

This NOTICE is to apprise the Court and the State of the Defendant's intentions and reasons, and is being submitted in good faith.

Sincerely,

Frank P. Wood (#A504-107) Grafton Correctional Camp 2500 S. Avon Belden Rd. Grafton, Ohio 44044 August 23, 2013

F. Harrison Green/Attorney
F. Harrison Green Co.
4015 Executive Park Drive
Suite 230
Cincinnati, Ohio 45241-4014

#### Mr. Green:

Enclosed you will find the following Exhibits:

- Exhibit A: My Pre-Trial History With Robyn Spencer-Speelman; and
- Exhibit B: My Pre-Trial History With Danielle Sadowsky-Smith;

  (Of which, you had my originals pre-trial as evidenced by your examination of the witnesses);
- Exhibit C: The core of Dr. Douglas M. Reed's reliable, scientific, and uncontradictable findings;
  (Which consists of evidence of my inability to commit such ignorant and heinous acts, but you also had pre-trial); and
- Exhibit D: My uncontested "Claim Of Acutal Innocence";
  (Which consists solely of State proffered and proven evidence adduced at Trial).

In accord with the above, and for the following reasons:

- 1) Your refusal to allow me to testify;
- 2) Your failure to proffer any meaningful defense;
- 3) Your failure to subpoena any witnesses on my behalf;
- Your failure to conduct any meaningful adversarial testing;
- 5) Your failure to bring to the Jury's attention State's evidence that proves my innocence, inter alia;
- 6) Your failure to inform Co-counsel Attorney Ronald R. Stanley or me of any Trial strategy;
- 7) It was announced during Trial that you were a "civil attorney" (Tp.523, Ln.3-8), which reveals you possessed neither the education nor the experience to conduct a criminal trial of such a highly sensitive nature; and because
- 8) Under your misguidance I unknowingly and unintelligently waived my United States Constitution Sixth Amendment rights to a speedy trial;

you're fired.

Cleaning up loose ends.

With absolute resolution,

Frank P. Wood (#A504-107) Grafton Correctional Camp 2500 S. Avon Belden Rd. Grafton, Ohio 44044

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the enclosed 'NOTICE OF DISMISSAL OF COUNSEL OF RECORD' was sent via Regular U.S. Mail on August 23, 2013 to:

Dean Holman/Chief Prosecutor Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256

and

F. Harrison Green/Attorney
F. Harrison Green Co.
4015 Executive Park Drive
Suite 230
Cincinnati, Ohio 45241-4014

Frank P. Wood

# IN THE COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

2013 AUG 27 PM 3: 31

STATE OF OHIO,		)	CASE NO. 05-CR-0365	DAVID B. WAT MEDINA CI CLERK OF C
vs.	Exhibit-71	)	JUDGE CHRISTOPHER J. COLLIER	
FRANK P. WOOD	,	)		
Defendant.		)	BRIEF IN RESPONSE TO N DISMISSAL OF COUNSEL	

Now comes the State of Ohio, by and through its counsel, Dean Holman, Medina County Prosecuting Attorney, and Matthew Kern, Assistant Prosecuting Attorney, and responds to Defendant's Notice of Dismissal of Counsel of Record filed August 27, 2013. For the reasons which now follow, the State notes that Wood does not ask for any relief and no "motion" is pending before the Court.

In his notice, Mr. Wood includes "exhibits" which are nothing more than typed summaries of his version of events in which he claims that he is actually innocent of the acts giving rise to his convictions. As every State and Federal court which has reviewed his meritless positions has agreed, Mr. Wood is guilty of rape and gross sexual imposition in violation of R.C. 2907.02(A)(1)(b) and (B) and R.C. 2907.05(A)(4). The Ninth District Court of Appeals found that Wood repeatedly engaged in sexual conduct with the child victim in this case, who was under the age of ten (10) at the time. The Court of Appeals further found that Wood compelled the child victim by force. *State v. Wood*, 9<sup>th</sup> Dist. Medina No. 06CA0044-M, 2007 Ohio 2673, at ¶ 56. The Court of Appeals also found that Wood committed the offense of gross sexual imposition against another, separate, child victim. *Id.* at ¶ 57.

Wood applied to re-open his direct appeal on the grounds of ineffective assistance of appellate counsel for failure to challenge the ineffective assistance of trial counsel. The Court of Appeals rejected the application to reopen.

As is also clear from the wording of some pages of his exhibits which were clearly used in federal habeas litigation, Wood has also filed federal habeas petitions under 28 U.S.C. § 2254. The United States District Court for the Northern District of Ohio found through both the magistrate judge's report and recommendation and the district court judges' final decision that Wood's convictions are supported by sufficient evidence. *Wood v. Hall*, Case No. 1:09CV0044, 2010 U.S. Dist. LEXIS 144385 (Aug. 12, 2010), at \* 44 (report and recommendation of Magistrate Judge Kenneth McHargh); *Wood v. Hall*, Case No. 1:09CV0044, 2012 U.S. Dist. LEXIS 41522 (Mar. 27, 2012), at \*33 (decision of U.S. District Court Judge Benita Pearson). Judge Pearson specifically held: "The trial testimony and evidence established beyond a reasonable doubt that Wood committed the charged offenses." *Id.* Judge Pearson certified, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal could not be taken in good faith and that there was no basis to issue a certificate of appealability under 28 U.S.C. § 2253(c) and Fed. App. R. 22(b).

Wood filed what he termed a "Notice of Appeal" from the District Court for the Northern District of Ohio to the United States Sixth Circuit Court of Appeals. The Sixth Circuit denied the request in an unpublished journal entry filed January 16, 2013. In its decision, the Sixth Circuit also found that "a rational trier of fact could have found Wood guilty of rape and gross sexual imposition. Reasonable jurists would not debate the district court's conclusion that the

state courts reasonably rejected this claim." *Wood v. Hall*, Sixth Circuit No. 12-3500 (Jan. 16, 2013), at \* 3 (unpublished).

Perhaps Mr. Wood's most substantial claim in his letter to the Medina County Prosecutor's Office is that he proved he was not at the scene of the crime. Wood's assertion, however, is false. As the Magistrate Judge and the District Court Judge both determined, the indictment in this case alleged that "on or about" October 1 through October 3 Wood raped a child victim and sexually molested a different child victim. The child victim testified that Wood repeatedly raped her, but did not limit the abuse to a single incident or a single weekend. Judge Pearson noted in her decision adopting the Magistrate's Report and Recommendation and denying the petition for habeas corpus that, "it cannot be said that Wood had an alibi, which absolves him from committing rape 'on or about' October 1<sup>st</sup> through October 3<sup>rd</sup>. Wood's alibi therefore fails." *Wood*, 2012 U.S. Dist. LEXIS 41522, at \* 31-32 (internal citations omitted).

Wood's assertions of his supposed innocence in the face of repeated denials of his claims by State and Federal courts demonstrate that he has not accepted responsibility for the offenses. His denials further show that his application for clemency is nothing more than another attempted appeal. The Parole Board should deny the application and require Wood to serve his full life sentence for repeatedly raping the child victim and sexually molesting another, separate, child victim. Justice in this case demands nothing less.

Wood does not ask for any relief, does not caption his filing as a petition for postconviction relief (which would be extraordinarily untimely, R.C. 2953.21(A); R.C. 2953.23(A)), and does not ask the Court to take any action. Instead, he simply gives "notice" that "apprise[s] the Court and the State of the Defendant's intentions and reasons," which he claims is submitted in good faith.

Wood's notice does not ask for the Court to take any action, and his claims of actual innocence are belied by the facts established at trial and as found by the State appellate court, the United States District Court for the Northern District of Ohio, and the United States Court of Appeals for the Sixth Circuit. To the extent that the Court was inclined to take any action upon the filing of Wood's "Notice," the Court should disregard Wood's "Notice." To the extent that it asks the Court to grant any form of relief, the Court should deny Wood's request.

Substantial justice was done in this case and Wood's appellate rights have been exhausted. Any arguments now about his innocence have long since been litigated and decided. Without the availability of any new evidence, Wood's claim simply seek to re-litigate the case again. Finality in the criminal justice system does not come easily, but for Mr. Wood and his victims it has arrived.

Respectfully submitted,

Dean Holman (#0020915)

Prosecuting Attorney Medina County, Ohio

By:

Matthew Kern (#0086415)

Assistant Prosecuting Attorney

Medina County Prosecutor's Office

72 Public Square

Medina, Ohio 44256

Phone: (330) 723-9536

Fax: (330) 723-9532

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Brief in Response has been sent via regular U.S. mail to Frank P. Wood, #504107, Defendant Pro Se, Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, Ohio 44044, this 27<sup>th</sup> day of August, 2013.

Matthew A. Kern

Assistant Prosecuting Attorney

#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual

Joyce A. Adams, MD; Ann S. Botash, MD; Nancy Kellogg, MD Arch Pediatr Adolesc Med. 2004;158:280-285.

#### Exhibit-B

Objective To compare the morphology of the hymen in adolescent girls who have and have not had sexual intercourse involving penile-vaginal penetration.

Subjects Female patients aged 13 to 19 years, recruited from an urban adolescent medicine practice.

Methods Subjects were interviewed in private after completing detailed questionnaires and then underwent a physical examination. External genital inspections were performed using a colposcope with an attached 35-mm camera to document the appearance of the hymen. The presence of notches or clefts was recorded during the examination, and photographs taken at x10 magnification were used to take measurements of the width of the posterior hymenal rim.

Results Posterior hymenal notches and clefts were more common among girls admitting past intercourse (13/27 [48%]) than in girls who denied intercourse (2/58 [3%]; P = .001), but the mean width of the posterior hymenal rim was not significantly different between the 2 groups (2.5 mm vs 3.0 mm; P = .11). Two subjects who denied intercourse but had posterior hymenal clefts described a painful first experience with tampon insertion.

Conclusions Deep notches or complete clefts in the posterior rim of the hymen were rare in girls who denied intercourse. Subjects who admitted past intercourse still had nondisrupted, intact hymens in 52% of cases.

INTRODUCTION

THE AMERICAN ACADEMY OF Pediatrics, Elk Grove, III, recommended in 1989 that all adolescent girls have an external genital examination as part of their physical examination to look for abnormalities of the hymen and other genital tissues.1 In practice, however, asymptomatic adolescent girls may not undergo a genital examination unless there is suspicion of sexual abuse or previous consensual sexual activity. The physician performing the examination is then expected to determine whether there has been vaginal penetration. There is a paucity of data available to assist in that determination.2

While there have been studies to obtain normative data on the appearance of the hymen and other genital tissues in newborn infants and prepubertal girls selected for nonabuse,3-5 the only published study comparing adolescent girls who were consensually sexually active with those who were not6 did not use magnification, such as a colposcope, and did not use photographs to document the appearance of the hymen. The lack of photographs precludes peer

Exhibit-72

review by blinded experts. In many centers where children and adolescents are evaluated for possible sexual abuse, photographs are taken with a camera attached to a colposcope to document any abnormal findings.7 Detailed, magnified, and objective photodocumentation is therefore necessary to adequately compare the appearance of the hymen in girls who have never experienced vaginal penetration (abuse or consensual) with those who admit having had vaginal intercourse.

In a case-control study8 of prepubertal girls aged 3 to 8 years, only girls who described digital-vaginal or penile-vaginal penetration were found to have deep notches or complete clefts in the posterior rim of the hymen or measurements of the posterior rim of the hymen at the midline less than 1 mm wide. A deep notch was defined as a V-shaped defect extending through more than 50% of the width of the hymen. A complete cleft was defined as a defect that extended through the entire rim of hymen, all the way to the fossa or vestibular wall.

The purpose of this study was to determine the frequency of anterior, lateral, and posterior notches and complete clefts in the hymen in adolescent girls who had never had vaginal intercourse and to compare the frequency of hymenal notches and clefts and mean width of the hymen at the midline between subjects who admitted and those

who denied having experienced penile-vaginal intercourse.

The study was approved by the Human Subjects Committee of the University of California, San Diego. Female patients aged 13 to 19 years were recruited from a university adolescent medicine practice at 2 locations in San Diego between June 1, 1997, and December 1, 2000. Inclusion criteria were age, having begun menstruation, and having a parent present to sign a consent form if the patient was younger than 18 years. A history of past pregnancy or abortion, past episodes of forced sexual intercourse, and diagnoses of anorexia nervosa or anxiety disorder were exclusion criteria.

Written informed consent was obtained, and both patients and parents were informed that the interview would include screening questions for emotional and behavioral problems and that the entire visit would be provided free of charge.

Patients were informed that they would receive \$50 for participation in the study.

The parent was asked to complete a questionnaire concerning the patient's health, health history, and any behavioral or emotional concerns. At the same time, the patient completed a questionnaire adapted from a previous study,9 which included questions concerning home, education, activities, past physical or sexual abuse, drug use, depression, suicide ideation or attempts, and past experience with penile-vaginal intercourse.

A complete physical examination including a detailed examination of the external genitalia using a colposcope was done in an office setting with the mother or other support person present if the patient so desired. All examinations were conducted by 1 of us (J. A. A.). Patients were placed on the examination table in the lithotomy position, and the external genitalia were carefully examined using separation of the labia majora and minora and labial traction, with

the patient watching the examination on the video monitor if she chose to do so.

Using a cotton applicator swab moistened with water, the edge of the hymen was gently stretched to clearly define the amount of tissue present at the 6-o'clock position of the posterior rim. In addition, any areas that appeared to be notches or clefts in the hymen were spread apart with the swab as well to define the depth of the notch or cleft. A larger cotton swab with the tip covered by a latex balloon was used in some patients to help visualize the notches or clefts in the hymen.

Photographs were taken using a 35-mm camera (Nikon, Melville, NY) attached to a colposcope (Cryomedics MM6000; Cabot, Cryomedics Inc. Langhorne, Pa) at x6 or x10 magnification. A photo log sheet was kept to match the subject number to the imprinted numbers on the slides, and notations were made of the location of notches or clefts

identified during the examination.

All colposcopic slides were reviewed by 1 of us (J. A. A.) in order to record details of hymenal appearance, including verification of the location of notches or clefts noted during the examination. Measurements of the width of the hymenal rim at the 6-o'clock position were taken using a calibrated measuring device. All slides were projected onto the screen using a slide projector (Kodak Ektagraphic, Rochester, NY). Slides of a millimeter ruler taken at x6 and x10 magnification were each projected in the same way, and a cardboard ruler was made to match the projected image of each ruler. These rulers were then used to take the hymen measurements from the projected images for each subject. The width of the posterior hymenal rim was measured from the projected slides at the 6-o'clock position, between the edge of the hymen and the base of the hymen where it meets the vestibular fossa inferiorly. Slides from all subjects whose photographs clearly showed the entire hymenal rim were sent to 2 additional experts in adolescent gynecology (A. S. B. and N.K.). Both reviewers were experienced in reviewing colposcopic photographs;

each had examined more than 1000 children and adolescents for suspected sexual abuse. The reviewers were blinded to the patients' sexual histories and were asked to describe the location of any deep notches or complete clefts in the hymen, using the definitions of Berenson et al8 described previously.

The data were entered into a computer database, along with the answers given by the patient and parent on the

questionnaires. The Student t test was used to compare continuous variables between subjects who said they had engaged in intercourse involving penile-vaginal penetration (admitted) and those who said they had never experienced (denied) such contact. A 2 analysis was done for grouping variables. SPSS software (SPSS Inc, Chicago, III) was used for all analyses, and P values <.05 were considered significant.

A total of 85 subjects were recruited, with a mean age of 16.5 years. A log was not kept of the number of patients who were approached about participating but declined. It is estimated that only 1 patient in 10 agreed to participate in the

study.

There were 58 subjects who denied ever experiencing penile-vaginal intercourse and 27 subjects who admitted consensual sexual activity involving penile-vaginal intercourse. The mean age of the subjects who reported having had intercourse was significantly higher than that of the subjects who denied sexual intercourse (17 years vs 15.5 years; P = .001). Of the 58 subjects who denied sexual intercourse, 52 used tampons and 6 did not. Of the subjects using tampons, 25 (48%) reported experiencing both pain and difficulty with insertion of the tampon on first attempt at using them.

**OUTSIDE REVIEW OF SLIDES** 

Initial difficulties with equipment resulted in poor-quality photographs being available for 18 subjects. Slides of the remaining 67 subjects (45 with no history of past intercourse and 22 with a history of consensual intercourse) were sent to the 2 reviewers, as previously described. The reviewers were blinded to the subjects' sexual histories.

Both reviewers agreed with the examiner on the absence of deep notches or complete clefts in the hymens of 37 (82%) of 45 subjects. Both also agreed on the presence of deep notches or clefts in 18 (90%) of 20 subjects. For 2 of the subjects, neither reviewer could determine from the photographs whether notches or clefts were present. Using the Cohen statistic,10 agreement between the examiner and each reviewer for the absence or presence of any notches, notches at the lateral location, and notches at the posterior location ranged from values of 0.71 to 0.85, all with P<.001.

**COMPARISON OF HYMENAL FINDINGS** 

Because the examiner was able to manipulate the hymenal tissue during the examination and make notations concerning the presence of notches or clefts and their depth, these data, along with the measurements of the posterior hymenal rim taken from the colposcopic photographs, were used in the subsequent analysis. There were 4 subjects in the non-sexually active group who had a hymenal septum.

The mean width of the hymenal rim was 2.5 mm among the subjects admitting past intercourse and 3.0 mm among the group who denied past intercourse. This difference was not statistically significant, using the t test for comparisons of means. Using the 2 test, however, there were significantly more subjects in the group admitting sexual intercourse than in the group denying intercourse with a posterior hymenal rim measurement of less than or

equal to 1 mm wide (6/27 [22%] vs 3/58 [3%], respectively; P<.01).
Table 1 presents the frequency of deep notches and complete clefts in the anterior, lateral, and posterior locations, comparing subjects without a history of sexual intercourse and those with a history of past penile-vaginal intercourse. There were 14 (52%) of 27 subjects in the sexually active group who had no deep notches or complete clefts in either the lateral or posterior locations.

