No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MR. SHANE FLOYD
(Your Name) — PETITIONER

vs.

UNITED STATES OF AMERICA
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MR. SHANE FLOYD (#72418-061)
(Your Name)

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(Address)

BRUCETON MILLS, W.V. 26525
(City, State, Zip Code)

304/379-5203 (PRISON CAMP)
(Phone Number)

QUESTION(S) PRESENTED

Implicit bias threatens the very foundation of the criminal justice system. Wasn't the judicial system built on fairness; the right to a fair trial; the right to a trial of one's peers; the right to be assumed innocent until proven guilty? It appears the majority decision in the U.S. Court of Appeals, Sixth Circuit, overlooked the far reaching impact of these biases and, more importantly the devastating impact they played in the petitioner's trial.

It is for this sound reason in isolation the petitioner appears before this Court, the one tribunal vested with the judicial power of the United States, noting with certitude adequate relief cannot be obtained in any other form or from any other court on the subject matter heretofore. It's in the spirit of this understanding that the petitioner profounds these two questions, both with direct constitutional implications.

(1). Whether, in fairness to judicial proceedings, can racial bias infect a jury's deliberations and decisions with the slightest dubiety that a discriminatory action tainted the outcome of a trial by way of the validity of the jury verdict?

It appears the U.S. Court of Appeals, Sixth Circuit, has interpreted important facts with federal law that calls for an exercise of this Court's supervisory power. With that, the petitioner proceeds in presentment of his second question...

(2). Whether the form of expression from an appellate court in denial of a defendant's first appeal, which openly solidifies both prongs of the Strickland Standard (performance and prejudice), proving legal counsel of record provided substandard assistance, affirm the defendant's constitutional rights were violated by way of the Sixth Amendment?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Solicitor General of the United States
Dept. of Justice
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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

THE PETITIONER remains uncertain if either of his cases at the District or Appellate Courts have been published. Respectfully, he has no way to access this information. In lieu of same, for the convenience of the Court, he provides pertinent case information as follows:

U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CASE: 15-4124, 15-4100, 15-4098

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CASE: CR2-14-126(1)

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was September 29, 2017.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 2, 2017, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States

Article VI

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

STATEMENT OF THE CASE

On June 23, 2014, Dr. Shane Floyd, along with three co-defendants, Carl Robinson, Christopher Martin and Kristal Screven were indicted on one count of conspiracy (Count11, in violation of 18 U.S.C. 371 to commit federal programs bribery. [18 U.S.C. 666(a)(1)(B) & (2)]. Indictment R.2, Page ID #21-28.

Dr. Floyd was also charged separately with one count of federal programs bribery (Count 2), and with one count of making a false statement in violation of 18 U.S.C. 1001(a)(2)(Count 4). (Id at 29-31). In addition, Robinson and Martin were charged with federal programs bribery, and Martin was charged with making a false statement.(Id at 29-31,33. On April 9, 2015, a superseding indictment was returned which did not materially change the allegations.(Indictment R.100).

Dr. Floyd entered a not guilty plea to all accusations. A joint jury trial ensued in which Dr, Floyd, Robinson and Martin were tried together. All thre were found guilty as charged. Tr.R.221, Page ID ## 3415-18. Id.

At his sentencing hearing on October 14, 2015, Dr. Floyd was sentenced to 60, 84 and 60 months, respectively for Counts 1,2 and 4, to be served concurrently. Judgment R.188, Page ID ## 1371-72. Additionally, he was ordered to pay restitution in the amount of $420,919. (Id at 1372-75), and forfeiture in the same amount. (Id at 1375).

REASONS FOR GRANTING THE PETITION

THE CASE BEING BROUGHT before this court of last resort began as an indictment in 2014 against four individuals alleging they conspired to commit federal programs bribery. One accepted a plea offer, while the other three opted for trial by jury. The Statement of the Case appears on page x herein.

The jury trial began on May 18, 2015. It survived 11 days with jury deliberations beginning on May 29, 2015 which remained perseverant until June 2, 2015, when late in the day the jury rendered a verdict finding all three defendants guilty on all counts.

Notwithstanding, the three were sentenced and are currently serving their respective disciplinary punishment in custodial detention in federal institutions.

Regrettably, the criminal offense and/or guilt or innocence of the three first time, non-violent, criminal history category I malefactors, is no longer at issue.

