IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

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| In re DANIEL MASTERSON,<br><br>on Habeas Corpus. | B_____<br><br>Related to People v. Masterson, B333069<br><br>Los Angeles Co. Superior Ct. No. BA487932 |

**PETITION FOR WRIT OF HABEAS CORPUS**

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From the Judgment of the Los Angeles Superior Court
Hon. Charlaine Olmedo, Judge Presiding

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TOPICAL INDEX

LIST OF EXHIBITS

| EXH. | DATE | DESCRIPTION | VOL. | PAGE |
|---|---|---|---|---|
| 17 | 07/29/2004 | Demand Letter and Draft Complaint | 1 | 92 |
| 18 | 12/01/2004 | Michael Bennitt Knowledge Report | 1 | 98 |
| 19 | 05/18/2006 | 'That '70s Show' Release Dates | 1 | 105 |
| 20 | 11/08/2016 | C.B. and Remini Tweet | 1 | 106 |
| 21 | 12/22/2016 | Remini screenshot to Det. Reyes | 1 | 107 |
| 22 | 12/23/2016 | Transcript of Remini-Myape telephone call | 1 | 109 |
| 23 | 01/03/2017 | Transcript of Meeting with Remini and Dets. Myape and Vargas | 1 | 128 |
| 24 | 01/26/2017 | Transcript of J.B. Interview by Dets. Myape and Viegas | 2 | 206 |
| 25 | 01/27/2017 | Transcript of N.T. Interview by Dets. Myape and Viegas | 3 | 444 |
| 26 | 04/24/2017 | Transcript of J.B. Interview with DDA Mueller, Leah Remini, Det. Vargas | 4 | 575 |
| 27 | 05/28/2017 | LAPD Report of Leah Remini and Mike Rinder Meeting with DDA Mueller | 4 | 820 |
| 28 | 09/12/2018 | Compendium of Text Messages re: TRO | 4 | 821 |
| 29 | 08/12/2019 | Andrew Brettler Letter | 4 | 827 |
| 30 | 08/15/2019 | Transcript of Tony Ortega Blog | 4 | 832 |
| 31 | 02/28/2020 | Excerpts of Allegations in the First Amended Complaint 19STCV29458 | 4 | 835 |

TABLE OF AUTHORITIES

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| | |
|---|---|
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**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Daniel Masterson through his attorney Eric Multhaup petitions for a writ of habeas corpus to vacate his two convictions for rape and the accompanying judgment of 30 years to life. Petitioner Masterson is being held in custody by the Warden of the California Men's Colony in San Luis Obispo, California, in violation of his state and federal constitutional rights, and in violation of his statutory rights under the laws of the State of California. By this verified petition, petitioner alleges as follows.

INTRODUCTION

This habeas corpus petition contains 11 claims, significantly more than the number of claims generated in the great majority of criminal cases, including many other serious cases with life sentences like this one.

Most of these numerous claims are attributable to an unexpected and unreasonable failure of trial counsel to present any of the mountain of exculpatory evidence that had been amassed by predecessor counsel. This breakdown occurred as follows. As of May 31, 2022, four months before trial, attorney Shawn Holley was petitioner's trial counsel of choice, with attorney Philip Cohen assisting her. In August 2022, attorney Cohen was thrust into the role of lead counsel when the court denied a continuance request by Holley due to her conflicting obligations in another case and she effectively withdrew.

Unbeknownst to petitioner at the time that Cohen became lead counsel, Cohen had a longstanding aversion to presenting affirmative defense evidence in the cases he tried. By all accounts (including his own), Cohen had a settled practice of cross-examining prosecution witnesses based on inconsistencies and implausibilities in their statements and testimony; making a personal assessment of whether he had established reasonable doubt through cross-examination; and if so, resting without presenting defense evidence.

Cohen adhered to that practice in this case, but did so without engaging in the due diligence necessary to make a reasoned choice of trial strategy. He personally spoke to only two of the more than 20 potential witnesses who had been strongly recommended by co-counsel Karen Goldstein and investigator Lynda Larsen. He wrote off the great majority of them without

any personal contact, notwithstanding their manifestly exculpatory prior statements to the police and to investigators.

This failure of due diligence violated the well-settled principle of Sixth Amendment case law that an attorney must interview potential defense witnesses as a necessary foundation for making a reasoned decision about trial strategy. See Exhibit 54, Declaration of Jack Earley (6 EX 1158)[1], and the case law contained therein, including Lord v. Wood (9th Cir. 1999) 184 F.3d 1083.[2]

The following summary conveys the extraordinarily exculpatory import of the witnesses who were available. As to complaining witness J.B., she told two of her female friends in

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[1] The exhibits, filed under separate cover titled "Exhibits in Support of Petition for Writ of Habeas Corpus" ("EX") are consecutively paginated, and are cited herein by volume and page number (e.g., "6 EX 1158" refers to Volume 6 of the Exhibits to Petition, page 1158).

[2] "We would nevertheless be inclined to defer to counsel's judgment if they had made the decision not to present the three witnesses after interviewing them in person. Few decisions a lawyer makes draw so heavily on professional judgment as whether or not to proffer a witness at trial. A witness's testimony consists not only of the words he speaks or the story he tells, but of his demeanor and reputation. A witness who appears shifty or biased and testifies to X may persuade the jury that not-X is true, and along the way cast doubt on every other piece of evidence proffered by the lawyer who puts him on the stand. But counsel cannot make such judgments about a witness without looking him in the eye and hearing him tell his story." 184 F.3d at 1095 (emphasis supplied).

the weeks and months after April 25, 2003, that her sexual relations with petitioner were "the best sex she had ever had" (Paige Dorian) and "one of her best sexual experiences" (Lynsey Bartilson). JB also acknowledged her sexual relations with petitioner to other friends without any mention of coercion or rape (Ben Shulman and Brie Shaffer).

In addition, on the evening in question,[3] there were two men who also spent the night at petitioner's residence, and who overheard J.B. and petitioner engaging in loud, enthusiastic and prolonged sexual relations (Luke Watson and Max Gerson).

As to N.T., her close friend Michele Miskovich gave a statement to a defense investigator in which she reported that N.T. had described her sexual relations with petitioner in a light-hearted and favorable manner. In addition, there were multiple witnesses who had reported that petitioner had an ongoing relationship with N.T. for some weeks, not merely the one occasion for which she claimed rape. By any standard, that was dynamite defense evidence.

Finally, there were expert witnesses who had been prepared and interviewed by co-counsel regarding helpful psychological and pharmacological testimony about memory

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[3] The events surrounding the incident occurred during the evening of April 24, and the sexual activity occurred in early morning hours of April 25. For simplicity's sake, the petition uses the date "April 25" to include both the events leading up to and the sexual activity itself.

formation and recollection and the effects of alcohol and drugs on memory.

All of these witnesses had been subpoenaed by investigator Larsen, but none were called. However, even without any defense evidence, the first jury went to the brink of acquittal, but hung with the vote in favor of acquittal on all three counts.

The legal landscape changed dramatically for the retrial. The prosecution, recognizing that the complaining witnesses' testimony was by itself underwhelming, announced its intent to present a significantly more aggressive case.

The primary change was to prominently portray the Church of Scientology, of which petitioner was a member, as a villainous force that had discouraged the complaining witnesses from reporting their allegations of rape to the police in 2003, and that was actively harassing the complaining witnesses in retaliation for making their complaints in 2017.[4] To this end, the

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[4] The actual tenets and practices of Scientology are not well known to the public at large. Judge O'Scannlain summarized them in Headley v. Church of Scientology (9th Cir. 2012) 687 F.3d 1173, 1174:

> Scientology teaches that man is an immortal spiritual being that, over time, becomes distressed as his mind experiences moments of pain or lowered consciousness. Scientology maintains, however, that man can overcome that distress – he can become "clear" – by using methods developed by Scientology founder L. Ron Hubbard. Scientology aims to disseminate Hubbard's teaching to "clear the planet" – that is, to help enough people to overcome spiritual

prosecution persuaded the court to reverse its prior ruling that excluded evidence about Scientology doctrine and practice, and instead to permit testimony from an anti-Scientologist that Scientology doctrine purportedly authorized, if not demanded, the harassment and bullying of the complaining witnesses. This evidence provided the foundation for the climax of the prosecution's closing argument, a Jeremiad against both petitioner and Scientology.[5]

Notwithstanding the prosecution's more aggressive approach, defense counsel announced that he was going to retry the case exactly as he had conducted the first trial. That decision was again made without the exercise of due diligence regarding the exculpatory value of the numerous available witnesses. For the retrial, counsel interviewed no additional witnesses, had no witnesses under subpoena, and presented no evidence. This was deficient performance under the standard of Strickland v. Washington (1984) 466 U.S. 668.

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> distress to free the planet of crime, war, and irrationality.

[5] "They were raped. They were punished for it. And they were retaliated against by their Church. As I mentioned, the Scientology law told them there is no justice for them. You have an opportunity to show these victims that there is. You have an opportunity to show these victims that there is justice. It does exist. There were no consequences for Mr. Masterson by this internal justice system from the Church. You have the opportunity to show Mr. Masterson that there are consequences for raping. They do exist." 34 RT 3411.

Not surprisingly, petitioner was convicted on two counts, and one count was mistried and dismissed. The two convictions are attributable to (1) the prosecution's more aggressive evidentiary presentation that focused on Scientology; (2) the complaining witnesses' inevitably enhanced capacity to parry Cohen's cross-examination at the second trial; and (3) counsel's failure to present any independent evidence to impeach the complaining witnesses or to develop any of the complementary avenues of defense that predecessor counsel provided to him. In sum, the jury saw only the tip of the iceberg of available defense evidence in the form of the complaining witnesses' inconsistent statements while the wealth of directly exculpatory evidence went unused for no viable tactical reason.

Counsel for petitioner recognizes that this Court might be initially skeptical that such a debacle could occur in a high profile case in which petitioner retained experienced attorneys. The debacle did occur through no fault of petitioner, who implored counsel to present at least a minimal modicum of defense evidence, but counsel refused. This petition contains eight separate ineffective assistance claims relating to a broad array of defense evidence that was not adequately investigated and/or presented. When viewed cumulatively, the prejudice from these multiple instances of deficient performance demonstrates that petitioner's convictions were a major miscarriage of justice.

The habeas corpus claims set forth in this petition are organized into four categories: claims relating to Count 1

(complaining witness J.B.); claims relevant to Count 2 (complaining witness N.T.); claims relating equally to both counts; and a claim of judicial bias.

## STATEMENT OF FACTS

The Statements of Facts in the Appellant's Opening Brief and in the Respondent's Brief reflect the evidence and events presented at the trial. This Statement of Facts contains a starkly different account of what occurred during the 20-year period from 2003 to 2023, an account that incorporates the extensive exculpatory evidence that was available for petitioner's defense. For the reader's convenience, this Statement of Facts is presented in narrative form and in chronological order. The declarations, transcripts and other documents that support these facts are cited in the individual claims and are attached as exhibits.

### 1. The background of petitioner and the complaining witnesses.

At the time of the incidents giving rise to the charges, petitioner was in his mid-20's and a successful television actor with excellent career prospects. From 1996 to mid-2002, he was in a committed relationship with and lived with C.B.,[6] the complaining witness in Count 3, on which the jury failed to reach a verdict. Between mid-2002 and mid-2004, he was single, dated

[6] Petitioner refers to the complaining witnesses as "C.B.," "N.T.," and "J.B.," following the convention used in the appeal briefing.

various women, including J.B., a 29-year-old woman who had wealthy parents but no visible means of support; and N.T., a 23-year-old TV actress. All were members of the Church of Scientology (referred to as "COS" in this petition). In mid-2004, petitioner met Bijou Phillips; courted and married her; had a daughter together; and lived monogamously with her until he was convicted and remanded.

2. Petitioner's September 2002 sexual relations with J.B.

In September 2002, petitioner had sexual relations with J.B. at his home. There ensued some ill feelings among J.B. and her friends because (1) she made an unfounded pregnancy claim shortly after the incident; and (2) she had gotten herself involved with petitioner in the immediate aftermath of his breakup with C.B. Brie Shaffer, petitioner's executive assistant and friend of J.B. at the time, was particularly vocal in her criticisms of J.B. for having sexual relations with petitioner, and then stirring up drama among their friends. J.B. characterized this sexual activity as consensual in her first two interviews with the police and with numerous friends, but by the time of trial, 20 years later, she claimed it had been a brutal rape.

3. J.B.'s allegation of rape on April 25, 2003.

J.B. has given numerous conflicting versions of what happened on April 25, 2003. See AOB, pp. 29-41. Here is her trial version. On April 24, 2003, a group that included petitioner, J.B., and others attended a birthday party for a mutual friend. Later

that evening, petitioner hosted an informal after party at his home. J.B. was given a ride to petitioner's home by Jenni Weinman, petitioner's publicist.

At the after party, J.B. had a drink and got into petitioner's Jacuzzi. She stayed in for a considerable period of time and then began to feel uncomfortable and woozy. She had Luke Watson, a friend of both her and petitioner, help her out of the Jacuzzi, where she had symptoms that included nausea, lightheadedness, blurred vision, and weakness. At that point, petitioner helped J.B. up to his bathroom; they showered together; and petitioner forced her to have sex.

4. The evidence refuting J.B.'s claim of rape, but not presented to the jury.[7]

J.B.'s conduct and statements before, during and after the April 25, 2003 incident refute her claim of rape, but none of that exculpatory evidence was presented to the jury.

J.B. confided to Jenni Weinman en route to petitioner's home that her first sexual experience with petitioner was "the best sex I have ever had."

Next, at the time of the sexual activity, there were two other people spending the night at petitioner's residence, Max Gerson, petitioner's longstanding housemate, and Luke Watson, petitioner's longstanding friend. Both heard petitioner and J.B. engaging in loud, enthusiastic, and prolonged sexual activity.

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[7] See Claim I, infra.

Both Max Gerson and Luke Watson encountered J.B. the following morning. Both found her lounging amiably on petitioner's deck, smoking a cigarette and dressed in one of petitioner's bathrobes.

Finally, J.B. subsequently spoke to several friends after the incident and repeatedly described the encounter in terms incompatible with her trial claim of forcible rape.

The first person she spoke to was Ben Shulman, a longstanding friend of the B. family, who periodically did home improvement projects commissioned by J.B.'s father. When she returned to the B. residence during the day of April 25, she encountered Ben Shulman who was there working. They chatted, and J.B. said that she had spent the night with petitioner. Ben Shulman expressed concern over this because of the drama that had followed her first sexual encounter with petitioner. J.B. responded that her only concern was that Brie Shaffer would be angry with her as she had been after the September 2002 incident. J.B. said nothing about rape of any kind.

In June 2003, J.B. was in New York working on a film project with Brie Shaffer. At one point, they had a personal conversation, and Brie Shaffer asked J.B. what had happened with petitioner on April 25. According to Brie Shaffer, J.B. "tried to justify her behavior at Danny's house on April 24, '03, by saying that 'the jacuzzi made [her] really drunk', that she really hadn't been drinking heavily, but there was some physical

reaction to the jacuzzi and the alcohol." J.B. made no reference to rape or forcible sex.

In July 2003, J.B. visited Paige Dorian and Lisa Marie Presley in New Hampshire. J.B. told them that her sexual activity with petitioner on April 25 was "the best sex she had ever had," and gave a graphic description of what made it so good. 8 CT 2316.

In the summer of 2003, J.B. told her close friend Lynsey Bartilson that her sexual relations with petitioner were "one of her best sexual experiences." All of these witnesses were subpoenaed for the first trial by investigator Lynda Larsen, but attorney Cohen neither called any of them nor cross-examined J.B. about her statements to them.

