EXHIBIT 3: ISSUES OF DISPUTED FACT OR LAW

Darlie Lynn Routier Application	Respondent's Answer	Issues of Disputed Fact or Law
I. Because Petitioner Is Innocent Of The Crime For Which She Was Convicted, Her Sentence And Conviction Are Unconstitutional Under *Schlup v. Delo* And Violate The Eighth Amendment And Petitioner's Federal And State Constitutional Rights To Due Process And A Fundamentally Fair Trial		
Legal Standard: Petitioner must "show that a constitutional violation has probably resulted in the conviction of one who is actually innocent." To establish that probability, "the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." *Schlup*.	**Legal Standard:** Applicant must prove by "clear and convincing evidence" that no juror would have convicted her in light of the new evidence. *Ex parte Franklin*.	***ISSUE OF LAW*** *See* Applicant Darlie Lynn Routier's Reply to Respondent's Original Answer to Applicant's Article 11.071 Application for Writ of Habeas Corpus ("Reply Br.") Pt. II.
I.A. Newly Discovered Evidence Supports The Defense's Theory At Trial That The June 6, 1996, Crime At 5801 Eagle Drive, Rowlett, Texas Was Committed By An Intruder		

I.A.1. A Bloody Fingerprint Lifted From the Glass Table in the Family Room Establishes That an Unknown Adult Was in the Routiers' Residence on the Morning of June 6, 1996 During or Right After the Attacks		***ISSUE OF FACT*** *See* Reply Br. Pt. II.A.
James Cron testified that the bloody fingerprint on the family room coffee table (Exh. 85J) "lacked sufficient points of identification." C.R.R. Vol. 35, p. 2265:15. He further testified that the fingerprint "fits the criteria to be a younger person's prints" – possibly those of a five or six year old child. C.R.R. Vol. 35, p. 2266:4-5. The jury "likely dismissed the fingerprint evidence as belonging either to Devon or Damon Routier." First App. 17.	Pat Wertheim tested Exh. 85J against known samples and was able to exclude all persons contributing fingerprint samples except Applicant. Resp. Ans. 26. Applicant mischaracterizes Prof. Jantz's report by claiming that "the latent fingerprint had sufficient points of identification for [Jantz] to conduct an anthropological analysis of the fingerprint." Resp. Ans. 26. Ms. Wertheim states in her affidavit that "[f]ingerprint examiners use the word 'identification' differently from most other scientists. When a fingerprint examiner states that an unknown print has been identified, that means the print was made by the same area of friction skin as a known print to which it was compared." Resp. Ans. Exh. 1 at 2.	Unlike on other issues Applicant raised, Respondent did not go back to Lt. Cron to have him explain his testimony; instead, Respondent consulted a different expert who was not familiar with the case. That calls into question Respondent's confidence in Lt. Cron's findings. Respondent's theory of the source of the fingerprint is a moving target; at trial, Respondent represented that the fingerprint was one of the minor victims; now, Respondent claims the fingerprint belongs to Applicant.

Prof. Richard Jantz conducted an anthropological analysis of the bloody fingerprint and "concluded that the latent print belongs to an adult not a child." First App. 18. He also determined that the print did not match any of the fingerprint samples from Petitioner, Darin, Damon, and Devon Routier, and all law enforcement personnel who responded to 5801 Eagle Drive. First App. 18.	Prof. Jantz's report is unreliable under the *Kelly* test for determining the admissibility of scientific testimony under Rule 702. Resp. Ans. 22. In support of its position, Respondent attaches the affidavit of Ms. Wertheim. The Jantz report nowhere states that he excluded any of the fingerprints of known persons at the scene as the source of the latent fingerprint. Resp. Ans. 26-27. The Jantz reports undermines Applicant's claim of actual innocence in suggesting a higher probability that the latent fingerprint was left by an adult female. Resp. Ans. 26. Ms. Wertheim concluded that "all of the people whose fingerprints were compared were excluded as the source of 85 J except Darlie Lynn Routier. She could be neither excluded nor identified." Resp. Ans. Exh. 2 at 2.	Prof. Jantz's method was consistent with the standard practice of forensic anthropologists who routinely assess the age of skeletal remains from dental development, bone length or bone development. Robert Lohnes, an independent fingerprint examiner, previously determined that Exh. 85J *was not made* by Petitioner. Ms. Wertheim's statements about the applicable legal standards for determining the admissibility of scientific evidence should be disregarded as outside her area of expertise.