There is now a matter of judgment consisting of three(3) "black" co-defendants who were tried together, along with two "black" female jurors, who were subjected to undue racial discrimination during this legal proceeding.

While the conclusion to this case should have been a "hung jury", racial indecency manifested itself into a piteous display of constitutional irregularity. There is nothing illegal or alien when a trial ends with a "hung jury". It's an integral part of a judicial determination.

The group of persons selected according to law, and given

the power to decide questions of fact, and return a verdict in this case involving three defendants accused of federal programs bribery, could not reach a verdict by the required voting margin. It happens! And it should have culminated in this legal proceeding, "United States of America vs Shane Floyd", United States District Court, Southern District of Ohio, Case Number CR:2-14-126(1).

Two questions are in presentment to this Court of last resort in the federal system. The first mixed question of law and fact persists, "Can racial bias infect a jury's deliberations and decisions with the slightest suspicion that a discriminatory action tainted a jury's verdict? Filing herein in propria persona, the petitioner maintains his constitutional rights were openly violated by both the district and appellate courts in the Sixth Circuit. Prejudicial discriminatory action was suppressed to avoid the consequence of a "hung jury". The actions by the appellate court in failing to diagnose and internalize the biased and prejudicial action of the district court illuminated this problem.

Both courts failed to denote the differences and/or similarities that affect established practice that confers privileges on a certain "class of people" or that "denies those privileges to a certain "class of people" because of race, age, sex, nationality, religion or disability". (Black's Dic, 10th Ed. at 566).

With the incidents that occurred in the instant action, had this jury been absent the two "black" female jurors that were essential in completeness of this panel, the question impends, would a "hung jury" have concluded this trial?

While the dictionary sense of "discrimination" may be neutral, it would be foolhardy for anyone to argue the current political use of the term is not pejorative.

Implicit biases allow individuals to efficiently categorize their experiences, and these categories allow people to better understand and interact with their world implicit biases which can be positive or negative. It is the negative biases, however, that give rise to the problems that we struggle to combat in the law and more broadly in our society." (Rose v Mitchell, 443 U.S. at 558-59 - 1979).

Because of this insufferable confusion, arguments about racial discrimination are immensely multiplied. Even judges can deliver judgment wrongfully in a discriminatory practice Many may be led to a false sense that they actually ruled properly on a moral argument showing that a ruling on the practice of discrimination, distinguishing for or against, can be wrongful without any "awareness of the equivocation involved." (Robert K. Fullinwider, "The Reverse Discrimination Controversy", 11-12 - 1980).

If this Court favors in fact that any "out of the way" discriminatory action in a legal proceeding must be challenged, and can never be left unresolved, it must then acknowledge the authoritative opinion that the case at bar should have resulted in a "hung jury" and not a conviction for all the wrong reasons. Not enough rhetoric has been written in the "majority" opinion for the U.S. Court of Appeals in denial of this matter in Direct Appeal to satisfy the point at issue facing the integrity of the judicial system. Racial bias in a legal proceeding!

Did this jury, consisting of 10 "white" individuals and two "black" females, decide this case against three "black" co-defendants, solely on the evidence before it,

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which persists as the touchstone of a fair trial? Or did bias infect this jury's deliberations and decisions?

Save, a court of law in this country must be the one place a person can get a "square deal" be he any color of the rainbow.

This very Court has_held that racial discrimination "odious in all aspects, is especially pernicious in the administration of justice," (Rose v Mitchell, 443, U.S. 545, 555 - 1979) and to allow it in the jury system harms "both the fact and the perception of a jury's role as "a vital check against the wrongful exercise of power by State." (Powers v Ohio, 499 U.S. 400, 411 - 1991).

It would appear, even from the limited experience of this pro se filing petitioner, that any failure to avoid undermining decades of arduous, patient labor to eliminate the shameful prevalence of such bias in the courts, is a blatant abuse of discretion. (Cassel v Texas, 339 U.S. 282, 290 - 1950). In the administration of justice, the course of persevering decisions must continue long standing, directed against racialism.

From cases dating as far back as 1880, this very Court reiterated the importance of this prohibition. The Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race, or on the false assumption that members of his race as a group are not qualified to serve as jurors. (Powers, 499 U.S. at 404, quoting Batson v Kentucky, 476 U.S. 79, 86 - 1986) (citations omitted).