5. The COS follow-up to J.B.'s report about the April 25 incident.

J.B. filed a written report of the incident with the COS Ethics Officer in December 2003, and claimed that she was intoxicated and pressured at the time of the sexual activity on April 25, 2003. The Ethics Officer initiated an inquiry in accordance with COS policy that carried into 2004. J.B. actively participated in it, and when she was unsatisfied with some aspect of the inquiry, she appealed to higher COS authority. On January 13, 2004, she wrote a letter to the International Justice Chief ("IJC"), who is the Church officer responsible for overseeing the application of Scientology ethical tenets to staff and

parishioners. She requested that the IJC convene a special board of inquiry to address her complaint.

In April 2004, petitioner and J.B. arranged for a mediation of their respective positions by a third party selected by her father. When that did not yield a resolution, J.B. wrote again to the IJC to inform him per COS policy that she intended to sue petitioner in civil court for damages. She also indicated that she was planning to file a complaint with the police. The IJC replied in writing that she had fulfilled her duty to notify COS of her intent to sue petitioner.[8]

6. J.B.'s unsuccessful complaint to the LAPD in June 2004 that petitioner had raped her.

J.B. made a complaint to the LAPD on June 6, 2004, that petitioner had date-raped her in April 2003. There was no mention of a gun. Det. Deborah Myers interviewed five people who were identified by J.B. as having knowledge relevant to the incident.[9] Det. Myers forwarded a report to the District Attorney who, based on the witnesses' statements, declined to prosecute.

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[8] All of J.B.'s actual conduct is inconsistent with her trial testimony that COS staff continually attempted to repress her efforts to have her report investigated and addressed via the normal COS channels.

[9] The witnesses were Paige Dorian, Brie Shaffer, Ben Shulman, Luke Watson, and Jenni Weinman, all of whom had direct knowledge of some exculpatory information.

7. J.B.'s successful settlement of a threatened civil suit against petitioner for $400,000 in September 2004.

The following month, J.B. retained a plaintiff's attorney to threaten to sue petitioner civilly for rape unless petitioner made a sufficient financial settlement to procure her forbearance. On July 29, 2004, J.B.'s attorney sent petitioner a demand letter and a draft civil complaint. At that time, petitioner was under contract for the very successful television series "That '70s Show." Petitioner retained an entertainment law attorney who strongly advised petitioner to make a settlement to avoid jeopardizing his multi-million-dollar contract.

The two attorneys convened a mediation, and on September 20, 2004, petitioner settled the threatened lawsuit for a $400,000 payment in exchange for, inter alia, a non-disclosure agreement by J.B. The transaction was viewed as business as usual in the entertainment industry by the experienced attorneys involved.

8. J.B.'s swindle of Michael Bennitt, 2002-2004.

During the same period of time that J.B. was embroiled with petitioner regarding the April 25, 2003 incident, J.B. was swindling a fellow Scientologist in his 30s named Michael Bennitt out of tens of thousands of dollars in cash and expensive gifts. Bennitt had met J.B. at a COS function, had fallen for her, and had accepted her sad (but false) story that she had been mistreated by her parents, and was the victim of other misfortunes of life, including bouts with leukemia and various other physical ailments.

Bennitt lived in Chicago and was a financially successful market trader. He carried on a long distance relationship with J.B. for two years, during which time he gave her access to his bank account and unrestricted use of a car and cellphone. They visited occasionally during this extended period. J.B. successfully fended off any physical intimacy with the excuse that her Scientology Ethics Officer had told her that she needed time to complete certain counseling programs before entering into an intimate relationship.

After petitioner paid J.B. the first installment of the civil settlement in fall 2004, J.B. no longer needed Bennitt's money, and she cut him loose. Bennitt realized that he had been duped, and that J.B. had been living a double life – one as his wounded platonic girlfriend and the other as an irresponsible party girl with indiscriminate sexual interests. He reported this experience to a Scientology Ethics Officer and expressed a negative opinion about J.B.'s character for truthfulness. None of this was presented to the jury in any form.[10]

9. N.T.'s allegation of rape in late 2003 and the evidence refuting it.

In late 2003, N.T. accepted an invitation to go to petitioner's house. She was actively looking for romance. The two had sexual relations, which N.T. described at the time in terms ranging from light-hearted and entertaining to disappointing in that petitioner had not called her afterward. In

[10] See Claim I-C, infra.

none of her conversations with family and friends did she suggest a forcible rape. Several witnesses observed that petitioner had a relationship with N.T. for some weeks. Thirteen years later, she claimed that there had been only one instance of sexual activity, and that it had been forcible rape.

10. Petitioner's exemplary life, 2004-present.

In September 2004, petitioner met Bijou Phillips; married her; had a daughter; and has led a monogamous life ever since. Petitioner maintained his career in the entertainment field, and in addition engaged continually in philanthropic efforts, particularly with financial assistance for medically needy first responders in New York where he grew up. Notwithstanding the 2023 convictions, the outpouring of support for petitioner at the time of sentencing from scores of people of all walks of life attests that petitioner has always led an upstanding and socially productive life.

11. J.B.'s long-running landlord scam, 2011-2016.

During the extended period that petitioner was leading an upstanding life, J.B. chose a very different path. By 2011, J.B. had married a third husband, and the two launched a long-running and occasionally successful scam in which they would rent an upmarket property in LA; make exaggerated or entirely unfounded complaints to the landlord and to the Los Angeles Housing District about purportedly dangerous or defective conditions; stop paying rent; and eventually sue the landlord for

damages of various kinds, with the hope of obtaining an insurance settlement.

Some insurance companies paid off, but some of the landlords fought back and obtained judgments against J.B. for non-payment of rent. When this source of income petered out, she turned her attention to petitioner and COS as alternative deep pockets. Needless to say, the defrauded landlords formed very negative opinions of J.B.'s character for truth and veracity. See Claim I-C, infra.

12. N.T.'s self-description as an artist on social media.

As to N.T., her acting career concluded in 2003. Her last credit was for appearing in an episode of "Dead Zone" in 2003. She did not have a public presence from 2003-2016, but did hold herself out as an artist on social media.

13. The 2016 rape allegations orchestrated in conjunction with anti-Scientologist Leah Remini.

At some point in 2016, C.B., J.B., and N.T. began communicating with each other about their sexual experiences with petitioner. The content of these communications is unknown due to the court's ruling that denied the defense access to their social media discussions about petitioner. See AOB, Argument IV.

At the same time, in November 2016, the first episode of an anti-Scientology television series, "Leah Remini: Scientology & The Aftermath," was aired. The series was developed by Leah

Remini, a former Scientologist and actress who parted ways from the COS in 2013, and became an active anti-Scientologist. The complaining witnesses learned of the program and contacted Remini. Remini became the complaining witnesses' spokesperson, advocate, and liaison with the prosecution team.

At Remini's urging, they contacted the LAPD in December 2016. Det. Myape, the detective assigned to the case, spoke to Remini before interviewing any of the complaining witnesses. Det. Myape told Remini, "You're vital to this investigation"; asserted that she wanted to "shake this group down"; and characterized Scientology as an "abomination." Det. Myape proposed that she and Remini meet at a place where "you and I can like hash it out and figure out strategies."

There ensued multiple meetings and interviews involving the prosecution and the complaining witnesses. Remini acted as advocate for the complaining witnesses, and conveyed her views that COS was a nefarious and criminal entity. See Claim IV, infra. At the same time, Remini had a major financial stake in fomenting the police investigation and prosecution of petitioner, because her television series would attain increased credibility and profitability from the fact that the LAPD and District Attorney were investigating the claims.

14. The bias in the law enforcement investigation resulting from the prosecution's excessive entanglement with Leah Remini.

The LAPD investigation was compromised in many respects by the entanglement with Remini. Petitioner's first

attorney, Tom Mesereau, had directly informed Det. Vargas on April 19, 2017, that Remini had previously exploited the LAPD to further her career in 2013 when she began her public anti-Scientology activities, and that she currently had a professional and financial stake fomenting the LAPD's investigation of the rape allegations.

That warning went unheeded. Five days later on April 24, 2017, DDA Mueller and Det. Vargas conducted an interview of J.B. at which Remini appeared as J.B.'s support person. Remini took charge of the interview, insisted that law enforcement publicly declare their belief that J.B. was raped, and then intervened to answer any questions that related to J.B.'s credibility.

15. The complaining witnesses' civil suit against petitioner in August 2019.

On August 22, 2019, the three complaining witnesses filed a joint civil lawsuit for damages that alleged various incidents of harassment by the COS and/or petitioner in response to their 2017 accusations of rape. The civil complaint also set forth the rape allegations in graphic detail, apparently in the hope of amending the complaint to add causes of action for rape upon petitioner's conviction.[11] All three complaining witnesses testified at trial that their primary if not sole reason for filing the

[11] That is exactly what the complaining witnesses did following petitioner's convictions and the reopening of a one-year window to file otherwise time-barred civil causes of action for rape. See Appellant's Opening Brief, Argument II; and Claim III, infra.

lawsuit was to stop the harassment that the LAPD had been unable to quell.

In fact, the lawsuit was filed as a tactical maneuver co-engineered by Remini and the complaining witnesses' lawyer to provide legal cover for A&E to air the final episode of Remini's television series that focused on the allegations against petitioner. On August 26, the final episode aired, resulting in a tsunami of publicity for the complaining witnesses and a seven-figure financial windfall for Remini. As anti-Scientology blogger Tony Ortega succinctly put it, "[y]esterday's lawsuit filed by the accusers no doubt gives A&E some legal room to finally put their stories on the air." The jury heard nothing to rebut the complaining witnesses' false testimony that the civil suit was filed solely to end their suffering as victims of continuing harassment by the COS.[12]

16. The District Attorney's decision to file charges in the midst of a highly partisan election campaign.

Meanwhile, the decision whether to prosecute remained pending for two and a half years through 2019. In December 2019, Remini launched a public diatribe against then incumbent District Attorney Jackie Lacey for failing to prosecute petitioner. This occurred during the run-up to the hotly contested District Attorney primary election in March 2020. Remini and several anti-Scientology bloggers proclaimed that petitioner would never

[12] See Claim V, infra.

be charged unless George Gascón was elected District Attorney. During the campaign, challenger Gascón made numerous references to Lacey's failure to charge petitioner and other entertainment figures being investigated for sexual misconduct. By June, Gascón was surging in the polls, and on June 17, 2020, Lacey personally announced to the public that petitioner had been arrested and charged.

17. Petitioner's development of very strong exculpatory evidence.

Petitioner had retained attorneys Tom Mesereau and Sharon Applebaum, both experienced southern California criminal defense attorneys. The case proceeded through preliminary hearing in May 2021 and toward trial in 2022. During that time, defense counsel conducted an extensive investigation and developed an extraordinary amount of exculpatory evidence as to all of the charges.

18. The change of counsel prior to the first trial and the failure to present any exculpatory evidence.

On May 31, 2022, petitioner designated attorneys Shawn Holley and Philip Cohen as his trial counsel. Attorneys Mesereau and Applebaum withdrew. 11 ART (8/23/24) 2718. All counsel agreed to a trial date of October 11, 2022. Petitioner expected Shawn Holley, a high profile and charismatic trial attorney, to be lead counsel.

In late July, attorney Holley filed a motion to continue the trial due to Holley's involvement in the ongoing arbitration on

behalf of Dodgers' pitcher Trevor Bauer. That motion was summarily denied on August 12, 2022. Holley bowed out and Cohen became sole lead counsel.

There followed a flurry of activity in which investigator Lynda Larsen and assisting counsel Karen Goldstein organized and presented the previously accumulated exculpatory evidence to attorney Cohen for use at the trial.

That effort went nowhere. Cohen made it clear to all concerned that he rarely if ever put on any affirmative defense evidence. Rather, he explained that his standard practice was to cross-examine the prosecution witnesses and make his personal assessment of whether he had persuaded the jurors of reasonable doubt.

Notwithstanding Goldstein and Larsen's efforts, Cohen did not speak to <u>any</u> prospective defense witnesses prior to the beginning of trial and the filing of witness lists. During voir dire, Cohen spoke briefly with two potential witnesses at the behest of Goldstein and Larsen. He conducted no other investigation.

Cohen presented no witnesses at the trial, and the case was submitted to the jury on November 15 without any affirmative defense. On November 30, after numerous jury questions, the jury declared a deadlock on all three counts, with the last vote heavily in favor of acquittal.[13] In sum, the credibility issues carried petitioner to the brink of acquittal, and he would have

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[13] Count 1 (J.B.), 10-2 not guilty; Count 2 (N.T.), 8-4 not guilty; and Count 3 (C.B.), 7-5 not guilty.

very likely obtained an acquittal but for counsel's failure to exercise due diligence and make an informed decision whether to present an affirmative defense. That should have provided counsel with a renewed incentive to dig into the trove of exculpatory evidence and prepare an affirmative defense for the retrial. However, counsel announced in early 2023 that he was going to conduct the retrial exactly as he had conducted the first trial.

19. Counsel's failure to present any exculpatory evidence at the retrial.

The case was set for retrial in April 2023. The prosecution correctly recognized that the testimony of the complaining witnesses had been viewed as anemic at best by the first jury, and responded by adopting a plan to bolster their credibility with three types of new evidence: opinion testimony from an anti-Scientologist that Scientology doctrine discouraged and punished Scientology members for reporting crimes by other Scientologists to the police; testimony from an LAPD criminalist that raised the possibility that petitioner had roofied the complaining witnesses; and testimony from a different Evidence Code section 1108 witness than the one who had bombed so badly at the first trial. See AOB, pp. 50-51.

Notwithstanding the prosecution's clear intent to present a more aggressive case, and notwithstanding the efforts of petitioner and others who implored Cohen to present a defense case, Cohen did not interview any potential defense witnesses

prior to the retrial; did not have any witnesses under subpoena; and did not present any defense.[14]

On May 31, 2023, the jury returned verdicts of guilty as to J.B. and N.T. The jury hung as to the charge related to C.B.

## CLAIMS FOR RELIEF

### CLAIMS RELATING TO COUNT 1 (J.B.)

I. PETITIONER WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO PRESENT ANY OF AN UNPARALLELED TROVE OF EVIDENCE TO IMPEACH J.B.

A. Ineffective Assistance of Counsel ("IAC") for Failure to Present Testimony from Numerous Exculpatory Witnesses Regarding J.B.'s Conduct and Statements Before, During, and After the April 25, 2003 Incident that Impeach Her Claim of Forcible Rape.

1. The failure to present evidence that J.B. told both Jenni Weinman the woman who drove J.B. to petitioner's residence on April 24, 2003, and Vanessa Pool that her first sexual experience with petitioner was enjoyable, if not the best sex she had ever had.

At trial in 2023, J.B. testified that her first sexual activity with petitioner in September 2002 was rape. However, she had told a very different story to Jenni Weinman, the woman who drove her to petitioner's residence on the evening of April 24, 2003. Jenni Weinman was employed by petitioner, and was an acquaintance of J.B.'s. During the drive to petitioner's residence,

[14] See Claims I-A through F; Claims II-A through D; and Claims III through VII.

Jenni Weinman asked J.B. what was going on with her and petitioner. As Jenni Weinman reported to LAPD Det. Deborah Myers in June 2004, J.B. replied that petitioner "is the best sex I have ever had." Exhibit 12, Transcript of Jenni Weinman Interview (1 EX 0067). Jenni Weinman told Det. Myers that she was "kind of floored" by this revelation, because she and J.B. were not close friends. Jenni Weinman dropped J.B. off at petitioner's and left.