Table 1. Comparison of Notches and Clefts in the Hymen in Subjects With and Without a History of Sexual Intercourse\*

Figure 1, Figure 2, Figure 3, Figure 4, and Figure 5 demonstrate the use of swabs to stretch out the hymenal rim and provide documentation of the presence or absence of notches or clefts.

Figure 1. Photograph at x10 magnification, showing a 19-year-old subject who admits to having consensual intercourse. Any notches or clefts in the hymen are unable to be clearly seen in this view.

Figure 2. The same subject as in Figure 1. A large cotton swab covered with a small latex balloon was used for contrast. A complete cleft in the hymen at the 5-o'clock position is clearly demonstrated.

Figure 3. A 19-year-old subject with no history of past sexual intercourse (subject 45). She described the painful insertion of a tampon on 1 occasion. A complete cleft was seen in the hymen at the 6-o'clock position during the examination, but it was not as clearly documented in the photograph, taken at x10 magnification.

Figure 4. A 16-year-old sexually active subject who admits to consensual sexual intercourse. No notches or clefts were visible in the hymen during examination. The subject was able to relax and allow stretching of the hymenal rim with a cotton swab. The photograph was taken at x10 magnification.

Figure 5. A 15-year-old subject with no history of past sexual intercourse who did not use tampons. The subject was able to relax, and a cotton swab stretching out the rim of the hymen shows no notches or clefts. Note the similar appearance to the hymen shown in Figure 4.

Two subjects who stated that they had never had sexual intercourse but had a posterior deep notch (subject 51) or

complete cleft (subject 45) had described a painful insertion of a tampon in their first and only attempt to use them. Subject 45 described using a large tampon from her mother's supply, even though her own menstrual flow was very light at the time (Figure 3). Both of the outside reviewers of the photographs identified a deep notch or complete cleft in each of these 2 subjects.

Among subjects who denied intercourse, 5 (9%) had 1 notch or cleft in the posterior or lateral locations, and 5 (9%) had 2 notches or clefts. For the group admitting to past intercourse, 4 (15%) subjects had 1 notch or cleft, 6 (22%) had 2 notches or clefts, and 3 (11%) had 3 or more. Table 2 presents a comparison of the number of subjects with 0 to 1 and 2 to 4 notches or clefts in the posterior or lateral locations and between subjects with and without a history of

sexual intercourse, using the Fisher exact test.

Table 2. Comparison of Number of Subjects With 0 to 1 and 2 to 4 Notches or Clefts in the Hymen

Since subject age was associated both with a higher likelihood of being sexually active and with a higher mean number of notches or clefts using the t test, a separate 2 analysis was done on the 58 subjects with no history of intercourse. There was no significant difference in the percentage of subjects with notches between the 3 age groups, 13- to 14-year-old (5/21 [24%]), 15- to 17-year-old (2/26 [8%]), and 18- to 19-year-old subjects (2/10 [20%]).

Lateral deep notches or complete clefts were found in 1 (10%) of 10 of the 18- to 19-year-old subjects with no history of intercourse and in 7 (63%) of 11 subjects in the same age group with a history of sexual intercourse (2; P = .01). Posterior deep notches or complete clefts were found in 2 (20%) of 10 of the older subjects with no history of

intercourse, compared with 7 (63%) of 11 older subjects with a history of past intercourse (2; P = .046).

To determine whether the number of posterior deep notches or complete clefts increased with the number of years a subject was sexually active, we calculated the number of years since the onset of sexual activity and compared this with the number of posterior or lateral hymenal defects in the 27 sexually active subjects. There was no significant correlation between years since sexual debut and the percentage of subjects with 0, 1 to 2, or 3 or more notches or clefts in the hymen, using 2 analysis.

To our knowledge, this study is the first to use magnification with a colposcope and photographs to document the appearance of the hymen in adolescent girls with and without a history of sexual intercourse. It is interesting to compare our results with those of Emans et al.6 In their study, which did not use magnification, 6 (3%) of the 200 girls who denied past intercourse had complete clefts in the posterior rim of the hymen. This is the same frequency we

found, and both of the girls with this finding in our study had described painful tampon insertion.

In the Emans study, 81% of the sexually active subjects were found to have complete clefts of the hymen during a nonmagnified examination, which is higher than the 48% frequency in our group of 27 subjects. The mean age of subjects in our study was 16 years compared with 18 years in the Emans study, which could account for the difference in the percentage of subjects with deep notches or complete clefts in the lower portion of the hymen. When considering only 18- and 19-year-old subjects who admitted having had past intercourse, we did find that 63% had posterior hymenal defects (deep notches or complete clefts), compared with 48% in sexually active girls in the larger

group of 27 subjects.

There are several limitations to our study, the most obvious being the reliance on the subjects to say whether they had experienced sexual intercourse involving penile-vaginal penetration. It is possible that the 2 subjects who said they had not had sexual intercourse but had posterior hymenal defects had, in fact, experienced sexual intercourse but denied it to the examiner. The responses of these 2 subjects to the other questions regarding family relationships; school functioning; use of alcohol, drugs, or tobacco; and past physical and sexual abuse or suicide attempt were similar to the responses of the other non-sexually active subjects, which suggests that they were indeed being truthful about not having experienced intercourse. However, there is no gold standard for determining virginity, and the subjects' disclosure of their status remains a less than perfect method.

The examiner in this study was not blinded to the subjects' histories of sexual intercourse, and this fact could be considered a limitation of the study. However, the high rate of agreement between the examiner and the blinded reviewers on photographs of 67 subjects added validity to the assessment of deep notches and clefts in the hymen. Another limitation was the use of still photographs rather than videotapes of the colposcopic examinations to document the presence of notches or clefts in the hymen, because difficulties with the equipment limited the number of photographs that could be sent for outside review. In addition, the method of stretching out the hymenal edge with a cotton swab was not always successful, and on some photographs, the swab obscured the defect the examiner was trying to demonstrate. Videotaped examinations and the use of the Foley catheter11 to expose the hymenal rim

may have allowed for a more comprehensive review of the findings by outside experts.

It would have been desirable to have a larger group of subjects who had neither used tampons nor engaged in penile-vaginal intercourse in order to study the isolated effects of tampon use on the appearance of the hymen. Girls who were not comfortable with tampon use were also likely to be uncomfortable with having an external genital examination using videocolposcopy and so were more difficult to recruit. However, it is reassuring that 50 of the 52

tampon users who denied intercourse were found to have a hymen without deep notches or clefts. CONCLUSIONS

Deep notches and complete clefts in the hymen at the 3-o'clock or 9-o'clock position, as well as in the posterior portion of the hymen, were found significantly more often in girls who admitted sexual intercourse compared with girls who denied having had sexual intercourse. Lateral or posterior deep notches or complete clefts in the hymen in adolescent girls should therefore be considered strongly suggestive of previous penetration. Whether the notches or clefts could have been caused by difficulty with tampon use or by speculum examinations must be assessed on a case-by-case basis.

Adolescent girls who have no deep notches in the hymen could still have experienced penile-vaginal penetration, because 52% of the subjects in this study who admitted past intercourse did not have deep notches or complete clefts in the lateral or posterior locations of the hymen. The absence of notches does not rule out previous penile-vaginal penetration in an adolescent. For this reason, the term intact should be avoided when describing a hymen that is free of clefts.

Further research is needed with a larger sample of girls who have had previous sexual intercourse to determine the factors that contribute to the presence, location, and number of notches and clefts in the hymen. Particularly useful would be longitudinal studies of adolescent girls through puberty, early adolescence, and into their young adult years to document the progressive changes in the hymen that may occur with tampon use or the onset of sexual activity. Additional longitudinal studies involving adolescents who have not had sexual intercourse are also needed.

Physicians, nurse practitioners, physician assistants, and nurses who examine and treat adolescent girls who have described being sexually abused continue to rely on the patient's description of the alleged assault. The absence of any injury to the hymen should not be used as a reason to negate the possibility that the adolescent has experienced vaginal penetration.

What This Study Adds

The study by Emans et al6 used nonmagnified examinations by 2 individual examiners to describe the appearance of the hymen in adolescent girls without a history of sexual intercourse, so an assessment of findings by a blinded reviewer was not possible. Although 3% of the subjects who denied intercourse had complete clefts in the posterior rim of the hymen, these were not attributed to the use of tampons.

In our study, photographs of 67 subjects were sent to 2 outside reviewers who were blinded to the subjects' history of intercourse, and both reviewers identified a deep notch in 2 (3%) of 58 subjects who denied intercourse but described painful past use of a tampon. We also found a lower frequency of hymenal clefts in a younger population of subjects who admitted sexual intercourse (48%) than was found by Emans et al in an older population (81%).

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## IN THE COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

2014 JUL 18 AM 10: 57

	MEDINA COL	ONIY, OHIO	7014 30F 10 WILLO. 21
STATE OF OHIO	,	CASE NO.: 05CR0365	DAVID B. WADSWORTH MEDINA COUNTY CLERK OF COURTS
Plaintiff,	•		MEDINA COUNTY CLERK OF COURTS
vs.	Exhibit-73	JUDGE CHRISTOPHER J.	COLLIER
FRANK P. WOOD	, ;	DEFENDANT'S RESPONSE BRIEF IN OPPOSITION	TO STATE'S
Defendant.	40	)	

Defendant Frank P. Wood (hereinafter 'Wood'), by presentation of document, challenges the State's Brief In Opposition. For the reasons, laws, and facts presented below, the State's contestations are powerless and Wood's evidentiary hearing should be granted.

The State, through Prosecutor Kern, is repetitively in error. In his citing of several pages of cases where defendants were denied delayed motions for new trial, Pros. Kern has failed to show how any of these cases are directly related to the facts of Wood's case. Specifically, the fact that Wood was transferred like a rabid kennel dog from one cage to the next, and under constant lockdown, for the immediate 121 days following verdict. This renders the 121-day time limit set forth in Crim.R.33(B) inapplicable to the case at bar.

To put this in the proper perspective, Pros. Kern should be stripped of his legal education, deprived of financial support, left without the aid of counsel or a private investigator, abandoned by society as a whole, declared a "Baby-raper!" and locked in a cage for 121 days in a hostile environment. Now let's see what he can discover with due diligence. Never judge a man's actions or inactions until you have spent 121 days in his cage.

Despite Pros. Kern's erroneous allegations, Wood presented sufficient evidence via fact, affidavit, and document that prove he was unavoidably

prevented from discovering the new evidence with due diligence within 120 days of verdict. Wood's Application, Affidavit, Motion, and Exhibits verify when he received the newly discovered evidence, and that he had no prior knowledge of its existence. Had Wood known of this evidence beforehand, he would have used it sooner. Logic prevails where common sense fails.

In <u>State v. Pinkerman</u>, 1993 Ohio App. LEXIS 2857, once a defendant satisfies the criteria of being unavoidably delayed from discovery with due diligence, as in Wood's case,

"A motion for new trial pursuant to Ohio R. Crim. P.33(B) is addressed to the sound discretion of the trial court..." Id. at HN1;

and not Pros. Kern.

#### Continuing:

"Ohio R. Crim. P.33(B) does not provide a time limit for the filing of a motion for leave to file a delayed motion for new trial. The Rule instead merely states that the court may not grant the motion for leave unless the trial court finds that the defendant was unavoidably prevented from discovering the new evidence within one hundred and twenty days from the day the jury returned the verdict." Id. at HN4.

In 2011 the Ohio Supreme Court cast the same ruling in <u>State v. Davis</u>, 131 Ohio St.3d 1; 2011 Ohio LEXIS 2381 at HN10. At this juncture, Wood prays the Court to take notice that Pros. Kern presented no case law superior to that which is cited above. Although Wood has presented controlling case law, with no ruling from this Honorable Court, Wood will continue his challenge.

Pros. Kern contends that Wood did not explain his delay from receiving to filing the evidence. Evidently Pros. Kern missed Wood's explanation in Wood's filings. Although the delay is irrelevant, as duly noted above, Wood did explain that he not only had to learn how the evidence applied to the facts of his case and exonerates him, Wood had to learn how to properly

present it medically and legally to the Court. Pros. Kern seems to mistakingly believe that an incarcerated pro se litigant, without a college education, can discover new evidence and file a motion for new trial in less than 120 days. Such reckless adjudication would keep a pro se litigant in a vicious cycle of filing, barred, filing, barred, filing, and so forth. Pros. Kern's complaint is absurd. Numerous cases have been overturned on this same ground and remanded to evidentiary hearings by the Supreme Court Of Ohio. This is why Pros. Kern relied on the lower court's rulings. Consider Davis, Id.

Pros. Kern claims that a defendant "must show that they sought leave to file within a reasonable period after actually discovering the evidence" (State's Brief at p.5). As noted above, Crim.R.33(B) has no such provision. Supporting, in State v. Pinkerman, 88 Ohio App.3d 158, 623 N.E.2d 643, 645 (1988), the trial court erred in not granting motion even though defendant had known of new evidence for nearly a year before pursuing motion for leave to file delayed motion for new trial. Still good law, Pinkerman is cited in Matthew Bender & Company's 2013 Ohio Forms of Pleading and Practice, and Ohio Rules of Criminal Procedure (p.2, ¶3 of Exhibit-A). And by Pros. Kern's own admission 'The court may entertain motions within the parameters of the rule itself (State's Brief at p.2). Crim.R.33(B) is concerned with being unavoidably delayed from discovering new evidence with due diligence; not with how long the defendant had the evidence before filing. Locked in a cage for 121 days with no prior knowledge of the evidence, per the parameters of Crim.R.33(B), Wood is properly before this Court.

Within p.5 of the State's Brief, Pros. Kern declares that "criminal defendants and their trial counsel have a duty to make a serious effort of their own to discover potential[ly] favorable evidence." With retained cousnel, there is no Constitutional provision to satisfy and support this

allegation. However, Wood did his part and provided Trial Counsel with every bit of available information at his disposal. Such is evidenced by Wood's Pretrial Histories and Counsel Green's questioning of witnesses. But that was pretrial and this is posttrial, leaving Pros. Kern's allegation powerless. However, Counsel Green's ineffectiveness for failing to present the newly discovered evidence was argued in Wood's Motion, for the evidence was available at the time of Trial. Counsel Green's ineffectiveness is a major Constitutional violation. Therefore, Pros. Kern's assertions just vindicated Wood's Claim of ineffective assistance where the newly discovered evidence was available at the time of Trial and Counsel failed to present it. Further, when a major Constitutional violation exists, and/or the correction of a manifest miscarriage of justice can take place, res judicata is not to be applied as the Court's powers of sua sponte can legally be engaged. Wood extends his gratitude to the State for this vindication of his Claim.

Within p.6 of the State's Brief, Pros. Kern committed a grave error when he delcared that Wood asserts that "it is not possible to engage in sexual acts with adolescent girls without traumatizing the hymen." This is <u>not</u> what Wood declared. Wood referred to p.2, ¶2 of the medical report that strictly deals with prepubertal girls. This is a blatant attempt by Pros. Kern to mislead this Honorable Court away from the facts. Why? Because this part of the medical report is material as it completely vindicates Wood of the F-1 rape charge. The State cannot contest otherwise. Deliberately misleading the Court must be deemed fraud upon the Court. Leaving an innocent man in prison, when proof of innocence sits in the Prosecutor's hands, is nothing less than malicious prosecution. Consider this, with proof of innocence in his hands, Pros. Kern is doing all he can to keep Wood in prison. What is the job of a Prosecutor? To free the innocent or to sustain an unjust conviction? Pros.

Kern has displayed a true lack of honor and integrity. This works against his credibility.

Query: Has anyone asked themselves how a healthy full-grown man can have vaginal intercourse with a nine-year-old prepubertal child and leave no signs of trauma?

Within p.7 of the State's Brief, Pros. Kern makes a desperate and reaching statement when he declared that "Wood has had the ability to correspond with a number of people about his case and could have earlier obtained the materials he now seeks to use in support [of] his motion." Even though this assertion is irrelevant to Crim.R.33(B), let's get this right and pretend, just for a moment, that Wood wasn't locked in a cage for 121 days. Pros. Kern claims that just because Wood spent years writing people across the country seeking help, these people should have helped Wood to obtain new evidence at an earlier date. Now, let's consider who Wood wrote. As a short list: Medina County Chamber Of Commerce; Medina County Job & Family Services; Akron Children's Hospital; Ottawa County Prosecutor's and Sheriff's Offices; FBI; USA Today; National Rape Crisis Center; Ohio, New York, and Wisconsin Innocence Projects; Senators Sherrod Brown and Jim Webb; President Obama (twice); Governor Strickland; Dateline; 20/20; 60 Minutes; Dr. Phil; and so forth. Out of 75-plus entities, only a handful responded with 'We forwarded your story,' 'Try this person,' 'We don't take cases without DNA, and the like. No one wants to get involved with a child sex case. It wasn't until Dr. Ahmed responded that wood could go forward.

Considering the exhaustive list of 75-plus entities, in early May of 2012 Wood was questioned by a prison staff member as to why he was writing the President and senators. Wood explained that he is innocent and that his variety of letters had nothing to do with the prison. A short time later

another staff member told Wood "You get a lot of mail." Wood had no idea where all this mail was at that time. A few weeks later Wood received a letter from his godmother in New Jersey. Upon it was stamped "MEDIA MAIL SUBJECT TO INSPECTION" (Exhibit-B). Wood got someone's attention, but the prison would not let the mail in. This is a common occurrence in this environment. Such actions are traditionally traced back to Prosecutors. For instance, the State filed their Brief on 7/7/14. The prison held it for (4) four days before Wood signed for it on 7/13/14, limiting an incarcerated pro se litigant's time to respond effectively. No wonder Wood couldn't get help sooner. The State's been preventing him from doing so! This seals the lid on unavoidably delayed.

