

***Russell v Borders***

***Writ  
Of  
Habeas Corpus***

***Ground 6***

***Prosecutorial Misconduct***

1     **GROUND 5.     PROSECUTORIAL MISCONDUCT**

2         Petitioner contends prosecutorial misconduct was a primary  
3 factor in his wrongful conviction on fifty-two counts of theft  
4 by either fraud or embezzlement. Prosecutorial misconduct is  
5 evident in nearly every phase of this proceeding from  
6 investigative phase through the sentencing phase. Petitioner  
7 argues there is sufficient evidence to suggest his conviction  
8 resulted from discriminatory charges, selective prosecution, and  
9 vindictive prosecution.

10        The elderly Petitioner, an experienced licensed real estate  
11 broker represented the stereotype of the white collar criminal  
12 who "made tons of money" at the expense and misery of "ordinary  
13 people" leading up to and during the collapse of the California  
14 residential real estate market. The prosecutor was newly named  
15 to head a task force on white collar crime.

16        Petitioner and his innovative Rent To Own program had been  
17 thoroughly investigated by the Bureau of Real Estate which con-  
18 cluded no wrongdoing on the Petitioner's part. The investi-  
19 gation was undertaken in response to several complaints about  
20 the Rent to Own program by dissatisfied customers. Complaining  
21 witness Jeffery Johnson, also a Real Estate Broker was  
22 instrumental in calling upon the other customers to submit  
23 complaints. When the Bureau of Real Estate found no evidence of  
24 wrongdoing and took no action against Petitioner, complaining  
25 witness Mr. Johnson became the ringleader, spearheading his  
26 personal campaign to flood the Sacramento County District  
27 Attorney's office with complaints from nearly every one of the  
28 Rent To Own customers.

      (Ronald Russell, Habeas Corpus Petition, Ground Six, page 58.)

1       The core issue underlying the complaints was the customers  
2       had paid a fee to Petitioner pursuant to a contract for specific  
3       services which would enable them to temporarily rent and eventu-  
4       ally purchase a home they selected from the Petitioner. The  
5       customers were dissatisfied because not all the services  
6       promised had been rendered. The contract also provided the fee  
7       was refundable if they "changed their mind." Petitioner took no  
8       issue with either the fact he had not rendered all the services  
9       the contract promised nor that dissatisfied customers were  
10      promised and entitled to a refund. The problem at hand was  
11      Petitioner financially overwhelmed by all the refund requests  
12      and could only make refunds as funds were available.

13       Like the majority of small business owners, Petitioner ex-  
14      pected his business would succeed, categorized the fees he col-  
15      lected from customers as business income and utilized the  
16      business income to pay his business operating costs. He paid  
17      refunds to customers who "changed their mind" from the same  
18      account until funds ran out. Petitioner never reasonably  
19      expected all the customers would request refunds or that his  
20      business would fail do to a set of business conditions beyond  
21      his control, BUT IT DID. And Petitioner had a contingency plan  
22      for customer refunds from the Broker's Recovery Fund (now known  
23      as the Consumer Recovery Account) if the remote possibility  
24      became a painful reality.

25       Based on the fact Petitioner paid these refunds out of the  
26      same account where fees from all customer were deposited as  
27      business income and from which business operating ex- penses  
28      were paid, the prosecution concluded Petitioner was operating a  
    (Ronald Russell, Habeas Corpus Petition, Ground Six, page 59.)

1 ponzi scheme or scam. The prosecution's theory further held the  
2 fees were no his property thus Petitioner had no legal right to  
3 use the fees he collected from customers for business operating  
4 expenses. Petitioner contends this is selective prosecution in  
5 the sense he operated his business according to widely accepted  
6 business practices, these were selectively deemed in his case to  
7 be a ponzi scheme, and he stood accused of stealing money from  
8 customers by false pretenses. This astonishing prosecution  
9 theory continued to grow more astounding and vague with the  
10 passage of time.