I.A.2. A Rowlett Woman Returning Home in the Early Morning of June 6, 1996 Observed Two Suspicious Men Walking from the Routier Neighborhood One of Whom Matched Petitioner's Description of the Assailant		***ISSUE OF FACT*** *See* Reply Br. Pt. II.B.
Potter recalls observing two suspicious men on Dalrock Road, near the Routiers' residence after 2:00 a.m. on the morning of June 6, 1996. First App. 18-19.	Potter does not explain why she did not come forward with her information earlier. Resp. Ans. 29. Potter's affidavit places the suspicious men walking *away* from the Routiers' home a half hour *before* Petitioner's 911 call. Resp. Ans. 28. Lt. David Nabors examined Dalrock Road and determined that the location of the "S" curve Potter describes in her affidavit is at least 1.23 miles from the Routiers' residence (and possibly as much as 2.3 miles). Resp. Ans. Exh. 3 at 2.	Respondent has not dispelled the conclusion that Ms. Potter places an individual matching Applicant's description of her attacker near the crime scene on the morning Applicant was attacked. Ms. Potter's affidavit is not more specific as to time than "after" 2:00 a.m.
I.A.3. In the Spring of 1996, Darin Routier Had Intentions to Have His Residence "Hit" to Collect Insurance Proceeds		***ISSUE OF FACT*** *See* Reply Br. Pt. II.B.

In the spring of 1996, Darin Routier inquired of Petitioner's father whether he knew anybody who would "burglarize" his home "so he could make an insurance claim." First App. 19.	Darin Routier's affidavit reinforces Respondent's evidence that Applicant had a financial motive to murder her children. Resp. Ans. 29.	Darin Routier's affidavit establishes that *he*, not Applicant, had a motive and apparent wherewithal to follow through on such a scam.
I.B. Preliminary Analyses by Forensic Experts Have Revealed Physical Evidence Inconsistent With The State's Circumstantial Case		***ISSUES OF FACT*** *See* Reply Br. Pt. III.B.1.
I.B.1. Knife Number 4		
Knife No. 4 may have been contaminated with fingerprint powder. First App. 21.	Applicant misstates evidence by claiming that "'[d]efense experts have concluded that the source of the fiber was fingerprint powder used to dust the knives recovered from the Routiers' residence.'" Resp. Ans. 31. Palenik's affidavit merely suggests the possibility of contamination. Resp. Ans. 31.	*See* Reply Br. Pt. III.E. Mr. Linch was not accurate in his testimony about the width of the fingerprint brush. Mr. Linch's notes support the possibility of contamination given proximity of the fingerprint powder residue on the butcher block to Knife No. 4.
I.B.2. Petitioner's Nightshirt		

The blood spatter on Petitioner's nightshirt is inconsistent with it having been worn as she stabbed her children with her right hand. First App. 21.	The affidavit of Terry Laber is cumulative and does not exculpate Petitioner. Resp. Ans. 33.	Respondent's answer creates a disputed issue of fact that should be evaluated by the Court.
I.B.3. Vacuum Cleaner		
Most of the bleeding that occurred on the vacuum cleaner happened after the vacuum cleaner was knocked over onto the floor. First App. 22.	The affidavit of Terry Laber impeaches Petitioner's testimony that she used the vacuum cleaner as a crutch to support herself. Resp. Ans. 33.	Respondent's answer creates a disputed issue of fact that should be evaluated by the Court.
I.B.4. Wine Glass		
The dispersal pattern of the glass chards of the wine glass is inconsistent with someone having smashed the glass onto the floor. First App. 22.	The affidavit of Terry Laber is cumulative and does not exculpate Petitioner. Moreover, his affidavit does not address the finding of clean glass shards *on top of* Petitioner's bloody footprint. Resp. Ans. 34.	Respondent's answer creates a disputed issue of fact that should be evaluated by the Court.
I.C. Petitioner Must Be Given Access to Physical Evidence Not Tested at All or Not Adequately Tested by the State or Defense Counsel to Fully Present Her Claims for Relief		