Now, considering Pros. Kern's extensive understanding and experience of what it's like to be locked in a cage for 121 days, perhaps he could enlighten this Court and Wood as to who Wood could have contacted earlier and received help. Pros. Kern needs to spend time unjustly incarcerated. Maybe then his reckless assertions will cease and desist. A cage is a real learning experience.

In his CONCLUSION, Pros. Kern claims that Wood's "claimed innocence ha[s] long since been litigated and decided." Not so. Let us not forget that Wood's "cynical" Jury adjudicated on "guilty" or "not guilty" against the facts. Further, Wood's Claim Of Actual Innocence went uncontested by the State and neither reviewing court would mention its existence. Perhaps this is directly related to why a Victims Of Crime advocate met with Wood at 7:30 a.m. on May 9, 2013 and said, referring to S.L., "Mr. Wood, the victim in your case - I apologize, Mr. Wood. The alleged victim in your case would like to open a dialogue with you." Evidently, the story changed... again. Although the wheels of justice grind slowly, finality and vindication,

they're coming around.

Considering Wood's innocence and the correction of a major Constitutional violation, especially when a manifest miscarriage of justice has been proven, res judicata does not apply, but, as previously noted, the powers of sua sponte do. If the Higher Courts can engage their powers of sua sponte, so can the Collier Court. A Reviewing Court is a Reviewing Court. To put this in the proper light, the incarceration of an innocent man clearly reveals that he was deprived of every Constitutional right known - be they expressed or implied - and only serves to validate any pending Claims before a Reviewing Court. Of course, this works to Wood's credibility.

#### CONCLUSION

For the reasons stated above, Wood is properly before this Honorable Court, and relief should be granted in order to reach the merits of Wood's Claims as presented in his Motion.

Submitted with integrity and respect for this Court,

Frank P. Wood (#A504-107)

Pro Se Litigant

Grafton Correctional Institution

2500 S. Avon Belden Rd. Grafton, Ohio 44044

#### CERTIFICATE OF SERVICE

Matthew Kern Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256

Frank P. Wood

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		URT OF COMMON PLEAS NA COUNTY, OHIO	2014 SEP 15 PM 3: 13
STATE OF OHIO		) CASE NO. 05 CR 0365	DAVID U. VADSIIOR
Plaintiff,		)	MEDINA SOUNTY OLESK OF SOURTS
vs.	Exhibit-74	) JUDGE CHRISTOPHER J. C	COLLIER
FRANK P. WOOD		) ) <u>JOURNAL ENTRY WITH</u>	
Defendant.		) INSTRUCTIONS FOR SER	RVICE
		)	

This matter came before the Court for non-oral hearing on July 25, 2014 on the Defendant Frank P. Wood's (hereinafter, "Wood") pro-se application/motion for an order granting leave to file a delayed motion for a new trial based on newly discovered evidence, the brief in opposition thereto filed by the State of Ohio and Wood's response to the State's brief in opposition.

Wood was indicted on one count of rape of a victim under the age of ten (10), in violation of R.C 2907.02(A)(1)(b)(B), a felony of the first degree, and one count of gross sexual imposition of a victim under the age of thirteen (13), in violation of R.C. 2907.05(A)(4), a felony of the third degree. A jury ultimately found Wood guilty of the two offenses charged in the indictment. Wood filed a motion for a new trial on May 10, 2006, which the Court denied. On May 15, 2006, the Court sentenced Wood to a mandatory term of life in prison for the rape offense and a three-year prison term for the gross sexual imposition offense. The Court ordered the sentences to be served consecutively.

Wood then timely appealed his sentence to the Ninth District Court of Appeals. On June 4, 2007, the Ninth District affirmed Wood's conviction. On August 27, 2013, Wood filed a notice of dismissal of counsel of record. The State filed a brief in response indicating that the filing did not ask for any relief and was not a motion that required adjudication. Wood then filed a response to the State's

brief. The Court did not take any action on Wood's filing because the case was not pending, no counsel was appointed at the time and the notice itself did not request any relief. Subsequently, on May 8, 2014, Wood filed a motion for leave to file a motion that exceeded the fifteen (15) page limit imposed on motions in the Medina County Local Rules. The Court granted the motion to exceed the page limit. On June 13, 2014, Wood filed the aforementioned application/motion for an order granting leave to file a delayed motion for a new trial based on newly discovered evidence. On that same date, Wood also filed a delayed motion for new trial, which this Court will assume is the motion which Wood is seeking leave of Court to file. "Although a defendant may file his motion for a new trial along with his request for leave to file such motion, 'the trial court may not consider the merits of the motion for a new trial until it makes a finding of unavoidable delay[.]" State v. Covender, 9th Dist. Lorain No. 11CA010093, 2012-Ohio-6105, \$13, citing State v. Brown, 8th Dist. Cuyahoga No. 95253, 2011-Ohio-1080, \$14.

Crim.R. 33 addresses the grounds upon which a new trial may be granted on the motion of a defendant. Wood argues that the Court should permit him to file the motion based on Crim.R. 33(A)(6), which may provide grounds for granting a defendant a new trial:

When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

Crim.R. 33(B) sets forth the timeframe in which an application for a new trial shall be made as follows:

Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time

provided herein.

Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

In the application for an order granting leave to file the new trial motion, Wood alleges that due to his incarceration following trial and the sentencing in this matter, it was impossible for him to discover any new evidence on his own and present it within the 120-day time frame set forth in Crim.R. 33(B). Wood cites to the case of *State v. Davis*, 131 Ohio St. 3d 1, 2011-Ohio-5028, 959 N.E.2d 516, as the basis for this Court's authority to grant Wood leave to present his delayed motion for a new trial based on newly discovered evidence. In *Davis*, the Ohio Supreme Court found that trial courts have jurisdiction to hear post-appeal motions for a new trial and otherwise held that courts should look to the language of Crim.R. 33 to determine whether a defendant should be permitted to file a delayed motion for a new trial based on newly discovered evidence. *Id.* at 6-10.

Wood alleges he was unavoidably prevented from discovering the evidence he seeks to present due to the "ineffective assistance of his Trial Counsel." Wood's affidavit, attached to his application for leave, states that:

Post Trial, during the fall of 2011, I acquired the attached medical research document, that unbeknownst to me at the time, exonerated me of the Felony-1 rape charge, captioned "#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse" —by Joyce A. Adams, M.D.; Ann Botash, M.D.; Nancy Kellog, M.D.; arch Pediatr Adolesc Med. 2004; 158:280-285.

Wood claims that since he is not trained in the legal or medical fields, and due to his incarceration, additional time was required between his discovery of the evidence and the presentation of the evidence in the motion for a new trial. Wood also admits that he unsuccessfully made attempts to contact the

doctor who provided this report to him for source verification. Apparently, the doctor who provided Wood with the research is not one of the doctors that authored the research article.

Other Ohio courts have held that incarceration alone is insufficient to justify filing a motion for new trial beyond the 120-day time frame. See State v. Anderson, 10th Dist. No. 12AP-133, 2012-Ohio-4733, ¶ 18 (holding the 134 days between receiving the alleged newly discovered evidence and filing the motion for a new trial was unreasonable, even in light of the defendant's current incarceration). The "medical research" Wood seeks to qualify as "newly discovered evidence" was authored in 2004. Wood's trial in this matter occurred in 2006. Therefore, the article was available at the time of trial. Wood merely makes a conclusory statement that his trial counsel was ineffective, leaving the Court to surmise that this statement is based on trial counsel not presenting this evidence. Wood's claim of ineffective assistance of trial counsel was already rejected by the Ninth District in his 2007 appeal, albeit based on different arguments.

Even assuming, arguendo, that Wood presented sufficient evidence to show his counsel was ineffective for failing to discover the medical research at the time of trial, Wood admits to having received the research himself "during the fall of 2011." Although Crim.R.33(B) "does not provide a specific time limit [within] which defendants must file a motion for leave to file a delayed motion for new trial [after the discovery of the basis for the motion], many courts have required defendants to file such a motion within a reasonable time after discovering the evidence." State v. Covender, 9th Dist.

Lorain No. 11CA010093, 2012-Ohio-6105, ¶12, citing State v. Anderson, 10th Dist. Franklin No. 12AP-133, 2012-Ohio-4733, ¶17.

Wood admits he discovered the medical research in the fall of 2011. The application for leave to file a delayed motion for a new trial was filed on June 13, 2014, almost three (3) years after Wood discovered the medical research. The medical research document itself is only five (5) pages long. The

Court finds that the almost three-year delay between discovering the five-page medical research document and Wood's filing of the motion for leave to file a delayed motion for new trial is not reasonable. The Court declines to hold an oral hearing on the motion for leave. "A defendant is only entitled to a hearing on a motion for leave to file a motion for a new trial if he submits documents which, on their face, support his claim that he was unavoidably prevented from timely discovering the evidence at issue." State v. McIntyre, 9th Dist. Summit No. 25666, 2011-Ohio-3668, \$\mathbb{Q}2\$, citing State v. Cleveland, 9th Dist. Lorain No. 08CA009406, 2009-Ohio-397, \$\mathbb{Q}54\$. The documents submitted by Wood do not support the claim that he was unavoidably prevented from timely discovering the evidence, but even if he was, the almost three-year delay in presenting the evidence and filing the motion was unreasonable.

Furthermore, even if the Court were to consider the merits of Wood's argument for a new trial, the evidence Wood seeks to introduce is not necessarily favorable and its presentation at trial would not necessarily have altered the outcome. The medical research itself, on page 5, concludes:

Adolescent girls who have no deep notches in the hymen could still have experienced penile-vaginal penetration, because 52% of the subjects in this study who admitted past intercourse did not have deep notches or complete clefts in the lateral or posterior locations of the hymen. The absence of notches does not rule out previous penile-vaginal penetration in an adolescent ... The absence of any injury to the hymen should not be used as a reason to negate the possibility that the adolescent has experienced vaginal penetration.

Wood argues in his response brief that he is questioning "how a healthy full-grown man can have vaginal intercourse with a nine-year-old prepubertal [sic] child and leave no signs of trauma" and the medical research supports his argument. However, the medical research actually contradicts his argument because it specifically concludes that lack of trauma should not be used as a reason to negate the possibility of penile-vaginal penetration.

Based on the foregoing, the Court finds that Wood's application/motion for an order granting leave to file a delayed motion for a new trial based on newly discovered evidence is DENIED.

#### IT IS SO ORDERED.

THE HONORABLE CHRISTOPHER J. COLLIER

The Clerk of Courts is instructed to send copies of the foregoing Journal Entry to the following parties or their counsel of record.

Matthew Kern, Esq. Assistant Prosecuting Attorney 72 Public Square Medina, Ohio 44256

Frank P. Wood, Inmate #A504-107 Grafton Correctional Institution 2500 South Avon Belden Rd. Grafton, Ohio 44044

Copies of this Entry were mailed by the Clerk of Courts on

DEPUTY CLERK OF COURT

Frank P. Wood

Mrs. Cooley

Exhibit-75

APS-a.m.

September 8, 2017

# What I Look Forward To Every Day

What I look forward to every day. Perhaps that should be rephrased as a question instead of left as a statement. But, since I tend to question everything, as an analytical thinker with an innovative mind, I wake up every day and ask myself the same question that Fortune 500 Company CEOs ask themselves before they get out of ord: What's truly important? In fact, I never leave the bed until I have asked myself that the ction and itemized the answers according to the 5-Facets that I developed to stay sane during my sojourn in Hell's Lost Half Acre. Further, I will continue to apply they facets long after I am gone. Having said that, Reader, let's go there and discover what I look forward to every day.

Every night before 1.30 to sleep, I make the conscious decision to wake up a better man tomorrow than the one who falls asleep tonight. Why? Glad you asked. Aristotle proffered the most insightfus and surgical statement into the personal growth and purpose of all human existence with just seven words: *An unexamined life is not worth living*. Self-reflection is always the most difficult to perform and the easiest to ignore. Utilizing the self-reflective thought process, I tend to focus on not just my successes, but my failures. Ah! *Am I the man I want to be?* If not, then I have not achieved my goals according to my *5-Facets*, which are as follows:

- Spiritual
- Mental/Intellectual
- Social/Emotional
- Physical
- Financial

Why the 5 Facets? Because everything in life falls under one of these categories. And, to date, no one can show me another facet that one of life's pieces fits into. Life is a mosaic, and not a sculpture. With that said, per facet, I set short-, intermediate-, and long-level goals. This promotes focus, balance, and realism. It also serves to eliminate disappoint when certain goals are not quite yet achieved. Further, this is also the foundation ationship building. We are all in relationships whether we know it or not. Our relationships 🏂 include family, friends, business partners, enemies, co-workers, strangers, and the e. This may seem foreign to you, but everyone you meet will affect your life, consciously or subconsciously, and vice-versa. Arthur Conan Doyle proffered the first rule ensic science when he proved that whenever two objects come together, they leave something behind. People function in the same fashion. The piece we either leave behind or take with us is called experience. As an for a moment, when you meet a stranger, say the girl at the example, even if it but on a relationship, regardless of its brevity, and how you handle it will be r 5 Facets. Unfortunately, people tend to argue differences instead of sharing them.

# Compulsion destroys relationships. -Max Lucado

Too often relationships end because people claim, "I'm not me anymore," or "I lost myself." This is merely a pure lack of understanding regarding the values and purposes of

relationships, i.e.<sup>1</sup>, they tend to believe that if the relationship feels stifling and has lost its

NEWNESS then it must end.<sup>2</sup> This is tragically not so. To avoid this catastrophe, it seems wise to set your own goals, have the other person set theirs, then sit down and share. Once you learn to value the differences instead of arguing them, the two of you can merge your ideas, your beliefs, and establish the goals for the relationship itself. In this manner, each of you retains your personal identities and the relationship has foundation and destination.

A ship with neither berth nor destination will find no favor in wind -Seneca

Regarding the above, successful corporate managers do the time to formulate

involved. They also *encourage* each other in the achie and their goals. This is how contracts are signed and business *elationships* flourish. Since the people who run Corporate America, who employ



most of us, have proven this method be remarkably successful, shouldn't we do the same?

Wisdom comprom imitation, experience, and reflection.
-Chinese proverb

Reader, you mee most patience and understanding as I engaged in artistic license while presenting in a similar present presenting in a similar present present

<sup>1</sup> Id est (Latin): that is

<sup>&</sup>lt;sup>2</sup> Remember: The grass may be greener on the other side, but it still needs mowed.

No, it's not easy, but worth the effort. What more, this can be applied to all you do and not just personal growth, e.g.<sup>3</sup>, work, study, product development, management, and more.

Now that I have opened up myself to you, it should be crystal that what I look forward to every day is what's truly important: Waking up a better man tomorrow than the one who falls asleep tonight.

Lastly, this mindset, which is actually set at two notches above tenacional has carried me this far, and will carry me on through until this Insolent Injustice ends. Until then, I shall endure.

DURABO!4

Unbr. e),

<u>Frank P. Wood</u>

Frank P. Wood

<sup>3</sup> Exempli gratia (Latin): for example.

<sup>&</sup>lt;sup>4</sup> Durabo (Latin): *I shall endure*. Mantra of the Nautonnier Knights.

#### **Works Cited**

Covey, Stephen R., 7 Habits Of Highly Effective People. New York City: Turtleback Books, 2010. Print.

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File-Stamp Return"

#### COURT OF APPEALS

14 DEC - | AM | 1: SN THE COURT OF APPEALS FOR THE NINTH JUDICIAL DISTRICT MEDINA COUNTY, OHIO

Exhibit-76

DAVID B. WADSWORTH MEDINA COUNTY

STATE OF OHIO, CLERK OF COURTS

Case No.: 14CA0093-M

Appellee,

AN APPEAL FROM THE MEDINA COUNTY COURT OF COMMON PLEAS CASE NO.: 14CA0093-M

FRANK P. WOOD.

vs.

Appellant.

BRIEF OF APPELLANT

Frank P. Wood (#A504-107) Pro Se Litigant Grafton Correctional Institution 2500 S. Avon Belden Rd. Grafton, Ohio 44044

Dean Holman (#0020915) Medina County Prosecutor Matthew A. Kern (#0086415) Assistant Prosecuting Attorney 72 Public Square Medina, Ohio 44256

PH: (330) 723-9536 FX: (330) 723-9532

Counsel for Appellant, Frank P. Wood.

Counsel for Appellee, State of Ohio

REQUEST FOR ORAL ARGUMENT

#### ASSIGNMENT OF ERROR

Defendant-Appellant Frank P. Wood was denied his U.S. 1st Amendment Constitutional rights to redress of grievances when the Trial Court abused its discretion in denying Wood's Application/Motion for new trial based on newly discovered evidence; evidence that fully exonerates Wood of a Felony-1 rape charge. The end results were the denial of Wood's U.S. Constitutional rights to due process and equal protection, and the sustaining of a manifest miscarriage of justice.

Ground I: The Trial Court erred when it determined that Wood was not unavoidably prevented from timely discovering the new evidence upon which he relies.

Ground II: The Trial Court erred when it determined that Wood's "almost three-year delay" between discovering and presenting the new evidence was unreasonable.

Ground III: The Trial Court erred when it determined that "the doctor who provided Wood with the research is not one of the doctors that authored the research article" as a means of denying Wood relief.

Ground IV: The Trial Court erred when it determined that Wood did not present a full argument regarding Trial Counsel's failure to produce the newly discovered evidence that was available at the time of trial.

Ground V: The Trial Court erred when it relied on the wrong section of the medical research to determine that it is not favorable and would not have altered the outcome of trial.

#### STATEMENT OF THE CASE

On August 3, 2005, a Medina County Grand Jury indictment was filed charging Defendant-Appellant Frank P. Wood (hereinafter "Wood") with two counts: one count of rape in violation of O.R.C. 2907.02 (A)(1)(b)(B), a felony of the first degree; and one count of gross sexual imposition in violation of O.R.C. 2907.05 (A)(4), a felony of the third degree.

