Address of Petitioner:

Scott P. Roeder
C/O SEDGWICK COUNTY DETENTION FACILITY
141 W ELM ST
WICHITA, KS 67203-3848

Address of Custodian:

Sheriff Robert Hinshaw
SEDGWICK COUNTY DETENTION FACILITY
141 W ELM ST
WICHITA, KS 67203-3848

IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS

In Re Scott P. Roeder, *petitioner*.	Case No. ______________________ PETITION FOR HABEAS CORPUS

PETITION FOR HABEAS CORPUS

I, Scott P. Roeder, pray that a writ of habeas corpus will issue without delay to free me from wrongful restraint.

I state that: 1) I am restrained at the Sedgwick County Detention Facility, located at 141 W. Elm St., Wichita, Kansas 67203, in the custody of Sheriff Robert Hinshaw; 2) to the best of my knowledge and belief, the cause or pretense of the restraint is that I have been arrested and charged with one count of first degree murder and two counts of aggravated assault; and, 3) the restraint is wrongful because the judges in my case have shown heightened disregard for the presumption of my innocence (claim 1), my custodian has made public, in a manner depriving

me of the presumption of my innocence, the names and addresses of my visitors and those who have written me while in custody (claim 2), my custodian has singled out my correspondence for unusual scrutiny, in a manner suggesting departure from impartial treatment, without justifying such an exercise of political power and privilege (claim 3), the prosecution in my case has made libelous allegations to undermine the impartiality I receive (claim 4), counsel for my defense has disparaged me in a manner unbecoming of impartial treatment (claim 5), counsel for my defense caused me to lose at trial by failing to provide a meaningful defense (claim 6), and the court denied a defense of voluntary manslaughter in a manner contrary to *United States v. Williams*, 553 U.S. 285 (2008), and contrary to the presumption of my innocence (claim 7).

Habeas corpus being a personal right under § 8 of the Kansas Bill of Rights, I present these claims personally, in addition to any claims to habeas corpus relief presented now or in the future by counsel on my behalf.

In support of these claims, I state the facts as follows:

CLAIM 1

There is cause for a writ of habeas corpus to free me on the basis of technicality: I was denied my right to bail, and thereafter subjected to excessive bail, in violation of § 9 of the Kansas Bill of Rights, thereby creating a presumption of guilt in view of such exceptional treatment, in violation of my right under Kansas law and the Constitution of the United States to be presumed innocent until proven guilty; I was denied the assistance of counsel, in violation of my rights under the Sixth Amendment to the Constitution of the United States; in absence of counsel, I was made the object of public spectacle, on national television, without court clothes, in violation of my right to impartial proceedings under the Sixth Amendment; my Eighth

Amendment rights under the Constitution of the United States were violated by imposing excessive bail and inflicting cruel and unusual punishment; my First Amendment rights under the Constitution of the United States to free speech and freedom of the press were violated by increasing my bail on the basis of lawful forms of abstract advocacy; and, my rights under the Fourteenth Amendment to the Constitution of the United States to due process and the equal protection of the laws were violated on the basis of disproportionate treatment.

After being taken into custody, I was kept in a freezing jail cell, so that I started having a bad cough and thought I would have pneumonia; I was in need of my sleep apnea machine; and, I was denied telephone privileges for two days. After being subjected to such cruelty by my custodian, the judge in my case made a public spectacle of me, forcing me to appear on television without the assistance of counsel or court clothes, before a national audience; furthermore, the judge did unlawfully subvert my right to bail under Kansas law at that time, thereby casting a shadow of doubt on the presumption of my innocence, given his recourse to exceptional treatment. This shows that the judge had unreasonable bias against me. It also shows I was subjected to cruel and unusual punishment in violation of the Eighth Amendment, having been singled out for such abuse in a manner departing from custom.