Petitioner should be permitted to scientifically test the blood stains on Darin Routier's blue jeans, the fingerprint brush and powder used to dust Knife No. 4, the blood-stained physical evidence removed from 5801 Eagle Drive, and the garage window screen. First App. 22-23.		Applicant renews her request for access to evidence to conduct forensic testing.
II. The Manifestly Defective Reporter's Record Renders Any Post-Conviction Review Inadequate, Denies Petitioner Her Federal and State Constitutional Rights to Due Process, and Prevents Effective Exercise of Petitioner's Constitutional and Statutory Rights to Petition This Court for Habeas Corpus Relief		
Susan Simmons refused to certify the first fifty-four pages of Volume 10 which contain the transcript of the October 21, 1996 hearing at which Mulder was substituted as counsel. An accurate transcript of that proceeding is critical to Petitioner's conflict-of-interest claim. First App. 24, 26.	The affidavits of three prosecutors and Applicant's original defense counsel confirm that Ms. Simmons' transcript of the October 21, 1996 hearing is substantively accurate. Resp. Ans. 47; Resp. Ans. Exhs. 4-7.	***ISSUE OF FACT*** *See* Reply Br. Pt. III.A. Respondent's claim that the court record is reliable is belied by the fact that the State of Texas has filed a lawsuit against Mr. Halsey because of the condition of that record. *See* Plaintiff's First Amended Petition, *Dallas County v. Halsey*, No. 99-09032-C, 68th Judicial District Court, Dallas County, Texas (filed June 2, 2000).

Deficiencies in the court record necessarily will prevent "meaningful and effective review . . . of the testimony, evidence, and arguments in Petitioner's trial" necessary to determine issues to raise in Petitioner's habeas application. First App. 26.	Applicant is procedurally barred from complaining that the court reporter's record is incomplete; the issue is raised in her direct appeal. Resp. Ans. 42.	***ISSUE OF LAW*** *See* Reply Br. Pt. III.A. Applicant's claim here is that the trial record's condition prevents her from identifying all her claims on habeas review which is not the issue raised in her direct appeal.
III. The Ineffective Assistance of Defense Counsel Deprived Petitioner of Her Federal and State Constitutional Rights to Effective Counsel and a Fundamentally Fair Trial		***ISSUES OF FACT AND LAW*** *See generally* Reply Brief Pt. I and III.B.
	Applicant's claim should be summarily denied because she did not attach an affidavit from her trial counsel to her Application. Resp. Ans. 62.	No legal authority requires Applicant to support her ineffective assistance of counsel claim with an affidavit from her ineffective counsel.
III.A. Defense Counsel had an Actual Conflict of Interest Under *Mickens v. Taylor* Because He Was Concurrently Representing Petitioner's Husband, Darin Routier and as a Condition of His Retention by the Family Agreed to Petitioner's Detriment not to Implicate Darin Routier		

III.A.1. Defense Counsel's Attorney-Client Relationship with Darin Routier and Employment Arrangement with the Routier Family Prevented Defense Counsel From Presenting an Effective Defense for Petitioner and From Effectively Cross-Examining Darin Routier at Trial		
Defense counsel represented Darin Routier at the gag order proceeding and thus had a pre-existing attorney-client relationship when he undertook the representation of Petitioner.	Applicant is procedurally barred from raising a conflict-of-interest claim because that claim was raised in her direct appeal. Resp. Ans. 49.	***ISSUE OF FACT AND LAW*** Applicant's conflict-of-interest claim is based on extra-record facts and new law, and therefore she may properly raise it on habeas review. *See* Reply Br. Pt. I.A.
As a condition of his employment as defense counsel to Petitioner, defense counsel agreed not to pursue a defense strategy that implicated Darin Routier. *Perillo*. First App. 28	Applicant's affidavits in support of her conflict-of-interest claim "add nothing new to the trial record she relied upon in the direct appeal because they do not show that Mulder had an attorney-client relationship with Darin that extended beyond the gag order hearing or that Mulder advanced Darin's interests over Applicant." Resp. Ans. 49. The affidavit of Darin Routier does not dictate a different result because it does "not state that he personally hired Mulder to represent him in any	***ISSUE OF FACT AND LAW*** Respondent acknowledges that an actual conflict of interest exists "if counsel is required to make a choice between advancing his client's interest in a fair trial or advancing other interests to the detriment of his client's interest." Resp. Ans. 54. Respondent concedes the existence of the side agreement between Darin Routier and Applicant's trial counsel through its failure to obtain a contradictory affidavit from Douglas Mulder.

	capacity" and "does not state that he told Mulder at any time about attempts to hire someone to burglarize his home or that he and Applicant fought on the night of the murders" and "never states . . . that he provided Mulder with any confidential information about him that Mulder could not (or did not) use to Applicant's benefit during the trial." Resp. Ans. 52-53. The affidavit of Douglas Parks only "identifies Mulder's representation of Darin at the gag order hearing as a source of a conflict." Resp. Ans. 53. Applicant was represented by untainted counsel as well as Douglas Mulder. Resp. Ans. 56. A "blame Darin" defense "would almost guarantee a guilty verdict because it would help explain otherwise weak points in the State's case." Resp. Ans. 57-58. Therefore Applicant's trial counsel's decision not to pursue Darin Routier as a suspect must be viewed as trial strategy. Resp. Ans. 58.	Respondent skirts the issue of the obvious implication of defense counsel conditioning his employment on not implicating a logical suspect. Nothing in Respondent's Answer dispels the conclusion that that situation created an actual conflict of interest. Respondent misconstrues the Parks affidavit; the conflict arose because Darin Routier was a suspect, not from his representation at the gag order hearing. Resp. Ans. 53. The merits of this strategy could not be assessed without any investigation into the strategy. Therefore, defense counsel's decision not to implicate Darin Routier cannot be considered trial strategy because Applicant's trial counsel made the side agreement before conducting a fact investigation. *See* Reply Br. Pt. I.
III.A.2. Petitioner Did Not Waive Her Right to Conflict-Free Representation of Counsel		