11 The prosecutor viewed a quick conviction in this case with  
12 54 alleged victims would be political capital for his own career  
13 advancement and anticipated the 72 year old Petitioner to jump  
14 at his offer to resolve the case with a short prison sentence.  
15 Instead, Petitioner maintained his innocence and attempted to  
16 assert his right to a speedy trial. In response, the prosecutor  
17 further expanded his investigation producing more than 7,000  
18 pages of "evidence" to deliberately overwhelm Petitioner's  
19 Public Defender and continued vigorously to oppose Petitioner's  
20 release from custody pending trial. Petitioner contends the  
21 prosecutor's conduct in both pretrial and trial matters  
22 evidences a high level of vindictiveness, the vindictiveness was  
23 a result of Petitioner's exercise of his right to maintain his  
24 innocence and his right to a speedy public trial. At an  
25 evidentiary hearing, Petitioner will argue discriminatory  
26 enforcement of the law, unconstitutionally selective prosecution  
27 and vindictive prosecution resulted in Petitioner's conviction.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 60.)

A. PROSECUTORIAL MISREPRESENTATION  
OF MATERIAL FACT

1. Rent To Own was a Ponzi scheme and scam operated by the Petitioner. (R.T. 3386:9-21), (R.T. page 3393-3396) (Note: Also see Ground 4, Notes: @ Footnote <sup>2</sup>) As a matter of legal definition the Rent To Own program was not a Ponzi scheme. A ponzi scheme involves investors who were promised an attractive exceptionally high return on their investment by the operator. The operator does not properly invest the funds and the return on the investment funds, if any is substantially less than promised to investors at the outset. To provide the ongoing appearance of extremely large returns, the operator pays early investors the promised return out of the funds collected from new investors. The scheme ultimately collapses when the operator is unable to pay the high returns and/or repay the principal to each investor. This a misrepresentation of material fact because no Rent To Own customers were investors nor were they promised a high rate of return on their money. Dissatisfied customers were promised a refund if they "changed their mind." The prosecution could have misstated this as material fact by calling the Rent To Own program "a lemon" because it leaves a sour taste in the mouth or an "Edsel" because customers decided "it wasn't all it was cracked up to be" but there is a huge prejudicial difference between "ponzi scheme" and "a lemon" or "an Edsel" in that the former has significant (Ronald Russell, Habeas Corpus Petition, Ground Six, page 61.)

1 negative emotional overtones, dastardly corrupt criminal  
2 connotations and attaches specific criminal liability (i.e. the  
3 operator's nefarious intent is presumed in a ponzi scheme.) The  
4 prosecution's express purpose of repetitive references to "ponzi  
5 scheme" and "Bernie Madoff" was to emotionally and  
6 quasi-intellectually vilify Petitioner to the jury.

7 2. The funds Petitioner took from customers remained  
8 their property and Petitioner promised to hold it "in  
9 trust" for them. (R.T. 3449:17-20) This a misrepres-  
10 sentation of material fact because "took from" is charac-  
11 teristic of stealing and theft. It is further  
12 misrepresentation because the prosecution tried  
13 repeatedly to characterize the fee "as really" a rental  
14 security deposit, "as really" the down payment on a house  
15 or "as really" earnest money in an escrow account. All  
16 these "as reallys" were essential to the prosecution's  
17 case for embezzlement against Petitioner. And as matters  
18 of material fact all of these "as reallys" were  
19 essentially false misleading conclusions made by the  
20 prosecutor. Customers paid a fee to Petitioner in  
21 advance of a promise for specific services rendered by  
22 the Petitioner. Complaining witnesses admitted they  
23 understood Mr. Russell wouldn't do anything for them  
24 until they paid him the \$2,900 fee. The contract  
25 provision stating this fee would be refunded if the  
26 customer "changed their mind" or contract provision at an  
27 indefinite date in the future Petitioner would apply the  
28 fee to a rental deposit did not alter the nature of the  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 62.)

1 transaction such that the fee remained the property of the  
2 customer to be held in trust by Petitioner. The contract made  
3 it clear Mr. Russell would be both the landlord and eventually  
4 the seller. A landlord is largely free to structure rental  
5 deposits as he deems necessary in a rental agreement.  
6 Petitioner and customers hadn't yet established a rental  
7 agreement spelling out the terms of a lease or deposit.  
8 Conceivably, with a damage deposit might cause property damage  
9 in excess of the damage deposit. The deposit as first and last  
10 month's rent creates another set of scenarios. Landlords can  
11 use rental deposits as he sees fit during the term of a lease.  
12 As the seller Mr. Russell was promising he would consider the  
13 fee as part of the down payment which was a bookkeeping matter.  
14 Mr. Russell was not saying in the contract 'Even if you cause  
15 \$10,000 of damage to my property which I have to pay  
16 out-of-pocket, I'm going to put the \$2,900 toward your down  
17 payment. These are matters to be carefully negotiated in the  
18 future between the contracting parties.