Later, another judge in my case imposed excessive bail along with a suggestion designed to create public distrust for the presumption of my innocence. In support of this claim, I note that Sedgwick County Judge Warren Wilbert stated the following when increasing bail:

> "His contact with the news media and the comments that he has made certainly cast a different light on Mr. Roeder, and if he were to make bond, No. 1, if he wouldn't be a flight risk; No. 2, whether he wouldn't perpetuate, participate or enact any *more* violence on his own or in concert with others," Judge Wilbert said at a June 10 hearing, according to a court transcript reported by CNN. (emphasis added)

Having been preceded by a complete denial of my right to bail under Kansas law, the imposition thereafter of excessive bail along with a suggestion that I might enact "more" violence if I make bond demonstrates heightened disregard for the presumption of my innocence. Widespread derogation from the presumption of my innocence influenced my decision to confess, that I might at least obtain the benefit of a necessity defense; moreover, subsequent confession does not mitigate the gravity of prior offenses against impartiality and due process.

The Associated Press has circulated a statement I made by telephone while in custody. The statement reads: "I know there are many other similar events planned around the country as long as abortion remains legal." Technically, that is just a statement of plausible fact that anyone could make, including, for example, the U.S. Marshal. But some have unfairly sought to use such statements against me as if they were incriminating (e.g., Judge Wilbert).

The U.S. Supreme Court has held that abstract advocacy of illegal things or actions is still legal. For example, in United States v. Williams, 553 U.S. 285 (2008), slip opinion p. 14, Opinion of the Court, the Court said: As we have discussed earlier, however, the term "promotes" does not refer to abstract advocacy, such as the statement "I believe that child pornography should be legal" or even "I encourage you to obtain child pornography."

In other words, under the U.S. Supreme Court, someone cannot be accused of promoting murder just because he says "I believe killing abortion doctors should be legal" or even "I encourage you to kill abortion doctors." This is because the term "promotes" does not refer to abstract advocacy under the definition of the Supreme Court. Indeed, what kind of nation would allow people to say they believe child pornography should be legal, but not to say they believe protecting children from homicide should be legal? In other words, for someone to say he thinks something is "justified" is another way of saying he thinks it should be "legal."

My First Amendment rights to free speech and freedom of the press were violated because Judge Wilbert increased my bail amount on the basis of my exercise of lawful forms of abstract advocacy. As the U.S. Supreme Court ruled in Branzburg v. Hayes, 408 U.S. 665, 704 (1972), "liberty of the press is the right of the lonely pamphleteer … just as much as of the large metropolitan publisher …" I have the same right to freedom of the press when I mail out pamphlets from my lonely jail cell, or call reporters on the phone, as do top newscasters on television. For Judge Wilbert to increase my bail amount on the basis of lawful forms of abstract advocacy made in connection with my press-related activities represents a grotesque subversion of my constitutional rights.

Writing for The Wichita Eagle ("Lawyer seeks bond for man charged with killing George Tiller," Jun. 3, 2009), Ron Sylvester reports as follows:

> Sedgwick County District Judge Ben Burgess … said that he ordered no bail for Roeder as "a discretionary decision taking public safety into account." Since 1920, the Kansas Supreme Court has held that judges couldn't withhold bail except in capital cases with the strongest evidence. "In all other cases, the admission to bail is a right which the accused can claim, and which no judge or court can properly refuse," the justices wrote in their 1920 decision. Section 9 of the Kansas Bill of Rights in the state constitution says: "All persons shall be bailable by sufficient sureties except for capital offenses." … Judges in Sedgwick County have routinely granted bonds in capital murder cases over the past decade. … Among them:
>
> • Reginald and Jonathan Carr, charged with killing five people during a 2000 crime spree that included robbery, rape and sodomy. The Carrs were held in lieu of $10 million bond.
>
> • Cornelius Oliver, charged with killing four people in 2000. Oliver's bond was set at $1 million.
>
> • Douglas Belt, charged with raping and decapitating a woman in 2002. He was ordered held under a $2.5 million bond.
>
> • Ted Burnett, charged with strangling a 14-year-old pregnant girl in 2006. Burnett was held under a $1 million bond.

Despite having been charged with a non-capital offense, at $20 million my eventual bail amount was set conspicuously higher than the norm even for capital offenses, in violation of my

Eighth Amendment right to be free from excessive bail. In violation of my Sixth Amendment rights to counsel and impartial proceedings, even at the time of my first court appearance I was denied the assistance of counsel to claim my right to bail under § 9 of the Kansas Bill of Rights. Such disproportionate treatment proves that my rights to due process and the equal protection of the laws under the Fourteenth Amendment have suffered egregious harm.