Wood was arraigned on August 15, 2005, before the Honorable Christopher J. Collier, Judge of the Medina County Court of Common Pleas, and entered a plea of "not guilty" to the indictment. Wood subsequently retained both Attorney F. Harrison Green of Cincinnati and Attorney Ronald R. Stanely of

being punished for it. In snort, Wood was not required, by operation of law, to present the exonerating effects of the newly discovered evidence in his Application for leave. The exonerating effects of the evidence are properly placed in Wood's Motion for new trial, where they belong, as Cause III, Ground I, supported by law and fact.

Pertaining to the second error, in relying on the wrong section of the medical research to determine that it is not favorable to Wood and would not alter any outcome, the Trial Court prematurely ruled on one of the merits of Wood's Motion for new trial without conducting an evidentiary hearing. Under these conditions,

(the court abused its discretion in deciding defendant's new-trial motion without an evidentiary hearing). State v. Gaines, 1st Dist. No. C-090097, 2010 Ohio 895, ¶36; citing State v. Davis, 131 Ohio St. 3d 1; 2011-Ohio-5028; 2011 Ohio LEXIS 2381, HN11, [3-\*P32].

Supporting, Crim.R. 33(A)(6) requires Wood to produce evidence at the nearing on the Motion for new trial, and not at the hearing on the Application for leave.

Regarding the third error, the title of the medical research and <u>correct</u> portion that fully exonerates Wood of the Felony-1 rape charge are as follows:

#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse - Joyce A. Adams, MD; Ann S. Botash, MD; Nancy Kellogg, MD; Arch Pediatr Adolesc Med. 2004; 158: 280-285.

In a case-control study8 of prepubertal girls aged 3 to 8 years, only girls who described digital-vaginal or penile-vaginal penetration were found to have deep notches or complete clefts in posterior rim of the hymen or measurements of the posterior rim of the hymen at the midline less than 1mm wide. A deep notch was defined as a V-shaped defect extending through more than 50% of the width of the hymen. A complete cleft was defined as a defect that extended through the entire rim of the hymen, all the way to the fossa or vestibular wall.

This is  $\P 2$  (although editorially  $\P 1$ ) of p.2 from the medical research that Wood relies on; and here's why.

The research paper deals with, primarily, "Subjects Female patients aged 13 to 19 years, recruited from an urban adolescent medicine practice" (Medical Report, p.1, ¶2). Evidently, the Doctors who conducted the testing knew that they needed a benchmark to work from and compare results. To do so, they relied on prepubertal girls to serve as that benchmark, or, a "case control study8" (Supra). A control, whether it be in business mangement, scientific analysis, or medical research, serves as a foundational premise from which test results can be compared due to the reliability and dependability of that particular control. To determine whether or not adolescent girls experienced digital-vaginal or penile-vaginal penetration, these experts in Pediatric Child Abuse Medicine concluded that "only" the hymens of prepubertal girls who experienced such penetration, due to the physiology and morphology, were the best control for that purpose (Supra).

Having determined the reliability of the research, the next logical step is to determine how this research applies to the alleged prepubertal victim in Wood's case.

Compatible with the research, S.L., the alleged rape victim, testified that Wood "put either his hands or his private inside" of her private (Tp.228, Ln.8-15). S.L.'s story then changed as she testified that Wood "only put his private inside of my private" (Tp.232, Ln.11-14). Compatible with the research, the prepubertal S.L. testified to, at least, penile-vaginal penetration.

In support, the "cynical" Jury (Tp.135, Ln.9-11), was charged with adjudicating on

"Rape." The Defendant was charged with rape.
...vaginal intercourse between a male and female.
Penetration...however slight...
Vaginal intercourse means penetration of the penis into the vagina.
(Tp.537, Ln.9-Tp.538, Ln.3).

The vagina is occluded by the hymen. Therefore, for vaginal intercourse to occur, the penis must pass through the hymen to enter the vagina "however slight." With this in mind, let us not forget that S.L. Testified that "...it really hurt...In my private" (Tp.230, Ln.12-16).

Now we come to the exonerating effects of this research. Nurse Practitioner Donna Abbott of Akron Children's Hospital testifed that, upon exam, S.L. had an "intact hymen" with "no abnormalities" or "signs of trauma" (TP.262-69; Tp.272-78). When these findings are compared to the medical research, for the prepubertal S.L. to experience vaginal intercourse "however slight," her nymen would have to reveal V-grooves, notches, or clefts: "abnormalities" or "signs of trauma," of which, there were none. So the Record reveals.

In finality, as the newly discovered evidence confirms why NP Abbott could not medically conclude that a rape occurred (Tp.274, Ln.13-18), heither can the State, nor a "cynical" Jury.

Within p.5 of the Journal Entry, the Trial Court proffers a question Wood posed in his Response: "Has anyone asked themselves how a healthy full-grown man can have vaginal intercourse with a nine-year-old prepubertal child and leave no signs of trauma?" To answer this question we must turn to Socratic Thinking and answer this question with another, such as, "With no signs of trauma, how did it "hurt" in S.L.'s private?"

#### IMPLANTED MEMORIES.

Let us not forget that the incomplete Record reveals that S.L.'s legal guardian "mother," Danielle Sadowsky (n.k.a. "Smith"), told S.L. she was raped, per the testimony of Licensed Social Worker Elizabeth Morstatter (Tp.301, Ln. 1-8).

When we combine Wood's "My Pre-Trial History With Danielle Sadowsky-

## IN THE COURT OF APPEALS FOR THE NINTH APPELLATE DISTRICT MEDINA COUNTY, OHIO

STATE OF OHIO,	•3	)	C.A. No.	14CA0093-M			
Appellee, vs.	Exhibit-77	) } }	COURT OF	ROM MEDINA CO COMMON PLEAS 05-CR-0365		<u></u>	
FRANK P. WOOD,		{	CASE NO.	בסבט-אט-בני	YERRA MENDER MEN	HVF.	ESURT OF
Appellant.		3			WAL OF C	26 /	
					D USWO OURT	AM:	APPE
V.	REPLY BRIEF OF	APPELI	ANT FRANK	P. WOOD	S. HIL	613	ALS

DEAN HOLMAN (#0020915) Prosecuting Attorney Medina County, Ohio

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APPELLANT, Pro Se

REQUEST FOR ORAL ARGUMENT

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Motion To Dismiss, With Prejudice, On Grounds Of Prosecutorial And Judicial Bad Faith And Misconduct; e-filed November 10, 2014
Grava v. Parkman Twp. (1995), 73 Ohio St. 3d. 397
State v. Simpkins, 2008 Ohio LEXIS 697

#### LAW AND ARGUMENT

Appellant Frank P. Wood (hereinafter 'Wood') recently received the State's Brief of Appellee which was filed by Assistant Prosecutor Matthew A. Kern (hereinafter 'Kern'). With the application of logic and deductive reasoning, Wood will show why Kern's application of conjecture and circular reasoning, and his argument in totality, must be dismissed and declared of no effect.

Kern is readily aware of the valid Grounds for relief Wood presented in his motion for new trial; e.g. Missing Transcripts (see State of Ohio v. Matthew J. Hartman, Medina Case No. 09CR0229 @ pp. xvi,35,and 66). With the knowledge of their impact and veracity, Kern is also aware of the exonerating effects of Wood's first piece of newly discovered evidence. With this knowledge, Kern became a blight on the judicial system's landscape when he had the audacity to vomit the following reckless assertion without thinking:

Wood's "newly discovered evidence" also contains a logical trap. Of the prepubertal girls sampled in the survey reviewed by the report in wood's motion, only girls who described vaginal penetration had deep notches or clefts, but says nothing regarding the absence of such notches or clefts. (State's Brief, p.11).

For clarity, the medical report states, regarding "prepubertal girls," "only girls who described digital-vaginal or penile-vaginal penetration," as with S.L., "were found to have deep notches or complete clefts in the posterior rim of the hymen." Again, as with S.L., there were none. In support, the incomplete Record reveals an "intact hymen" with "no abnormalities" or "signs of trauma" (Brief of Appellant, p.21). With that said, Kern fabricates an illogical assumption in his vain attempt at circular reasoning where he claims "This analysis explains the presence of notches or clefts, but it says absolutely nothing regarding the absence of notches or clefts" (id). This line of litigation not only creates bad law,

taken away after fighting with his kid sister. Kern should be ashaned to call himself a Government Prosecutor. Good has seen manure spread liberally over fields far and wide, mounded up as compost, but neither as deep nor as high as Kern's desparate and reaching attempt to sustain an already unjust and insolent conviction. This type of litigation, if one could call it that, when ruled in favor by dishonorable judges lacking morals and ethics, is why innocents suffer, and sometimes die, in prison. There is a God in Heaven, and we will all stand before the Creator and give account. At that time, Wood prays with fervor for Kern to recall that

Just as the shadows of birds in the sky Move along with them, Beings are followed by The right and wrong they have done.

-Buddha

Many have had their mettle tested through this situation. For some, their test is yet to come. But rest assured, it is coming.

With "only" being the key word in the medical research cited, it is crystal that finding or not finding notches or clefts in a prepubertal hymen is a clearly defined and reliable measurement. Therefore, the application of this highly credible and uncontested evidence can be applied to Wood's case with logic and deductive reasoning as follows: The presence of notches or clefts in a prepubertal hymen prove penetration. Hence, the lack of notches or clefts in a prepubertal hymen reval no penetration. In this light, it is now obvious that Kern's misguided attempt at circular reasoning does not represent a circle at all. Rather, it looks more like a dog chasing a tail it can never catch.

In support of the above, let us now turn to the proven science of ballistics and the logic of deductive reasoning. Imagine ten "intact"

windshields with "no abnormalities" or "signs of trauma" installed equally in ten "prepubertal" cars. Now consider the same nammer striking "only" nine out of ten of the windshields leaving identical "notches" or "clefts." Due to the lack of "abnormalities" or "signs of trauma" in the last "intact" windshield, ballistics and deductive reasoning tell us that the tenth windshield was never struck by the hammer. Applied to the case at bar, the hammer represents Wood's penis while the tenth windshield represents S.L.'s hymen. Logic now dictates that Wood's hammer never struck S.L.'s windshield.

Having proven that applying this medical research to the facts of Wood's case fully exonerates him of the F-1 rape charge, any challenges by Kern to the admission of this evidence are powerless. This is due to the fact that

"...res judicata is not to be applied so rigidly as to defeat the ends of justice or as to work an injustice." State v. Simpkins, 2008 Ohio LEXIS 697, HN6; citing Grava v. Parkman Twp. (1995), 75 Ohio St. 3d 397, 386-87. (Wood's first motion for new trial, p.2).

Note that in Kern's argument he fails to mention the presence of implanted memories where S.L.'s "mother" told S.L. that Wood had raped her while she spent the entire indicted weekend of abuse in "Put-In-Bay" with her legal guardian "dad" Scott Sadowsky and "not at Frank Wood's house" (Motion For New Trial, Exhibit-F: Wood's uncontested Claim Of Actual Innocence). Kern then went so far as to not only fail to challenge the credibility and reliability of the prepubertal medical research upon which Wood relies, Kern cited medical research that deals with "ADOLESCENT GYNECOLOGY" (State's Brief, p.12). Jern then failed to present one piece of medical evidence from this alleged research to contradict the reliable measurement presented by Wood. In finality, Kern's argument now rests upon a three-legged milking stool with one leg missing.

Honorable Judges, what we are all hearing is the sound of inevitability. It is emanating from the bells of Liberty and Justice. But it is up to this Court of Integrity to ensure the sound is heard by all.

#### CONCLUSION

Kern can provide no credible medical evidence via example to contradict Wood's first piece of newly discovered evidence. Therefore Kern's argument must be dismissed and declared of no effect. Wood's evidentiary hearing must be granted.

With integrity and respect,

Frank P. Wood (#A504-107)

Grafton Correctional Institution

2500 S. Avon Belden Road Grafton, Ohio 44044

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Reply Brief Of Appellant Frank P. Wood was sent via Regular U.S. Mail on this \( \sum \frac{\sqrt{\text{Q}}}{\text{D}} \) day of January, 2015, to:

Matthew A. Kern Assistant Prosecuting Attorney Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

#### Exhibit-A

State of Ohio

County of Medina )

SS:

Exhibit-78

Now comes RONALD R. STANLEY and states as follows:

- 1. I am an attorney, licensed to practice in the State of Ohio;
- 2. I have assisted Frank Wood with a number of legal issues throughout the past 10 years including his defense in a criminal case in the Medina County Court of Common Pleas;
- 3. In July of 2014 Frank Wood requested that I locate the doctors who wrote a medical research paper entitled "Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse";
- 4. The names of the three doctors are: Joyce A. Adams, MD; Ann S. Botash, MD; and Nancy Kellogg, MD;
- 5. On or about July 25, 2014 I located a website for these doctors and forwarded this information to Frank Wood; and

6. Further Affiant does not say.

Ronald R. Stanley

Sworn to me, a notary in and for the above State and County, by Ronald R. Stanley, this \_\_ day of October 2014.

AMANDA E. WRIGHT
Notary Public, State of Ohio
My Commission Expires 05-18-2019
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#### JOYCE A. ADAMS, MD, FAAP, FSAM

Professor of Clinical Pediatrics

Division of General Academic Pediatrics and Adolescent Medicine



Dr. Adams moved with her family to San Diego in 1994 and since then has been a faculty physician in the Department of Pediatrics, working mainly with adolescent patients and child abuse medical evaluation. She is on the staff of Rady Children's Hospital, where she admits patients with anorexia nervosa for medical stabilization and consults on cases of suspected child physical and sexual abuse. In addition to being a practicing physician, Dr. Adams conducts clinical research studies, writes articles and book chapters on adolescent medicine and child abuse, and speaks at national and international conferences. She is also passionate about teaching adolescent medicine to medical students and

Dr. Adams was motivated to specialize in Child Abuse Pediatrics early in her career, when a school age child was referred to the clinic and was diagnosed with a sexually transmitted infection. No one wanted to believe that a child could get such an infection through sexual abuse, so she tried to learn everything she could about the problem in order to help the child and educate her colleagues.

A pediatrician for over 30 years, Dr. Adams earned a Bachelors and Master's Degree in Biochemistry from the University of Kansas, and graduated from the University of Kansas School of Medicine in 1977. She completed her residency training in Pediatrics at Montefiore Hospital and Medical Center in New York City in 1980. In the past 25 years, Dr. Adams has taught, conducted research, and served as an expert witness on child sexual abuse medical evaluation. Renowned for her work around the world, she has published over 30 articles on the topic and contributed book chapters to 5 books.

Dr. Adams worked for 8 years as the medical director of the health office at UCSD's Preuss School, a charter school for college bound 6th to 12th grade students from families where neither parent graduated from college. She enjoys giving talks to the students on various topics in adolescent health, nutrition, eating disorders, and sexually transmitted infections. Teens ask the most fascinating questions! She also volunteers once or twice a month providing health care to homeless teens on the Kid

Dr. Adams thinks that one of her best qualifications as an adolescent medicine physician is the raising of two adolescent boys (always "kids", though now age 22 and 27 years). She has experienced first-hand the trials and joys of helping kids get through the sometimes rough years of adolescence, and can reassure parents that: "It will get better! They are adults in progress, and sometimes progress seems stow." Taking walks in nature, reading a good book, having a laugh at a funny movie, and traveling to new and exciting places helps her keep her perspective on the emotional ups and downs of parenthood.

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#### Exhibit-B

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Dr. Adams' Experience Research training, expertise and qualifications

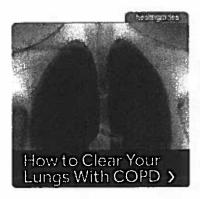
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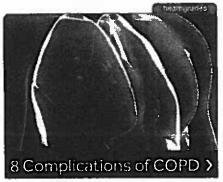
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#### Dr. Ann S. Botash MD

Exhibit-C

Pediatrician in Syracuse, NY

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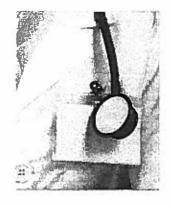
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Dr. Botash has one office in New York.

Specializing in the field of Pediatrics, Dr. Botash is prepared to provide comprehensive medical care for infants, children and adolescents, acting as their primary care physician. Dr. Botash has the experience and skills to provide the proper medical care for children of all ages, working closely with parents to ensure that the child is developing and maturing properly Dr. Botash is also trained to practice Adolescent Medicine.

Dr. Botash works with fourteen doctors including Dr. Paul Fuller and Dr. Steven Blatt.

#### Dr. Botash's Specialties

**Pediatrics** 

Provides primary care for children of all ages, diagnosing and treating both common and complex conditions.

Adolescent Medicine

Offers preventive and comprehensive care for children during their formative teenage years.

#### Recent Health News

Recession Forced Many Families to Seek Medicaid Coverage Dennis Thompson, HealthDay Reporter, Jun 10, 2014 at 9:00 AM

Teen Bullies, Victims Armed More Than Other Kids, Study Says Steven Reinberg, HealthDay Reporter, Jun 9, 2014 at 4:00 PM

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Dr. Nancy D. Kellogg, MD Specializes in Child Abuse Pediatrics • Female • Age 58

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#### ANN S. BOTASH, MD SUNY Upstate Medical University

Child Abuse M Dream

Child Abuse Evaluation & Treatment for Medical Providers



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#### About Us

Ann S. Botash, MD, Professor of Pediatrics at the State University of New York Upstate Medical University, is a nationally recognized expert in child sexual abuse evaluation. She directs the University Hospital's Child Abuse Referral and Evaluation (CARE) program in Syracuse, New York www.upstate.edu/qch/services/care/ . The multidisciplinary CARE team works closely with law enforcement officials, child protective services, and community agencies concerned with children's welfare to provide comprehensive and sensitive medical management.