19 3. Petitioner had a duty under the law to hold the \$2,900  
20 fee customers paid him in segregated accounts. (R.T.  
21 3458:12-20), (R.T. 3386:9-15) This a misrepresentation  
22 of material fact because there is no such requirement and  
23 no such duty under California law. As in #2 above, this  
24 misrepresentation was essential to the prosecution's case  
25 for embezzlement against Petitioner. The prosecution  
26 deliberately confused the jury with information  
27 Petitioner was a Real Estate Broker and information when  
28 real estate brokers are either the buyer's or seller's  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 63.)

1 broker the broker has a duty to segregate funds received in a  
2 separate account. The misrepresentation of material fact is  
3 Petitioner was never these customers' broker. Initially,  
4 PETITIONER WAS THE BUYER and landlord. At an unspecified future  
5 date PETITIONER WOULD BE THE SELLER. In the former case Mr.  
6 Russell could serve as his own broker. In the latter case, the  
7 customer might well choose a different broker to handle the  
8 property transaction between owner-seller Mr. Russell and  
9 themselves as buyer.

10 4. Petitioner's use of these fees to pay business  
11 operating expenses was illegal and prohibited by law.  
12 (R.T. 3335:13-20) This a misrepresentation of material  
13 fact because there is no such restriction or prohibition  
14 under California law. The prosecution's evidence showed  
15 Petitioner treated the fees as business income disbursed  
16 for acceptable and legitimate business purposes including  
17 advertising, office operations and rent. This  
18 misrepresentation was material to the prosecution's case  
19 of theft by deception and fraud attempting to mislead the  
20 jury part of the Petitioner's deception was he didn't  
21 explain to each customer he intended to use these fees  
22 for business operating expenses. The prosecutor's intent  
23 was to link Petitioner's use of fees for operating  
24 expenses to a ponzi scheme where funds invested are held  
25 in segregated investor accounts but diverted by and  
26 converted to purposes of the operator. The prosecutor  
27 continued to condemn Mr. Russell using this false  
28 comparison reiterating to the jury 'Once Mr Russell got  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 64.)



1        their money he considered it his money.' Under the law  
2        and pursuant to the contract these fees were his money.

3        5.        The contract signed by Petitioner was illegal and an  
4        "instrument of fraud." (R.T. 3339:10-3340:6), (R.T.  
5        3465:9-13)        The "contract as illegal" is a  
6        misrepresentation of material fact because the contract  
7        was reviewed by Petitioner's attorney who saw nothing  
8        illegal about it. The prosecution's own expert witness  
9        Mr. Kovar testified "In my opinion, it's a grab bag of  
10       attractive ideas. I've never seen -- up until now I have  
11       never seen this particular contract nor have I ever read  
12       a contract this disjointed." (R.T. 2876:6-9) The nature  
13       of any contract would of course offer attractive ideas  
14       and options in return for some consideration. The  
15       witness was entitled to his opinion this as unusual -  
16       like nothing he had seen before and disjointed. As a  
17       matter of contract law however, in contract disputes,  
18       contracts operate against the party who drafts and offers  
19       it and to the benefit of the other party meaning in this  
20       disagreements about attractive ideas or confusion caused  
21       by disjointed construction would operate to the  
22       customer's benefit. The contract as an "instrument of  
23       fraud is a misrepresentation of material fact because the  
24       contract was an agreement executed between parties  
25       neither of whom contested their signatures as forgeries.  
26       Instruments of fraud include checks drawn on nonexistent  
27       accounts, falsified documents i.e. titles, deeds,  
28       securities, stock certificates, counterfeit currency or  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 65.)

1 other counterfeited items or merchandise. The prosecutor  
2 applied this term to convey to the jury the contract  
3 represented only false promises and the pretense by which  
4 Petitioner stole the customer's money - false pretense  
5 being a necessary element of fraud. To accept this false  
6 premise by the prosecution, one would also accept the  
7 ridiculous proposition Petitioner willingly memorialized  
8 his false pretenses in writing when he executed the  
9 contract.