Petitioner did not knowingly waive her right to conflict-free counsel. First App. 37.		Respondent concedes this point; this position is supported by the Notice of Conflict of Interest Applicant's prosecutors filed with the Court.
III.B. Defense Counsel Failed to Conduct and/or Unreasonably Abandoned its Investigation Into Facts and Evidence Essential to Petitioner's Defense	Applicant's claim should be summarily denied because she did not attach an affidavit from her trial counsel to her Application. Resp. Ans. 62.	No legal authority requires Applicant to support her ineffective assistance of counsel claim with an affidavit from her ineffective counsel.
III.B.1. Defense Counsel Failed to Pursue Critical Expert Testimony to Rebut the State's Scientific Case Against Petitioner		***ISSUES OF FACT*** *See* Reply Br. Pt. III.B.1.
Defense counsel failed to investigate or present evidence to refute (1) Linch's conclusions regarding debris found on Knife No. 4; (2) hesitation marks on Petitioner's nightshirt; or (3) Mr. Bevel's testimony about blood spatter in the garage and on the back of Petitioner's nightshirt. First App. 42-45.	Applicant's trial counsel investigated evidence demonstrating that she was a good mother and investigated evidence of the mysterious black car. Resp. Ans. 65. Applicant's trial counsel elicited favorable testimony through its cross-examination of Messrs. Bevel and Linch. Resp. Ans. 71.	Applicant's trial counsel hastily discharged forensic experts Messrs. Laber and Epstein even though their preliminary findings were favorable to Applicant.

Forensic experts Terry Laber and Barton Epstein's preliminary findings were not consistent with a staged crime scene. First App. 45-46. Such evidence should have been presented to rebut the State's case.	Applicant "failed to prove that her experts actually had favorable testimony to give." Resp. Ans. 66.	Mr. Laber's affidavit states that "Based on the analysis I performed in this case, it was my professional opinion in November 1996, and is my professional opinion today, that there were numerous pieces of physical evidence we reviewed that were not consistent with a staged crime scene." First App. Exh. 7 ¶ 11.
Defense counsel should have consulted and presented testimony from an expert in disassociative symptoms and bruises. First App. 50.	Applicant materially misrepresents the trial record in claiming that defense counsel failed to consult with experts on disassociative symptoms and bruising because both Dr. Lisa Clayton and Dr. Croons , and Dr. Dimaio, respectively, testified on those subjects. Resp. Ans. 77-78. Respondent claims that counsel violated Rule 3.03 of the Texas Rules of Disciplinary Professional Conduct in making this "misrepresentation" to the Court. Resp. Ans. 79.	Drs. Clayton, Croons, and Dimaio, although experts in the field of psychiatry, are not experts in bruising and disassociative symptoms.
III.B.2. Defense Counsel Failed to Investigate Evidence Implicating Darin Routier and Thus Did Not Present a Proper Defense for Petitioner		***ISSUE OF FACT*** *See* Reply Br. Pt. III.B.1.

Defense counsel failed to investigate evidence suggesting that Darin Routier had arranged the attack at his residence. First App. 53. That evidence together with the evidence of the mysterious black car observed in the Routiers' neighborhood support Petitioner's claim of innocence. First App. 55.	Under *Strickland*, defense counsel is not required to pursue investigations that a defendant has given counsel reason to believe would be fruitless; Applicant informed her trial team that Darin Routier was not involved in the crime. Resp. Ans. 70. The affidavit of Darin Routier conclusively establishes that the Routiers were in financial straits and thus is favorable to Respondent's case. Resp. Ans. 77.	Applicant's trial counsel had been advised by Applicant's original counsel, whom he replaced, that evidence in the case implicated Darin Routier and that a proper defense of Applicant should involve that theory.
III.C. Defense Counsel Failed to Object to the State Mounting an Unfair Prosecution with Inadmissible Evidence		***ISSUES OF FACT AND LAW*** *See* Reply Br. Pts. III.B.2. & III.C.
III.C.1. The Prosecution Was Allowed to Build its Case for Guilt Substantially on the Basis of Character Evidence		
III.C.1.a. Propensity Evidence		