CLAIM 2

In addition to the cause presented in claim 1 above, there is cause for a writ of habeas corpus to free me on the basis of technicality: The names and addresses of my visitors and correspondents have been made public by my custodian, without warrant, including to State and Federal authorities, in violation of my rights under the First Amendment to the Constitution of the United States to privacy, freedom of speech, and peaceable assembly with respect to visitors and correspondence, my rights under the Fourth Amendment to the Constitution of the United States to privacy and security for the protection of my papers against unreasonable searches, my rights under the Fourteenth Amendment to the Constitution of the United States to privacy, due process, and the equal protection of the laws, and my right to be presumed innocent until proven guilty under Kansas law and the Constitution of the United States.

As a prisoner I rely on visitors, commissary funds, and correspondence to maintain a sense of social and bodily integrity. It has come to my attention that my custodian has made public the names and addresses of my visitors and correspondents, and that some of these have been subjected to questioning by the police power as a consequence.

While many institutions, including the United States Postal Service, may inspect mail for security purposes, there is no authority to conduct warrantless searches of the mail to investigate

what amounts to a suggestion of guilt by association. To suggest that anyone who visits or writes to me might be guilty by association not only deprives me of the presumption of innocence to which I am entitled, but it also inhibits people from contacting me in custody for fear of being made subject to questioning by the police power. That I have been singled out in this warrantless fashion demonstrates a systematic abuse of my right to impartial treatment.

Now people will be afraid that if they send me money for my commissary fund they will be investigated by the police power at some level. No one wants to be put on a terrorist watch list or have themselves investigated by authorities. So that violates my rights, because I have the right to privacy, free speech, and peaceable assembly. Peaceable assembly includes the right to have visitors without the government intimidating them. Otherwise, people will be afraid to visit me, correspond with me, or send me money for my commissary fund.

In addition to the loss of rights, I further grieve that I have been deprived of donations to my commissary fund on account of such abuse, as a reasonable person might be inhibited from sending a commissary donation to me simply for fear of being made subject to added scrutiny by the police power as a consequence. I therefore request that my custodian be required to deposit funds into my commissary fund as restitution for such losses. As a guide to restitution, my custodian allows for commissary spending up to $160 per month. A higher amount might be determined based on projected estimates of donations apart from such abuse.

CLAIM 3

In addition to the cause presented in claims 1-2 above, there is cause for a writ of habeas corpus to free me on the basis of technicality: My custodian has prohibited me from sealing my outgoing (non-legal) mail, unlike other inmates who can seal their mail without being read by the

custodian, in an apparent violation of my Fourteenth Amendment right to the equal protection of the laws under the Constitution of the United States, my right as a matter of equal protection and benefit to be free from abuses of political power and privileges under § 2 of the Kansas Bill of Rights, and my right to impartial proceedings under the Sixth Amendment to the Constitution of the United States and § 10 of the Kansas Bill of Rights.

It has been highly publicized in the news that all of my outgoing (non-legal) mail is read by my custodian, unlike other inmates who can seal their mail without being read. There is a question of how and why I was singled out in this fashion, whether it violated my Fourteenth Amendment right to the equal protection of the laws under the Constitution of the United States, and whether my custodian abused political power and privileges in violation of § 2 of the Kansas Bill of Rights when deciding to single me out for such abuse. There is also a question of whether such abuse has contributed to the defeat of my right to impartial proceedings under the Sixth Amendment to the Constitution of the United States and § 10 of the Kansas Bill of Rights. It deprives me of the equal protection and benefit of free government under Kansas law for my custodian to be allowed to abuse political power and privilege so as to arbitrarily decide that my mail should be subjected to unusual scrutiny, in contrast to others charged with one count of first degree murder, just because I am accused of murdering an abortion doctor.

CLAIM 4

In addition to the cause presented in claims 1-3 above, there is cause for a writ of habeas corpus to free me on the basis of technicality: the prosecution in my case has made libelous allegations to undermine impartiality, in violation of my rights under the Kansas Bill of Rights to be equally protected from abuses of political power and privileges (§ 2), to impartial proceedings

(§ 10), to be free from libelous matter not published for justifiable ends (§ 11), and to be free from false suggestions of domestic treason (§ 13).