10 6. Petitioner made attractive false promises to customers  
11 he never intended to keep in order to get their money.  
12 (R.T. 3390:13-16) This a misrepresentation of material  
13 fact because the misstatement is directly controverted by  
14 the totality of evidence. Petitioner went to great  
15 length and expense to create the PPM as a vehicle for  
16 private investor funds, hired an attorney to recruit  
17 prospective investors and personally participated in the  
18 HUD application process for the Neighborhood  
19 Revitalization Program if he had no intention of  
20 fulfilling his "attractive promises." The contrary  
21 statement is more reasonably true: Petitioner went to  
22 great lengths doing everything in his power to fulfill  
23 his attractive promises made to Rent To Own customers.  
24 This false misleading statement to the jury by the  
25 prosecution was made in an attempt to establish  
26 Petitioner's nefarious intent. This is more of the same  
27 circular logic: Mr. Russell made attractive false  
28 promises with nefarious intent and we can infer Mr.

(Ronald Russell, Habeas Corpus Petition, Ground Six, page 66.)

1 Russell's nefarious intent from all his false promises.  
2 What if, however, we (correctly) conclude Petitioner was  
3 fully intent on keeping all of his attractive FUTURE  
4 promises when he made them, but the future brought  
5 unforeseen circumstances preventing him from fulfilling  
6 his promises. A promise is not a false promise simply  
7 because it goes un-fulfilled.

8 7. Mr. Neff and Mr. Russell were at cross purposes in the  
9 operation of the Rent To Own program. (R.T. 3462:13 to  
10 3463:14) This a misrepresentation of material fact  
11 because it is predicated on the false assumption Mr.  
12 Russell had no intention or financial incentive to  
13 purchase homes for Rent To Own customers and Mr. Neff's  
14 financial success depended entirely on closing the sale  
15 of homes to Rent To Own customers. The \$2,900 fee  
16 Petitioner collected from each customer pales in  
17 comparison to his expected income from buying homes  
18 (broker's fee paid by seller at least \$15k), rental  
19 income from the home he owned (at least \$1,800 x 24  
20 months = \$43.2k) and profit from selling the house to the  
21 Rent To Own customer (20% more than what he paid for the  
22 property i.e. \$200,000 x 20% = \$40k) It is absurd to  
23 assume Petitioner had no intent and interest in \$98k  
24 income he would derive from buying, renting and selling a  
25 home to each and every Rent to Own customer. Similarly,  
26 Earl Neff had an interest in "growing the business",  
27 increasing future customer traffic, some of whom would be  
28 referrals from satisfied customers who like Jim Mora were  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 67.)

1       able to purchase a home with conventional financing.  
2       Testimony was "Mr. Neff was Petitioner's right hand man"  
3       and as such, like Petitioner, he had a "long term view"  
4       about the business. The prosecutor attempted to use this  
5       separation as circumstantial evidence of Petitioner's  
6       nefarious intent.

7       8.     Petitioner took advantage of Ms. Cannon and Haven of  
8       Hope in 2006 to pocket a \$57k commission. (R.T.  
9       3341:3-27), (R.T. 3461:1-28) This a misrepresentation of  
10      material fact because the misstatement is totally  
11      controverted by the testimony of Ms. Cannon and Ms.  
12      Raymond, both of whom were Haven of Hope executive  
13      officers. The prosecutor attempted to use gross  
14      misrepresentation of material fact as circumstantial  
15      evidence as to Petitioner's self serving intent. This  
16      was part and parcel of Mr. Archibald's tactic to demonize  
17      and vilify Petitioner in front of the jury at every  
18      opportunity irregardless of circumstances and witness  
19      testimony.

20      9.     Petitioner bought a car from Mr. Mora but refused to  
21      pay him for it. (R.T. 3341:28 - 3342:27) This a  
22      misrepresentation of material fact because the testimony  
23      of witness Jim Mora is contained in Volume XI. pages  
24      3118-3134 of the Reporters Transcript and contains no  
25      references of any kind to vehicles or vehicle sales.