Defense counsel failed to object to the State's characterizing Petitioner as someone who would commit capital murder. First App. 57.	The introduction of character evidence indicating that Applicant was a "good mother" in opening and closing arguments and through witnesses was a critical part of her defense strategy and thereby opened up the issue of character. Resp. Ans. 82.	Respondent's Answer ignores fundamental tenets of law that a prosecutor may not initiate a case based on the accused's character, that a prosecutor must limit any character evidence to a rebuttal of the evidence put on by the defense, and that the evidence offered on direct examination of a prosecution witness cannot be in the form of specific acts. Respondent offered character evidence *before* the defendant opened the door to it, offered evidence not that rebutted a "good mother" defense but that affirmatively urged propensity to murder, and proved such through specific instances of conduct, all in contravention of the rules of evidence.
Defense counsel failed to object to the State's introduction of evidence about Petitioner's material possessions. First App. 63.	Evidence that Applicant had breast implants is not character evidence because it does not evidence "a generalized personal trait or propensity to behave in a certain way." Resp. Ans. 84. Applicant's trial counsel used Respondent's character evidence in its favor by indicting Respondent for commenting on how people should live their lives. Resp. Ans. 85.	Respondent's evidence clearly were specific acts introduced to suggest bad character and to support Respondent's propensity arguments.

III.C.1.b. Admissions of the Prosecution's Propensity Evidence Violated Petitioner's Right to Due Process and Demonstrated that Her Defense Counsel Was Ineffective		
III.C.2. The Prosecution Was Allowed to Introduce Inadmissible Hearsay Evidence that Unfairly Prejudiced Petitioner		
Defense counsel failed to object to the State's introduction of inadmissible hearsay. First App. 67.	Applicant has failed to demonstrate that she was harmed by the inadmissible hearsay or that her trial counsel's strategy was not to object to hearsay evidence that the State could introduce through other testimony. Resp. Ans. 87-88. Respondent's hearsay evidence of Darin Routier's statements to the CPS worker was admissible as prior inconsistent statements and evidence of bias. Resp. Ans. 89.	Applicant's trial counsel's failure to object to Respondent's hearsay evidence resulted in its improper use for substantive purposes. Darin Routier's statements to the CPS worker were not inconsistent with prior statements he had made.

III.C.3. The Prosecution Was Allowed to Introduce, Under the Guise of Expert Opinion, Irrelevant Speculation About Petitioner's Conduct and State of Mind		
III.C.3.a. Medical Witnesses		
Defense counsel failed to object to the State's introduction of state-of-mind evidence under the guise of expert testimony from medical personnel. First App. 70.	The testimony of medical personnel was admissible as non-expert opinion testimony based on their personal perceptions. Resp. Ans. 91.	Respondent misstates Applicant's argument and fails to address her claim that the testimony of these witnesses was speculative and inadmissible regardless of their qualifications. Speculative testimony is not "rationally based on the perception of the witness" nor "helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." First App. 70; Tex. R. Evid. 701.
III.C.3.b. James Cron		

Defense counsel failed to object to Lt. Cron's expert opinion testimony about the usual conduct of criminal intruders. First App. 74.	Because Lt. Cron's field of expertise was other than "hard science," the test for admissibility of his crime-scene evidence need only satisfy the following: (1) the field of expertise is a legitimate one; (2) the subject matter of the evidence is within that field; and (3) the testimony properly relies upon principles in the field. Lt. Cron's testimony satisfied all three conditions. Resp. Ans. 94. Applicant's trial counsel used Lt. Cron's testimony to Applicant's advantage through cross-examination, e.g., pointing out that his conclusions were based on a 20-min walkthrough of the Routiers' home. Resp. Ans. 95.	Respondent misstates Applicant's argument and fails to address her claim that the testimony of this witness was speculative and inadmissible regardless of his qualifications.
III.D. Defense Counsel Failed to Challenge the Constitutionality of the Interrogation of a Sedated Petitioner Confined in her Hospital Bed After Surgery		*See* Reply Br. Pts. III.B.2. & III.C.