To undermine the impartial treatment to which I am entitled, the prosecution in my case made libelous allegations against me; specifically, Sedgwick County District Attorney Nola Foulston told the judge in my case a reasonable person would believe I have engaged in “alleged acts of American terrorism.” To evoke the memory of the September 11th attack against me demonstrates heightened disregard for impartial treatment. It suggests that I should be treated differently by my custodian and the judges in my case than other suspects. For it is well known that terrorism suspects are regarded as having a lower expectation of rights.

It would not make reasonable sense to call someone who opposes adultery a terrorist just because someone is killed for committing adultery; it would not make reasonable sense to call someone who advocates fair card playing a terrorist just because someone is killed for cheating at cards; it would not make reasonable sense to call someone who advocates for the protection of defenseless children a terrorist just because someone is killed to protect defenseless children from homicide. According to § 2 of the Kansas Bill of Rights, "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit." It would not be in accord with the principle of equal protection and benefit to allow the prosecution to abuse political power by labeling someone who advocates for the protection of defenseless children a terrorist, but not, for example, someone who opposes adultery. Indeed, far more people are killed each year for committing adultery than for killing defenseless children. It is therefore an abuse of political privilege for the prosecution to make such an arbitrary distinction in an effort to undermine the impartiality I receive.

Americans have a vigorous history of opposing tyranny and despotism. The people being sovereign, their opposition to corrupt government is distinct from treason. Yet, in ordinary terms, an allegation of "American terrorism" by prosecutors suggests domestic treason, even though the suggestion is false for lack of compliance with § 13 of the Kansas Bill of Rights.

CLAIM 5

In addition to the cause presented in claims 1-4 above, there is cause for a writ of habeas corpus to free me on the basis of technicality: counsel for my defense has disparaged me in public in a manner unbecoming of impartial treatment, in violation of my right to impartial proceedings under § 10 of the Kansas Bill of Rights, my Fifth Amendment right under the Constitution of the United States not to be compelled in any criminal case to be a witness against myself, my Sixth Amendment rights under the Constitution of the United States to impartial proceedings and the assistance of counsel, and my Fourteenth Amendment right under the Constitution of the United States to the equal protection of the laws.

I have it on good authority that appointed counsel spoke to the press, on camera, before a national audience, so as to disparage me in a manner unbecoming of impartial treatment. Habeas corpus is required to bring this matter to light in the manner of discovery, so that I may be shown video, audio, and written transcripts of each occasion where appointed counsel has discussed my case with the public. As a prisoner in custody, it is frustrating to learn secondhand that appointed counsel has disparaged me in public behind my back.

The following I have on good authority: When asked if the press would still be hearing from me, one of my attorneys, on national television, turned to the cameras with a disparaging look on his face, telling the press that he was sure I would be in contact with them; it was clear

from the impression he mugged that he meant it in a disparaging way, as if to say I cannot control my own tongue to prevent myself from being a liability to the defense.

I did not authorize counsel to make such a statement to the press. There was no need for him to do that. He could have just walked away. Such actions by counsel make it look like there are some prisoners who deserve to be disparaged by their own attorneys, including before a national audience. Because other prisoners would not have to suffer being disparaged by their own attorneys, such actions violate my Fourteenth Amendment right to the equal protection of the laws. By mugging an impression that my contact with the press has been a liability to my defense, it amounts to an implicit suggestion that I have incriminated myself; and, given that counsel legally represents me, such a suggestion violates my Fifth Amendment right not to be compelled in any criminal case to be a witness against myself, for it makes it look as if my own defense has conceded that my words to the press are an unfortunate liability.

There is little doubt that the disparaging conduct of counsel gratified the national press by making it seem that even my own counsel was willing to admit that my words with the press should be interpreted as a liability, in other words, incriminating. It is not within the province of counsel to make such a disparaging concession in public. It is a breach of attorney ethics. To do this behind my back is a breach of attorney-client privilege so profound as to violate my right under the Sixth Amendment to the assistance of counsel.

Immediately after losing my trial, it was reported by the Associated Press ("Man convicted of murdering abortion provider," by Maria Sudekum Fisher, Jan. 29, 2010), that my appointed counsel had this to say:

> Defense attorney Mark Rudy described his case as helpless and hopeless.