This Court has been explicit in its rulings, citing "Smith v Texas, 311 U.S., 128, 130 - 1940), "...for racial discrimination to result in the exclusion from jury service of

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otherwise qualified groups not only violates our Constitution and the laws enacted under it, but is at war with our basic concepts of a democratic society and a representative government."
This Court further reinforced this principle in "Swain v Alabama, 380 U.S. 202 - 1965", with "...a State's purposeful or deliberate denial to negroes on account of race of participation as jurors in the administration of justice violates the Equal Protection Clause." (id at 203-04 - citations omitted).

"Batson" further revitalized and solidified this dictate. The thrust therein is threefold. First, it protects "the right of the defendant to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria." (Holland v Illinois, 493 U.S. 474, 491-92 - 1990). Second, it protects "the right of a member of the community not to be assumed incompetent for and be excluded from jury service on account of his race." (id at 492)(citing Batson, 476 U.S. at 87). Third, it protects "the need to preserve public confidence in the fairness of our system of justice." (id)(quoting Batson, 476 U.S. U.S. at 87).

This Court has further expanded "Batson" to apply to civil cases, stating, "...racial discrimination has no place in the courtroom whether the proceeding is civil or criminal." (Edmonson, 500 U.S. at 630) (citing Thiel v S. Pac. Co., 328 U.S. 217, 220 - 1946).

These aforesaid statements of fact dramatically in some instances produce responsive answers to suspicions and inferences that racial bias may have infected the validity of the jury verdict in the case at bar.

Notwithstanding, this Court must be convinced after reading what follows, that the petitioner was tried and convicted

in the presence of discriminatory criteria. Implicit biases will always threaten the very foundation of the criminal justice system.

ESTABLISHMENT OF A PRIMA FACIE CASE OF RACIAL DISCRIMINATION

The jury of 12 in the instant action was comprised of 10 "white" parties and two "black" females. Instantly, an inference of discrimination, based on the number of jurors of a particular race is recognizable. This disparity was neither challenged, nor does it directly contribute to the racial discrimination heretofore.

On the morning of Dr. Floyd's sentencing hearing, his attorney filed a motion for a new trial, which the other two defendants (Carl L. Robinson and Christpher D. Martin) later joined.

Dr. Floyd's counsel alleged that the only two "black" jurors looked uncomfortable during the verdict announcement and polling. Based on this observation, he hired a private investigator to interview the two jurors who stated "they were initially unconvinced by the evidence of the defendants' guilt. The two jurors were identified as A.R. and M.S.

The investigator also learned that instead of the jury foreperson, a "white" woman, discussing these doubts in good faith, she chastised them "believing the pair was reluctant to convict because they owed something to their black brothers".

The remark ignited a confrontation requiring a marshal and the deputy clerk to intervene in an attempt to placate the uprising.

Dr. Floyd argued that this intervention by court personal constituted improper outside influence, mandating a new trial.

The district court instantly demurred stating the investigative evidence was inadmissible under Rule 606(b) of the Federal Rules of Evidence. This regulation codifies the long standing "no impeachment rule" against using juror testimony to impeach a verdict.

In denying the improperly obtained evidence, the district court relied on Southern District of Ohio Local Rule 47.1, made applicable to criminal cases by Local Criminal Rule 1.2. This rule states, "...no attorney, party or anyone acting as agent or in concert with them connected with the trial of an action shall...contact, interview, examine or question any juror regarding the verdict or deliberation of the jury in the action except with leave of the Court."

Also pertinent in this analysis is Rule 606(b) which provides that, "...During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters. [F.R.Evid § 606(b)(1)]

Admittedly, this rule cannot be paramount where basic constitutional rights are at issue. The Court is referred to its own ruling decided in "Pena-Rodriquez, 137, S.Ct. 855", where a juror's statement indicated that racial animus was a significant factor in the juror's decision regarding guilt or innocence.

The Court held, "Where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the [Rule 606(b)] no impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee."(id at 869).

While this Court did clarify, "not every offhand comment indicating racial bias or hostility will suffice; rather, "there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict."(id)

Unlike the situation in "Pena-Rodriguez", the appellate court found it relevant that the foreperson in the instant action did not make comments showing that animus was a significant motivating factor in her own vote to convict".

While it is true that the "Pena-Rodriguez" Court set, as a requirement, for a statement indicating jury bias to trigger judicial inquiry, that "the statement...tend to show that racial animus was a significant motivating factor in the juror's vote to convict." (id at 859).