Dr. Botash has also worked to establish the McMahon/Ryan Child Advocacy Site. This site provides a safe place to reduce trauma for abused children and their non-offending family members during the treatment process. One of New York State's Child Advocacy Centers, it facilitates the work of community agencies to prevent, investigate, and treat child abuse www.mcmahonryan.org/ .

In order to better serve all children and adolescents in New York State, Dr. Botash created the Child Abuse Medical Provider (CHAMP) Network to educate healthcare professionals in the identification and management of child sexual abuse cases. A New York State Department of Health (NYSDOH) grant helps support CHAMP activities that include coursework and continued learning through webcasts and case reviews accessed through its website www.champprogram.com . NYSDOH also funded Dr. Botash's writing a primer for medical providers, Evaluating Child Sexual Abuse: Education Manual for Medical Professionals, which is the first step in the training to become a CHAMP Provider http://www.champprogram.com/become-provider.shtml . In addition, Dr. Botash contributed to the original State of New York Child and Adolescent Sexual Offense Medical Protocol and has provided materials for its revision.

In 2005 Dr. Botash received the Ambulatory Pediatric Association's award for Public Policy and Advocacy. In addition to her work with child abuse, the award recognized her role in creating the Community Oriented Advocacy Training (COAT) program. COAT teaches advocacy skills through clinical projects in systems-based care.

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# CHRISTUS SANTA ROSA Children's Hospital Center for Miracles

Nancy Kellogg, MD, Division Chieffor Calld Abuse Pediatrics

## The Center for Miracles: Seeking proactive remedies

By Tracy Ross

"A 14 - month - old and her younger brother were stuffed into a trash bag beneath their mother's apartment. The mother is being charged with two counts of capital murder." This is a real item from a San Antonio news story. Horrible realities like this case and others drove the creation of the Center for Miracles, founded by faculty member Nancy Kellogg, MD, and other community leaders. Kellogg is Division Chief for Child Abuse Pediatrics at the School of Medicine and also Medical Director of ChildSafe (formerly the Alamo Children's Advocacy Center), a local nonprofit organization and community resource for child and adolescent victims of sexual abuse. Kellogg and a team, including two pediatricians, a nurse, a director, a social worker and a community outreach specialist, staff the new center in partnership with CHRISTUS Santa Rosa. The clinic is located across from the CHRISTUS Santa Rosa Children's Hospital in downtown San Antonio.

About five years ago, Kellogg became concerned with the rapid and significant changes in medical knowledge, particularly in child physical abuse and neglect. "I applied for and received a grant from Children's Justice Act allowing me to serve as a medical consultant to Child Protective Services," explained Kellogg.

Through the grant activities, it became evident that a clinic was needed where children referred for physical abuse or neglect could be seen and evaluated instead

of relying entirely on photographs and information presented by Child Protective Services (CPS). A feasibility study conducted by CHRISTUS Santa Rosa Children's Hospital identified a community need for such a clinic. In 2006, the Center became a reality.

"It was all serendipitous and the Goldsbury Foundation provided their generous support," added the pediatrician.

The Goldsbury Foundation is a private family foundation committed to providing meaningful philanthropic support that stimulates positive and lasting change for the children and families of San Antonio. For every dollar donated, the Goldsbury Foundation will match up to \$1 million toward child abuse prevention programs offered at CHRISTUS.

The mission of the Center for Miracles is to promote health and safety for children who have been abused or are at high risk of being abused. Whether the abuse is physical, emotional, sexual, or neglect, the scars can be deep and long-lasting. Prevention is the central goal.

"I would love to be out of a job," says Kellogg, but the reality is child abuse is the second most chronic childhood disease." Asthma is number one.

The Center handles the heartbreaking truths that are part of our community. They face obstacles such as funding but have support through state grants to help keep services available. Providing guidance and information to the legislators and staff who wrote State

Senate Bill 1877, the Center has been described as the "model program" proposing that similar "Centers of Excellence" be established for evaluating child abuse throughout Texas.

James Lukefahr, MD, also a Professor in the Division of Child Abuse Pediatrics, assumed the Medical Directorship position when he joined in 2007. Faculty and staff who also support the Center for Miracles include Kathleen Buckley, Certified Pediatric Nurse Practitioner, Dr. Amy Gavril, a first-year Child Abuse fellow, Sherry Rumsey, Project Director for the Forensic Assessment Center Network, and Sandra Quiroz, Administrative Assistant. Other team members include CHRISTUS Santa Rosa associates Rose Orsborn, who is Clinic Director, Community Outreach Director Brandy Ralston-Lint, social workers Angie Oviedo and Susan Lowe, Medical Assistant Leticia Martinez, and Administrative Assistant Sara Kizzie.

In 2008, Kellogg was recognized with a Community Leadership award by the Federal Bureau of Investigation, which celebrates those who have made significant contributions to public well-being and security.

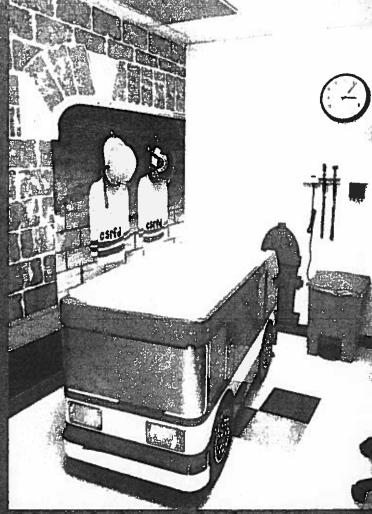
The Center provides medical, psychosocial and counseling evaluations, as well as diagnosis of treatment for children and their families referred to the Center. The work Kellogg, Lukefahr, and their dedicated team offer the community is nothing short of a miracle to an estimated 1,300 children evaluated each year in Bexar County and surrounding counties.

At the Center, affected families are able to talk to professionals in a nonjudgmental, respectful and receptive environment. The Center and its staff work closely with CPS.

"The Center cultivates trust between our staff and the families we are here to help—-it's a neutral environment," explains Kellogg.

Essentially the Center is a referral-based child abuse center and a healing place for children and their families, but for one victim, it was heaven. It was the first place where she felt safe enough to describe her years of abuse and neglect; unfortunately, it wasn't until after the tragic death of her 8-year-old sister. Beyond the vacant look in her eyes, the medical exam showed an enlarged liver, a sign of malnourishment, but this would just be a small piece of what needed to be mended. The emotional pain hidden behind the innocent child's face showed no physical scars. The compassion and dedication of the Center's team help these traumatic stories reach positive outcomes.

As you walk through the hallways, there are bright colors, alcoves for those needing quieter spaces, cut outs



The fire station themed exam room lends comfort to an uncomfortable situation.

of native Texas animals on the walls, and an exam room painted as a fire station with an exam table that is also a fire truck.

Kellogg has also played an important role in making child abuse pediatrics a recognized subspecialty in the School of Medicine. Its child abuse fellowship is the only one in the state and one of only 18 in the country.

With the support of Thomas Mayes, MD, MBA, Chair of Pediatrics, the UT Medicine/CSR employees, the Goldsburys', as well as the community and the state, the Center is certainly a group effort to support a dire need in the community.

"This is like heaven"

- Pediatine Child ribuse Patient

#### Exhibit-E

#### September 22, 2014

Exhibit-80

Dr. Joyce A. Adams, MD UNIVERSITY PEDIATRIC ASSOCIATE 2521 Stockton, Blvd., Suite 4100 Sacramento, CA 95817

Dr. Ann S. Botash, MD UNIVERSITY PEDIATRIC/ADOLESCENT CENTER 90 Presidential Plaza, Room 3073 Syracuse, NY 13202

Dr. Nancy D. Kellogg, MD CENTER FOR MIRACLES 315 N. San Saba, Suite 201 San Antonio, TX 78207

Re: actual innocence/your medical research

#### Distinguished Physicians:

Thank you for granting me brief audience. Remaining under the impression that your positions demand your time, I respectfully take a moment to introduce myself. My name is Frank P. Wood and I am the former owner of the now extinct Ironwood Construction, Incorporated out of Medina, Ohio. Neither have we previously met, spoken, nor corresponded.

In 2006 I suffered a grievous injustice and was sent to prison for life for the alleged rape of a 9-year-old prepubertal child. This was despite two facts: 1) Via testimony, the alleged victim and both legal guardians placed the girl with her legal guardian "Dad" and "not at Frank Wood's house" on the dates of the assault; and 2) Nurse Practitioner Donna Abbott from Akron Children's Hospital testified that the girl, upon exam, had an "intact hymen" with "no abnormalities" or "signs of trauma." In the end, NP Abbott declared that she could not tell if a rape occurred but concluded that it did because the Social Worker told her so (records available upon request).

In 2011 Dr. Rami Azzam Ahmed forwarded to me the attached medical research:

#2 Differences in Hymenal Morphology Between Adolescent Girls With and Without a History of Consensual Sexual Intercourse - Joyce A. Adams, MD; Ann S. Botash, MD; Nancy Kellogg, MD; Arch Pediatr Adolesc Med. 2004; 158: 280-285.

After some time and study I realized how the information regarding prepubertal girls in paragraph 2 (although editorially paragraph 1) of page 2 exonerated me. After further study I filed an Application/Motion for new trial on June 13, 2014. The Court denied my request for relief and stated that, "Apparently, the doctor who provided Wood with the research is not one of the doctors that authored the research article." Hence, this correspondence.

I would have contacted you sooner, if possible. But I only received your web site information that contains your mailing addresses this past August and the Court's denial was handed down on September 15, 2014. With my Notice Of Appeal due in the Higher Court by October 15, 2014, contacting you became

absolutely necessary.

The alleged rape victim testified to digital-vaginal and penile-vaginal penetration, and further claimed that it "really hurt" in her "private." In support, Social Worker Elizabeth Morstatter testified that the girl's "mother" told her she was raped. With testimony claiming a rape, implanted memories, and medical evidence proving an intact hymen with no abnormalities or signs of trauma, I turn to your research.

In light of the above, as leading experts in Pediatric Child Abuse Medicine, I am requesting that you 1) Authenticate that this is your research; and 2) With the lack of abnormalities or signs of trauma, or, as your research would declare a "notch" or a "cleft," proffer your expert medical opinion as to whether or not a rape occurred.

Doctors, I am neither a physician nor an attorney, and my time is limited to file my pro se appeal. If I am late, I will be time-barred and the Reviewing Court will deny me access. Therefore I beseech you to act swiftly and to respond as soon as possible.

Grateful for your time and patience.

With integrity and respect,

Frank P. Wood (#A504-107)

Grafton Corr. Inst.

2500 S. Avon Belden Rd. Grafton, Ohio 44044

cc: jaa asb ndk

encl: medrpt

•					
STATE OF OHIO,		) CASE NO. 05CR0365	2015 FEB 20 PM 1:41		
Plaintiff,	Exhibit-81	)	7 •		
vs.		) SODGE CIRIDIOI MER S	DAVID B WADEWORTH COUNTY COUNTY		
FRANK P. WOOD,	<b>\</b>	DELAYED MOTION FOR I			
Defendant.	Š	PURSUANT TO CRIM.R.			

DELAYED MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE PURSUANT TO CRIM.R. 33(B)

Defendant Frank P. Wood (hereinafter "Wood"), by presentation of document, exercising his U.S. 6th Amendment Constitutional rights to proceed pro se, and hus U.S. 1st Amendment Constitutional rights to redress of grievances, has submitted an Application for Order granting leave to file this delayed motion for new trial. Consistent with his inherent U.S. Constitutional rights, and the ruling in <a href="State v. Covender">State v. Covender</a>, 9th Dist. Lorain No. 11CAO10093, 2012-Ohio-6105, ¶13, Wood "may file his motion for new trial along with his request for leave to file such motion." Hence, this Motion is being submitted in tandem to Wood's Application.

Utilizing the Affidavit of Nancy Coe (Exhibit-A) (hereinafter "Ms. Coe"), the Affidavit of Wood (Exhibit-B), Wood's second piece of newly discovered evidence in the form of a Facebook transmission from S.L. (Exhibit-C) (adopted post trial as "S.L."), prima facie evidence from the face of the Trial Record, and additional documentation (Exhibits: C-L), Wood will present in a clarified manner the verdict-altering effects of this new evidence.

Due to past historical events, so that all parties involved are on the same page with a full understanding of the evidence upon which Wood relies, Nelson Coe (hereinafter "Mr. Coe"), the son of Ms. Coe, sent S.L. the following Facebook transmission on October 4, 2013:

hey i am a friend of Frank Wood. I was looking at his case and seen you were one of the people involved. have you been keeping up with it? he's doing a lot of appealing and trying very hard to prove his innocence and has asked for some help and I was wondering what your position is and if you were willing to help

On October 19, 2013, fifteen days later, S.L. (" S.L. ") sent the following reply:

after the things he did to me as a 8 year old child there is nothing I will do to help prove his "innocence" his actions destroyed my family he just needs to come to terms with that (Exhibit-C)

In reviewing S.L.'s statement, two things stand out. First, the "8" was entered numerically and not typed out as 'eight.' This entry is therefore intentional and clearly defined in memory. Second, the "family" that S.L. refers to was comprised of her legal guardian parents: Danielle Sadowsky (hereinafter "Danielle") and Scott Sadowsky. As the State-appointed custodians of S.L., per the testimony of Scott Sadowsky, he and Danielle received "relative placement" of S.L. (Tp.180, Ln.14-15) sometime during early 1999.

Having clearly defined the evidence upon which Wood relies, Wood will proceed to enlighten all parties involved as to the verdict-altering effects of his <u>second piece</u> of newly discovered evidence.

As noted on p.6 of Wood's uncontested Claim Of Actual Innocence

(Exhibit-D), Wood was accused via an Amended Bill of Particulars (Exhibit-E) of sexually assaulting S.L. during the weekend of October 1-3 of 2004. In support of the indicted, testified to, and confirmed dates of abuse, Licensed Social Worker Elizabeth Morstatter testifed that S.L.'s "mother" told S.L. that Wood raped her (Tp.301, Ln.1-8) while S.L. testified that she spent the entire indicted weekend with her legal guardian "dad" Scott Sadowsky celebrating her tenth birthday in "Put-In-Bay" and "not at Frank Wood's house" (Tp.247, Ln.7-16). Confirming the place and date of assault, S.L. testified that her birthday weekend was her "dad's weekend" (Tp. 247, Ln. 15-16) and that "it happened" right before her tenth birthday (Tp.230, Ln.4-8). S.L. further testified that on these specific dates (October 1-3 of 2004), "...it really hurt...In my private" (Tp.230, Ln.12-16). This testimony was fully solidified where S.L. testified, "Well, I -- I really enjoyed my birthday, and it was fun, but it was the two days before that really -- he hurt me the two days before" (Tp.230, Ln.6-8). This testimony confirms who S.L. was with, where she was, and when the assault took place. There is no evidence to the contrary. None.

With S.L.'s date of birth being October 3, 1994 (Tp.495, Ln.17-18), and her tenth birthday falling on Sunday, October 3, 2004 (Exhibit-F: Calendar of October 2004), she also testified that she celebrated her birthday

"On"

her birthday, and that she had another birthday when she got back to Wood's house on Monday, October 4, 2004 (Tp.247, Ln.7-19). It is crystal that whether it was "the two days before" Sunday, October 3rd, or Monday, October 4th of 2004, S.L. was sexually assaulted in Put-In-Bay, Ohio while in the presence of her "dad" Scott Sadowsky and "not at Frank Wood's house."

It should be clear to all that Wood could not have committed a crime he

was not present for. In addition, S.L.'s above cited testimony is fully corroborated by Wood's My Pre-Trial History With Danielle Sadowsky-Smith (Exhibit-G).

Someone, such as Prosecutor Kern, may take the liberty to make the allegation that "8" is a typo or that S.L. "must have been confused" (Exhibit-G, p.D-3 @ ¶3). Not possible due to several factors. First, let us consider the State-proven pinpoint dates in the indictment where S.L.'s "mother" told S.L. that Wood raped her while she spent the entire weekend of her tenth birthday in "Put-in-Bay" with her "dad" and "not at Frank Wood's house" (Supra); Second, S.L. was in therapy with Dr. LeSure for this weekend of alleged abuse before, during, and after Trial; Third, Mr. Coe's request for S.L.'s help was sent on October 4, 2013, and S.L.'s reply came back on October 19, 2013: fifteen days later. S.L. consulted with someone, and that someone was Scott Sadowsky. Yes, the same man who adopted S.L. post trial to control her. When he realized that he couldn't, Scott Sadowsky threw S.L. into a foster home in Akron, Ohio. Good parenting? For verification of who S.L. turned to, attached is a page from Danielle's Facebook account (Exhibit-H). Notice how Danielle glorifies her three children while S.L. is now considered obsolete. Evidently, for both Danielle and Scott Sadowsky, S.L. served her purpose; Fourth, S.L. had time to think, and via another implanted memory, S.L. changed her story and claimed Wood abused her two years before she and Wood met. Let us keep in mind that S.L. consciously responded as a twenty year-old married adult (married as ); and Fifth, per the testimony of Danielle, during the course of her affair with Wood, she and Wood never met in the presence of the children (Tp.110, Ln.24-Tp.111, Ln.20), and she and Scott Sadowsky had guardianship of S.L. since she was "four and a half years old" (Tp.102, Ln.15-16). This

testimony places Scott Sadowsky, and <u>not Wood</u>, in S.L.'s presence when she was abused as "a 8 year old child" (Supra). Now we know why the Victims of Crime representative that approached Wood at 7:30 a.m. on May 9, 2012, referred to S.L. as the **Tallegal** victim. Indeed, the story did change.