Defense counsel failed to object to the introduction of Petitioner's statements in an interview that was involuntary and not the product of free will under *Mincey*. First App. 79.	Applicant's trial counsel used the fact that the medication administered to Applicant had the effect of a "truth serum" to suggest that her failure to confess to the crimes indicated that she was innocent. Resp. Ans. 97. *Mincey* is inapplicable because in Applicant's case she did not express a desire not to speak with the police detectives and she was not suffering the effects of medication. Resp. Ans. 99. The evidence from the hospital room interview was otherwise before the jury and so any error from the admission of the interview statements was harmless. Resp. Ans. 101.	The effect of the medication administered to Applicant is an issue of disputed fact. One witness testified that her medication rendered Applicant susceptible to confusion, disorientation and temporary memory loss. First App. 79. Respondent's description of Applicant's medication as a "truth serum" supports her claim because statements induced by a "truth serum" have been held to be involuntary. *See Townsend v. Sain*, 372 U.S. 293, 307-08 (1963). Respondent adopts too narrow a reading of *Mincey*, which broadly held that any criminal trial use of an involuntary statement is a violation of due process where the defendant's decision to speak was not the product of a rational intellect and free will. *Mincey* is not limited to cases in which the defendant expressed a wish not to speak. *Mincey* held that any use of an involuntary statement is a due process violation, and therefore may not be put before the jury under any grounds.

III.E. Defense Counsel Failed to Object to the State's Interfering with the Defense's Access to Witnesses, Which Deprived Petitioner of Her Federal and State Constitutional Rights to Due Process		*See* Reply Br. Pts. III.B.2. & III.C.
Defense counsel failed to object to the State's conditioning access to certain State witnesses on a district attorney being present at the interviews. First App. 83.	Applicant has failed to identify any witness whom she was not allowed to interview or demonstrate that she was prejudiced by denied access. Resp. Ans. 102-03. Applicant's trial counsel admitted on the record in the proof-evident hearing that he did not know the substance of the testimony of witnesses he desired to question. Resp. Ans. 102.	Respondent ignores the constitutional implications of its conditioning access to its witnesses on a prosecutor being present during the interview.
III.F. Defense Counsel Failed to Offer Evidence from a Secretly Taped Police Video That Would Have Negated a Highly Prejudicial Videotape Offered by the State		

Defense counsel failed to introduce evidence to negate the highly prejudicial video of the graveside birthday party. First App. 84.	The entire graveside video was cumulative and would not have added significantly to the defense's case. Resp. Ans. 104. The affidavit of Juror Sanford is inadmissible under Rule 606(b). Resp. Ans. 104.	The complete graveside video put in context Applicant's mourning on the day the video was secretly taped. Rule 606(b) does not apply.
IV. The Cumulative Effect Of Defense Counsel's Actions Deprived Petitioner Of Her State And Federal Constitutional Rights To Due Process And A Fundamentally Fair Trial		
The cumulative effect of defense counsel's failures denied Petitioner her constitutional right to effective assistance of counsel. First App. 88.	Applicant attacks only "isolated aspects of her trial team's representation" and thus her claim violates one of the precepts of *Strickland* requiring an examination of the totality of her counsel's representation. Resp. Ans. 105.	***ISSUE OF FACT AND LAW*** *See* Reply Br. Pt. III.B.
V. Defense Counsel Failed to Challenge Prosecutorial Misconduct At Trial Depriving Petitioner of Her Right to a Fundamentally Fair Trial		***ISSUES OF FACT AND LAW*** *See* Reply Br. Pts. III.B.2. & III.C.

The State introduced propensity evidence in violation of the Texas Rules of Evidence's prohibition against offensive use of character evidence. First App. 89.	Defense counsel failed to object to the alleged prosecutorial misconduct that Applicant identifies. Resp. Ans. 107. Applicant's trial counsel introduced the issue of character in opening statements and through witnesses. Resp. Ans. 110.	Respondent contends that the prosecutorial misconduct in Applicant's case was proper, but also that her trial counsel did not object. This begs the question of whether Applicant had adequate representation. Respondent misconstrues the rules of evidence applicable to character evidence (Rules 403 and 404). A defendant may not be tried on the theory that she has the propensity to commit a crime and yet Respondent did exactly that. Respondent may not dictate the scope of character evidence introduced because its evidence must *rebut* the character evidence introduced by the defense, and may only be introduced if and when the defense has introduced character evidence. Character evidence offered on direct examination is limited to opinion or reputation evidence and not specific instances of conduct – as Respondent presented in this case. As Respondent concedes, opening statements are not evidence and therefore defense counsel did not open up the issue of character through opening statements. Respondent was, therefore, required to