Surely, this does not speak against the fact that the "Pena-Rodriguez" decision also casts a wider constitutional net, pointing to the appropriateness of a broader inquiry. While it does not affect "every offhand comment indictaing racial bias or hostility," it certainly must apply to whether a statement that "casts serious doubt on the fairness and impartiality" of the jury's decision.(id at 869).

Both A.R. and M.S reportedly told the investigator that jury deliberations had become openly hostile along racial lines.

Specifically, the 10 other jurors had been ready to convict at the beginning of those logical discussions, but A.R. and M.S. had doubts about the credibility of the unindicted co-conspirator, Mike Ward, who became the key government witness.

Ward was an ex-police officer who lost his job due to a drug conviction. The pair of "black" jurors also believed Dr. Floyd's account of depositing thousands of dollars into his bank were the result of his activities as a minister of a church with a tradition of parishioners giving cash gifts.

The doubts of A.R. and M.S. prevented the jury from reaching a consensus for the next three days of deliberation, during which time the jury sent several notes to the court, prompting the "Allen" charges and the "Pinkerton" liability instructions.

Noteworthy is the fact this disaccord boiled over into a hostile encounter on the last day of deliberations, June 2, 2015.

The jury foreperson reportedly told A.R. and M.S. that she found it strange that"the colored women are the only two that can't see that the defendants were guilty" and accused the pair of deliberately hanging the jury.

A verbal melee ensued which required the marshall to enter the jury room to calm the situation. Next, the deputy clerk persuaded the foreperson to apologize to A.R. and M.S. Following that half-hearted apology, however, the foreperson punctuated her apology with the remark that she still felt the pair were protecting "the defendants because they owed something to their black brothers."

The dispute continued, this time spilling out into the hallway where A.R. and M.S. declared they were "through with deliberations". At that moment in time, could any possible trial finding or decision be guaranteed as being valid based on the factual issues of the case? Contraire to sound reasoning, the Bailiff coereced the pair to return to deliberations, wherefore, a few hours later the jury delivered its unanimous verdict of "guilty". Of extreme importance is the fact none of these occurrences were reported to counsel for the defense.

The jury foreperson's racial animus in the instant action, in contrast to "Pena-Rodriguez", was not aimed directly at the defendants, but, rather was directed at the two female "black" jurors. However, is this difference sufficient to overcome the taint of racial prejudice on the proceedings?"

In "Pena-Rodriguez", the Supreme Court rested its decision on the idea that the jury is to be "a criminal defendant's fundamental protection of life and liberty against race or color prejudice". (id at 868) (quoting McCleskey v Kemp, 481 U.S. 279, 310 - 1987).

Isn't there a constitutional rule that mandates racial bias in this system of justice must be addressed, including, in some instances, after the verdict has been entered? This persists to prevent a systemic loss of confidence in jury verdicts. Isn't this a confidence that is a central premise of the Sixth Amendment, trial right ?" (id at 869)

Surely this Court, that is so strongly committed to eliminating racial bias in the jury deliberation process, can see through its decision in "Pena-Rodriguez" that this applies equally to the present case. Here, a "white" jury foreperson injected her racial biases explicitly into the deliberative process.

It is hardly a strained inference, when a juror displays racial bias towards another juror of the same race as the defendant. Isn't that juror also incapable of impartially judging the guilt of the defendant? This inference, if it pleases the court, is a natural, even necessary extension of the Court's reasoning in its "Pena-Rodriguez" decision.

In hiring a private investigator, counsel for the defense acted in violation of both the district court's express order not to contact jurors, and its local rules. This deplorable conduct played a prominent role in the district court's denial of Dr. Floyd's motion for a new trial or evidentiary hearing.

In "Pena-Rodriguez", this Court concluded that rules of professional ethics and local court rules clearly guide the practical mechanics of acquiring and preserving evidence (id). The Court especially noted that in "Pena-Rodriguez" counsel for the defense did not solicit the jurors' allegations of racial bias (id at 870).

Respectfully, as important as those rules remain, such considerations must bend in the face of probable constitutional violations.

Can Dr. Floyd's fundamental constitutional right be disregarded over his counsel's improper conduct, especially when racial bias, infecting the jury's verdict, is sufficient to prevail over this improper conduct? Moreover, other avenues exist, such as sanctions against counsel, to punish him for his flagrant disregard of the rules.