To better understand how the above would alter a trial verdict rendered by either a "cynical" or impartial Jury, let us turn to the world of finance and the U.S. Stock Market, and utilize the following analogy:

As Main Street brokers (those of us who invest from home), we follow the paths of Wall Street brokers (those who are licensed and trade electronically on a global scale). Those from Wall Street are typically known as "Lead Underwriters" or "Investment Banks" that carry the names of Morgan Stanley, Citigroup, JP Morgan, Bofa Merrill Lynch, and the like. These banks are so large and possess such an overwhelming amount of capital that they must invest it. Why? Time is money. Therefore, money decreases in value over time due to risk, inflation, and uncertainty. They must either "Work their buck" or lose future buying power. Now, Main Street investors, we refer to these financial giants as "Elephants." As they step in to or out of a stock, they leave footprints, or "Elephant Tracks," reflected in the daily price and volume action of an underlying security, or stock. These Elephants are primarily "Sit-And-Hold" investors and tend to build their positions slowly. As Main Street investors, we follow these tracks and buy in to a stock on the rise and sell higher: Better known as "Momentum Investing" or "Hit-And-Run." When determining if an Elephant is driving a stock, the basic principles of tracking and human psychology come in to play. Why? Fear and Greed: They drive the Market. With this in mind, when the Elephant makes the first step in to a stock, this is an indicator, the second step is a pattern, the third step is confirmation, and the fourth step is commitment. You see, a quadraped

must be fully committed to the fourth step. If not, and it tries to change direction, it will stumble and fall, or, as in the case of the Elephant, it will lose money by backing out too soon. With the habitual nature of people, once the third step is complete, they are committed to the fourth. Failure to complete the fourth would result in stress. Eventually, drives will engage to eliminate the stress and the fourth step would be completed. Any basic psychology or management course will verify this truth. Now, let's apply these four "steps" to the facts of the case at bar.

STEP ONE: Per the testimony of Danielle and the Facebook transmission of S.L., Scott Sadowsky was with S.L. when she was sexually assaulted as "a 8 year old child." INDICATOR.

STEP TWO: Per the testimony of Danielle, S.L., and Scott Sadowsky, Scott Sadowsky was with S.L. when she was sexually assaulted in Put-In-Bay on the State-pinpointed dates in the Amended Bill of Particulars. PATTERN.

STEP THREE: Per the testimony of Danielle and Scott Sadowsky, Scott Sadowsky was with S.L. on the unindicted date of October 20, 2004 (Tp.92, Ln.14-20; Tp.205, Ln.10-Tp.206, Ln.4), (Exhibit-D, p.12). CONFIRMATION.

STEP FOUR: The allegations initially called for S.L. being sexually abused "approximately fifty times" (Tp.280). Dr. LeSure testified that the alleged incidents ran, quoting S.L., "Sometime after my birthday and before Halloween" (Tp.416, Ln.16-17). As the incidents ran the entire 31 days of October, Wood saw S.L. for 8-9 days at the most (Exhibit-D, p.12), (Tp.87, ln.10-22). For the rest of the 31 days of October, S.L. was with Scott Sadowsky. COMMITMENT.

Let's take this a step further. S.L. told Wood, in Danielle's presence, about Scott Sadowsky, "Dad," removing his bath towel while in her bedroom during the weekend of October 8-10, 2004 (Exhibit-G, p.D-3). Yes, another

"dad" weekend. Amazingly enough, Prosecutor Eisenhower actually asked Scott Sadowsky, "Did you ever walk around in just a towel?" (Tp.218, Ln.22). Evidently, Wood was not the only one S.L. told about this incident. Indeed, Scott Sadowsky is <u>FULLY COMMITTED</u>. There are additional steps, but due to page limitations and time constraints, we'll save those for later.

Supported by multiple counts of implanted memories, Danielle's "untruthful" testimony (Tp.132, Ln.22-Tp.133, Ln.2), Wood's first piece of newly discovered evidence, suppressed <u>Brady</u> evidence in Wood's first motion for new trial, the core of Dr. Reed's Voir Dire (Exhibit-I), and the above <u>STEPS</u>, Wood's second piece of newly discovered evidence is more than enough to alter any verdict and secure an indictment for one Scott Sadowsky (Exhibit-J). In support,

# THE STATE CANNOT PRESENT ONE PIECE OF ALLEGED EVIDENCE FROM THE FACE OF THE TRIAL RECORD THAT WOOD CANNOT DISPROVE!

Let us now turn to the second part of S.L.'s Facebook transmission, which states:

his actions destroyed my family he just needs to come to terms with that

S.L. blames the divorce of her legal guardian parents, Danielle and Scott Sadowsky, on Wood. What S.L. does not know is that both Danielle and Scott Sadowsky testified that neither one of them wanted S.L. in their house and blame her for the demise of their marriage. This allegation, supported by State's evidence from the face of the Trial Record, is authenticated in the attached documents: Letter to Rick Lazard, the biological father of S.L. (Exhibit-K), and Who or What destroyed the Sadowsky marriage? (Exhibit-L). It is lucid that the concept of Wood destroying the Sadowsky marriage is the result of another implanted memory. The most amazing part is that during

the course of Trial, no one asked Danielle, "Why did you leave the sanctity of your marriage?"

Query: What would S.L. have to say now if she knew her legal guardian parents' testimony?

Driving the nail home, while addressing the "cynical" Jury, Prosecutor Eisenhower posed the following question:

Who doesn't remember their tenth birthday? (Tp.495, Ln.17-18).

Then, pushing the envelope, she declared as "evidence" before the Jury,

She sat here and told you, "a couple of days before my tenth birthday." And that's evidence. That's evidence. There's been no evidence to the contrary. None. (Tp.524, Ln.19-24).

Prosecutor Eisenhower's declarations give veracity to the pinpoint dates of abuse in the indictment, validating Wood's proof of implanted memories. For instance, S.L.'s testimony and Facebook transmission confirms she was sexually assaulted <u>TWICE</u>, at least, while with Scott Sadowsky, and <u>NOT</u> Wood. Yet, S.L. remains convinced that she was with Wood. The absurdity is this: S.L. is also convinced Wood abused her <u>TWO YEARS BEFORE</u> she and Wood met. Thanks to Prosecutor Eisenhower, the State has solidified the verdict-altering effects of Wood's second piece of newly discovered evidence.

Perhaps the State should have investigated for truth instead of merely seeking a conviction. Considering, nobody from the Medina County Prosecutor's Office or Children's Services interviewed Wood prior to indicting him.

In final regards to Wood's second piece of newly discovered evidence, the Ohio Supreme Court declared that

(due process requires that a motion for new trial based on newly discovered evidence, must, at some point, be considered on the merits). State v. Rossi, 2nd Dist. No. 23862, 2010 Ohio 4534 at [\*P23]; citing State v. Davis, 131 Ohio St. 3d 1, 2011-Ohio-5028; 2011 Ohio LEXIS 2381 at HN11, [\*\*P32].

#### CONCLUSION

As the ceiling of reasonable doubt has been shattered, there can be no doubt that Wood's second piece of newly discovered evidence is verdictaltering. Therefore, an evidentiary hearing must be granted and set for a specific date.

Relief is accordingly sought.

Submitted in absolute truth,

P. Wood

Frank P. Wood (#A504-107)

Grafton Corr. Inst.

2500 S. Avon Belden Rd. Grafton, Ohio 44044

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Delayed Motion For New Trial Based On Newly Discovered Evidence Pursuant To Crim.R. 33(B) was sent via Regular U.S. Mail on this 18 day of february, 2015, to:

Matthew A. Kern, Assistant Prosecutor Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

Inbox Other (6)

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Exhibit-B

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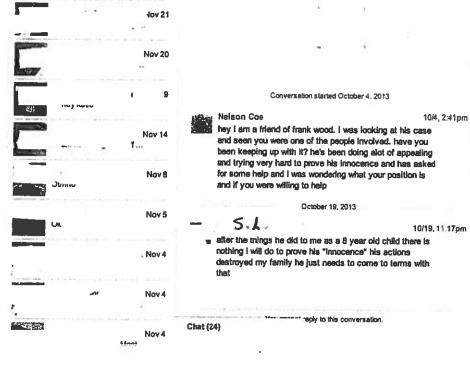
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### File-Stamp-Return

## IN THE COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

COMMON PLEAS COLUR!

2015 APR -9 AM 11: 22

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STATE OF OHIO,		) CASE NO. 05CR0365	FILEC
Prosecutor,		JUDGE	DAVID B. WADSWORTH MEDINA COUNTY MEDINA COURTS
vs.	Exhibit-82	(Visiting Judge to be As the Supreme Court of Ohi	lo)
FRANK P. WOOD,		WOOD'S RESPONSE SUPPORTI	
Defendant.	×	) MOTION FOR LEAVE TO FILE ) MOTION FOR NEW TRIAL	DELATED

#### WOOD'S RESPONSE SUPPORTING HIS MOTION FOR LEAVE TO FILE DELAYED MOTION FOR NEW TRIAL

On March 30, 2015, Defendant Frank P. Wood (hereinafter "Wood") received the State's Brief In Opposition To Wood's Motion For leave To File A Delayed Motion For New Trial. This Brief was filed by Matthew A. Kern (hereinafter "Kern") of the Medina County Prosecutor's Office. Grateful for the opportunity to respond, Wood will not only show that Kern's admissions support Wood's presentation of his second piece of newly discovered and exonerating evidence, but by Kern's omissions his Brief should be declared of no effect and dismissed.

Let us begin.

Within pp.1-4 of the State's Brief, Kern is absurdly obsessed with irrelevant case law, that has absolutley nothing to do with the distinguishing facts of Wood's case, while claiming that Wood did not show "clear and convincing evidence" that he was unavoidably prevented from discovering the newly discovered evidence upon which he relies within the 120-day time frame as set forth in Crim. R. 33(B). As an omission, Kern failed to acknowledge that the new evidence did not exist until "nearly seven and a half years

post verdict" (Wood's Application For Leave, p.2). Having satisfied the strict standards as set forth in Crim.R. 33(B), Wood is timely, and therefore properly before this Honorable Court.

Within p.5 of the State's Brief, Kern, in vain, attempts to rely on a (7) seven month delay between discovery and filing in <u>State v. Davis</u>, 9th Dist. Lorain No. 12CAO10526, 2013 Ohio 846, as a means of denying Wood leave to file. Here, by omission, Kern failed three ways. In sequence, <u>FAILURE 1</u>: Kern failed to show that <u>Davis</u> is irrelevant to the distinguishing facts of Wood's case;

FAILURE 2: Kern failed to acknowledge that "less than three months" lapsed between receiving and filing in Wood's case (Application For Leave, p.2). Not too shabby for an incarcerated pro se litigant who never finished college, eh? Next thing you know, Kern will demand a reversal in the space time warp continuum so Wood will have to file pre-discovery. As Einstein's Theory Of Relativity, now the Law Of Relativity, proves that mass and energy are interchangeable, time is only the constant that exists as a measurement of movement and change. Praise God in Heaven! For innocent incarcerated pro se litigants will always have, at least, the Laws Of Nature to give them reasonable access to the courts; and

FAILURE 3: Kern failed to mention that in State v. Pinkerman, 88 Ohio App. 3d 158, 623 N.E.2d 643, 645 (1993), the Ohio Supreme Court ruled that the trial court erred in not granting motion for new trial even though the incarcerated defendant had knowledge of the new evidence for nearly a year before pursuing motion for leave to file delayed motion for new trial. Kern knew of this law and fact, for Wood presented it in his Brief Of Appellant, December 1, 2014, pp.11-12, that was filed into the Ninth District Court Of Appeals under Case No. 14CAOO93-M, to vindicate the admission of his first piece

newly discovered and exonerating evidence.

Kern's line of litigation is wasting this Honorable Court's time. Supporting,

Time is our most priceless and personal asset. It is the one thing you can give and not get back.

-Frank P. Wood, The Innocent Man

Kern's argument is irrelevant and should be dismissed.

Within p.6 of the State's Brief, Kern states the obvious with
"It is implausible that a girl of eight or nine years of age could not recognize the individual sexually molesting them."

Kern, for once in Wood's case, is absolutely correct! Now, here, Kern is litigating content presented in Wood's delayed Motion, where it belongs. However, since Kern opened the door, we can go through. In proper context and application, S.L. believing Wood sexually assaulted her while whe was with her legal guardian Scott Sadowsky, two years prior to S.L. and Wood meeting, reveals and validates implanted memories (Delayed Motion For New Trial, pp.4-5, 8; Exhibit-D). This alone is grounds for reversal.

By Kern's admission, the State is not only in concession of these facts, their vessel christened "Wrongful Conviction" has lost sight of its berth and has no port of destination. And so it goes. ...

To the person who does not know where he wants to go, there is no favorable wind,
-Seneca, philosopher

or ruling.

Within p.6 of the State's Brief, Kern attempts to claim "hearsay" regarding the (A)ffidavit(s) of Wood and Nancy Coe "despite [their] having access to Mr. Coe and apparently being aligned with him" (Id, p.7). As the State has failed to present any affidavits to contradict the Affidavits of Wood and Ms. Coe, under such conditions

Indeed, no more than affidavits is necessary to make the prima

facie case. <u>United States v. Kis</u>, 658 F.2d 526, 536 (7th Cir. 1981); Cert. <u>denied</u>. <u>50 U.S.L.W</u>. 2169; S. Ct. 1982.

Something else Kern knew: Brief Of Appellant, December 1, 2014, p.9, (Supra).

As evidenced by the Affidavit(s) of Wood and Nancy Coe, Ms. Coe retrieved and forwarded the Facebook transmission to Wood. Therefore her Affidavit was required to satisfy her discovery and Wood's time constraints pursuant to Crim.R. 33(B); and not Mr. Coe's.

Regarding the "witness" Mr. Coe, Crim.R. 33(A)(6) states, in pertinent part,

"\* \* \* When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witness by whom such evidence is expected to be given, \* \* \*."

By operation of law, Mr. Coe's Affidavit is not due until the hearing on the Motion and its merits. But rest assured, as Wood's "witness() by whom such evidence is expected to be given," Mr. Coe will be present "at the hearing" with Affidavit in hand.

As to this "competent, credible evidence" (State's Brief, p.7), this is a Facebook transmission and public record that reveals no deceit by Mr. Coe. Further, there is a web address in the bottom left-hand corner that can be accessed for authentication. Also, Mr. Coe's Facebook Account will be accessed, by his own hands, in open court.

Crushing the balance of Kern's argument here, this Facebook transmission can be subpoensed by this Honorable Court, Wood, or Kern. That is, unless, the State elects to "quash" as they did in <a href="State v. Hartman">State v. Hartman</a>, Motion To Dismiss, With Prejudice, On Grounds Of Prosecutorial And Judicial Bad Faith And Misconduct, Medina County Case No. 09CR0229, November 10, 2014, p.67, revealing a lack of honor and integrity.

Within pp.7-8 of the State's Brief, Kern alleges that Wood's presentation of the Facebook transmission is "an attempt merely to impeach or contradict former evidence" (Id, p.8). Much to Kern's disappointment, with this new and exonerating evidence, Wood has successfully proven who S.L. was with on every date of alleged abuse and implanted memories. As these truths are presented in Wood's Motion, where they belong, the cumulative effects of evidence and facts, destroying the "cynical" Jury's disposable verdict (Tp.135, Ln.7-11), have altered the outcome of Wood's trial indefinitely. Under such causes and conditions, such mighty weight, a new trial should be granted if newly discovered evidence could likely have changed the outcome of trial, even if the evidence is impeaching or contradictory in nature. City of Dayton v. Martin, 43 Ohio App. 3d 87, 539 N.E.2d 646, 648 (1987).

Within Kern's <u>CONCLUSION</u> he alleges that Wood's second piece of new evidence, which validates his first, is not "material" (State's Brief, p.8). With an <u>uncontested</u> and <u>unmentioned</u> Claim Of Actual Innocence, comprised solely of State's evidence from the face of the incomplete and materially altered Trial Record, this new evidence <u>is</u> material, exculpatory, and exonerating. Kern has no argument. (see Delayed Motion For New Trial, Exhibit-F).

Supporting the above, this evidence, and Wood's presentation of the evidence, are, in turn, supported by Wood's presentation of his Request For Brady Hearing And Dismissal Of Indictment, March 30, 2015 (awaiting this Honorable Court's review). Yes, the White Elephant in the room that the State wishes would go away. Nothing like a bright white 4-ton mastodon with pink polka dots to get everyone's attention. Turn your head and close your eyes, but it's still there. The very presence of this exonerating and

premeditated Brady Violation, not only reveals a <u>fabricated</u> case, but <u>validates</u> Wood's argument. The State cannot contest otherwise.

Wood apologizes to this Visiting Court. This Honorable Court has grabbed a tiger by the tail while walking through a maelstrom. To decipher the facts will be a time-consuming and difficult task. Understood. It took Wood years to sift the wheat from the chaff to prove his innocence. Still, between the filings of Wood and State there remains a plethora of paper to examine. But Wood beseeches this Sagacious Court to examine every word patiently and carefully, and to recall that

Since the truth is always embedded in a vast network of conditions, the broader your outlook is, the greater the possibility of success at constructing something positive or undoing something negative,

-Tenzin Gyatso, the 14th Dalai Lama as in the instant case.

Lastly, as this Court sifts the facts from fiction through its legal mind, Wood has a most sincere and honorable request. Wood implores this Court to recall and to keep in mind the echo of Ancient Rome's greatest Prosecutor Cicero: "Cui bono?" "Who benefits?" Indeed, who benefits from Wood's incarceration? Thank you.

#### CONCLUSION

Solidified by sufficient law and operative facts, Wood is timely and properly before this Venerable Court. The granting of leave to file a delayed motion for new trial and the holding of an evidentiary hearing will comply with the rudimentary demands of justice and the Supreme Court of Ohio when it declared that

(due process requires that a motion for new trial based on newly discovered evidence, must, at some point, be considered on the merits). State v. Rossi, 2nd Dist. No. 23862, 2010 Ohio 4534 at [\*P23]; citing State v. Davis, 131 Ohio St. 3d 1, 2011-Ohio-5028; 2011 Ohio LEXIS 2381 at HN11, [\*\*P32].