		let the defense determine if and when character would be introduced and to determine the scope of that evidence.
The State improperly injected his opinion on the credibility of witnesses at trial (including Petitioner, Darin Routier, and the Rowlett Police Department). First App. 93.	Respondent's closing arguments merely summarized the trial evidence and indicated a lack of bias and thus did not constitute misconduct. Resp. Ans. 112. Respondent was not improperly vouching for the credibility of the Rowlett Police Department but "was merely acknowledging their efforts in the difficult task of investigating and prosecuting the offense . . . only that they answered the call." Resp. Ans. 115.	Respondent's vouching for the credibility of its witnesses constituted improper conduct.
The State made inflammatory statements in closing arguments in an effort to persuade the jury to find Petitioner guilty out of sympathy for her children. First App. 95.	Respondent can properly comment on Applicant's demeanor and thus the characterization of her crying as insincere was proper. Resp. Ans. 114. Respondent can properly make a "plea for proper law enforcement." Resp. Ans. 116.	Respondent's invocation of sympathy for the victims of the crime during closing argument constituted improper conduct.

The State introduced extra-record evidence that the fingerprints of a man fitting Petitioner's description of her assailant did not match those left at the scene. First App. 97.	Respondent's introduction of extra-record evidence was "invited argument." Resp. Ans. 118 (citing *Bush v. State*).	Respondent's reliance on *Bush* is misplaced because, in *Bush*, the defense knew that the witness was unavailable. In this case, the evidence was not unavailable and Respondent could have introduced it but chose not to. Under these circumstances, the interjection of extra-record evidence by Respondent in closing was improper prosecutorial misconduct.
The State introduced irrelevant evidence at trial of Petitioner's owning sex toys and marijuana found on the scene. First App. 99.	Review of this claim is barred because this issue was preserved by trial counsel; Applicant should have raised this issue in her direct appeal. Resp. Ans. 109. Respondent's introduction of marijuana evidence was accidental. Resp. Ans. 121. The evidence of Applicant's ownership of sex toys was not character evidence because it was not evidence of a "generalized personal trait." Resp. Ans. 122.	The cumulative effect of Respondent's misconduct—both that objected to and not objected to by Applicant's counsel—resulted in a fundamentally unfair trial that can only be remedied through this proceeding. Respondent's answer regarding the marijuana evidence creates an issue of disputed fact that should be resolved by the Court. Respondent's answer regarding the admission of sex toys highlights question of its relevance, and, under any circumstance, constituted evidence of specific acts intended to establish Applicant's bad character.

The cumulative effect of the State's misconduct deprived Petitioner of her constitutional right to a fundamentally fair trial. First App. 99.	There is no cumulative effect because Applicant has not demonstrated prosecutorial misconduct. Resp. Ans. 123. Moreover, Applicant's trial counsel failed to object to most of the cited instances of alleged misconduct. Resp. Ans. 123.	The trial record demonstrates a pattern of cumulative prosecutorial misconduct by Respondent. Applicant's deprivation of her right to a fundamentally fair trial due to Respondent's conduct can only be remedied through a new trial.
VI. The State Knowingly Withheld Impeachment Evidence Regarding Two of the State's Primary Experts In Violation Of *Brady v. Maryland* and Petitioner's Constitutional Guarantees To Due Process and a Fundamentally Fair Trial		***ISSUES OF FACT AND LAW*** *See* Reply Br. Pt. III.D.
VI.A. The Prosecution Violated Its Duty Under *Brady v. Maryland* by Failing to Disclose Evidence of Similar Crimes that Would Impeach the Testimony of the State's Crime Scene Analyst, Special Agent Alan Brantley		

The State suppressed favorable evidence within its possession of similar crimes committed in the time frame and vicinity of the Routier murders. First. App. 102-104.	Knowledge of police reports in the possession of the Dallas Police Department could not be imputed to the prosecution because the Dallas Police Department was not "acting on the prosecution's behalf." Resp. Ans. 132-143.	***ISSUE OF LAW*** *See* Reply Br. Pt. III.D.1. Knowledge of the Dallas Police Department may be imputed to the Dallas County Prosecutor's Office.
VI.B. The Prosecution Violated Its Duty Under *Brady v. Maryland* by Failing to Disclose Known Impeachment Evidence Regarding the History of Mental Illness and Related Employment Problems of the State's Trace Evidence Analyst, Charles Linch		
VI.B.1. The Prosecution Failed to Disclose Charles Linch's History of Mental Incapacity and Involuntary Psychiatric Commitment for Depression and Alcohol Dependence		
Prosecutor Toby Shook had direct knowledge of State's expert Charles Linch's history of mental illness, including his involuntary psychiatric commitment prior to Petitioner's trial. First App. 106.	Prosecutor Toby Shook was unaware of Mr. Linch's history of depression or the reason for his hospitalization until after Applicant's trial. Resp. Ans. 155-156; Aff. of Toby Shook (Resp. Ans. Exh. 13).	***ISSUE OF FACT*** *See* Reply Br. Pt. III.D.2. Respondent has created an issue of fact (and credibility) that can only be resolved by the Court.