J.B. also told a different story to Vanessa Pool, a longstanding friend, during a conversation shortly after the 2002 incident. J.B. told Vanessa Pool that she and petitioner had gotten drunk and had kinky sex, including anal sex. J.B. laughed about it, and said she would not mind doing it again. Exhibit 53, Declaration of Vanessa Pool. (6 EX 1157).

2. The failure to present evidence that J.B.'s sexual encounter with petitioner was consensual from petitioner's housemate Max Gerson and from Luke Watson, both of whom were at petitioner's residence at the time of the incident.

Counsel failed to present testimony of the two young men who were present at petitioner's home on the evening of April 24, 2003, Luke Watson and Max Gerson. Both observed J.B. behaving inconsistently with her rape narrative over the course of the evening and into the next day.

Max Gerson was petitioner's longtime housemate from 1995 to 2004. Max Gerson was home on the evening of April 24, 2003. His bedroom was directly across from petitioner's bedroom.

During the night, he heard loud noises of sexual activity emanating from petitioner's bedroom, including the voice of a woman who sounded as though she was enthusiastically participating in sexual relations.

The following morning, Max Gerson left for work sometime after 9:30 a.m. On his way out, he saw J.B. lounging in petitioner's bathrobe and smoking, looking content.

On June 11, 2004, LAPD Det. Deborah Myers interviewed Luke Watson after J.B. had made a complaint of rape to the LAPD.

Luke Watson had been a friend of both petitioner and J.B. for several years as of April 25, 2003. On that night, he was at petitioner's residence, as was J.B. They talked amicably for a while, and then J.B. got in the Jacuzzi and spent a long time in it. She was topless and flirted with him some. As the other guests were leaving, Luke Watson told J.B. that she had been in the Jacuzzi for more than an hour, and that she should get out because petitioner had asked him to turn off the Jacuzzi jets. J.B. got out and commented to Luke Watson that she had a headache and was feeling nauseous.

Petitioner came down from his bedroom to see what was going on. Luke Watson went to a guest room to sleep and heard the shower running in petitioner's bathroom. Later, he was trying to sleep when he heard a woman's voice upstairs in petitioner's bedroom engaging in sexual activity, and she "seemed to be like having a good time." Exhibit 13, Transcript of Luke

Watson Interview, June 11, 2004 (1 EX 0073). Exhibit 59, Declaration of Luke Watson (6 EX 1182). He thought that it was not very smart for petitioner to have sex with J.B., because the previous time they did, there was a lot of drama afterward. The following morning, Luke Watson went out on the deck, and J.B. was "sitting out there just smoking a cigarette and just hanging out." Luke Watson gave her his opinion that she was behaving irresponsibly and would be viewed unfavorably by her friends. Luke Watson suggested that she not see petitioner until she "kind of straightened stuff out." Luke Watson did not see her again for several months. Id.

3. Failure to present evidence that J.B. described her sexual activity to Ben Shulman during the day of April 25, 2003, in a light-hearted manner.

Ben Shulman, a friend of both J.B. and petitioner, gave a statement to Det. Myers on June 17, 2004. Exhibit 15, Statement of Witness Ben Shulman, LAPD Follow-up Investigation (1 EX 0085). Ben Shulman had a longstanding friendship with the B. family, and his daughter attended the same school as J.B.'s daughter. On April 25, 2003, Ben Shulman was working on an outdoor construction project at the B. residence at the behest of J.B.'s father, Bill. At one point, J.B. returned home, and they conversed. J.B. told him that the previous evening she had slept

with petitioner, and that she was concerned that Brie Shaffer, petitioner's assistant, would be upset with her.[15]

Ben Shulman was taken aback by J.B.'s disclosure – "I can't believe you did that." In response, J.B. smiled and requested Ben Shulman's advice "on what she should do about Shaffer." In sum, the day after the incident, J.B. expressed concern about the potential social fallout from her having another sexual fling with petitioner, but made no complaint about the sexual activity itself.

4. The failure to present evidence of J.B.'s subsequent statements during the summer of 2003 that either flatly repudiated or were clearly inconsistent with her claim of forcible rape.

During the summer of 2003, J.B. had conversations with three friends on separate occasions regarding her sexual activities with petitioner. She told two of them that her sexual relations with petitioner were "the best she had ever had," and discussed her sexual activities with petitioner at length with a third woman but made no suggestion that it was anything other than consensual.

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[15] Brie Shaffer had been upset with J.B. for some time because of her disruptive behavior with petitioner and others, some of which was chronicled in a Knowledge Report of February 7, 2002, Exhibit 2 (1 EX 0011), and another that she submitted on April 25, 2003, Exhibit 6 (1 EX 0021). "A Knowledge Report" in Scientology lexicon is a report by a Church member that calls another member's unethical conduct to the attention of a Scientology Ethics Officer.

Witness Paige Dorian was the personal assistant to Lisa Marie Presley, a friend of J.B.'s and was acquainted with petitioner and his personal assistant. During the summer of 2003, Paige Dorian was working in New Hampshire. J.B. visited her and Lisa Marie there, and in the course of their conversations, J.B. told them that her two sexual encounters with petitioner had been the best sex she had ever had. Paige Dorian reported this conversation to Det. Myers in 2004, Exhibit 14, Transcript of Paige Dorian Interview (1 EX 0082), and has confirmed and expanded on that conversation in her declaration. Exhibit 48, Declaration of Paige Dorian (6 EX 1147).

Lynsey Bartilson became a close friend of J.B. after they met at a mutual friend's birthday party in the summer of 2003. At one point when they were exchanging confidences, J.B. told Lynsey Bartilson that her sexual activities with petitioner were "one of her best sexual experiences." Exhibit 49, Declaration of Lynsey Bartilson (6 EX 1150).

During the fall of 2003, Lynsey Bartilson developed an active dislike for petitioner because he warned her of J.B.'s toxic qualities, which offended her. In 2004 she parted company with J.B. due to J.B.'s dissolute lifestyle. She was never a friend of petitioner's.

In addition, J.B. had a candid conversation in June 2003 with Brie Shaffer about her sexual activity with petitioner on April 25, 2003. J.B. acknowledged to Brie Shaffer that she had sexual relations with petitioner on that evening but said nothing

about it being nonconsensual. Exhibit 11, Transcript of Interview of Brie Shaffer (1 EX 0060), Exhibit 60, Declaration of Brie Shaffer (6 EX 1183).

B. IAC for Failure to Impeach J.B.'s Trial Testimony with Her Own Writings Regarding Her Sexual Activities with Petitioner.

1. J.B.'s acknowledgement in her June 2003 "O/W write-up" that her sexual relations with petitioner on April 25, 2003, were consensual.

As of early April 2003, J.B. had been the subject of multiple Knowledge Reports written by other Scientologists regarding her improper conduct in violation of Scientology ethics and norms, including excessive drinking and neglecting her child. These reports were written by people close to her – her mother (Exhibit 3, Ruth B. Knowledge Report, 1 EX 0013) and her friends Paige Dorian (Exhibit 5, Paige Dorian Knowledge Report, 1 EX 0017), and Brie Shaffer (Exhibit 2, Brie Shaffer Knowledge Report, 1 EX 0011).

J.B.'s Ethics Officer, Julian Swartz, decided that J.B. needed to address the claims of misbehavior and arranged to meet with her in May 2003. The first stage of the procedure to address such a matter frequently entails the parishioner writing a candid account of their misbehavior, known in the Scientology lexicon as an "Overt/Withhold," or "O/W write-up."[16] In May 2003, he asked J.B. to prepare an O/W write-up regarding her

[16] The process of writing down one's misbehavior is viewed in Scientology practice as a therapeutic experience.

recent violations of the COS Ethics Codes. The result was a typewritten document with J.B.'s name at the top, the date of June 2003, and written in the format prescribed for this type of document. Exhibit 7, J.B. O/W write-up, June 2003 (1 EX 0023). The document contained her descriptions of numerous incidents in which she described such ethics violations as drinking to the point of black-out; engaging in inappropriate sexual activities; buying alcohol for an under-aged relative; and neglecting her parental responsibilities. Included among these incidents is the following account of her April 25, 2003, sexual activity with petitioner, which she described as consensual. She employed Scientology terminology throughout this report, and counsel for petitioner has provided a translation to colloquial English in parentheticals.

> O: [overt] I set a bad example as a clear and contributed to another engaging in non survival activities.
>
> T: [time] April 2[5]th around 3:00 am.
>
> P: [place] in Hollywood at Danny's house.
>
> F: [form] I went out with a group of friends, and we ended up at the end of the night at Danny's house. When I got there I poured a drink (Vodka and fruit punch). I was socializing with those there. (there were about 20 people there.) As I put my purse down on a chair, Danny slapped me in the rear. I gave him a dirty look and said "can you not!" Then I went about my comm cycle [conversation] with another. At one point Danny was originating some comm to me [catching up] and another about his trip he just

arrived back from. He was saying that in the last few weeks he hadn't had anything to drink or 2d activities [dating] with anyone he came across. This is actually a notable ethics change on his part. Immediately I realized I had poured a drink with him when I arrived. I was getting a drink and he came over asked what I was drinking and poured himself a drink. I felt like a bad influence. I did not validate his ethics change or comment [failed to support petitioner's positive efforts], I actually questioned the 2d part of his statement [the part about not dating] in disbelieve [sic].

Later that night, both of us having drank for an hour or more, I noticed his flow get more solid [flirtation], as it does when he is restimulated on the 2d [sexually attracted] in my experiences with him. I let him 8c-push [guide/assist] me in the Jacuzzi. He was undressing me etc. I got out of the jacuzzi after he and others left the tub, but now due to 2 drinks and an hour in the hot jacuzzi (I have extremely low blood pressure) I was ill beyond believe [sic] and could not really see. Luke was there with me. I curled up in a ball on the ground and waited for the intense illness to pass.

Then a minute later Danny came up to me I couldn't actually see him (only a little bit of a white robe) as my vision goes black when I overheat and my blood pressure gets low, so I asked Luke who was there. Danny answered and picked me off the floor. At this point I knew that this would likely lead into a 2D activity [sexual relations] between us. I knew I was drunk and he was too. I said no I am sick he said I will help you. At this point I was naked, and as he was carrying me away I thought it was a solution to the situation I was just in with Luke (he was attempting to touch me etc.) just before I got ill. I was not wanting to confront a long standing sit

[situation involving on and off flirting] between Luke and I and with Danny carrying me away it handled that.

I went upstairs and threw up with Danny's help. After Danny picked me off the floor and went to put me in the shower I knew I should get out of his room then. As I turned to get out of the shower as he was stepping in now undressed. I decided at that point the hell with it and I would have sex with him and enjoy it even though it was a big violation of my own 2d ethics level etc. [violation of her moral code] I had sex with him and was drunk and engaged in 2d irregularities with him [unconventional sex].

I blacked out at one point. And when I came to I suddenly lost my non confront [sobered up] and caved in. [felt guilty] He told me to wait right there (I was in his bed) and he went out of the room (I believe for a glass of water or s/g) I went and hid in his closet til I knew he came back in and was in bed for awhile. We did not use a condom. While having sex, he proposed we do this again as often and whenever I wanted and I should tell him. I agreed to this. This was not us mocking up a 2d etc. [visualizing and creating a longer-term relationship]

What I realize now is here he had just kept his ethics in for weeks on the 2d [stayed on the straight and narrow] and he had not been drinking and I just facilitated and contributed to his demise rather than validate and make it right.

E: [event] I drank, was promiscuous, and contributed to another's demise as well as setting a bad example. Exhibit 7 (1 EX 0031-0032) (emphasis supplied).

J.B.'s written account demonstrates that the April 25 incident was not forcible rape at all, but was a voluntary sexual

fling, perhaps ill-advised but entirely uncoerced. It was directly exculpatory as to the issue of consent to the sexual relations.

2. J.B.'s acknowledgement that she authored the June 2003 "O/W write-up."

J.B. denied authorship of the O/W write-up when Det. Vargas questioned her about it on July 22, 2020. She also denied authorship when cross-examined about it at the preliminary hearing in May 2021.

However, she had long ago acknowledged authorship of the O/W write-up in her January 13, 2004, formal letter to IJC. Exhibit 9 (1 EX 0038).

That letter includes the following passage – "I worked on my ethics cycle at AOLA in May and June and did an O/W write up." Exhibit 9 (1 EX 0039) (emphasis supplied). Trial counsel could have confronted her at trial with the O/W write-up; J.B. would likely have denied writing it as she did in her interview with Det. Vargas, and at the preliminary hearing; and counsel could have impeached her with her acknowledgement of authorship in the IJC letter.

3. J.B.'s description of her sexual activities with petitioner in a manner inconsistent with her subsequent claim of forcible rape.

In the January 13, 2004 IJC letter, J.B. described her April 25 sexual activity with petitioner in a manner that was inconsistent with a claim of forcible rape. She referred to a "rumor" circulating among her friends that she "was really drunk and passed out in his bed and that he had, being my friend, not

taken advantage of me." She firmly asserted that "[t]he truth is uncontested by both Danny and I that he and I had sex that night," but without any reference to it being forcible rape at all, much less forcible rape with a gun.

4. J.B.'s acknowledgement that she did not make a report of rape to her Ethics Officer immediately upon her return to California in May, 2003.

At trial, J.B. testified that immediately upon return from her family trip to Florida in early May 2003, she made a report of rape to her Ethics Officer, i.e., a nearly contemporaneous report. However, the chronology she reported in the January 13, 2004 IJC letter is very different:

- In May and June, J.B. "worked on [her] ethics cycle at AOLA … and did an O/W write up." [No mention of a rape.]
- In July, "Brie and I got in comm and she asked me if I had sex with Danny as she realized she never asked me. I said I had." [No mention of a rape.][17]
- "About two weeks later [late July or early August] I told my MAA [Ethics Officer] how and what went down with Danny and I, the state I was in the fact I did not want him to carry me to his bathroom/ bedroom, the promise he made not to do anything to me other than help me throw up, and the physical portions of which I was conscious for. I had a

[17] Brie Shaffer confirmed the July 2003 conversation with J.B. in her June 2004 interview with Det. Myers. See Claim I, supra.

bigger problem which was reporting it and the ensuing drama I would have to go thru." Exhibit 9 (1 EX 0039).

The chronology in J.B.'s January 2004 IJC letter repudiates her testimony that she had made a contemporaneous report, and instead states that she first told her Ethics Officer that the incident was nonconsensual due to alcohol in late July/early August, some three months after the incident, a not-so-contemporaneous report.

5. J.B.'s acknowledgement that she wrote the Knowledge Report dated December 2003 during November and December 2003.

At trial, J.B. testified that she had written three reports during her counseling with Ethics Officer Julian Swartz in May/June 2003. 25 RT 2105. The first report was a short written statement to Swartz in which she summarized "what I had experienced" and "what my feelings were." 25 RT 2105. The second report was an "O.W. write-up." 25 RT 2106.[18] The third report was a Knowledge Report. 25 RT 2106. The only Knowledge Report attributed to J.B. is the one dated December 2003. Exhibit 8, J.B. Knowledge Report (1 EX 0035).

J.B.'s testimony that she wrote the Knowledge Report in May/June 2003, nearly contemporaneous with the incident, was

[18] There is only one O/W write-up extant, the one dated June 2003, Exhibit 7 (1 EX 0023), which J.B. denied authorship of in her statement to Vargas and in her preliminary examination testimony, but which she acknowledged authoring in her January 13, 2004, IJC letter.

rebutted by her January 13, 2004, letter to the COS International Justice Chief:

> In November I went in session [counseling], this came up for me, and after being sent to ethics I wrote my report on Danny. That was in early December 2003. Since then this cycle has blown up and I could not imagine a worse scenario. Exhibit 9, IJC Letter Jan. 13, 2004 (1 EX 0039).