Relief is accordingly sought.

Unbroken,

Frank P. Wood (#A504-107)
Pro Se Litigant
Grafton Correctional Institution
2500 S. Avon Belden Rd.
Grafton, Ohio 44044

k P. Wood

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Wood's Response Supporting His Motion For Leave To File Delayed Motion For New Trial was forwarded via Regular U.S. Mail on this  $6^{\frac{1}{2}}$  day of 2015 to:

Matthew A. Kern/Assistant Prosecutor Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

COMMON PLEAS COURT

#### IN THE COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

2015 OCT -7 AM 10: 02

DAVID B. WADSWORTH

STATE OF OHIO

CASE NO. 05-CR-0365

Plaintiff,

JUDGE PATRICIA A. COSGROVE (Sitting by Assignment)

v.

Exhibit-83

FRANK P. WOOD

ORDER ON DEFENDANT'S SECOND MOTION FOR NEW TRIAL

Defendant.

On July 20, 2015, the Ninth District Court of Appeals affirmed the judgment from the Medina County Court of Common Pleas denying the Defendant's pro se motion filed in June 2014 requesting leave for an application to file a motion for a new trial. State v. Wood, 9th Dist. Medina No. 14CA0093-M. On February 20, 2015, while the above appeal was pending, the Defendant, Frank Wood, pro se, filed a second application for leave to file a motion for a new trial. On March 27, 2015, the State filed a brief in opposition. On April, the Defendant filed a response brief.

The "newly discovered evidence" in the Defendant's first motion for application for a new trial involved a so-called "report" or article that dealt with hymenal morphology in adolescent girls that published in 2004, two years before his rape trial IN 2006. The Court of Appeals rejected his application for leave to file a motion for a new trial as untimely filed. Wood acknowledged he knew of the report since 2011 but did not present the newly discovered evidence to the Court until June 2014.

The basis of the Defendant's second application to file a motion for new trial before this Court involve an alleged 2013 Facebook transmission between Nelson Coe, who was asked by his mother Nancy Coe, to contact one of victims, S.L. to see if she was willing to help prove "Frank's innocence." On October 4, 2014, Nelson Coe allegedly contacted S.L. via Facebook and stated that he was a friend of Frank Wood and Wood was "doing a lot of appealing and trying very hard to prove his innocence." On October 19, 2013, S.L., allegedly responded with a posting on Facebook, stating that, "after the things he did to me as a 8 year old child there is nothing I will do to prove his "innocence" his actions destroyed my family and he needs to come to terms with that."

It is important to note that it was not Nelson Coe that filed an affidavit attesting to the veracity of the Facebook posting. It was Nelson's mother, Nancy Coe, who filed the affidavit attesting to facts when she had no personal knowledge of the communication. (See, Defendant's Application for Leave, Exhibit A, affidavit of Nancy Coe). Defendant claims the use of the numeral "8" somehow signifies "implanted" memories.) (See, Wood's response brief filed on April 9, 2015, page 3).

The Defendant stated that he became aware of this "evidence" on December 4, 2014. The Defendant believes that this evidence exculpates him from the rape conviction as the minor child, S.L., testified at his trial in 2006 that Defendant sexually assaulted her before her tenth birthday. The minor child, S.L., would have been the age of eleven when she testified in the rape trial, some nine years ago. The testimony of S.L. revealed that she was sexually assaulted by Wood on several occasions and her testimony was supported by "ample evidence" and "corroborated by several other witnesses." (See, the attached Ninth District Court of Appeals order that denied Defendant's motion for leave to re-open his appeal. *State v. Wood*, 9<sup>th</sup> Dist. No. 14CA0093-M filed on October 7, 2007, at page 2.)

Assuming, for purposes of this order, the Facebook conversation is accurate, (even though it has not been properly authenticated), this "evidence" does not prove the Defendant is innocent. In the alleged Facebook posting, the victim, S.L., never recants her testimony that Wood repeatedly raped her as a child. The fact S.L may have said on Facebook nine years after she testified that she was eight instead of nine (right before her tenth birthday) is of no import.

The Court, having discussed the merits, or lack thereof, of Defendant's "newly discovered evidence", the Court will discuss whether the Defendant has met the legal threshold for the Court to grant a motion for a new trial. In order to grant a motion for a new trial, the Defendant must demonstrate that the evidence: (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered prior to trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence. State v. Peters, 9<sup>th</sup> Dist. Wayne No. 09CA007, 2009 Ohio 6024, at para. 10, quoting State v. Hawkins, 66 Ohio St. 3d 339, 350, 612 N.E.2d (1993), quoting State v. Petro, 148 Ohio St. 505, 76 N.E.2d 370 (1947).

The Defendant has failed to satisfy at least two prongs of the test to grant a motion for a new trial. First, whether S.L, the child that was raped by Wood, was eight or nine years old when she was raped multiple times by Wood according to the record, does not create *any* probability, much less a strong probability, that the result of the trial would have been any different. Second, this hearsay evidence, which would not be admissible in any future trial, merely seeks to contradict or impeach the victim's testimony.

Because, the Defendant has not met the evidentiary threshold for this Court to consider the grant of a motion for new trial, it is not necessary for the Court to address the timeliness of the motion or the issue of due diligence, since Defendant's motion on its face is devoid of merit.

Since the Defendant was convicted of rape of S.L., and gross sexual imposition of his minor daughter, Wood has filed one frivolous motion after another. He attempts to parse out different arguments in his post-conviction motions, but in reality, he continues to re-litigate the merits of his convictions and complains about the trial court's rulings on the admission of evidence, which the appellate court found was supported that was supported by ample and corroborating evidence.

#### **CONCLUSION**

The Court denies the Defendant's application for leave to file a second motion for a new trial. The Court finds the Defendant's motion to be frivolous and without merit. If the Defendant continues to file frivolous post-conviction motions, the Defendant could be potentially declared a vexatious litigator in separate civil litigation filed pursuant to R.C.2323.52.

For all the foregoing reasons, Defendant's pro se motion for application for leave to file a second motion to file a delayed motion for a new trial is denied.

The Medina County Clerk of Courts is instructed to mail a time-stamped copy of this order to the parties listed below and this Court.

This order is final and appealable. There is no just cause for delay.

IT IS SO ORDERED.

JUDGE PATRICIA A. COSGROVE

(Sitting by Assignment)

cc: Frank P. Wood, #504107, Defendant, Pro Se, Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, Ohio 44044
Assistant Medina County Prosecutor Mathew A. Kern

COMMON PLEAS COURT

# COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

2015 HAR 30 PM 1:31

STATE OF OHIO,		) CASE NO. OSCRO365 DAVID S. WADSWOR	Tu	
Prosecutor,		CASE NO. O5CRO365  DAVID B. WADSWORT MEDINA COUNTY CLERK CF COURTS	177	
vs.	Exhibit-84	<pre>     JUDGE     (Visiting Judge to be Assigned by     the Supreme Court of Ohio) </pre>	•	
FRANK P. WOOD,		the Supreme Court of Ohio)		
Defendant.		) REQUEST FOR BRADY HEARING AND DISMISSAL OF INDICIMENT		

# REQUEST FOR BRADY HEARING AND DISMISSAL OF INDICIMENT

On February 26, 2015 Defendant Frank P. Wood (hereinafter "Wood") filed a Motion For Disqualification Of Prosecutor And For Retraction Of State's Brief Of Appellee in regards to the above captioned case. Within this Motion Wood presented the following Exhibits:

Exhibit-A: Affidavit of Frank P. Wood (with internal Exhibits);

Exhibit-B: My Pre-Trial History With Robyn Spencer-Speelman;

Exhibit-C: My Pre-Trial History With Danielle Sadowsky-Smith;

Exhibit-D: Notice of filing Record, In Court of Appeals, Ninth Judicial District, Medina County, Ohio;

Exhibit-E: Cause III, Ground I: Newly Discovered Evidence; Ground II: Brady Violation (copy attached to this Request);

Exhibit-F: Claim Of Actual Innocence; and

Exhibit-G: Reply Brief Of Appellant Frank P. Wood.

As this Request serves to supplement Wood's Motion For Disqualification and the <u>Brady</u> Violation contained therein, Wood will refer to the above Exhibits accordingly. Any additional Exhibits will be identified in sequence and attached to this Request.

As noted above, Wood presented a valid <u>Brady</u> Violation. Therefore, consistent with <u>Brady v. Maryland</u>, 373 U.S. 83; 83 S. Ct. 1194; 1963 U.S.

LEXIS 1615, the <u>Brady Act</u>, and their progeny, Wood is now directly requesting a <u>Brady Hearing</u> to vindicate his U.S. 14th Amendment Constitutional rights to Due Process and Equal Protection. For reasons stated more fully below, this hearing must be granted and take place without delay.

As evidenced in Wood's <u>Brady</u> Violation (Exhibit-E, p.17-18), Tricia Carchedi, a Social Worker with the Medina County Job & Family Services/Children's Services, conducted an investigation regarding the alleged rape victim in Wood's case. The Record reveals that Ms. Carchedi concluded there was "no evidence" against Wood (Tp.342, Ln.6-10), "closed" his case (Tp.339, Ln.11), and forwarded a letter to the Medina County Prosecutor's Office declaring the above (Tp.342, Ln.6-10). When this letter surfaced at Trial without Wood's knowledge, Lead-counsel Green sought leave of the Trial Court to cross-examine Ms. Carchedi as to her "inconsistencies" (Tp.341, Ln.9-16) and the contents of this letter. Then, in a <u>premeditated</u> fashion (Exhibit-E, p.18), Asst. Pros. Anne Eisenhower convinced the Trial Court to not let the letter in (tp.344, Ln.9-16), thereby suppressing materially exculpatory evidence in violation of Crim. R. 16(B)(1)(f) and <u>Brady v. Maryland</u> (Id).

This evidence is much more than materially exculpatory. This evidence is exonerating as it is Direct Evidence proving Wood's actual innocence. In turn, as the State had this evidence pre-indictment, a dark shadow has fallen on Detective Mark Kollar of the Medina City Police Department and Grand Jury proceedings, ultimately vacating the State's premise for indictment.

What more, this <u>Brady</u> Evidence comes from the State's leading investigative agency in Wood's case: Children's Services. It's no small wonder that their Office elected not to interview Wood. For the State to suppress this evidence during Trial without Wood's knowledge of its existence, keeping it from what the Trial Court declared to be a "cynical"

Jury (Tp.135, Ln.7-11) was catasrophic to Wood's defense. Let's think about this for a moment. Wood's Lead-counsel sought to present this evidence to a hostile Jury, obviously, as proof of innocence and alibi. What lawyer would not prepare his client's defense around such exonerating evidence? The suppression of this evidence, which had value to Wood's defense, prevented Lead-counsel Green from presenting a complete defense and from an effective cross-examination of the witness. Considering this breach of Due Process,

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard this right, the Court has developed 'what might loosely be called the area of constitutionally guaranteed access to evidence.' United States v. Valenzuela-Bernal, 458 U.S. 858, 867, 73 L. Ed. 2d 1193, 102 S. Ct. 3440 (1982). Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system."

California v. Trombetta (1984), 467 U.S. 479, 481. (citing State v. Roughton, 1999 Ohio App. LEXIS 410, HN9, HN10).

With this light to show him the way, Wood still cannot find law that permits the State to suppress materially exulpatory and exonerating evidence during the course of Trial, thus keeping it from a "cynical" Jury. Not only has the State inflicted a Due Process Wound upon Wood, Lead-counsel's failure to object to this blatant form of Prosecutorial Misconduct, and raise a Brady Violation, deprived Wood of his Constitutional right to the effective assistance of counsel; Strickland v. Washington, 466 U.S. 688 (1984); (Exhibit-E. p.19). Wood was in a lose/lose situation.

Continuing, the "cynical" Jury, which is a structural error that deprived Wood of his U.S. 6th Amendment right to be tried by an impartial jury, never had the opportunity to weigh the credibility of this evidence in its deliberations. In reality, this suppressed evidence was also a structural error as it was a constitutional defect that affected the framework in which

the Trial proceeded, rather than simply being an error in the Trial Process itself. State v. Perry, 101 Ohio St. 3d 118, 2004 Ohio LEXIS 263, HN9. The hostile Jury's verdict is not worthy of confidence. Having shattered the axiomatic standard of reasonable doubt with this Brady Evidence, as it was at inception, the tainted verdict is disposable.

For a better understanding of this situation, Wood has successfully proven that Asst. Pros. Anne Eisenhower suppressed this evidence in a premeditated fashion. Typically, Prosecutor's suppress evidence only to have it surface post-trial. Here, with careful planning, Pros. Eisenhower suppressed this evidence during Trial and kept it from the hostile Jury. This may very well result in a case of first impression. Now, to further compound present conditions, Wood presented his valid Brady Violation with his first piece of newly discovered and exonerating evidence on June 13, 2014. Yes, not only was the State aware of the Brady Violation during Trial in 2006, the State has been aware of Wood's Brady Claim for nearly two years. To date, neither Court nor State have made a move to correct this manifest miscarriage of justice. Dishonorable.

To support Wood's Due Process Violation, let's look at what this  $\underline{\text{Brady}}$  Evidence validates.

Montville Township Police Department, another State investigating agency, pre-indictment, determined there was no merit to the allegations, refused to file charges, and "terminated" the case against Wood (Tp.47, Ln.10-23). Nurse Practitioner Donna Abbott of Akron Children's Hospital, acting as another State investigating agency, medically evaluated the alleged rape victim and found an "intact hymen" with "no abnormalities" or "signs of trauma," and was unable to conclude that a rape occurred (Tp.262-269; Tp.272-278). Ms. Abbott's findings are supported by Wood's first piece

of newly discovered and exonerating evidence that was filed on June 13, 2014. Then there's Wood's uncontested Claim Of Actual Innocence (Exhibit-F). Comprised solely of State's evidence from the face of the incomplete and materially altered Trial Record (Exhibit-A), Wood has successfully proven fraud, conspiracy, perjury, who committed the crimes, his own factual innocence, and implanted memories. These implanted memories are further supported by Wood's second piece of newly discovered and exonerating evidence that was filed on February 20, 2015 (currently awaiting the Visiting Judge's review). Wood's Claim of innocence also reveals that both alleged victims' manipulated and coerced pre-trial out-of-court statements were fully contradicted by their voluntary in-court testimonies. Then there's the Voir Dire testimony of the State's leading expert in this field: Dr. Douglas M. Reed; a licensed clinical psychologist who spent his entire thirty-year career working with sociopaths and sex offenders (Tp. 475, Ln. 22-24). Dr. Reed has unbiasedly and scientifically proven that Wood does not possess the psychological capacities to commit such ignorant and heinous acts, and that for Wood to touch a child sexually would "violate" everything he believes (Tp.476, Ln.1-5). As

Belief determines behavior.

-Max Lucado, preacher, author

the core of Dr. Reed's Voir Dire is presented as Exhibit-H and attached to this Request. And, finally, the <u>Brady</u> Evidence validates both of Wood's Pre-Trial Histor[ies] (Exhibits B & C) and their contents. Especially their contents.

The suppressed <u>Brady</u> Evidence is truly material, exculpatory, and exonerating. With a Due Process Violation of such epic proportions, and a <u>fabricated</u> case, it is axiomatic that a reversal of conviction is mandatory.

<u>Premeditated</u>. This was willful and malicious prosecution. The State has neither excuse nor argument.

#### CONCLUSION

There is no remedy for the Due Process injury that was maliciously inflicted upon Wood by the State. Wood's Due Process Wound is infected with the toxic poison of <u>Bad Faith</u>. With no remedy for the wound, there is only an antidote for the poison: Dismissal of indictment. Therefore Wood directly requests for this Honorable Court (Visiting Judge) to set an immediate date for the <u>Brady Hearing</u> and to appoint him counsel for proceedings. Wood further requests this Court to issue an Order For Conveyance and to include in this Order that Wood be permitted to bring files and documents pertinent to his defense and proceedings, not exceeding more than one cubic foot.

Relief is accordingly sought.

Submitted with integrity and respect,

Frank P. Wood (#A504-107)

Pro Se Litigant

Grafton Correctional Institution

2500 S. Avon Belden Rd. Grafton, Ohio 44044

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Request For Brady Hearing And Dismissal Of Indictment was forwarded via Regular U.S. Mail on this  $25\frac{1}{10}$  day of Macch, 2015, to:

Matthew A. Kern/Assistant Prosecuting Attorney Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

Prosecutor.

vs.

FRANK P. WOOD.

Defendant.

#### COMMON PLEAS COLLA IN THE COURT OF COMMON PLEAS MEDINA COUNTY, OHIO 2015 APR 20 PM 2: 4 STATE OF OHIO, CASE NO. 05CR0365 VISITING JUDGE TO BE ASSIGNED ERK OF COURTS Exhibit-85

WOOD'S RESPONSE VINDICATING HIS REQUEST FOR BRADY HEARING AND

DISMISSAL OF INDICIMENT

WOOD'S RESPONSE VINDICATING HIS REQUEST FOR BRADY HEARING

AND DISMISSAL OF INDICTMENT

Defendant Frank P. Wood (hereinafter 'Wood'), by presentation of document, responds to the State's Brief In Opposition To Wood's Motion For A Brady Hearing And Dismissal Of Indictment that was filed through the Medina County Prosecutor's Office by Assistant Prosecutor Matthew A. Kern (hereinafter "Kern"). Having received the State's Brief on April 11, 2015, Wood is greatly pleased with the opportunity to respond. Further, for the factual and Constitutional reasons set forth below, Wood will now show why Kern's response must be declared moot and Wood's requested relief granted.

To clear the air, within p.2 of the State's Brief, Kern alleges that Wood "could have appealed the conviction on this basis; the argument is now barred by res judicata." There are three ELEMENT(s) proving Kern to be in error.