26      10.    Petitioner's Christian faith was part of Petitioner's  
27      deception of Rent To Home customers. (R.T. 3337:15 -  
28      3338:2), (R.T. 3465:21-28) This a misrepresentation of  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 68.)

1 material fact because the testimony of witnesses Ms.  
2 Cannon, Ms. Raymond and the Petitioner himself revealed  
3 the nature of Petitioner's religious convictions and  
4 faith substantially years before the innovative Rent To  
5 Own program was even conceptualized. This was another of  
6 the prosecutor's really "cheap shots" in front of the  
7 jury intended to demonize and vilify Petitioner not only  
8 as a con man but also hypocrite.

9 11. Petitioner only looked out for himself and what was  
10 best for Mr. Russell. (R.T. 3340:24 - 3341:27) This a  
11 misrepresentation of material fact because the testimony  
12 of numerous prosecution witnesses controverted the  
13 statement as false. Prosecution witnesses, for example  
14 testified Petitioner donated his sales commission to  
15 completely furnish living facilities for homeless people,  
16 gave his nephew in a college a used car and saved them a  
17 great deal of money. Furthermore, it is inconceivable  
18 that a man who "only looked out for himself and what was  
19 best for himself" could be engaged in the real estate  
20 business for thirty (30) years without ever being subject  
21 of a complaint. Again, this is material fact misstated  
22 by the prosecutor to paint the Petitioner as a  
23 self-centered, self-indulgent, self-serving con man whose  
24 style is to take advantage of everyone he's ever  
25 encountered in his life. Probably nothing could be  
26 farther from the truth - at least according to the  
27 prosecution's own witnesses.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 69.)

1 12. Petitioner made an enormous profit from the Rent To  
2 Own program. (R.T. 3391:24 - 3392:6), (R.T. 3451:1-4)  
3 This a misrepresentation of material fact because the  
4 prosecution spent at least \$13,000 for expert witness  
5 testimony from a forensic accountant who determined the  
6 Rent To Own program went broke and therefore was unable  
7 to provide the promised refunds to all the customers.  
8 Profit and income are not the same. Profit is the  
9 amount remaining after subtracting costs from income.  
10 Furthermore, the forensic account found no evidence  
11 Petitioner's business expenses (costs) were questionable  
12 or unusual nor did the forensic accountant determine  
13 that Petitioner had hidden away income in an off-shore  
14 account or invested it in a non-business item like a  
15 private jet or services for a prostitute. This is  
16 material because it was essential to the prosecution's  
17 case that Petitioner had enriched himself by victimizing  
18 the Rent To Own customers. The jury heard a great deal  
19 of testimony about the financial losses of complaining  
20 witnesses. This misstatement of material fact to the  
21 jury was intended to inflame the jury against  
22 Petitioner. The prosecutor also knew as a matter of  
23 fact Petitioner was indigent, could not post bond and  
24 was represented by the Public Defender. Hence, the  
25 prosecutor, given these circumstances had to know there  
26 was no measurable profit made by Petitioner in the Rent  
27 To Own program.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 70.)

1 If an evidentiary hearing is granted in this matter, Peti-  
2 tioner will argue the prosecutor's misrepresentations of  
3 material fact cited above and others severely prejudiced  
4 Petitioner resulting in his conviction. Petitioner will further  
5 argue the severity of prejudice resulting from misrepresentation  
6 of material fact warrants reversal of Petitioner's conviction on  
7 all counts.

8 B. PROSECUTION MISLED THE DEFENSE

9 1. Use of Testimony by Wonda Raymond and Margreta Cannon

10 (R.T. 215:13-7) January 23, 2014 the court convened to  
11 consider motions in limine. Defense counsel submitted  
12 Motion #10 to exclude other crimes evidence. The prose-  
13 cution made representations to the Defense as follows:  
14 "At one point I was looking at an earlier transaction Mr.  
15 Russell had with Haven of Hope. As I advised the Court  
16 in chambers and Mr. Slaughter, I am not currently intend-  
17 ing to use that in the People's case in chief. I'm  
18 presuming if Mr. Russell took the stand and somehow got  
19 into that, that might open it, but I'm not planning to  
20 use that in my case in chief." At trial, the prosecution  
21 called witnesses Wonda Raymond and Margretta Cannon, both  
22 of whom were Haven of Hope executive officers. The  
23 testi- mony of both witnesses chiefly focused on the 2006  
24 Haven of Hope real estate transaction. The prosecution  
25 used the earlier transaction in his case in chief as  
26 circumstan- tial evidence of Petitioner's intent in the  
27 instant case. (R.T. pages 1962-1990), (R.T. pages  
28 2014-2027), (R.T. pages 2028-2052), (R.T. pages  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 71.)