This also refutes her trial testimony that her Scientology Ethics Officer discouraged her from making a report back in May and then forced her to write it in conformity with his admonitions. The December 2003 report was all J.B.'s handiwork that in fact <u>was encouraged</u> by her Ethics Officer in November 2003, per her January 13, 2004 letter.

6. J.B.'s repeated use of the term "rape" and "rapist" in both her January 13, 2004 and her April 13, 2004 letters to the International Justice Chief.

J.B. testified that when she was writing the Knowledge Report, Swartz made it clear that she was not to "open up with or at any point use the word rape." 25 RT 2110. However, she wrote two letters to the IJC on January 13 and April 13, 2004. In the January 13 letter, she characterized her complaint as rape five times. Exhibit 9, J.B. Letter to IJC, Jan. 13, 2004 (1 EX 0038). In the April 13 letter, she informed the IJC that she intended to sue petitioner for damages arising from the April 25, 2003 incident. In that letter, she used the term "rape" or "raped" six

times and referred to petitioner as a "rapist." Exhibit 10, J.B. Letter to IJC, April 13, 2004 (1 EX 0043).

The letters flatly rebut J.B.'s testimony that she was prohibited by COS law from accusing another Scientologist of rape in COS communications. 25 RT 2069 ("we don't say that word" ["rape"]). She used the term multiple times with impunity in her official communications with the International Justice Chief.

### C. Failure to Present the Testimony of Character Witnesses Regarding J.B.'s Poor Reputation for Honesty and Veracity throughout Her Life.

Throughout her adult life, J.B. exploited numerous people by means of lies and deceit to obtain monetary benefits for herself, generally by falsely portraying herself as a victim of some external force. Not surprisingly, many of the victims of J.B.'s scams formed negative opinions of her character for truthfulness and veracity, and the presentation of their opinions to that effect would have had considerable impeachment impact. See Evidence Code section 786, subd. (e) ["character … honesty or veracity, or their opposites"].

Counsel for petitioner has selected three potential character witnesses as illustrative of the larger circle of people who also hold J.B.'s character for truthfulness in very low esteem.

#### 1. Marty Kovacevich.

From 2011 to 2016, J.B. and her third husband engaged in a series of frauds against a succession of Los Angeles landlords.

The two of them would rent a residence, sometimes under false pretenses; make numerous and contrived complaints of defective conditions to the Los Angeles Housing Authority; stop paying rent; and eventually sue the landlords. Sometimes the landlords' insurance companies made generous settlements, and sometimes the landlords fought back and won judgments of their own. By 2017, they had fleeced at least five landlords, all of whom hold an adverse opinion of J.B.'s credibility.[19]

One of them, Marty Kovacevich, fought back after dealing with J.B.'s false claims of defective residential conditions for a lengthy period. He had numerous encounters with her regarding fictitious claims of property defects, all dutifully investigated by the Los Angeles Housing Authority and found unsupported. When she eventually sued him, he counter-claimed, and after a drawn out legal battle, he won a judgment against her and husband. During the course of this protracted dispute, Mr. Kovacevich formed the opinion that J.B.'s character for veracity was terrible. Exhibit 39, Declaration of Marty Kovacevich (6 EX 1105).

2. Ruth Speidel.

Ruth Speidel, J.B.'s mother, was concerned about J.B.'s dissolute and irresponsible life as an adult single mother well before the April 25, 2003, incident with petitioner. See Ruth B. Knowledge Report, September 8, 2002, Exhibit 4 (1 EX 0015).

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[19] See Exhibit 63, Roster of J.B.'s landlord lawsuits (6 EX 1193).

Nonetheless, Ms. Speidel did her best to support J.B., largely for the sake of her granddaughter, Brittany, who was being seriously neglected by J.B.

Over the years, Ms. Speidel has maintained as much contact with Brittany as she could. J.B. severed her relationship with her mother in 2018 after her mother confronted her for making false statements about the April 25, 2003 incident with petitioner and about COS involvement after the incident. Ms. Speidel would have testified that she discussed the April 25 incident with J.B. many times over the years, and never once did J.B. claim that petitioner displayed a handgun. Ms. Speidel would have further testified that in her opinion, J.B.'s character for truthfulness was terrible. Declaration of Ruth Speidel, Exhibit 55 (6 EX 1163).

3. Michael Bennitt.

In 2002, J.B. was leading a dissolute life, neglecting her eight-year-old daughter, drinking too much, and living on and off with her parents. At one point in 2002, she was attending Scientology religious services in Clearwater, Florida, and met a fellow Scientologist named Michael Bennitt, who was a few years older and well-to-do. Bennitt became smitten with J.B. and wooed her. J.B. responded by feeding him a contrived tale of hardship and woe on several fronts, including medical and financial, and portraying herself as a hapless victim of circumstances. Bennitt was a successful market trader in Chicago, and for approximately two years they had a long-

distance relationship in which J.B. bilked him for tens of thousands of dollars in cash and gifts, as well as the use of a car and other amenities. J.B. avoided sexual relations with Bennitt by claiming that she was diligently working through Scientology counseling programs to improve her life and that she did not want to begin an intimate relationship with him until she attained a desired degree of character improvement.

This exploitive relationship continued until the fall of 2004 when J.B. settled her threatened lawsuit with petitioner and no longer needed Bennitt's financial assistance. She cut him loose. Bennitt woke up and realized that he had been scammed. He wrote a lengthy Knowledge Report in December 2004 in which he chronicled J.B.'s deceitful course of conduct and offered a scathing opinion of her character for dishonesty. The period of his involvement with J.B. overlapped with J.B.'s claim of rape by petitioner and her successful extraction of $400,000 from him. In sum, as a result of his two-and-one-half-year interaction with J.B., Bennitt formed the opinion that she had a poor character for truthfulness and veracity during the same time frame that she threatened petitioner with a career-stopping civil lawsuit and reaped a significant financial benefit. Exhibit 18, Michael Bennitt Knowledge Report (1 EX 0098).

D. Petitioner was Deprived of Due Process and a Fair Trial by Prosecutorial Misconduct in Presenting J.B.'s False Testimony that She was Bullied by the COS to Sign a Nondisclosure Agreement As Part of the 2004 Civil Settlement and by Ineffective Assistance of Counsel for Failure to Debunk the False Testimony.

In July 2004, a month after the District Attorney declined to prosecute J.B.'s claim of rape in April 2003, J.B. hired Daniel Noveck, a prominent plaintiff's attorney to draft a civil complaint against petitioner and threaten to file it unless petitioner made a suitable financial settlement. Exhibit 17, Demand Letter and Draft Complaint (1 EX 0092). Petitioner retained Marty Singer, an equally prominent entertainment attorney who strongly advised petitioner to make a settlement regardless of the merits of the accusation to avoid jeopardizing negotiations for an eight-figure television contract. J.B.'s attorney made a $2,000,000 demand; the parties engaged a mediator; and on September 20, 2004, the parties came to an agreement in which petitioner would pay J.B. $400,000 in return for a release of liability and a non-disclosure agreement ("NDA"). Petitioner successfully protected his thriving career, and J.B. walked away with $400,000. That is considered business as usual in the entertainment industry.

Thirteen years later, on January 26, 2017, J.B. was interviewed by Detectives Myape and Viegas, and she broached the 2004 mediation settlement, but described it in an altogether fabricated and self-serving manner. She claimed that she was

coerced into signing the settlement agreement by Scientology operatives who threatened to expel her from the Church if she refused. Exhibit 24, Transcript of J.B. Interview (2 EX 0390):

> [J.B.]: He then – (UI). I go down with my lawyer and meet with his lawyer, Marty Singer, on a Saturday in Marty Singer's offices. (UI) Marty Singer (UI) no witnesses no nobody.
>
> Me and my stupid attorney, who I hate now – he's dead[20] – this guy who turns out doesn't know anything about law – and left me alone for two hours when I met with Marty. And I was waiting. And we come back, and I had to sign an agreement with him, right, and bring that to Julian[21] on Saturday. (UI). 6:00 at night. Either come in with your agreement, right, signed, or pickup you're declared.[22] You're choice, right?
>
> Det. Reyes: Uh-huh.

J.B. contended that she "didn't expect money," and that she "didn't make a demand for money." Exhibit 24 (2 EX 0390). The detectives apparently accepted this statement at face value in

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[20] To paraphrase Mark Twain, J.B.'s report of Noveck's demise was greatly exaggerated. Noveck was very much alive when Det. Vargas called him on September 18, 2018, and Noveck "stated that the COS was not involved." Exhibit 33, LAPD Chronology 2017-2021, compiled by Det. Vargas (hereafter "LAPD Chrono") (5 EX 0957).

[21] Julian Swartz was J.B.'s Ethics Officer, whom she claimed delivered the threat to sign the NDA or be expelled.

[22] "Declared" is the Scientology term for "expelled."

spite of its inherent implausibility that while she never expected money or asked for money, petitioner paid her $400,000.

As noted above, Det. Vargas subsequently elicited from attorney Noveck in 2018 that there was no COS involvement in the threatened civil suit and settlement, and that petitioner was eager to settle the dispute for business reasons unrelated to the merits of J.B.'s accusation. Exhibit 33, LAPD Chrono (5 EX 0957).

In 2020, DDA Mueller called Marty Singer to testify at a criminal grand jury proceeding regarding the settlement, and Singer disclaimed any involvement by COS in the negotiations and settlement. 9 CT 2583-2585.

Notwithstanding the prosecution's knowledge that both attorneys had clearly stated that there was no COS involvement in the civil settlement and the NDA, the prosecution elected to make J.B.'s false claim of COS duress regarding the NDA an integral part of its case at both trials.

The prosecution knew from multiple sources that J.B.'s COS coercion scenario was a fiction. Det. Vargas had elicited from J.B.'s attorney Noveck that there was no COS involvement. DDA Mueller had elicited from Marty Singer at the grand jury proceeding that there was no COS involvement.

Det. Vargas called Noveck who confirmed that he negotiated the settlement that included the NDA but "stated the COS was not involved." Exhibit 33, LAPD Chrono (5 EX 0957) (emphasis supplied).

Det. Vargas summarized Noveck's description of the process as follows:

> He stated he drafted a letter advising Mr. Singer of the forthcoming civil lawsuit. Mr. Singer requested a meeting. During a subsequent meeting with Masterson and JD-1, who were placed in separate rooms, the parties involved reached an agreement. A civil suit was never filed by Noveck. Id.

Vargas further noted that according to Noveck, Masterson was concerned about a "moral clause" he had with the television production he was involved with at that time. He did not want to lose the lucrative eight-figure contract he then had. He was eager to settle and finalize the NDA. Ibid.

Moreover, DDA Mueller had been separately informed by petitioner's attorney Marty Singer that there had been no COS involvement in the civil settlement. DDA Mueller had called Singer as a witness at a grand jury proceeding in 2020, and Singer disclaimed any contact with anyone from COS in the course of the settlement proceedings. See People's Opposition to Third Party Lavely and Singer Professional Corporation Objection to Subpoena Duces Tecum, filed September 1, 2022, 9 CT 2583, 2585.

Thus, the prosecution was clearly informed that J.B.'s claim of coercion by the COS to sign the NDA was a fabrication. Nonetheless, the prosecutor elicited from her at both trials the false version of the events that closely tracked her January 17, 2017, statement to Det. Myape.

E. IAC for Failure to Investigate and Present Evidence that J.B. Had A Chronic Medical Condition that Explained the Cluster of Symptoms She Described At the Time of the April 25, 2003 Incident to Rebut the Prosecution's Argument that Petitioner Roofied Her.

1. J.B.'s initial attribution of her April 25 symptoms to her anemia/low blood pressure condition.

In J.B.'s statements to the police and in her testimony at both trials, she described symptoms that she experienced after being in petitioner's hot tub on April 25, 2003. She claimed she felt extremely weak, woozy, and out of it with blurred vision. She attributed these symptoms to either alcohol furnished by petitioner and/or to a roofie-type drug that petitioner put in her drink. This testimony cast petitioner in the unfavorable light of a Bill Cosby-like sexual predator. However, embedded in J.B.'s statements was an alternative explanation for the symptoms that did not involve petitioner at all. This explanation was contained in J.B.'s first written description of her April 25 sexual activities with petitioner.

The document titled O/W write-up and dated June 2003, Exhibit 7 (1 EX 0023), contains J.B.'s first description of her compromised condition after drinking alcohol and spending an hour in the Jacuzzi:

> I let him 8c-push me in the Jacuzzi. He was undressing me etc. I got out of the jacuzzi after he and others left the tub, but now due to 2 drinks and an hour in the hot jacuzzi (I have extremely low blood pressure) I was ill beyond believe [sic] and could not really see. Luke was there with me. I curled up in a

> ball on the ground and waited for the intense illness to pass. Then a minute later Danny came up to me I couldn't actually see him (only a little bit of a white robe) as my vision goes black when I overheat and my blood pressure gets low, so I asked Luke who was there. Danny answered and picked me off the floor. Exhibit 7, J.B. O/W write-up (1 EX 0031) (emphasis supplied).

2. J.B.'s confirmation of her low blood pressure/anemia condition in 2017.

In her July 22, 2020, police interview, J.B. confirmed that she had a longstanding low blood pressure condition, but then claimed that her low blood pressure symptoms had never been as severe as the symptoms she felt on the evening of April 24, 2003. Exhibit 32, Transcript of J.B. Interview by Det. Vargas, July 22, 2020 (5 EX 0904).

3. The trial testimony of the prosecution's toxicologist.

Jennifer Ferencz testified that she is a criminalist who works in the LAPD toxicology unit. 30 RT 2817. The prosecutor provided her with hypothetical facts that tracked J.B.'s testimony, and elicited the following:

> Q: Now based on that hypothetical, do you have an opinion whether the symptomatology in that – expressed by that person would be consistent or inconsistent with the alcohol alone?
>
> A: The hypothetical that you presented, that symptomatology is inconsistent with that amount of alcohol consumed.
>
> Q: And, again, what is your basis for that opinion?

A: Again, having received training on the effects of alcohol in the human body. 30 RT 2837-2838.

4. Facts regarding J.B.'s medical condition that accounted for all of her symptoms.

J.B. was diagnosed early in life with a chronic condition of iron deficiency anemia. There are multiple causes of iron deficiency, some can be treated with iron supplements. However, J.B. had a very intractable form of anemia that was caused by a metabolic inability to absorb the iron contained in iron-rich foods. See Exhibit 55, Declaration of Ruth Speidel (6 EX 1163).

This type of iron deficiency anemia results in symptoms that include: low blood pressure, vision blurring, physical weakness, mental confusion, and sensitivity to heat. Exhibit 62, Declaration of Dr. Daniel Buffington (6 EX 1190).

J.B.'s mother became aware of J.B.'s anemia condition early in her life when it was diagnosed by their family doctor. However, the problem was intractable, and J.B. suffered symptoms when she over-exerted, was over-heated, or drank alcohol. Ms. Speidel also noticed that J.B. had an additional symptom – that she bruised easily.