ELEMENT 1: Wood never knew this exonerating evidence existed; it was never produced in his Discovery Packet; and his retained Counsel never told him about it. This is a very serious matter, indeed.

ELEMENT 2: As the materially altered and incomplete Trial Record reveals, retained Counsel failed to object to the suppression and preserve the issue (Tp.340-344). Harmoniously, Court-appointed counsel failed to raise the issue on Direct Appeal. These failures deprived Wood of his U.S. 6th Amendment rights to the effective assistance of counsel per Strickland v. Washington, 466 U.S. 688 (1984), and his U.S. 14th Amendment rights to a fair trial and an adequate appellate review. Failure and fault, cause and prejudice, they are now imputed to counsel (U.S.C. § 2254\_\_\_\_\_\_\_).

ELFMENT 3: Within Wood's request for Brady Hearing, Wood has proven what the suppressed evidence validates (pp.4-5), revealing a manifest miscarriage of justice; something Kern cannot challenge. Considering validation and failure to challenge as causes, the effects are as follows:

"...res judicata is not to be applied so rigidly as to defeat the ends of justice or as to work an injustice." State v. Simpkins, 2008 Ohio LEXIS 697, HN6; citing Grava v. Parkman Twp. (1995) 73 Ohio St. 3d 397, 386-87).

The cumulative and exonerating effects are overwhelming! Now, since resjudicate does not apply,

"\* \* \* justice shall be done. \* \* \*." <u>Berger v. United States</u> (1935), 295 U.S. 78, 88, 55 S. Ct. 629, 633, 79 L.Ed. 1314, 1321. Citing State v. Keenan, 66 Ohio St. 3d 402; 613 N.E.2d 203; 1993 Ohio LEXIS 1214, HN2. [REVERSED ON GROUNDS OF PROSECUTORIAL MISCONDUCT].

With State's evidence proving a fabricated case, innocence trumps all.

Within p.2 of the State's Brief, Kern makes four STATEMENT(s) that are neither synonomous with the distinguishing facts of Wood's case, nor <u>Brady v. Maryland</u>, 373 U.S. 83 (1963), 83 S. Ct. 1194, 10 L. Ed. 2d 215, 1963 U.S. LEXIS 1615. They are as follows:

STATEMENT 1: ("As the alleged exculpatory records were presented during the trial, there exists no Brady violation requiring a new trial.").

Having surfaced in a side bar outside the hearing of the Jury (Tp.340-344), the exculpatory records were <u>never</u> presented to what the Trial Court declared to be a "cynical" Jury (Tp.135, Ln.7-11) "during the trial." The cynical Jury is a Due Process Violation, for it resulted in the denial of Wood's 6th Amendment right to be tried by an impartial jury, and his 14th Amendment right to Due Process, Equal Protection, and a fair trial. So says the United States Constitution. This violation is of tremendous magnitude.

STATEMENT 2: Such information cannot be Brady material because it was known to the defense.

To dispel Kern's misunderstanding, we must ask the proper question: What is <u>Brady</u> material? Per <u>Brady v. Maryland</u> (Supra), <u>Brady</u> material is, by definition:

- Material (and)
- Relevant to guilt or punishment (and)
- Favorable to the accused (and)
- Within the actual or constructive knowledge or possession of anyone acting on behalf of the State.

Obviously this exonerating evidence was in the constructive knowledge and possession of the State. It's <u>their</u> evidence. Now, having established what <u>Brady</u> material is, the evidence is material, relevant to guilt (innocence), and favorable to Wood. How? Why? Let's go there.

The Trial Court declared that the State's <u>Star Witness</u> Danielle Sadowsky "is not truthful in her testimony" (Tp.132, Ln.22-Tp.133, Ln.2). As the second of thirteen State witnesses, Danielle Sadowsky was permitted to testify unfettered. Aware of the <u>Brady</u> evidence, State's evidence proving there is "no evidence" against Wood (Tp.342, Ln.6-10), the State knowingly used perjured testimony to convict Wood. And here's how:

In <u>Kyles v. Whitley</u>, 514 U.S. 419, 115 S. Ct. 1555, 131 L.Ed.2d 490, 1995 U.S. LEXIS 2845 (another <u>Brady</u> case),

The Court noted that "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Augers, 427 U.S. at 103 (footnote omitted). Kyles LEXIS HN1, FOOTNOTES 7.

With State's evidence proving Wood's innocence, Danielle Sadowsky should have been removed from the Trial. For every time she opened her mouth against Wood, State's evidence proved that she "is untruthful in her testimony." As her entire testimony was tainted with the poison of perjury, this is the same "mother" that told the temple virgin S.L. that Wood raped her (Tp.308, Ln.1-8). A reasonable likelihood that the false testimony could have affected the judgment of the "cynical" Jury has been established.

Cui bono?

STATEMENT 3: ("Brady only applies when a defendant discovers post-trial that the State has withheld exculpatory evidence.").

As Kern obviously admits the suppressed evidence is exculpatory, "only" is in error. For nowhere in <u>Brady</u> and its progeny is this assertion written in stone. Supporting, Wood, "a defendant," did not know of this exonerating evidence and its suppression until "post-trial."

STATEMENT 4: The fact that it was excluded at trial for reasons stated on the record does not mean it was withheld from the defense.

Two errors are now in play. First, the reasons for excluding this evidence are <u>not</u> stated in the Record by the Trial Court, with the exception of Pros. Eisenhower's whining and manipulations; and, second, "withheld" is a factual error and inapplicable to the distinguishing facts of Wood's case, a case that just may be a case of first impression. Wood will now clarify the above.

The Legal Field is known as "practicing" law. For just as in practicing medicine, the law, specifically Brady Law, exists in a perpetual state of

evolutionary advancement and application. Considering, in <a href="Brady">Brady</a> the High Court declared

We now hold that the suppression by the prosecutor of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment \* \* \*.

Brady LEXIS HN1, HN2.

Having satisfied materiality through the validating and exonerating effects of the evidence, which the State cannot challenge, Wood's Lead-counsel requested leave of the Trial Court to admit this evidence to cross-examine the State's witness who generated it. Then, without Wood's knowledge, the State's exonerating evidence was suppressed during trial.

Despite Kern's claims, the Court did not declare "only" before or after trial, but left Constitutional leeway for "during." The Framers would agree. And notice how the Court used "suppression" and not "withheld." Obviously, via Brady and its progeny, "suppression," "non-disclosure," and "withheld" are interchangeable with equal application and force, regardless of when the violation occurred.

Confirming the above, in <u>Brady</u> the High Court declared, regarding "suppression" and "perjured" testimony that

In Pyle v. Kansas, 317 U.S. 213, 215-216, we phrased the rule in broader terms:

"Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. Mooney v. Holohan, 294 U.S. 103."

The Third Circuit in the <u>Baldi</u> case construed that statement in <u>Pyle v. Kansas</u> to mean that the "suppression of evidence favorable" to the accused was itself sufficient to amount to a denial of due process. 195 F.2d, at 820. In <u>Napue v. Illinois</u>, 360 U.S. 264, 269, we extended the test formulated in <u>Mooney v. Holohan</u> when we said: "The same result obtains when the <u>State</u>, although not

soliciting false evidence, allows it to go uncorrected when it appears." And see Alcorta v. Texas, 355 U.S. 28; Wilde v. Wyoming, 362 U.S. 607. Cf. Durley v. Mayo, 351 U.S. 277, 285 (dissenting opinion).

We now hold that the suppression of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment \* \* \*. Brady, 373 U.S. 83, 86-87.

The High Court's utilization of "in broader terms" and "extended" validates Wood's legal theory of evolutionary advancement and application. With that said, let's apply the facts of Wood's case in an overlay-fashion to the above ruling in Brady.

Wood's papers are pro se drawn, and they do set forth allegations that his imprisonment resulted from the perjured testimony of Danielle Sadowsky, knowingly used by the State authorities to obtain his conviction, and from the pre-meditated and deliberate suppression by those same authorities of evidence favorable to him during trial. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, proven by the incomplete and materially altered trial record, entitle Wood to be released from his present custody that resulted from the disposable verdict of a Court-certified cynical jury.

The suppression of the State's exonerating evidence during trial was itself sufficient to amount to the denial of due process. The same result was obtained when the State, although not soliciting false evidence, allowed it to go uncorrected through the Court-verified untruthful Danielle Sadowsky.

We now hold that the suppression of evidence favorable to Wood upon counsel's request during trial violated due process where the evidence is material to innocence.

Having authenticated a <u>Brady</u> Violation, under AEDPA standards, specifically U.S.C. 28 § 2254 (d) (1), a Federal Reviewing Court will issue Writ when

\* \* \* a state court decision is an unreasonable application of clearly established federal law if it "correctly identifies the governing legal rule but applies it unreasonably to the FACTS of a particular prisoner's case," Williams v. Taylor, 529 U.S. 362, 407-408, 120 S.Ct. 1495, 146 L. Ed. 2d 389 (2000), OR if it "either unreasonably refuses to extend a legal principal from Supreme Court precedence to a NEW CONTEXT [EMPHASIS ADDED]." Joseph, 439 F.3d at 450 (citation and internal quotation marks omitted.) Citing Saxton v. Sheets, 547 F.3d 597, C.A. 6 (ohio), 2008.

Reverse-engineering this law, this Sagacious Court is now Federally and Constitutionally empowered to fully engage its Judiciary Powers and apply the FACTS of Wood's case to <u>Brady</u> in a <u>NEW CONTEXT</u>.

In the end, should this Court elect otherwise, and since

[t]he "Great Writ's basic objectives" include "protecting the innocent against erroneous conviction," Shriro v. Summerlin, 542 U.S. 348, 362 (2004),

with respect for this Court, Wood is equally empowered, both Federally and Constitutionally, to pursue the issuance of Writ.

#### CONCLUSION

The State has no argument. Wood is lawfully entitled to his <u>Brady</u>
Hearing and dismissal of indictment. Wood now prays this Venerable Court to
proceed swiftly and set this insolent injustice right.

Relief is accordingly sought.

With an unbreakable spirit,

Frank P. Wood (#A504-107)

Grafton Correctional Institution

-P. Wood

2500 S. Avon Belden Rd. Grafton, Ohio 44044

#### CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Wood's Response Vindicating His Request For Brady Hearing And Dismissal Of Indictment was forwarded via Regular U.S. Mail on this 16th day of April, 2015, to:

Matthew A. Kern/Assistant Prosecutor Medina County Prosecutor's Office 72 Public Square Medina, Ohio 44256.

Frank P. Wood

#### Exhibit-86

COMMON PLEAS COUR

2015 OCT -7 AM 10: 0

# FILED DAVID B. WADSWORTH MEDINA COUNTY CLERK OF COURTS

### IN THE COURT OF COMMON PLEAS MEDINA COUNTY, OHIO

STATE OF OHIO

CASE NO. 05-CR-0365

Plaintiff,

JUDGE PATRICIA A. COSGROVE (Sitting By Assignment)

v.

FRANK P. WOOD

Defendant.

ORDER ON DEFENDANT'S MOTION FOR BRADY HEARING AND TO DISMISS INDICTMENT

On March 30, 2015, the Defendant, Frank P. Wood, pro se, filed a motion for a Brady hearing. On April 8, 2015, the State filed a brief in opposition. On April 20, 2015, the Defendant filed a response brief. The Defendant requests this motion serve as a "supplement" to a previously filed motion to disqualify the Medina County Prosecutor's Office from this case. The Court grants the Defendant's request. The Court has issued a separate order on the disqualification issue.

In May 2006, a jury found Wood guilty of rape, with respect to a child under the age of 10, and gross sexual imposition, with respect to a child under the age of 13. The trial court sentenced Wood to life in prison on the rape count and three years in prison on the gross sexual imposition count, with the terms to be served consecutively. The Ninth District Court of Appeals affirmed his convictions on direct appeal. See, State v. Wood, 9th Dist. Medina No. 06CA0044-M, 2007-Ohio-2673.

On July 20, 2015, the Ninth District Court of Appeals affirmed the trial court's denial of the Defendant's pro se motion for leave to file an application for a new trial. The focus of

Defendant's motion was "newly" discovered evidence of a report written in 2004, generated two years before his conviction. Wood acknowledged that he received the "report" which in actuality was an article on hymenal morphology written in 2011. He further admitted that he did not present this information to the Court until 2014.

Since the Defendant's allegations of discovery violations by the State were not raised in the Defendant's latest appeal, the Court will address the these claims.

In the landmark decision, *Brady v. Maryland*, 373 U.S. 83, (1963), the Supreme Court held that the State's failure to disclose exculpatory evidence to the Defendant that is material to guilt or punishment, violates due process. Exculpatory evidence is material if there is a reasonable probability that the conviction or sentence would have been different had those materials been disclosed. *Id. Brady; Strickler v. Greene, 527 U.S. 263, 296.* 

The Defendant alleges that the prosecutor in his rape case "convinced the judge" to not admit a letter from the Medina County Job and Family Services (CSB) closing their investigation. On page two (2) of Defendant's motion he incorrectly categorizes the report as "direct evidence" and accuses the "State" of "suppressing" this evidence. Wood admits that his trial counsel was aware of the report at the trial and, in fact, unsuccessfully argued for its admission at trial. (Page three (3), first line of Defendant's brief).

Although the Defendant couches his claims as "Brady" violations his arguments are nothing more than an attempt to re-litigate the admission of evidence by the trial court in his rape trial. In addition to complaining about the trial court's refusal to admit the CSB report, Wood also claims Brady violations because the jury did not acquit him based on the testimony that the Montville Police Department did not charge him with a criminal offense prior to his case being indicted by the Grand Jury. The Defendant also takes issue with the fact that and the jury did not

agree with his position that because one of the children's hymenal tissue was intact that this proved that she was not raped. Since this case was not tried before this Court, it will not cite to the plethora of medical evidence to the contrary.

In order to demonstrate a *Brady* violation, the discovery of exculpatory evidence *after trial* must be known by the State and not disclosed to the defense before trial. *State v. Vu*, 9<sup>th</sup> Dist. Medina No. 11CA0058-M, 2012 Ohio 2002 at para. 48, (emphasis added), quoting *United States v. Agurs*, 427 U.S. 97, 103 (1976), *State v. Pepper*, 2<sup>nd</sup> Dist. Montgomery No. 19225, 2003 Ohio 3053, at para. 34.

The essence of a *Brady* decision must be a claim that the State failed to disclose evidence that was unknown to the Defendant at the time of trial and this evidence was material to the Defendant's guilt or punishment.

The fact that the Defendant objects to the admission of certain evidence by the trial court establishes conclusively that this evidence was known at the time of trial and not discovered afterwards. The Defendant complains about the trial court rulings by citing to portions of the trial transcript where the evidentiary rulings were discussed on the record with the Court and counsel. The alleged exculpatory records were discussed during the trial by the attorneys and the Court.

Since, the evidence was disclosed at the time of trial, and not discovered subsequent to the trial, the Defendant has not established a *Brady* violation and therefore, he is not entitled to a new trial. *State v. Wickline*, 50 Ohio St. 3d 114, 116 (1990).

## CONCLUSION

For the foregoing reasons, as evidenced by the Defendant own admission and the trial record of proceedings, Wood and his attorney knew of the existence of the evidence at the time of trial

and sought to have it excluded. Therefore, the evidence was not unknown, as required to demonstrate a Brady violation. Defendant's motions for a Brady hearing and dismissal of the indictment in this case are denied.

The Medina Clerk of Courts is instructed to mail a time-stamped copy of this order to the parties listed below and this Court.

This is a final and appealable order. There is no just cause for delay.

IT IS SO ORDERD.

JUDGE PATRICIA A. COSOROVE

(Sitting by Assignment)

cc: Defendant, Frank P. Wood, Pro Se, Inmate #504107, Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, Ohio 44044
Assistant Medina Prosecuting Attorney Mathew A. Kern

#### APPENDIX-B

#### WORKS CITED

Anderson, Douglas M. <u>Dorland's Illustrated Medical Dictionary.</u> 29<sup>th</sup> Edition. Philadelphia: W.B. Saunders Company. A Harcourt Health Sciences Company, 2000.

Asimov, Issac. The Complete Stories, Vol. I. New York: Broadway Books, 2001.

Cervantes, Miguel. <u>Don Quixote</u>. Translated by TDM Lathrop. Signet Classics, Penguin Group U.S.A., 2011.

Covey, Stephen R. The 7 Habits of Highly Effective People. n.d.

Fetzer, Scott. The World Book Encyclopedia. B Volume 2. Chicago: A Scott Fetzer Company, 2016.

Fetzer, Scott. The World Book Encyclopedia. L Volume 19. Chicago: A Scott Fetzer Company, 2016.

Fetzer, Scott. The World Book Encyclopedia. T Volume 19. Chicago: A Scott Fetzer Company, 2016.

Frank, Anne. Anne Frank, The Diary of a Young Girl. Garden City: Doubleday & Company, Inc., 1952. Released by Otto H. Frank

Garner, Bryan A., Editor in Chief. Black's Law Dictionary. 10th Edition. Thomson Reuters, 2014.

Goleman, Daniel, Ph.D. Emotional Intelligence: Why it matters more than IQ. 1995.

Hagerty, Barbara Bradley. No Way Out. The Atlantic Monthly, January/February 2018.

Hartley, Gregory and Karnich, Maryann. <u>Body Language Handbook: How to Read Everyone's Hidden Thoughts & Intentions.</u> Pompton Plains: Career Press, Inc., 2009.

Pickett, Joseph P., Executive Editor. Webster's New College Dictionary. Third Edition. Boston, MA: Houghton, Mifflin, Harcourt, 2008.

Riddle, A.G. The Atlantis Plague - Book One. A.G. Riddle, 2014.

Riddle, A.G. The Atlantis World, Book Three. Riddle, A.G., 2015.

Rothenberg, Robert E. <u>The Plain Language Law Dictionary.</u> 2<sup>nd</sup> Edition. New York: Signet. Peguin Books, 1996.