The Southwestern Institute of Forensic Science (SWIFS) had direct knowledge of Charles Linch's history of mental illness. SWIFS knowledge can be imputed to the State. First App. 106.	SWIFS' knowledge may not be imputed to Respondent for purposes of *Brady* disclosures. Resp.Ans. at 157-160.	***ISSUE OF LAW*** *See* Reply Br. Pt. III.D.2. Impeachment evidence known by SWIFS—an agency acting on behalf of Respondent in Applicant's trial—may be imputed to Respondent.
VI.B.2. The Prosecution Failed to Disclose That Linch's Desire for Recognition and Propensity to Testify in High-Profile Capital Murder Cases and Employment Problems at the Southwestern Institute of Forensic Sciences Biased His Testimony		
VI.B.3. The Prosecution's Failure to Disclose Evidence Regarding Charles Linch's Chronic Depression, Alcohol Dependence, and Tenuous Employment Relationship Violated the Prosecution's Duty Under *Brady v. Maryland*		

VI.C. The Prosecution Violated Its Duty Under *Brady v. Maryland* by Failing to Disclose the Expert Opinion of Psychiatrist Dr. Kenneth Dekleva that Petitioner Would Not Present a Future Danger		
Dr. Kenneth Dekleva, the State's forensic psychiatrist, informed the prosecution in connection with his assessment of Petitioner that Petitioner did not pose a future danger to society. First App. 111-12 and Aff. of Dr. J. Douglas Crowder (First App. Exh. 3).	Dr. Dekleva did not offer an opinion to the prosecution regarding the ultimate issue of Petitioner's future dangerousness. Resp. Ans. 176-83; Aff. of Toby Shook (Resp. Ans. Exh. 13); Aff. of Dr. Kenneth Dekleva (Resp. Ans. Exh. 18).	***ISSUE OF FACT*** *See* Reply Br. Pt. III.D.3. Dr. Dekleva expressed his opinion to the prosecution prior to Applicant's trial that she was not likely to constitute a future danger to society. There is an issue of fact as to the substance of Dr. Dekleva's opinion and of his conversation with Dr. Crowder that must be resolved by the Court.
VI.D. The Multiple Failures of the Prosecution Under *Brady v. Maryland* Constitute a Material Error That Violated Petitioner's Right to Due Process Under the Fourteenth Amendment to the United States Constitution and Art. 1, § 19 of the Texas Constitution		

VII. The State Failed To Correct The False Testimony of Charles Linch In Violation Of Petitioner's Federal And State Constitutional Guarantees To Due Process And A Fundamentally Fair Trial		***ISSUES OF FACT*** *See* Reply Br. Pt. III.E.
The knives and butcher block collected from Petitioner's kitchen were dusted for latent fingerprints prior to being analyzed by the State's forensic expert, Charles Linch. First App. 115-16; Second Aff. of Charles A. Linch (First App. Exh. 9).	Evidence regarding the chain of custody of the knives and butcher block is inconsistent with Mr. Linch's statement that the knives were tested for fingerprints prior to his forensic analysis. Resp. Ans. 202-04; Resp. Ans. Exhs. 3, 21-24.	
The serrated bread knife found in Petitioner's kitchen that contained microscopic debris (Knife #4) was contaminated by fingerprint powder used to dust the knives. First App. 21, 116; Aff. of Samuel Palenik (First App. Exh. 10).	Fibers from the fingerprint brush "could not have contaminated the knife" on which Mr. Linch found microscopic rubber dust particles and fiberglass rod fragments (Knife #4). Resp. Ans. 207.	There is an issue of fact as to whether the serrated bread knife was contaminated with fingerprint dusting powder or fragments from Applicant's garage window screen
VIII. The Cumulative Effect of the State's Misconduct Deprived Petitioner of Her State and Federal Constitutional Rights to Due Process and a Fundamentally Fair Trial		

IX. The Texas Death Penalty Statute Is Unconstitutional On Its Face And As Applied In Petitioner's Case	*Quinones* was reversed by the Second Circuit. Resp. Ans. 209. Applicant has not demonstrated that anyone on Texas's death row is innocent or has been executed. Resp. Ans. 210.	***ISSUE OF LAW*** *See* Reply Br. Pt. IV. The Second Circuit's reversal does not dictate the result of Applicant's constitutional challenge to the Texas Death Penalty Statute.