1 2057-2062), (R.T. pages 2014-2028)

2 **2. Prosecution's Theory of the Crime** (R.T. pages 3417-3419)

3 The prosecution led the defense to believe the instant  
4 case was theft by deception. Not until opening argument  
5 was the defense aware the prosecution was offering two  
6 theories of the crime being either fraud or embezzlement  
7 and asking the jury to decide which theory applied to  
8 individual counts. The jury had not heard evidence that  
9 supported each and every element of each and every count.  
10 This "two theory menu" allowed the jury to essentially  
11 side step the elements of intent and knowledge of wrong  
12 doing when considering the binary choice of either fraud  
13 or embezzlement. To defend as to each count the defense  
14 would have to make a showing that each specific count  
15 lacked the essential elements of fraud AND lacked the  
16 essential elements of embezzlement.

17  
18 **C. PROSECUTION'S USE OF PERJURED TESTIMONY**

- 19 **1. Earl Neff regarding receiving no compensation or payment**  
20 **from Petitioner's Rent To Own program.** (R.T. pages  
21 2364-007 thru 2867) The prosecution called their witness  
22 Earl Neff who initially testified to receiving "a little  
23 bit of gas money once in a while and slept in the Rent To  
24 Own office because he described his financial situation  
25 as "Very meager". Several days later the prosecution  
26 recalls the witness to testify. The prosecution asks Mr.  
27 Neff to thumb through a stack of checks made payable to  
28 Mr. Neff and now the witness testifies he received a  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 72.)



1 series of checks "for living expenses" from the  
2 Petitioner, his employer totally more than \$8,000. The  
3 witness, testifying under a grant of immunity was warned  
4 by the court before beginning to testify that he could  
5 not commit perjury.

- 6 2. Complaining witnesses generally in reference to Petition-  
7 er's alleged statements about trust accounts, escrow  
8 accounts and a special safe place for fees Petitioner  
9 collected. Petitioner contends most, if not all of the  
10 complaining witnesses were "coached" either by Mr.  
11 Jeffery Johnson or the Prosecution's Investigator on how  
12 to answer questions regarding Petitioner's statements  
13 about trust accounts, escrow accounts and special safe  
14 place for the fees Petitioner collected from them.  
15 Petitioner never discussed the topic of "safe keeping of  
16 fees" with any customer and the disparity between  
17 individual complaining witnesses' recollection of such  
18 discussions suggests the ideas of trust accounts, escrow  
19 accounts and special accounts was planted in their  
20 thinking. Petitioner contends the Prosecutor was fully  
21 aware these representations were false but they were  
22 exactly the necessary words he needed to make his case  
23 against the Petitioner.

24 D. BRADY VIOLATIONS

- 25 1. Bureau of Real Estate Investigation Petitioner, and his  
26 Rent To Own program were subjects of a six (6) month  
27 investigation by the Department of Real Estate later  
28 known as the Bureau of Real Estate prior to the filing of  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 73.)

1 any charges in the instant criminal proceeding. The  
2 Department or Bureau found no evidence of wrong doing and  
3 took no action against Petitioner or the operation of the  
4 Rent To Own program. Copies of documents related to this  
5 investigation and the Investigation Report were  
6 exculpatory material and never provided to the defense.

7 2. Broker's Recovery Fund or Consumer Recovery Fund This  
8 fund became known as the Consumer Recovery Account. The  
9 prosecution continued to deny the existence, purpose and  
10 potential relief available through out the proceedings.  
11 Petitioner insisted his customers would receive their  
12 refund from this private pool of funds paid by all  
13 brokers out of their commissions. The prosecution had  
14 all the information about the fund in it's possession but  
15 failed to tender it to the defense. Instead, after  
16 obtaining Petitioner's conviction on all 52 counts,  
17 provided the fund's application form to each of the  
18 complaining witnesses who obtained a full refund of their  
19 fee as promised by the Petitioner in their contract.