This Court has always cautioned, with regard to evidentiary rules, against their application when they mechanistically defeat the ends of justice. Instead, the Court urges pursuit of the fundamental standards of due process. (Rock v

Arkansas, 483 U.S. 44, 55- 1987)(quoting Chambers v Mississippi, 410 U.S. 284, 302 - 1973) (see also Crane v Kentucky, 476 U.S. 683, 690 - 1986). Evidentiary rules cannot trump the mandates of the Constitution.

Is it likely that the district court's willingness to dismiss evidence of this racial hostility, permeating the jury deliberation process in the case at bar led the district court into error? The facts bear witness to this conjecture.

After the three days of jury deliberation, each juror was polled individually and responded that the verdict was unanimous, uncoerced, and a fair reflection of each juror's vote. This is supported by this Court's clear admonition that racial bias, when left unaddressed, poses a risk of systemic injury to the administration of justice.(See "Pena-Rodriguez, 137 S.Ct. at 868).

Aside from the racial bias displayed by the "white" foreperson's comments, isn't it probable that the "black" jurors may have plausibly felt pressure to swing to the majority's view and vote to convict, in order to demonstrate they were not approaching their obligations as jurors out of racial considerations.

The jury foreperson's remarks are characterized by the appellate court as "racially insensitive". At issue here, nonetheless, is not the interpersonal quality of sensitivity (or its absence), but rather the constitutional implications associated with the injection of racial animus and racial consideration into jury deliberations.

In summation, in the case at bar, the "white" jury foreperson accused two "black" jurors of deliberately trying to "hang the jury". The reasoning was consequent to their

shared race with the defendants, because "maybe" they felt they owed something to their "black brothers". That foreperson found it "strange that the colored women are the only two that can't see the defendants'guilt".

The severity of this situation diminishes the weight properly given to the two "black" jurors who confirm their votes were coerced.

Most important is the fact the "white" jury foreperson's comments embody the decades-old concern given voice by Justice Marshall in "Batson v Kentucky, 476 U.S. 79,90 L Ed 2d 69, 106 S.Ct. 1712 - 1986". He said, "Exclusion of blacks from a jury, solely because of race, can no more be justified by a belief that blacks are less likely than whites to consider fairly or sympathetically the State's case against a black defendant than it can be justified by the notion that blacks lack the intelligence, experience or moral integrity to be entrusted with that role" (quoting Neal v Delaware, 103 U.S. 370, 397 - 1881 -citations omitted).

"Such an implication is prejudicial to the defendant, demoralizing to the juror, and completely antithetical to the truth. A person's race simply is unrelated to his fitness as a juror". (id at 87)(quoting Thiel, 328 U.S. at 227 - 1946).

In other words, the "white" jury foreperson's comments arguably exerted pressure on the two unpersuaded "black" female jurors to change their minds and votes, in order to disprove the "belief" alluded to by Justice Marshall in "Batson", that "blacks are less likely than whites to consider fairly...the State's case against a black defendant...".(id at 104)

Doesn't this caution arguably apply as much to a juror who makes racial considerations an argument in deliberations with fellow jurors, as it does to a juror who votes to convict out of racial animus?

Much of the aforesaid reveals the opinion of the dissenter in the Sixth Circuit, three judge panel. While the majority ruled in review of the petitioner's Direct Appeal, as it always does, this time failing to recognize the potential presence and/or acknowledge the racial bias in the case at bar. The vote was 2-1 in denial. Yet, its lone dissenter, the Honorable Bernice B. Donald, is deserving of recognition for not simply following the "establishment" as a consequence, but stepping outside the controversy and taking a judgmental position with surety. The judicial system is far more deserving of judges like Judge Donald, who adjudicates with ascertained principle.

Hasn't the evidence of racial animus and harassment, presented by the petitioner heretofore, created reasonable doubt to question the validity of this jury verdict?

The petitioner maintains his Sixth Amendment constitutional right has been trespassed upon, and this case must be remanded to the lower court for further proceedings as may be appropriate under the circumstances and consistent with this opinion.

THE SECOND IMPORTANT QUESTION OF FEDERAL LAW

WHETHER the appellate court, by its own language in denial of a Direct Appeal, satisfies the Strickland Standard, showing that a lawyer's representation was constitutionally substandard, thereby proving the petitioner never received a fair trial through the ineffectiveness of his trial and/or

appellate counsel of record, affirming a transgression of his Sixth Amendment constitutional right?