F. IAC for Failure to Impeach J.B. with the Inconsistent Statements in Her Civil Complaints Against Petitioner.

On February 28, 2020, the complaining witnesses filed a First Amended Complaint, 19 STCV29458. Paragraph 146 of the complaint alleges that while in petitioner's bedroom, "Jane Doe #1 attempted to make noise, but Masterson picked up a gun off of

his nightstand, pointed it at her, and told her to be quiet" (emphasis supplied). Exhibit 31, Excerpts of Allegations in the First Amended Complaint (4 EX 0835). This starkly conflicts with her trial testimony that petitioner was alarmed by someone banging on the bedroom door, took a gun from the nightstand drawer, and then dropped it back into the drawer as soon as he knew who was at the door. This display of the gun lasted mere "seconds."[23]

Paragraph 147 of the complaint alleges that during the evening of April 24, 2003, "Defendant Masterson held Jane Doe #1 down and anally assaulted her. Masterson only stopped when he heard a voice at the bedroom door and went to investigate." At neither trial did J.B. testify that she was anally assaulted during the April 25, 2003, incident. Rather, as set forth in detail in the Appellants Opening Brief at pp. 31-40, J.B.'s allegations regarding anal sex were strictly limited to the September 2002 encounter.

The First Amended Complaint eliminates any mention of anal contact during the September 2002 incident (Paragraphs 135-137) and transfers the entirety of the anal incident to April 25, 2003.

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[23] "At one point, he pulled out this gun from that drawer. When there was someone banging on the door, he grabbed for a gun. It was on the right side of the bed. I saw it. He seemed agitated, alarmed. His energy I thought, oh, my god. Whatever is a threat at the door. He then responds to the voice and drops it back in the drawer." 25 RT 2027.

Paragraph 148 of the complaint alleges that "Jane Doe #l does not specifically recall when, but she recalls at one point escaping the bedroom and returning downstairs. She recalls Defendant Masterson and Luke Watson grabbing her to bring her back up to Masterson's bedroom." This is the first time that J.B. has ever said anything to this effect. It is an entirely new allegation that surfaced 17 years after the incident. Exhibit 31, Excerpts of Allegations in the First Amended Complaint, Par. 148 (4 EX 0838).

CLAIMS RELATING TO COUNT 2 (N.T.)

II. PETITIONER WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BY COUNSEL'S FAILURE TO PRESENT EXTENSIVE AVAILABLE EVIDENCE TO IMPEACH N.T.

A. IAC for Failure to Present the Testimony of A Friend of N.T.'s About A Conversation in Which They Exchanged Reports of Their Respective Sexual Encounters.

Counsel failed to call Michele Miskovich, a friend and confidante of N.T.'s, to testify that on a social occasion they exchanged reports about their respective sexual experiences with petitioner. N.T. described her "fling" with petitioner in a light-hearted manner, contained no suggestion of rape, forcible or otherwise. Michele Miskovich was a longstanding friend of N.T.'s, notwithstanding N.T.'s erratic and sometimes violent behavior, particularly when she was drinking. Exhibit 51, Declaration of Michele Miskovich (6 EX 1153).

B. IAC for Failure to Present Evidence that Petitioner and N.T. Had An Ongoing Sexual Relationship that Lasted for Some Weeks, Not One Night as N.T. Claimed.

A core component of N.T.'s testimony was that she had one and only one sexual encounter with petitioner, i.e., a one-off event, and that it was a rape.

Counsel failed to present testimony of three witnesses who confirmed that petitioner and N.T. had an ongoing sexual relationship that lasted for a period of weeks, not one night as N.T. testified. These witnesses were Ilaria Urbinati, Max Gerson and Ben Shulman.

N.T. was living at Ilaria Urbinati's residence during 2003. Ilaria Urbinati knew N.T. was having an ongoing relationship with petitioner. Subsequently, she ran into N.T. after they had gone their separate ways, and when they talked about petitioner, N.T. had only positive things to say about him. Her good words about petitioner caught Ilaria Urbinati's attention because N.T. seldom if ever said anything nice about former boyfriends. N.T. never said anything about being raped or otherwise mistreated by petitioner.

After the allegations became public in 2017, N.T. told Ilaria Urbinati that she didn't realize she had been raped until Leah

Remini explained it to her. Exhibit 61, Declaration of Eric Multhaup (6 EX 1186).[24]

Max Gerson was petitioner's longtime housemate from 1995-2004. He had previously dated N.T. several times, but it did not develop into a sustained relationship. At some point in the latter part of 2003, petitioner asked Max Gerson if there would be any problem on Max Gerson's part if petitioner dated N.T., and Max Gerson assured petitioner there would not be.

Subsequently, there was a period of two or three weeks when Max Gerson encountered N.T. leaving petitioner's residence in the afternoon on multiple occasions. She never said anything about rape. Exhibit 50, Declaration of Max Gerson (6 EX 1151).

Ben Shulman was also acquainted with N.T. as a person in petitioner's social sphere. He saw N.T. at petitioner's residence many times, and recognized that they had an ongoing relationship for a time, "hooking up." Exhibit 52, Declaration of Ben Shulman (6 EX 1155).

### C. IAC for Failure to Present Evidence that N.T. had Made A Formal Complaint to Law Enforcement in 2007 that She Had Been the Victim of Multiple Sex Offenses, but Made No Mention of Any Rape by Petitioner or By Her Former Boyfriend.

On January 27, 2017, N.T. was interviewed by Dets. Myape and Viegas. In the course of explaining to the detectives why she

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[24] N.T. testified at the preliminary hearing in May 2021 that she did not realize her sexual encounter with petitioner was rape until 2011 when she read an anti-Scientology article in the New Yorker. 7 ART (8/23/24) 1639, May 20, 2021.

did not want to have sex with petitioner on their first date, she volunteered that she suffered from body shame that she attributed to being molested as a child.

> Another thing you should know about me is I have a lot of things – because I was molested a lot as a child. I have a lot of body shame. Exhibit 25, Transcript of N.T. Interview (3 EX 0464-0465).

Det. Myape asked whether the molestation was ever reported to the police. N.T. replied that at the time she did not report it, but years later in 2007, the molester made an overture to her on social media, and she made a report at Rampart LAPD station. The detective she spoke to proposed that she initiate a sting conversation with the molester. N.T. had multiple conversations with the detective, but did not wind up making the sting call. At no point did she tell the Rampart detective that she was raped twice in 2003, first by her longtime boyfriend Chris Watson, and then by petitioner.

D. IAC for Failure to Impeach N.T. with Inconsistent Statements in Her Civil Complaints.

N.T. testified that after she arrived at petitioner's residence, they sat on the couch in petitioner's living room and "were talking." 28 RT 2538. "We were speaking for a little bit, and then he got up and got me a drink in the kitchen." Ibid.

In the First Amended Complaint, N.T. alleged that "[i]mmediately upon her arrival, Daniel Masterson offered her red wine," Par. 240, a far more peremptory scenario. Exhibit 31,

Excerpts of Allegations in the First Amended Complaint (4 EX 0839).

N.T. testified that after they walked around the residence, they went outside to the pool and Jacuzzi area. Petitioner told her to "take off your clothes now" because "you're getting in the water." 28 RT 2547. N.T. then reported a loss of consciousness before she got in the Jacuzzi:

> And then I have glimpses of in the Jacuzzi, a picture of myself and him, and then it goes black. And it's like – these are, like, flashes of no visual to visual and then visual. And sometimes the visual is blurry, but that's what it felt like.
>
> Q: Let me ask you: Did some of your clothing end up coming off?
>
> A: I think so. Yeah, something came off. I don't know how. Either he took it or I – I was really not – my awareness was not – I was in and out of, like, some kind of consciousness. It was not – I couldn't tell you how – which came off or how or whatever. 28 RT 2548-2549 (emphasis supplied).

In the First Amended Complaint, N.T. alleged that "Masterson ultimately did remove some articles of clothing that Jane Doe #2 was wearing," Par. 240. N.T.'s affirmative allegation that petitioner removed some of her clothing conflicts with her trial testimony that she had no recollection of how her clothing came off, and calls into question her veracity generally.

CLAIMS RELATING TO BOTH COUNTS

III. IAC FOR FAILURE TO PRESENT EXPERT TESTIMONY TO EXPLAIN THE COMPLAINING WITNESSES' MUTUAL FINANCIAL MOTIVE TO COLLUDE TO SECURE PETITIONER'S CONVICTIONS ON MULTIPLE COUNTS OF FORCIBLE RAPE AS A PREREQUISITE TO ADD CAUSES OF ACTION FOR RAPE TO THEIR CIVIL SUIT.

The complaining witnesses denied any pecuniary interest in the outcome of the criminal trial, 28 RT 2631, and the prosecutor adamantly argued to the jury that they had none. 34 RT 3411.

In fact, the complaining witnesses had a very substantial stake in ensuring that petitioner was convicted of multiple counts of forcible rape because those criminal convictions were necessary to reopen a civil statute of limitations window for them to sue petitioner and the COS for damages attributable to the rape.[25] The effect of multiple convictions of forcible rape would trigger a one-year window under Code of Civil Procedure 340.3 for them to file a civil cause of action for rape.

Without multiple convictions of forcible rape in the criminal case, none of the complaining witnesses would have been able to pursue civil damages based on their claims of rape because of expiration of the civil statute of limitations.

[25] In addition, criminal convictions would have provided the complaining witnesses an evidentiary advantage in the civil case pursuant to Evidence Code section 1300.

The jury should have been informed of the complaining witnesses' significant financial motives to ensure criminal convictions so that the jury could accurately determine their credibility as to their claims of forcible rape.

Defense counsel made a nascent effort to apprise the jury of this motive by re-filing a motion prior to the second trial for the court to take judicial notice and inform the jury of Code of Civil Procedure section 340.3. The trial court refused to take judicial notice or otherwise apprise the jury of this provision of the Code of Civil Procedure. The court barred "any questions or testimony" concerning Code of Civil Procedure section 340.3. 15 ART (8/23/24) 3944. That denial was erroneous and infringed on petitioner's right to present a full defense, as set forth in Argument II in Appellant's Opening Brief. Counsel made no other efforts to apprise the jury of the complaining witnesses' direct financial interest in obtaining multiple convictions of forcible rape. There were other and better means of providing that evidence. Counsel could have called a UCLA law professor to explain to the jury why the complaining witnesses had a financial stake in securing at least two criminal convictions in order to pursue damages for rape.

## IV. IAC FOR FAILURE TO PRESENT EVIDENCE (1) THAT THE POLICE INVESTIGATION WAS BIASED DUE TO THE INAPPROPRIATE ENTANGLEMENT WITH ANTI-SCIENTOLOGIST LEAH REMINI; AND (2) THAT THE BIAS RESULTED IN A DEMONSTRABLY SHODDY AND DEFICIENT INVESTIGATION.

### A. Introduction and overview.

A longstanding avenue of defense available in a criminal prosecution is to present evidence that the prosecution conducted a shoddy and deficient investigation due to bias, negligence, or some other cause. "A common trial tactic of defense lawyers is to discredit the caliber of the investigation." Bowen v. Maynard (10th Cir. 1986) 799 F.2d 593, 613. See Kyles v. Whitley (1995) 514 U.S. at 466 ["the defense…could have attacked the reliability of the investigation"]. Defense counsel are then able to argue that the deficiencies of the investigation should be viewed as a source of reasonable doubt as to the probative value of the prosecution evidence that was presented.

The record in this case reveals ample evidence that the law enforcement investigation was biased against petitioner from the outset due to the inappropriate entanglement by the police and prosecutor with anti-Scientologist Leah Remini. She was welcomed into the prosecution fold as an advisor, strategist, authoritative arbiter on the policy and practices of the COS, and advocate for the complaining witnesses. She was welcomed even though the LAPD knew that she had an ongoing vendetta against

petitioner.[26] At the same time, the prosecution knew that her anti-Scientology television series would reap substantial publicity and financial benefits if petitioner were charged and convicted.

Petitioner's initial attorney, Tom Mesereau, explicitly brought Remini's self-interest motives to the attention of Det. Vargas early in the pretrial proceedings. On April 19, 2017, attorney Mesereau informed Vargas that there were media reports that Remini was involved in the police investigation, and that "Remini's anti Scientology stance has fueled the investigation through her show on A&E." Exhibit 33, LAPD Chronology (5 EX 0931). Mesereau informed Vargas that Remini had previously used the LAPD to jump start her faltering career four years earlier by having her main contact in the LAPD, Det. Kevin Becker, file an unfounded missing person report on the wife of Scientology's leader—designed to smear the Church. The LAPD investigated the report and deemed it unfounded that same day, but it did generate considerable publicity for Remini.

Neither the police nor the prosecutor paid Mesereau any heed. To the contrary, five days later, DDA Mueller and Det. Vargas had an interview with J.B. to get "a gage of what kind of witness you are." Exhibit 26, Transcript of Interview, April 24, 2017 (4 EX 0575). Remini attended the interview and dominated the discussion, insisting on a show of commitment to J.B.'s claim

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[26] See Exhibit 21, Remini screenshot to Det. Reyes, 12/22/2016 (1 EX 0107-0108).

of rape while intercepting questions addressed to J.B. that related to her credibility.

Not only could counsel have informed the jury of the inappropriate relationship with Remini, counsel could also have shown the jury that the overall prosecution was objectively deficient, attributable to the relationship with Remini, institutional negligence, or both.

B. Evidence of the prosecution's continuous and inappropriate entanglement with Leah Remini.

1. The prosecution's continuing and inappropriate entanglement with Leah Remini.

In 2016, the complaining witnesses made contact with each other about their sexual relations with petitioner some 13 years previously. C.B. and N.T. had not reported to the police that they had been raped.

At the same time, Leah Remini, a former actress and anti-Scientologist was developing a lucrative niche in the entertainment industry by producing a TV series called "Leah Remini: Scientology & The Aftermath." The premise of that series was to air the complaints of former Scientologists about their experiences as members.

The series first aired in November 2016, and came to the attention of C.B. She then made contact with Remini,[27] as did

[27] C.B. Tweeted Remini November 8, 2016:

the other complaining witnesses. Remini told C.B. that she [Remini] would consider having C.B. on her show only if C.B. first made a formal complaint to her local police department, "like an initiation," Exhibit 23, Transcript of Meeting with Remini and Dets. Myape and Vargas (1 EX 0185), and C.B. did so. The Austin Police Department sent a copy of their report to the LAPD, and an investigation was opened. N.T. and J.B. both contacted Remini and the LAPD.

Before the LAPD had interviewed any of the three complaining witnesses, Remini initiated a call with Det. Myape, who had been assigned to the investigation. The transcript of that call demonstrates a mutual commitment from both of them to make Scientology a primary focus of the investigation, as excerpted below. After Remini gave Myape her disparaging description of Scientology, Det. Myape responded, "I think this case is – has the potential to become, you know, very big." Exhibit 22 (1 EX 0110). She explained that "because this involves a group that I've never dealt with, I'm going to reach out to more experts because I don't want – I want the case to be a solid case."

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> @LeahRemini I just wanted to thank you for everything you're doing. Gave me strength to leave. You wouldn't believe what they did to me. ♥
>
> Remini replied:
>
> @[C.B.] If you like, you can email your story here and it can be looked into knowledgereports@hushmail.com. Exhibit 20, C.B. and Remini tweets (1 EX 0106).

Remini and Det. Myape then formed and confirmed their alliance:

> Leah Remini: Sure.
>
> Det. Myape: – and I want it to go forward and I want the DA's to file it. They are not going to file a case that they're not going to go – be able to walk in the court with.
>
> Leah Remini: Well, that's why I want to help you.
>
> Det. Myape: Okay.
>
> Leah Remini: – In any way that I can because you have to understand the inner workings of the organization which is what the FBI has tried and failed – because they don't – they don't usually contact people who know what they're talking about or to show them things that they need to arm themselves with.
>
> Det. Myape: Right and you're vital to this investigation.
>
> Leah Remini: Well, I'm available to you for anything.
>
> Det. Myape: Awesome. Id. (1 EX 0110-0111) [emphasis supplied]

Myape replied that she was fully committed to Remini's agenda, and called Scientology and its practices an "abomination":

> Det. Myape: Yeah, you know what I'm going to do, because I've been thinking about reaching out to the FBI?
>
> Leah Remini: Yes.
>
> Det. Myape: And I want to. We have it at our level, at our division, robbery homicide division, we dealt with – we have agents that deal with this all the

time, so I want to meet with them because this has the propensity to be big.