20 3. Witness statements to Investigators The prosecution  
21 failed to turn over copies of the full statements  
22 obtained by the prosecution's investigator from each  
23 complaining witness. Several of these complaining  
24 witnesses also testified they had not received or  
25 reviewed their written statement(s).

#### 26 CONCLUSION

27 If an evidentiary hearing is granted in this proceeding,  
28 Petitioner will provide written documentation as to all of the  
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 74.)

1 above claims in Ground 6. He will argue that his conviction was  
2 the result of prosecutorial misconduct in all of the forms cited  
3 above; the prosecutor's conduct violated Petitioner's right to a  
4 fair trial; and, in all likelihood, absent the prosecutorial  
5 conduct, the result in this proceeding would be significantly  
6 different. Finally Petitioner will argue, in view of the  
7 prejudicial harmful effect of the prosecutor's conduct the only  
8 reasonable and proper relief is reversal of the verdict on all  
9 counts.

10 **APPLICABLE CASE LAW:**

11 U.S. v. Armstrong, 517 U.S. 456 (1996) The High Court found  
12 the petitioner was convicted as the result of an  
13 unconstitutionally selective prosecution violating petitioner's  
14 Fifth Amendment right to due process.

15 Vick Wo v. Hopkins, 118 U.S. 356 (1886) The charges which  
16 resulted in petitioner's conviction were the product of  
17 discriminatory enforcement of the law violating petitioner's  
18 Fifth Amendment right to due process.

19 Blackledge v. Perry, 417 U.S. 21 (1974) The charges which re-  
20 sulted in Petitioner's conviction are the result of prosecuto-  
21 rial vindictiveness based on Petitioner's exercise of a legal  
22 right violating petitioner's Fifth Amendment right to due  
23 process.

24 U.S. v. Goodwin, 527 U.S. 386 (1982) The charges which resulted  
25 in Petitioner's conviction are the result of prosecutorial vin-  
26 dictiveness based on Petitioner's exercise of a legal right  
27 violating petitioner's Fifth Amendment right to due process.

1 Gray v. Netherland, 516 U.S. 152 (1996) The court held a prose-  
2 cutor deliberately misled the defense about the evidence the  
3 State intended to introduce regard the theory of defendant's  
4 guilt violating petitioner's Fifth Amendment right to a fair  
5 trial.

6 Napue v. Illinois, 360 U.S. 264 (1959) The prosecutor knowingly  
7 used perjured testimony to obtain a conviction. The prosecution  
8 knew or should have known the testimony was false and prejudice  
9 resulted violating petitioner's Fifth Amendment right to a fair  
10 trial.

11 Darden v. Wainwright, 477 U.S. 168 (1986) The court held the  
12 petitioner's conviction was obtained as a result of prosecu-  
13 torial misconduct violating petitioner's Fifth Amendment rights  
14 to a fair trial and due process.

15 Doyle v. Ohio, 426 U.S. 610 (1976) The Supreme Court held the  
16 trial court permitted defendant's credibility as a witness in  
17 his own behalf to be impaired by fundamentally unfair means vio-  
18 lating petitioner's Fifth Amendment right to a fair trial and to  
19 testify in his own defense.

20 U.S. v. Young 470 U.S. 1 (1985) Petitioner's conviction follow-  
21 ed from the prosecutor's vouching for the credibility of a  
22 witness violating petitioner's Fifth Amendment right to due  
23 process.

24 Berger v. U.S., 295 U.S. 78 (1935) The prosecutor's misstate-  
25 ment of material fact were used to obtain Petitioner's convic-  
26 tion violating petitioner's Fifth Amendment rights to a fair  
27 trial and due process.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 76.)

1 Brady v. Maryland, 373 U.S. 83 (1963) The state failed to dis-  
2 close evidence favorable to the accused violating petitioner's  
3 Fifth Amendment right to due process.

4 Kyles v. Whitley, 514 U.S. 419 (1995) (Brady Violation by Inves-  
5 tigative Agencies) The State failed to disclose Brady evidence  
6 that was in the possession of investigative agencies to which  
7 the State had access violating petitioner's Fifth Amendment  
8 right to due process.