> "I've never seen anyone lay himself out as much as Mr. Roeder did," Rudy said after the verdict, referring to his client's confessions.

Such statements by appointed counsel, which I did not authorize, show a pattern of abuse, whereby appointed counsel feels at liberty to disparage me behind my back before the public, as if to justify my conviction in this fashion, both before and after trial. Such conduct is highly prejudicial and signals an effort by appointed counsel to deprive me of impartiality to maintain currency with the press, even at the expense of attorney-client privilege. It must be remembered that counsel represents me; he does not have the right to go off on the side and please the press by serving as an independent trial commentator at my expense.

Combined with an undermining of impartiality by the judges in my case, my custodian, and the prosecution as set forth in Claims 1-4 above, such actions by counsel appointed for my defense serve as the straw that broke the camel's back when it comes to undermining my right to impartial treatment. It is therefore evident that my right to impartial proceedings under the Sixth Amendment and § 10 of the Kansas Bill of Rights has been irreparably violated.

CLAIM 6

In addition to the cause presented in claims 1-5 above, there is cause for a writ of habeas corpus to free me on the basis of technicality: appointed counsel's deficiency prejudiced the defense in a manner so serious as to deprive me of a fair trial and likely acquittal, in violation of my Sixth Amendment right under the Constitution of the United States to the assistance of counsel and my Fourteenth Amendment right under the Constitution of the United States to the equal protection of the laws.

In the past, the U.S. Supreme Court has extended to the judiciary the right to lie, *Stump v. Sparkman*, 435 U.S. 349 (1978) (upholding judicial immunity for forced sterilization conducted under false pretense of appendectomy). The U.S. Supreme Court is presently considering extending to prosecutorial attorneys the right to lie as well. *Pottawattamie County, Iowa, et al., Petitioners v. Curtis W. McGhee, Jr., et al.*, Supreme Court Docket No. 08-1065. The present claim deals with the question of whether it is also acceptable for defense attorneys to lie to indigent petitioners about their defense prospects to maintain their currency in court.

The U.S. Supreme Court allows appointed counsel wide latitude to ignore matters of law or fact to preserve his or her "currency" with the Court by avoiding any issue "[t]he Supreme Court has signaled very clearly it doesn't want to deal with" or is "unwilling to deal with" (to quote attorney-general designate John Ashcroft, responding to Sen. Dianne Feinstein on his second day of confirmation testimony, Jan. 17, 2001.) In view of the Certiorari Act (43 Stat. 936), which authorized the U.S. Supreme Court to reject any petition despite its legal merit, attorneys such as Mr. Ashcroft have long viewed it as "a losing proposition" to do otherwise. Yet even if it is a losing proposition, it still does not give appointed counsel the right to lie to (or to humor) defendants about such matters; for the defendant has the right to present all matters of legal merit that are necessary to complete a competent defense. Our courts should not allow or encourage their bar members to do the court a favor by lying to clients and omitting issues of legal merit to maintain their "currency" with the court so they can succeed on other days, in other cases, and "on other issues," to again quote Mr. Ashcroft.

In this country, rights, laws, and technicalities should apply to all of us great and small, without exception, and it should be the job of the attorney to go into court and make sure our judges are observing them, without exception, even if it means rubbing their faces in due process

once in a while, even at the highest court of the land. Unfortunately, rather than upholding this ideal, our nation's courts encourage attorneys to be mindful of their social, political, and financial currency more so than any underlying issues, the merits of law, or the rights of the client. Indeed, under the Certiorari Act, the U.S. Supreme Court is leading the way in this respect, by expressly reserving the right to ignore matters of legal merit, including "the misapplication of a properly stated rule of law." U.S. Supreme Court Rule 10.

Although I had a bona fide agreement with appointed counsel to pursue a necessity defense, counsel omitted key questions related to the Unborn Victims of Violence Act of 2004 (Public Law 108-212). This deficiency prejudiced the defense with respect to a necessity defense in a manner so serious as to deprive me of a fair trial and likely acquittal. For if the unborn can be victims of violence, then it is reasonable to protect them from violence. The legal standard of reasonableness should not be measured by the willingness of a society to draw the line according to the anarchy of its psychological rationalizations. Since the law recognizes that the unborn can indeed be victims of violence, it must also recognize the courage of those who find it in their hearts to accept the necessity of defending them from violence. To do otherwise means giving in to the anarchy of conscience at the expense of innocent children.