Leah Remini: I agree.

Det. Myape: And I want it to be big. I want to shake this group down.

Leah Remini: I love you for this. I can't tell you how much this means to them, like it means everything.

Det. Myape: Because this is so – like this is an abomination.

Leah Remini: I agree. Id. (1 EX 0117) (emphasis supplied).[28]

At one point, Det. Reyes commented that disaffected Scientologists should file a "class action" against the COS. Id., pp. 10-12.

Remini had a direct financial interest in fomenting the LAPD investigation because she could use it to gain publicity and credibility for her TV series.

The Remini-LAPD alliance was further forged at a January 3, 2017 meeting at the LAPD Hollywood Station between Remini and Dets. Myape and Vargas. The conversation focused on Remini's pejorative description of various alleged COS practices, which Remini characterized as "obstruction of justice." Exhibit 23 (1 EX 0162).

[28] The audio recording of the phone call reflects that Det. Myape's manner and demeanor can only be described as gushing over Remini and her involvement in the case, not an appropriate tone for a putatively objective police detective.

2. The Mesereau wake-up call.

Three months later on April 19, 2017, Det. Vargas, recently promoted to lead investigator, met with petitioner's attorney, Tom Mesereau, who apprised him of Remini's background and her current personal and financial interests in (1) fomenting petitioner's prosecution; and (2) vilifying the COS. See Exhibit 33, LAPD Chrono (5 EX 0931, 0933). Mesereau described her prior exploitation of the LAPD for publicity and profit, and her current activities as producer of a television series whose public popularity and its financial reward would be greatly improved if the LAPD stated that petitioner was under active LAPD investigation. This wake-up call fell on deaf ears.[29]

3. The prosecution's undeterred alliance with Remini.

On April 24, 2017, five days after Det. Vargas' meeting with Mesereau, DDA Mueller and Det. Vargas interviewed J.B.

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[29] In addition, the prosecution had been independently informed of Remini's antagonism against petitioner personally. In early 2015, there was a documentary film called "Going Clear" shown at the Sundance festival that portrayed Scientology in a negative light. Petitioner was present at the Sundance festival, and gave a rebuttal interview to a reporter from PAPER Magazine. Petitioner described the benefits of practicing Scientology, and included some harsh language regarding naysayers who were excoriating Scientology without understanding it.

This article came to Remini's attention, and petitioner became a particular focus of her anti-Scientology zeal. In December 2016, C.B. forwarded to Det. Myape a post in which Remini lambasted petitioner. Thus, the LAPD was on direct notice that Remini was an antagonist of petitioner with a particular grudge.

with Remini ostensibly present as J.B.'s support person. As Det. Vargas explained to J.B., "one of the things that this is useful for is it kind of gives him a gage what kind of witness you are." Exhibit 26, Transcript of J.B. Interview with DDA Mueller, Remini, and Det. Vargas, April 24, 2017 (4 EX 0575). That did not occur. Rather, Remini dominated the interview, repeatedly telling DDA Mueller and Det. Vargas how they should handle the prosecution; repeatedly answering law enforcement questions on J.B.'s behalf; and giving her anti-Scientologist views to supplement J.B.'s answers.

This interview bore no resemblance to a legitimate and objective police inquiry. It was a Leah Remini show. In the course of the 245-page interview transcript, Remini interceded 494 times. See Exhibit 26 (4 EX 0575-0819). Remini extracted a commitment from Mueller and Vargas that "[t]hey believe Jen." Id. Det. Vargas responded to J.B. "[Y]ou're not alone in this." (4 EX 0578)

Remini interjected numerous comments about Scientology's purportedly repressive practices (4 EX 0751-0755), and personally led J.B. through a repudiation of Paige Dorian's 2004 police report that contained J.B.'s statements that her sex with petitioner was the best she ever had (4 EX 0793-0796).

In May 2017, at the request of Leah Remini, Mike Rinder, the co-producer of Aftermath, also met with Mueller and Vargas. Remini and Rinder held forth as to their belief that COS members would lie to police authorities and would destroy

evidence to thwart a law enforcement investigation. Exhibit 27, LAPD Follow-Up Report (4 EX 0820). The collaboration continued through the time of trial.

Thus, notwithstanding Mesereau's direct warning to Det. Vargas that Remini was a publicity-seeking, anti-Scientologist with a significant financial stake in fomenting the prosecution of petitioner, the prosecution maintained its close relationship with Remini and her associate Rinder as valued assets on the prosecution team.

C. The objective deficiencies in the prosecution's investigation.

1. The failure to interview the great majority of exculpatory witnesses.

At the April 24, 2017, interview, DDA Mueller informed Remini and J.B. that the decision whether to file would be made "after looking at everything and talking to everybody." Exhibit 26, Transcript of J.B. Interview with DDA Mueller, Remini and Det. Vargas (4 EX 0808).

That never occurred. Between the launching of the investigation and the filing of charges, the prosecution team interviewed 19 witnesses. This included only two of the six witnesses interviewed by Det. Myers in 2004 regarding the J.B. allegation – Brie Shaffer and Luke Watson, Jenni Weinman, Paige Dorian and Ben Shulman had all provided highly exculpatory information in 2004, but were ignored in the investigation that led to charges in this case. In short, in 2004 Det. Myers was able to interview six key witnesses in a two-week

period, but in the six years between 2017 and trial, the LAPD only interviewed two of them.[30]

The prosecution interviewed none of the exculpatory witnesses whose names Mesereau had provided to Det. Vargas on April 19, 2017. These witnesses included Max Gerson, Lynsey Bartilson, Paige Dorian and Vanessa Pool. All four had highly exculpatory information. Exhibit 33, LAPD Chrono (5 EX 0932-0934). The purported LAPD investigation was an exercise in confirmation bias, not an independent and impartial inquiry. No evidence about these obvious and objective deficiencies in the investigation was presented to the jury.

Nor did the LAPD expend reasonable efforts to investigate red flag alerts regarding the credibility of the complaining witnesses. DDA Mueller and Det. Vargas were well aware that each of the three complaining witnesses had made multiple unfounded complaints of stalking or harassment, but that apparently did not affect the decision to use them.

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[30] The other 17 witnesses interviewed during the investigation were Leah Remini; C.B. (three times); J.B. (six times); N.T. (four times); Jimmy DeBello; Jordan Ladd; Damien Perkins; Ruth Speidel; Bobette Riales (two times); Rachel Dejneka; Rachel Smith; Tricia Vessey (two times); Joanne Berger; Alexandra Fincher; Robert Altman; Kathleen J.; and Diana Parker Crnojuzic.

2. The failure to investigate J.B.'s implausible denial of authorship of the June 2003 O/W write-up.

On July 16, 2020, attorney Mesereau had delivered to Det. Vargas a box of materials retrieved from J.B.'s car in 2004. The box contained certain documents and other effects that were indisputably J.B.'s personal papers, as well as the O/W write-up dated June 2003. That document contained the exculpatory bombshell in which J.B. described her April 25, 2003, sexual activity as entirely consensual on her part – "I decided at that point the hell with it and I would have sex with him and enjoy it even though it was a big violation of my own 2d ethics level, etc." See Exhibit 7, J.B. O/W write-up (1 EX 0031).

On July 22, 2020, Det. Vargas and another officer went to J.B.'s residence at Mueller's request to ask her about the materials contained in the box, particularly the O/W write-up. This occurred approximately a month after charges had been filed, and should have given the prosecution a major concern about J.B.'s credibility.

Det. Vargas showed her the O/W write-up document and identified it as "the original that was found in the vehicle," Exhibit 32, Recording 34-3 (5 EX 0878-0879). When Vargas initially asked J.B. whether she had typed the document, she equivocated, "I don't know that I typed this." Exhibit 32, Recording 34-2 (5 EX 0868). She then asserted as a first line of defense that regardless of who created the document, it could not possibly have been found in her car because she would not have

had access to it under Scientology policy. Exhibit 32, Recording 34-2 (5 EX 0868). That tack was manifestly unpersuasive, because Det. Vargas had verifiable information in the LAPD Chrono, Exhibit 33 (5 EX 1010-1012), that it had been found in J.B.'s car in 2004.

Her second line of defense was that while many of the events described in the document did occur as described, she did not author the document and the description of her sexual activities with petitioner on April 25, 2003 was not true. Exhibit 32, Recording 34-3 (5 EX 0911-0912).

Later in the interview, Det. Vargas asked J.B. for her view on how the document could have gotten into her car. Having abandoned the "could not have been in my car" defense, she responded that it must have been written by the COS and planted in her car:

> Q: How would a document like this end up in that box?
>
> A: The Church put it there. Julian Swartz helped – whoever is helping OSA put it there.
>
> Q: And gave it to the defense?
>
> A: Yeah. Yeah. Exhibit 32, Recording 34-3 (5 EX 0914).

That response was patently implausible for many reasons, but Det. Vargas never pursued them. Vargas should have recognized that either (1) J.B. was flatly lying to him in her disavowal of having written the document and her disavowal of ever having seen it, Exhibit 32, Recording 34-3 (5 EX 0915); or (2) the Los Angeles investigator was lying about finding it in her

car and removing it; or (3) the Los Angeles investigator was telling the truth about finding it in her car but somehow an operative of the COS had fabricated the document in 2004 and planted it in J.B.'s car before the investigator repossessed it. Given the manifest importance of the document to J.B.'s credibility about the April 25, 2003, incident, any reasonable police investigator would have drilled down to resolve this, but Det. Vargas did nothing in response to J.B.'s implausible story, other than elicit a reiteration of her denial of authorship. "So this is something definitely you did not write. Someone else did this; is that correct?" Exhibit 32, Recording 34-3 (5 EX 0893).

Det. Vargas later asked her again to confirm that she had never seen the document before and that she had not typed it, Exhibit 32 (5 EX 0924), which she did. He concluded with the comment, "I think we've addressed the issue that Mueller wanted us to confirm with you." Id. In sum, defense counsel had a trove of examples available to demonstrate the deficiencies in the prosecution's investigation.

## V. IAC FOR FAILURE TO REFUTE THE COMPLAINING WITNESSES' TESTIMONY THAT THEIR OWN CIVIL LAWSUIT WAS FILED SOLELY FOR THE PURPOSE OF STOPPING A "CAMPAIGN OF TERROR" WAGED BY THE COS.

### A. The complaining witnesses' claim that their motive for filing the civil lawsuit was to stop a "campaign of terror."

The prosecutor elicited from each complaining witness that she was a victim of a COS-driven "campaign of terror,"[31] and that given the inability of the LAPD to stop the campaign, the three banded together to file a civil lawsuit for the primary if not sole purpose of stopping the harassment. J.B. and C.B. forcefully denied that they had any pecuniary interest in the lawsuit and adamantly asserted that the sole purpose in filing the lawsuit was to end the harassment. N.T. testified that the primary reason for filing the lawsuit was to stop the harassment, and that the prospect of damages was a secondary reason. 28 RT 2629-2630. The complaining witnesses' claims of a campaign of terror that was too powerful for the LAPD to stop were highly likely to

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[31] J.B. testified as follows:

> Q. What was the reason for filing that lawsuit?
>
> A. There was no number of reports, no – nothing we could seemingly do to stop – like, stop this campaign of terror. Like, it was just getting bolder and bolder and bolder and bolder. 25 RT 2161.
>
> N.T. (28 RT 2629) and C.B. (22 RT 1597) echoed this testimony.

elicit the jury's sympathy for themselves and elicit an antipathy toward petitioner and the COS.[32]

B. The clear evidence of an ulterior motive.

There was virtually uncontestable evidence that the complaining witnesses invented and testified to a self-serving and false explanation for why they filed their civil lawsuit in August 2019. The actual reason for filing the lawsuit at that time was to provide A&E, the network broadcasting Remini's show, with legal cover to air her final episode that focused on the rape allegations against petitioner.

The evidence of this self-interested and mercenary motive is as follows. In June 2019, Remini shot one final episode that related specifically to the rape claims against petitioner. On August 9, 2019, petitioner's civil lawyer received a request from A&E to comment on the allegations against petitioner for inclusion in the final episode. On August 12, counsel for petitioner responded with a cease and desist letter that warned A&E that there was nothing to "provide any protection to IPC (the executive producer of the series), Ms. Remini or AETN [A&E] if they produce and air the false and defamatory allegations about our client in any future episode of the Series."

[32] There was extensive evidence that the claims of harassment were completely unfounded, but the defense was precluded from presenting that evidence by the court's exclusionary ruling. See AOB, Argument VII.

Exhibit 29, Andrew Brettler letter of Aug. 12, 2019 (4 EX 0827); Exhibit 47, Declaration of Andrew Brettler (6 EX 1145).

That created a standoff. Remini and the complaining witnesses needed to induce A&E to air the final episode. They landed on the strategy of filing a tactical lawsuit so that A&E could have legal cover to air the episode.

Counsel for the complaining witnesses drafted a complaint that contained all of the rape allegations from 2003 in addition to the allegations regarding harassment in 2016-2019. Bixler v. Church of Scientology, et al., No. 19STCV29458: J.B., pp. 23-25; N.T., pp. 35-36; C.B., pp. 13-14.

The complaint was filed on August 22, 2019, and A&E aired the final episode four days later on August 26, 2019. The episode addressed both the rape and the harassment allegations. The complaining witnesses received extensive publicity about their accusations, and Remini received a very handsome paycheck. Exhibit 40, Aaron Smith-Levin blog of June 26, 2024 (6 EX 1108).[33]

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[33] "Do you know what Leah Remini got for the episode that featured [C.B.]. According to Tony Ortega, Leah Remini got $1 million for the episode that featured [C.B.]. She also got an Emmy Award. Leah Remini should be kissing [C.B.]'s ass.

* * *

"By the way, when I say $1 million, I don't mean for the entire three seasons of the show. I mean, for one final episode."

The timing of events – the August 12 cease and desist letter; the filing of the lawsuit on August 22, 2019; and the airing of the final episode on August 26 – strongly supports an inference that the purpose of the lawsuit was to facilitate the airing of the final Aftermath episode, not to push back against purported harassment. Even Remini sympathizer Tony Ortega recognized in his blog that "[y]esterday's lawsuit filed by the accusers no doubt gives A&E some legal room to finally put their stories on the air." Exhibit 30, Tony Ortega Blog (4 EX 0832).

The conduct of the complaining witnesses and their attorneys after the filing of the lawsuit provides virtually conclusive proof that the lawsuit was filed for mercenary reasons unrelated to the claims of harassment. The complaint was filed on August 22 without any accompanying request for a restraining order or injunction. If the complaining witnesses had in fact been motivated to obtain relief from harassment, they would have immediately applied for a TRO.

In fact, the complaining witnesses were well aware of the purpose of a TRO. Det. Vargas had repeatedly informed the complaining witnesses that a TRO was an available option to pursue if they believed they were being harassed by the COS, Exhibit 28, Compendium of Text Messages re: TRO (4 EX 0821-0826).

For example, Det. Vargas told C.B. by text on September 12, 2018, that a restraining order "would be a good idea." Id. (4 EX 0826). C.B. had previously obtained a restraining order to

stop harassment relating to a disgruntled former employee in her husband's band. See Carnell (C.B.) v. Pridgen, LA Super. Ct. No. SS019039. She was thus familiar with the function of a restraining order when confronted with actual threats and harassment.

The 2019 lawsuit proceeded without any of the plaintiffs making any effort to obtain interim relief. The docket for Bixler et al. v. Church of Scientology International et al., 19 STCV29458 reflects that no pleadings were filed by either party for three months. On November 18, 2020, defendants filed motions to quash service of the complaint and to compel religious arbitration. As of August 22, 2020, a full year after the filing of the complaint, the complaining witnesses and their attorney had not filed any request for injunctive or other immediate relief from the claimed harassment.[34]

[34] The complaining witnesses never filed a request for injunctive relief. In the criminal case that was filed on June 17, 2020, the prosecutor requested and obtained a fairly standard protective order pursuant to Penal Code section 136.2 that enjoined petitioner personally from having contact with the complaining witnesses. 1 Aug CT (06/05/24) 8-9.

## VI. IAC FOR FAILURE TO CONSULT WITH AND CALL AN EXPERT WITNESS TO REBUT THE TESTIMONY OF PROSECUTION EXPERT DR. BARBARA ZIV REGARDING RAPE TRAUMA SYNDROME AND TO EXPLAIN THAT THE CHANGES IN THE COMPLAINING WITNESSES' STORIES WERE INCOMPATIBLE WITH SCIENTIFIC KNOWLEDGE REGARDING THE PROCESSES OF MEMORY FORMATION AND RECOLLECTION.

The prosecution elected to substitute Dr. Barbara Ziv as the rape trauma syndrome expert at the second trial and named her in the prosecution witness list. The defense witness list contained the same two psychologists from the first trial witness list, Drs. Mitchell Eisen and Scott Frasier, neither of whom Cohen had spoken to.

At the Evidence Code section 402 hearing, the prosecutor requested and received permission to elicit testimony from Dr. Ziv regarding "rape trauma syndrome and the impact of alcohol and drugs on memory," because those are areas that "fall outside the common knowledge of the jury." 11 CT 3183, Order of March 28, 2023.

At trial, the prosecutor asked Dr. Ziv about the usual litany of rape trauma myths,[35] and then turned to the critical topic of memory formation and retention over time:

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[35] Dr. Ziv testified that there are common but counter-intuitive aspects of many rapes, including (1) most rapes are committed by acquaintances; (2) physical resistance occurs in only about 15% of rapes; (3) verbal resistance like screaming only occurs in 25-40% of rapes; (4) delayed reporting is the norm; and (5) continuing contact with the rapist directly or by device is common.

> Q: I want to also ask you with regard to the reporting, a victim of sexual assault coming forward to report to law enforcement. You've – well, with regard to testing the water, is there a – is there a difference if you have a victim giving multiple reports to multiple different interviewers over a period of time over different times? 23 RT 1805.

Given defense counsel's ultra-narrow focus on inconsistencies of the complaining witnesses over time, this area was of great importance to both parties. However, neither the court nor Dr. Ziv understood the question, and the prosecutor moved on.

Defense counsel did not ask Dr. Ziv any questions on cross to elicit testimony that the types of inconsistencies over time in the complaining witnesses' testimonies were starkly incompatible with well-established scientific and medical knowledge about how human memory works.

Defense counsel did not call either of the two mental state experts on the defense witness list. The defense thus squandered a significant opportunity to impeach the credibility of the complaining witnesses by not consulting with a psychologist as to the points to be addressed in the cross-examination of Dr. Ziv; by not calling a defense expert to explain the shortcomings of her testimony; and by not calling a defense expert to explain that the evolving changes in the complaining witnesses' stories over time were incompatible with scientific knowledge regarding memory formation and recollection. That impeachment testimony was

readily available. Exhibit 44, Declaration of Dr. Mitchell Eisen (6 EX 1116).

Dr. Eisen's most compelling point is that where a witness purports to give a full account of an event, free of fear, embarrassment, or any other compromising factors, and then later gives a different account of the event that includes additional information or conflicting information, the changes cannot be attributed to natural processes of memory formation and recollection. Rather, the changes are attributable to intentional conduct by the witness, usually an ulterior motive to alter the story for some kind of benefit. That was the crucial information that the defense had to convey to the jury, i.e., that the inconsistencies in the complaining witnesses' stories that appeared after the witnesses had made a full and unfettered statement to the police were likely contrived.

## VII. IAC FOR FAILURE TO CALL A WITNESS TO CHALLENGE AND REBUT THE TESTIMONY OF ANTI-SCIENTOLOGIST CLAIRE HEADLEY WHO TESTIFIED FOR THE PROSECUTION AS A PURPORTED EXPERT.

As noted above, the prosecution re-grouped after the first hung jury, and obtained permission to present expert testimony that Scientology doctrine contains the repressive tenets that the complaining witnesses had described at the first trial. See Appellant's Opening Brief, Argument VI. The prosecutor's offer of proof was explicitly related to the Scientology "texts":

> Now, Ms. Headley would not be asked about her beliefs about Scientology. It would be extremely narrowly tailored, only to that there are texts that

> exist with certain language. She would not be testifying that these victims – why they believed the way they did or how they believed.
>
> That is up to the individual victims to testify about what their beliefs was, from reading these texts, from being shown these policies. But not to allow someone to testify that there are these policies or books or texts that exist puts it in the victims' hands to represent that themselves with no backing. 13 RT 670.

Judge Olmedo not only granted the prosecution's request, but also unilaterally expanded the scope of the negative Scientology evidence for use as direct evidence of petitioner's guilt, all of which was erroneous and prejudicial for the reasons set forth in Argument VI of the Opening Brief.

Judge Olmedo issued her ruling regarding Scientology evidence on March 28, 2023, see 11 CT 3199, and put the defense on notice of an escalated barrage of anti-Scientology evidence in the second trial. The court reversed its prior ruling that Claire Headley could not testify to COS tenets and practices. Headley is a disgruntled former member of the Church who became an avowed anti-Scientologist after leaving the religion – hardly the qualifications for an independent expert.[36]

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[36] Headley had a history of bad blood with the COS. She and her husband had previously sued COS for false imprisonment and forced labor. The federal district court granted summary judgment in favor of COS, awarding COS court costs, and the Ninth Circuit affirmed. Headley v. Church of Scientology, supra, 687 F.3d at 1181.

At the time of her testimony, she worked for the Aftermath Foundation, Remini's anti-Scientology entity. The only restriction Judge Olmedo placed on Headley's testimony was that she could not relate any of her own personal experiences as a Scientologist.

Shawn Holley suggested that Cohen consider calling Hugh Whitt, a longstanding Scientologist. Whitt had ample knowledge and personal experience to adequately explain Scientology's actual teachings regarding internal dispute resolution practices, cooperation with civil and criminal authorities, and other topics that the complaining witnesses had broached in the first trial.

Cohen listed Whitt as a potential defense witness on the witness list filed on April 17, 2023, 11 CT 3256, and the subject matter of his testimony was described as "Scientology tenets, teachings and practices." Whitt was not called as a witness.

Headley testified on direct to her heretical beliefs about repressive Scientology policies and practices, but did not cite any texts, scripture, or other COS documents to support her assertions. Her primary assertions were as follows: (1) Scientologists must obey Scientology law rather than civil law if they conflict[37]; (2) Scientologists are not permitted to report crimes committed by another Scientologist to the police[38]; and (3)

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[37] "If there is a rule in Scientology that is directly in conflict with a law in the United States, …the Scientologist will follow the law of Scientology." 27 RT 2453.

[38] "It's a known policy that you do not call the police. There is – There is a – you would need to request specific authorization from the International Justice Chief to do so." 27 RT 2458-2459.

Scientologists are not permitted to use the word "rape" in their communications with Scientology ethics staff.[39]

At the conclusion of her direct, the prosecutor asked her why she was testifying, and she answered, "I'm here on my own volition to educate people on the policy and practices of Scientology as I experienced them through the very extensive work in the Sea Organization[40] and Religious Technology Center[41] for eight years, and that's my goal," 27 RT 2472 (emphasis supplied). There was no defense objection, notwithstanding Judge Olmedo's restriction that she not testify about her personal experience.

## VIII. PROSECUTORIAL MISCONDUCT IN ARGUING THAT SCIENTOLOGY LAW HAD DENIED JUSTICE TO THE COMPLAINING WITNESSES, AND INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO OBJECT.

The prosecutor artfully set up the conflict between Scientology law and American law and then used it to conclude his closing argument with an attack on Scientology law as inimical to American justice. He then urged the jury to right the wrong perpetrated by Scientology law by giving the complaining

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[39] "In 1997 a code was implemented where terms of a sensitive nature – such as rape, sexual assault, things of that nature – were no longer written in reports." 27 RT 2458.

[40] The Sea Organization is the Scientology religious order.

[41] Religious Technology Center is a separate Church of Scientology.

witnesses the American justice that they deserved, i.e., criminal convictions. "As I mentioned, the Scientology law told them there is no justice for them." 34 RT 3411 (emphasis supplied). The prosecutor could not have been clearer in accusing the Church itself of obstructing justice – "There were no consequences for Mr. Masterson from this internal justice system from the Church," 34 RT 3411. The prosecutor concluded by asking the jury to convict petitioner to afford the complaining witnesses the justice that had been denied to them by the Church – "Ladies and gentlemen, I ask that you give these victims the justice that they're looking for; that you find this defendant guilty of the charges of raping each one of these victims. Find him guilty and give them their justice." 34 RT 3412. Defense counsel made no objection.

## IX. PETITIONER WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BY THE COURT-IMPOSED RESTRICTIONS ON COUNSEL'S ABILITY TO INVESTIGATE AND IMPEACH KATHLEEN J.

This claim expands upon Argument V in the Appellant's Opening Brief, p. 124, that the trial court erred in permitting the prosecution to present the testimony of Kathleen J. as an Evidence Code section 1108 witness without affording the defense sufficient amount of time to investigate and impeach her testimony. This claim focuses on the impeachment materials that counsel would have developed if afforded sufficient time.

Argument V of the AOB sets forth the chronology of the prosecution's March 6, 2023 disclosure of intent to call Kathleen

J.; the March 10 motion to exclude; and the March 28 ruling that denied the motion. AOB, p. 124.

The crux of Kathleen J.'s testimony was that in July 2000, she was involved in the production of a movie in Toronto called "Angel Eyes." She was a Canadian citizen and a resident of Toronto. When the movie was completed, there was a "wrap party" at the Sutton Place Hotel. She attended with her husband and two stepdaughters. Coincidentally, petitioner was also in Toronto making a movie called "Dracula 2000," and he and the other cast members were billeted at the Sutton Place Hotel.

At one point during the evening, Kathleen J. and her family were invited to another party put on by people associated with "Dracula 2000." A central part of her testimony was that the actor Gerard Butler attended the second party, which was memorable to her and to her stepdaughters in light of his movie star fame. 31 RT 3097-3098. She accepted a drink from a man she did not recognize and talked with him. She began feeling light-headed and nauseous, and told the man she wanted to go to the bathroom. He offered to show her where it was. Instead, he guided her into a bedroom and raped her while she was blacked out. She did not tell her husband because she was embarrassed.

Five months later in December 2000, she and her husband were at home watching "Dracula 2000" because it had been filmed in Toronto. When petitioner appeared on the screen, she had a strong reaction and began crying and shaking. She told

her husband what had happened, but did not call the police because she felt it was "too late."

Kathleen J. was somewhat impeached at trial with recent inconsistent statements she had made to blogger Tony Ortega. Counsel was unable to muster any evidence that no sexual activity, much less a rape, ever occurred. Such evidence was available, but not within the time frame permitted by the trial court.

There was extensive evidence available that the incident alleged by Kathleen J. could not have occurred as she claimed it did.

A reasonable investigation would have produced the following impeachment evidence.

Kathleen J. contended that she remembered the evening because famous actor Gerard Butler was in attendance and was the center of attention. That was very implausible because in 2000 Butler was a complete unknown in North American cinema, and "Dracula 2000" was his very first role for a Hollywood production. See Exhibit 1, Entertainment Weekly, Nov. 17, 2000 (1 EX 0010).

Kathleen J. contended that an unidentified man gave her a drink, subsequently led her to a bedroom and raped her. Only later when she watched Dracula 2000 did she recognize petitioner as the rapist. That was implausible because in 2000 petitioner was very well known in Canadian television for his role in the popular series "That '70s Show." If Kathleen had

recognized anyone at the Toronto party, it would have been petitioner.

Kathleen J. contended that the rape occurred during a party hosted by the Dracula 2000 group in a large suite in the hotel. That was implausible because Dracula 2000 was a low budget film, and it was in the middle of shooting as of July 2000. There was no reason for the Dracula 2000 group to host a fancy party at that time.

Kathleen J. contended that she was raped in a bedroom and passed out there for several hours. That was implausible because the Sutton Place Hotel adhered to the Toronto Municipal Code requirement that every bedroom had to have its own bathroom. It is highly improbable that Kathleen J. could have remained passed out in a bedroom in the party suite without anyone noticing. Exhibit 46, Declaration of Investigator Brockbank (6 EX 1144).

Kathleen J. contended that she and her husband watched Dracula 2000 on their home screen at Christmas 2000. That was implausible because Dracula 2000 was released to theaters on December 22, 2000, and was not released for home viewing until July 2001.

In 2000, petitioner was in a committed relationship with C.B. Numerous people including his housemate would have testified that he maintained a monogamous life-style during the course of that relationship.

The investigation thus would have yielded evidence that would have significantly impeached Kathleen J.

## X. PETITIONER WAS DEPRIVED OF DUE PROCESS BY THE PROSECUTION'S PRESENTATION OF FALSE TESTIMONY OF HARASSMENT BY THE COMPLAINING WITNESSES KNOWING THAT THE COMPLAINTS HAD BEEN INVESTIGATED BY THE LAPD AND FOUND UNSUBSTANTIATED.

### A. The proceedings regarding the admissibility of harassment evidence and the ineffective assistance of counsel for failure to rebut the false claims of harassment.

Prior to the first trial, the prosecution moved to introduce evidence from the complaining witnesses that they had been harassed by members of the COS. As the prosecutor explained, "witnesses who are testifying under certain fears or concerns, it's important for the jury to hear that evidence so that they can make a determination of credibility." 14 ART (8/23/24) 3666-3667. The prosecutor advised the court that he intended to introduce five specific incidents of harassment, including (1) C.B.'s claim that the COS killed her dog; and (2) J.B.'s claim that the COS was going through her property. 14 ART (8/23/24) 3667-3669.

The defense contended such evidence should be excluded because it was both false and highly inflammatory, and if offered would require extensive rebuttal that entailed undue consumption of time under Evidence Code section 352. 6 CT 1593-1602; 14 ART (8/23/24) 3660-3666. Defense counsel provided documentation that the LAPD had investigated the claims of harassment and had determined that there was no COS

involvement in the incidents reported, and/or that the incidents did not constitute harassment by anyone. Counsel pointed out that C.B. reported to LAPD that COS operatives had strangled to death her pet dog, Ethel. However, C.B.'s prior Instagram posts made it clear that the dog had died of natural causes at a dog boarding facility where C.B. had boarded her dog. 6 CT 1598; 7 CT 1896.

The court resolved this dispute in a most prosecution-favorable manner, ruling that "[t]he People may present testimony that the victims generally felt they were subject to instances or a campaign of harassment and stalking that they felt was related to their cooperation with law enforcement in the rape case," but "the court will not allow the specific instances themselves" to be introduced by the prosecution per Evidence Code section 352. 15 ART (8/23/24) 3952-3953. The court was unclear whether the defense was subject to similar restrictions. Id.