Perhaps appointed counsel's omission of questions relating to the Unborn Victims Act was intended to satisfy Mr. Ashcroft's mantra about being mindful of one's "currency" with the court. Though the legal merit of such questions is overtly critical to the my case, the U.S. Supreme Court has created a completely different standard of what constitutes a question of legal merit under the Certiorari Act, whereby presentation of even the most critical questions may be deliberately avoided by counsel as "a losing proposition" depending simply on what the court has

"signaled," to again quote from Mr. Ashcroft. Instead, every defendant should have the right to have his or her case settled according to law.

While the Unborn Victims Act makes an exception for children who are legally versus illegally aborted, a coroner would not be able to distinguish the two on this basis alone. (In other words, one child pulled feet first from the womb and thrown into the dumpster naked with a stab wound to the back of the head and the cranial contents removed will look just like any other to the coroner, regardless of whether the woman wanted it done or not.) In this respect, the trial court should have been forced to address whether they are beings so far inferior that they have no rights we are bound to respect, as *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1856), puts it, or whether they instead deserve the equal protection of the laws, as the Fourteenth Amendment to the Constitution of the United States puts it. Pursuit of this question is critical to my defense because the latter establishes the right of each child be protected by another person, in this case, myself, as an innocent third party entitled to defense from homicide.

Instead, being mindful of his currency with the court, appointed counsel let the court slip by this critical question, by allowing the court to make a false statement to the effect that abortion has already been thoroughly debated. On the contrary, as Justice Stevens and *Roe v. Wade* author Justice Blackmun point out 20 years after *Roe*, neither any Member of the U.S. Supreme Court nor the U.S. solicitor general has ever so much as even "questioned" whether the children in question have rights we are bound to respect, as provided by the Fourteenth Amendment to the Constitution of the United States; instead, the only debate has been over to what extent should the states be allowed to override both a woman's decision to refuse an abortion as well as her decision to choose an abortion; indeed, there cannot have been any meaningful debate without someone at least having "questioned" the matter. *Jacobson v.*

Massachusetts, 197 U.S. 11 (1905); *Buck v. Bell*, 274 U.S. 200 (1927); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Roe v. Wade*, 410 U.S. 113 (1973), at 153-154 (relying on *Jacobson* and *Buck* to reject the argument that the abortion decision should be left to the woman's sole determination), and at 159 (disavowing *Skinner*, saying, "The situation therefore is inherently different from … *Skinner*"); *Doe v. Bolton*, 410 U.S. 179 (1973), at 215 (Justice Douglas joining the Court's reliance on *Jacobson* and *Buck* in *Roe*); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), at 100-101 (Justice Marshall reflecting that the Court in *Roe* abandoned *Skinner* and instead "reaffirmed its initial decision in *Buck v. Bell*" for abortion); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Planned Parenthood v. Casey*, 505 U.S. 833, at 859 (the plurality warning that the states' rights justices would allow states to override a woman's decision to refuse an abortion "as readily" as to override her decision to choose an abortion), at 913, 932 (Justices Stevens and Blackmun, who wrote *Roe*, respectively reflecting that no Member of the Court, nor the solicitor general, has ever so much as "questioned" whether the children have rights we are bound to respect, but instead the Court has debated to what extent states should be allowed to override the woman's abortion decision), and at 915 (Justice Stevens, with whom Justice Blackmun joined at 932, disavowing *Skinner* for abortion); *Stenberg v. Carhart*, 530 U.S. 914 (2000), at 980 (the states' rights justices banding together under Justice Thomas to clarify that they would allow states to perform even partial-birth procedures, provided only that the states so decide). In light of this abundant evidence, there is no question that appointed counsel allowed the court to get away with making a false statement to avoid further questioning on the matter of the children's rights and my right to defend them.