The complaining witnesses gave dramatic testimony that COS had launched a "campaign of terror" against them that was growing "bolder and bolder and bolder and bolder." 25 RT 2161 (J.B.). Complaining witness N.T. claimed she was "100 percent" certain that she was being harassed at the hands of COS. 28 RT 2629. Defense counsel made no effort to challenge or rebut this testimony.

B. The available evidence that refuted a claim of harassment by the COS or any other person or entity associated with petitioner.

The three complaining witnesses made a total of 40 separate claims of harassment to the LAPD. The great majority of them did not result in any action by the LAPD. Twelve of them resulted in formal DR reports.[42] See Exhibit 64, Chart of Harassment Claims (6 EX 1195). One of these was forwarded to the Los Angeles District Attorney for filing consideration, but it was rejected. Exhibit 42 (6 EX 1113). One other was submitted to the Los Angeles City Attorney for filing, but it was also rejected. Exhibit 43, LA City Attorney CPRA (6 EX 1115). Many of the incidents were not merely unsubstantiated, but were affirmatively determined to be not harassment.[43]

## XI. PETITIONER WAS DEPRIVED OF DUE PROCESS AND A FAIR TRIAL BY THE PERVASIVE JUDICIAL BIAS DISPLAYED AT THE SECOND TRIAL.

Petitioner does not lightly make a claim of judicial bias, but it is unavoidable in this case. From the outset of the case, the court overstepped its judicial role and intervened in matters of

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[42] An LAPD "DR Report" is an official record of an investigation. COS was never a target or subject of any LAPD investigation.

[43] For example, J.B. complained that a Scientology operative had been searching through her trash for nefarious purposes. LAPD investigation established that there was a harmless woman in J.B.'s neighborhood who did engage in dumpster diving. Exhibit 64, Chart of Harassment Claims (6 EX 1195).

COS doctrine and practices. See AOB, Argument VI. At the first trial, the court's evidentiary rulings did not overall favor either party, and the jury viewed Judge Olmedo as even handed.[44]

The second trial was dramatically different. At the parties' request, the court revisited many of the first trial rulings, and (1) granted every prosecution request to change a prior adverse ruling, but (2) denied every defense request to change a prior adverse ruling. Moreover, the second jury viewed Judge Olmedo as biased in favor of the prosecution based on her manner and conduct in court.

Counsel for appellant has identified seven aspects of Judge Olmedo's conduct of the second trial and related proceedings that compel an inference of bias, as set forth below.

A. The Indicia of Bias.

1. The jurors' view of Judge Olmedo as biased in favor of the prosecution.

Following the convictions on May 31, 2023, attorney Holley conducted consensual interviews with certain members of the jury, including Juror No. 6. He described discussions among the jurors regarding Judge Olmedo's repeated interventions to curtail defense cross-examination. The jurors discussed their mutual perception that Judge Olmedo wanted to see petitioner get

[44] The jury foreperson gave a post-verdict interview with anti-COS blogger Tony Ortega, and commented that Judge Olmedo was a "nice lady" who was "professionally courteous." Exhibit 36, Transcript of Podcast (6 EX 1049).

convicted, and that she was biased in favor of the prosecution. Exhibit 41, Declaration of Shawn Holley (6 EX 1110).

2. The objective disparity between Judge Olmedo's treatment of the prosecution and the defense regarding trial objections.

At both trials, the court sustained prosecution objections to defense questions at a far higher rate than defense objections to prosecution questions, as set forth in the following Table 1.

Table 1 – Comparison of Objections Sustained at the First Trial

| Party & Attorney | Total # of Objections | Sustained | Overruled | Percentage Sustained |
|---|---|---|---|---|
| Defense-Cohen | 316 | 112 | 204 | 35% |
| Defense-Goldstein | 43 | 15 | 28 | 35% |
| Total Defense | 359 | 127 | 232 | 35% |
| Prosecutor-Mueller | 293 | 175 | 118 | 60% |
| Prosecutor-Anson | 22 | 14 | 8 | 64% |
| Total Prosecution | 315 | 189 | 126 | 60% |

Table 2 – Comparison of Objections Sustained at the Second Trial

| Party & Attorney | Total # of Objections | Sustained | Overruled | Percentage Sustained |
|---|---|---|---|---|
| Defense-Cohen | 149 | 58 | 91 | 39.0% |
| Defense-Holley | 37 | 15 | 22 | 40.5% |

| | | | | |
|---|---|---|---|---|
| Prosecutor-Mueller | 105 | 68 | 37 | 64.7% |
| Prosecutor-Anson | 83 | 68 | 15 | 82.0% |

The court sustained a significantly higher percentage of prosecution objections compared to defense objections at both trials.

| First Trial | Second Trial |
|---|---|
| % defense sustained – 35% | % defense sustained – 40% |
| % prosecution sustained – 60% | % prosecution sustained – 66% |

At the first trial, the percentage of Judge Olmedo's sua sponte objections against the defense was disproportionately high compared to sua sponte objections against the prosecution. At the second trial, Judge Olmedo made more sua sponte objections in general and made a higher percentage of them against the defense.

| First Trial | Second Trial |
|---|---|
| % sua sponte objections defense – 65% | % objections against defense – 78% |
| % sua sponte objections against the prosecution – 35% | % objections against prosecution – 22% |

3. The inconsistent application of a particular legal principle to the benefit of the prosecution.

This indicator of bias is apparent in Judge Olmedo's rulings regarding the use of police testimony to attack or bolster a witness's testimony. Judge Olmedo correctly identified and articulated the legal rule involved:

> The Court: Police officers cannot testify as to whether or not they believe any witness's testimony is credible or truthful.
>
> There is case law on point. Can't do it, will not allow you. So any question you intend to ask, do you think this was truthful, did you think that is truthful, the court will not allow and I'll interpose my objections. 31 RT 3015.

At the first trial, neither party asked any law enforcement officer to opine about witness credibility.

On direct at the second trial, Det. Myape acknowledged that despite the fact that she told the complaining witnesses not to communicate with one another, they repeatedly did just that. 31 RT 2995-2999. The prosecutor then elicited over defense objection Det. Myape's opinion that no contamination occurred – "I don't think that they colluded or contaminated each other's testimony." 31 RT 2998-2999.

That error was compounded when the court sustained a prosecution objection on cross:

> Q: [by defense counsel] Now, would it be accurate to say that you do not know whether any of the statements made to you by the Jane Does are truthful?
>
> [The prosecutor] Objection; it's overbroad.
>
> The Court: It's an inappropriate question, so the objection is sustained. 31 RT 3006.

The court thus erroneously failed to enforce the prohibition against a police officer vouching for the credibility of a prosecution witness when the prosecution had Det. Myape vouch that no contamination occurred. The court then erroneously

invoked the prohibition against a police officer vouching when defense counsel attempted to elicit from Det. Myape that she "do[es] not know whether any of the statements made to you by the Jane Does are truthful." See AOB, Argument III.

4. The court's granting of the prosecution's requests for more favorable rulings on evidentiary matters at the second trial while denying defense requests for more favorable rulings.

At the first trial, the court excluded prosecution evidence regarding tenets and practices of Scientology. Before retrial, the court reversed its ruling and agreed to the presentation of anti-Scientology testimony. The rationale for this reversal was entirely unfounded. The court asserted in clear contravention of the record that the defense had claimed it was relying on a defense of consent prior to the first trial, but then during the first trial, the defense had shifted to a denial that the incidents never happened.[45] The court then asserted that "[t]he broad charge of fabrication in all aspects of the victims' testimony by the defense make Claire Headley's testimony far more probative than prejudicial." 15 RT 769.

[45] The court stated, "Only after the commencement of trial and through cross-examination of the victims did it become clear to the court, and confirmed by the defense, that the defense was now asserting that the questioned incidents had never occurred at all, rather than consisting of consensual sexual activity." 15 RT 768-769 (emphasis supplied).

5. The reiteration of rulings that disfavored the defense.

Judge Olmedo reaffirmed the denial of defense access to the complaining witnesses' communications with each other regarding petitioner on the ground, inter alia, that the defense already had amassed "an incredibly large amount of [impeachment] materials." 3 RT 169. The court's implication was that the "incredibly large amount of [impeachment] materials" somehow reduced the defense need for the social media and other communications as an additional source of impeachment.

6. The repeated violations of the principle of "party presentation."

The clearest instance of the court's violation of the principle of party presentation relates to the unilateral expansion of the scope of testimony from Claire Headley for use as direct evidence of petitioner's guilt. 11 CT 3175-3176. That far exceeded the prosecution's request.

7. The improper intrusion into the adjudication of Scientology law, and the untenable determination that resulted.

a. The court's unconstitutional intrusion into Scientology doctrine and its misinterpretation of scripture at the preliminary hearing.

The issue of Scientology doctrine first arose at the preliminary hearing, held on May 18-21, 2021. The prosecution elicited testimony from complaining witness C.B. at the preliminary hearing on May 19 that her delay in reporting any

sexual misconduct to the police was in obedience to Scientology doctrine that prohibited a Scientologist from reporting another Scientologist to law enforcement authorities. 6 ART (8/23/24) p. 1293. She claimed that when she brought her complaint to the attention of Church Ethics Officers, she was shown a passage in the Scientology text Introduction to Scientology Ethics that she understood to mean that Scientologists were prohibited from reporting other Scientologists to law enforcement for committing public crimes. Ibid. On cross, she was handed a copy of the Introduction to Scientology Ethics, and was asked to identify any textual support for her testimony. She was unable to do so.

The next day, the prosecutor referred C.B. to a 1965 policy letter that discussed suppressive acts, and that included the prohibition against "delivering up the person of a Scientologist without justifiable defense or lawful protest to the demands of civil or criminal law," and asked C.B. if this passage supported her understanding that reporting another Scientologist's crime to the police was prohibited. She enthusiastically agreed. 7 ART (8/23/24) 1534.

On re-cross, counsel attempted to question C.B. whether the cited passage in fact prohibited reporting another Scientologist to the police:

> Q. Well, nowhere does it say reporting a Scientologist to the police is a suppressive act; correct?
>
> The Court: The court will interpret the pages that were just shown according to – the court will review

> it at the time that I make my decision. 7 ART (8/23/24) 1535 (emphasis supplied).

After argument, the court arrogated to itself the interpretation of a disputed passage in the ethics text:

> These exhibits [including the ethics text] indicate that the written doctrine of Scientology not only discourages but prohibits one Scientologist from reporting another Scientologist in good standing to outside law enforcement. This expressly written doctrine sufficiently explains to this Court the hesitancy and lateness in reporting the crimes charged to law enforcement and also explains the inconsistencies in the witnesses' testimony and the actions taken subsequent to the events that comprise the charges. 8 ART (8/23/24) 1860 (emphasis supplied).

b. The court's unconstitutional intrusion into Scientology doctrine at trial in the form of allowing the testimony of anti-Scientologist Claire Headley as a purported expert on Scientology doctrine.

The court perpetuated its unconstitutional intrusion into religious doctrine at trial by allowing prosecution witness Claire Headley to testify to her version of the meaning of Scientology doctrine, and then tasking the jury to make its own determination of the substance of Scientology doctrine.

8. The court's pejorative and unfounded remarks about petitioner at sentencing.

Before imposing sentence, the court lectured petitioner that he had just been legitimately convicted of two forcible rapes, and

that he should not view himself as victimized by the criminal justice system:

> You were convicted because each of the victims reported the rapes to someone shortly after the rapes occurred, also back in 2001 and 2003. Jane Doe 2 told her mother and friends; thus reporting the rape. Jane Doe 1 reported the rape to Scientology officials and also wrote letters to Scientology's International Justice Chief, reporting the rape.
>
> They also reported the rape to Los Angeles Police Department almost – approximately a year later. 44 RT 3720.

The court's lecture was founded on a mischaracterization of the record. Petitioner was convicted of two forcible rapes, and none of the complaining witnesses had reported a forcible rape anywhere near in time to the incident. And N.T. never reported a rape to the LAPD until 2017.

The court then referred to the 2004 civil settlement as further corroboration of petitioner's guilt:

> In addition, shortly after the rape, you paid Jane Doe 1 approximately $400,000 to keep quiet about the charged sexual incident. And while some may argue that whether you believed her story was true or not, you just didn't want the bad publicity, she was seeking money from you, close to half a million dollars is a lot to pay for the silence about an incident that you claimed never happened. 44 RT 3720.

This passage contains two clear indicia of Judge Olmedo's bias. First, without having any knowledge of the operative facts, she made an adverse inference against petitioner that his 2004 settlement indicated a consciousness of guilt, when the

settlement was a standard business practice in entertainment circles, e.g., to pay an accuser a miniscule fraction of the accused's earning potential to avoid public disclosure and scandal. The court drew the worst possible inference against petitioner based on a superficial and incomplete knowledge of the facts.

The court also denigrated the defense attribution of a motive to lie to the complaining witnesses at the time of trial:

> So the argument that they only colluded with each other decades later after leaving Scientology to get money from you does not make sense in light of the earlier reporting, nor does it diminish the truth or impact of the earlier statements made at or near the time of the rapes when they had no motive to lie, retaliate or gain money. 44 RT 3721.

The court's reference to the complaining witnesses' "earlier report[s]" overlooks the salient fact that the earlier reports did not claim forcible rape. The court ignored the actual defense position that the complaining witnesses banded together in 2016 to upgrade their earlier reports to forcible rape to cash in via a civil lawsuit.

The court had excluded the defense proffer regarding the complaining witnesses' manifest motive to falsely claim forcible rape to re-open the civil statute of limitations. See AOB, Argument II.

## CONCLUSION

WHEREFORE, for the foregoing reasons, petitioner requests that this Court issue an order to show cause and remand the matter to the superior court for an evidentiary hearing before a judge other than Judge Olmedo.

Dated: December 1, 2025

/eric s. multhaup/

ERIC S. MULTHAUP

## VERIFICATION

I am the attorney retained to prepare this habeas corpus petition on behalf of petitioner Daniel Masterson. I have reviewed the foregoing allegations, know their contents, and believe them to be true. I am making this verification in petitioner's stead because I conducted the investigation that developed the material facts alleged herein while petitioner was incarcerated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed on December 1, 2025 at Mill Valley, California.

/eric s. multhaup/
ERIC S. MULTHAUP

## CERTIFICATE OF COMPLIANCE

I certify that this Petition for Habeas Corpus consists of 22,720 words.

Dated: December 1, 2025

/eric s. multhaup/
ERIC S. MULTHAUP

DECLARATION OF SERVICE

RE: In re Daniel Masterson on Habeas Corpus, B _____;
Court of Appeal No. B333069;
Los Angeles Superior Ct. No. BA487932

I, Eric S. Multhaup, am over the age of 18 years, am not a party to the within entitled cause, and maintain my business address at 35 Miller Avenue, Suite 229, Mill Valley, California 94941. I served the attached:

PETITION FOR WRIT OF HABEAS CORPUS

on the following individuals/entities by TrueFiling or by placing a true and correct copy of the document in a sealed envelope with postage thereon fully prepared, in the United States mail at Mill Valley, California, addressed as follows:

Attorney General
By TrueFiling

Clerk of the Superior Court
210 West Temple Street
Los Angeles, CA 90012

Daniel Masterson
[address withheld]

Los Angeles District Attorney
211 West Temple Street, 9th Floor
Los Angeles, CA 90012

I declare under penalty of perjury that service was effected on December 1, 2025, at Mill Valley, California, and that this declaration was executed on December 1, 2025, at Mill Valley, California.

/eric s. multhaup/
ERIC S. MULTHAUP