Again being mindful of his currency with the court, appointed counsel let the court make a self-serving statement without opposition, namely, that admission of a necessity defense would

result in anarchy. On the contrary, it is anarchy to oppose the right of innocent children to be protected from homicide. It is anarchy to allow children to be victims of homicide without so much as ever even calling the coroner for a statement. Absence of a coroner's statement is most conspicuous. It testifies to the judicial anarchy associated with 'legal' abortion.

To competently address my right to a necessity defense, the court should have called the coroner for a statement to address any question of child homicide in an upright and legal manner; the court furthermore should have appointed counsel to represent the *children's* rights to the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. For my right to be equally protected by laws permitting a necessity defense is indissoluble from the children's right to be equally protected from harm as a matter of necessity. The issues of a coroner's statement and the Fourteenth Amendment rights of the children therefore cannot be excluded from a meaningful defense in this case.

The ineffective assistance of counsel results not only from attorney error or misconduct, but also from restraints imposed by the court which render even the best ambitions of the most capable counsel ineffective, by allowing perfunctory pursuit of latitudes ripe for conviction while denying any pursuit of those ripe for acquittal. It is to appoint counsel to pursue what is doomed, while denying a defense likely to prevail. I would have been acquitted had counsel been allowed to pursue a necessity defense and had counsel obtained a coroner's statement to confirm, as an objective matter, that the children in question are indeed victims of homicide.

CLAIM 7

In addition to the cause presented in claims 1-6 above, there is cause for a writ of habeas corpus to free me on the basis of technicality: the court failed to allow a voluntary manslaughter

defense under Kansas law in view of *United States v. Williams*, 553 U.S. 285 (2008), thereby depriving me of my rights to due process, a fair trial, and the equal protection of the laws under the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and § 10 of the Kansas Bill of Rights, in a manner egregiously violating my right to be presumed innocent until proven guilty under Kansas law and the Constitution of the United States.

Even if the jury felt my use of force was unreasonable in absence of the requisite necessity defense, the jury still should have been allowed to decide that I had an honest belief that deadly force was justified, so as to convict me on a lesser charge of voluntary manslaughter. Instead, District Judge Warren Wilbur ruled out a second-degree murder conviction, saying, "There is no immediate danger in the back of a church [where George Tiller was killed]." However, the court's view on a lack of an immediate danger serves only to question the reasonableness of my use of force; it does nothing to question the honesty of my belief that deadly force was justified. Implicit in the court's ruling therefore is a presumption that I did not hold an honest belief, which amounts to a clear denial of the presumption of my innocence with respect to first degree murder in view of alternatives such as voluntary manslaughter.

In *Williams* the U.S. Supreme Court ruled that an honest yet unreasonable belief has prosecutorial merit only if the belief can be supported, as an objective matter, by matter that plainly conveys the belief that was engendered. *Id*., at slip opinion p. 10, Opinion of the Court. Analogously, it is fair to suppose merit would likewise be found lacking in a defense setting where one is unable to show that his belief is supported, as an objective matter, by matter that plainly conveys in an honest way the belief that was engendered. By preventing counsel from presenting objective matter to prove the honesty of my belief, the court obtained the self-serving result of making it appear that my suggestion of an honest belief lacked merit.

Instead, the same standard of belief-predicated-on-objective-matter used by prosecutors to convict Williams should have been allowed conversely in my favor in the hands of my defense to acquit me of first degree murder. I have the right to present "objective matter" to confirm the honesty of my belief. For, absent a showing of objective matter to prove honesty, the legal merit of suggesting that one's actions were based on an honest belief is limited.

Using a gaping double standard, in contrast to the prosecution in the *Williams* case my defense was not allowed to present objective matter to confirm that my belief was engendered in all honesty by matter plainly conveyed, namely, by evidence that Tiller killed children without restraint. For example, if supported *as an objective matter* by a coroner's statement, photographs of children victimized by abortion providers such as Tiller will do no less to convince a properly instructed jury that I was led to believe I was preempting homicide of an actual child by shooting an abortion provider than photographs in a case like *Williams* will convince a jury that someone would be led to believe actual children were victimized by pornographers.

CONCLUSION

Having been unlawfully deprived of my constitutional rights in the manner stated above, and having been unlawfully incarcerated by my custodian in the manner stated above, I pray for the issuance of the Great Writ to obtain my freedom.

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

____
Scott P. Roeder

Dated: ___________________________________