In addition to the racial bias issue presented to this Court in its first question heretofore, the petitioner brings to light his second contention that the U.S. Court of Appeals, Sixth Circuit, by its own admission, in its Order of Judgment, affirming the judgments of the district court in the petitioner's Direct Appeal, has crystallized with tangible proof that his Sixth Amendment constitutional rights were violated.

The petitioner openly declares that this constitutional right was not only violated via racial bias, but it was also trespassed upon with ineffective legal assistance at his trial, as well as during his First Appeal.

To support this allegation he promulgates the narration from the Order in Judgment issued by the U.S. Court of Appeals, Sixth Circuit, that affirmed the district court's actions against him.

THE STRICKLAND STANDARD

The Strickland Standard is well recognized and has been an integral part of the judicial system since 1984. (Strickland v Washington, 466 U.S., 668 - 1984). It has become the single attribute to set the minimum standard of lawyer competence in the representation of a defendant.

Two conditions remain essential for a defendant to show his lawyer's representation was constitutionally sub-standard. First, the lawyer's performance must have been outside the broad range of professionally acceptable assistance. It's labeled the "performance prong".

Second, there must be a reasonable probability that but for the attorney's unprofessional errors, the result of the proceeding would have been different. It's labeled the "prejudice prong".

Nothing better in evidence herein unmasks that Dr. Floyd experienced serious errors by his counsels of record that deprived him of a fair trial.

In his appellate brief to the U.S. Court of Appeals, Sixth Circuit, the petitioner presented several issues in addition to his racial discrimination matter in question heretofore.

First, he argued that the "Allen charges" were improper. In "Allen v United States", this Court approved the giving of supplemental instructions to a jury which had been unable to agree. These instructions have been said to approach "the ultimate permissible limits" for a verdict-urging instruction. The Allen charge is intended to delicately balance the obligation of each juror, both to consider carefully the arguments of other jurors concerning a proper verdict, and to vote his or her conscience rather than simply acquiesce to the opinions of others. (United States v Scott, 547 F.2d 334, 336 - 6th Cir- 1977) (citing Allen v United States, 164 U.S. 492, 501 - 1896).

In part, Dr. Floyd maintained the Allen charges in the instant action (three in total) contained at least in one instance coercive language.

While the Sixth Circuit allows the usage of such charges, it cautions that any variation upon the precise language approved in Allen charges imperils the validity of a trial (id at 337).

The petitioner further argued for a mistral, noting the court's use of the Allen charges coerced the jury into rendering a guilty verdict. The appellate court instantly disagreed, saying, "...the district court's actions are not enough for reversal..." (ECF #483, p.14).

It is illustrious over the course of the three days in jury deliberations, the jury sent the court several notes suggesting that it was having trouble reaching a consensus.

Specifically, on the second day of deliberations, the jury sent the court a note asking, "...if we cannot agree on Count One of conspiracy, can we rule on the other counts?" In response, the court instructed, in relevant part, "...I would encourage you to resolve the conspiracy issue because ultimately all of these issues have to be resolved..."

That same day, the jury sent a second note, saying, "How are we to proceed if one or more juror members feel like the jury is intentionally being hung?"

The court responded with a full Allen charge, Sixth Circuit Pattern Jury Instruction.

Lastly, at about 10 am on June 2, 2015, the final day of deliberations, the jury sent the court its third and final note, saying in relevant part, "We the jury feel that we will not be able to come to agreement on Verdict Form 1 and 2 on Count One (i.e., the conspiracy count).

The court responded with a second full "Allen charge", adding in part, "...As important as it is that you do so honestly and in good conscience...but I can't emphasize enough, ladies and gentlemen, how important it is for you to listen to one another...as you deliberate...but as mature adults, every one of you has had a disagreement with

someone and has been able to work through it at some point in your lives...". Somehow this district court misplaced the actual reality that disagreement by the jury is a "breathing" part of the jury system.

In its affirmation of the district court's judgment against Dr. Floyd, the appellate court's "majority opinion" was very straightforward with absolute assertion that his Sixth Amendment constitutional right was trespassed upon.

The constitutional safeguards of trial by jury, under the U.S. Constitution, art. III § 2, clause 3, and the Sixth Amendment, have always been held to confer upon every citizen the right to remain free from the stigma and penalties of a criminal conviction until he has been found guilty by a unanimous verdict of a jury of 12 of his peers. The possibility of disagreement by this jury and the lack of a unanimous verdict are protections conferred upon a defendant in a criminal case by the Constitution. For a judge to tell a jury that a case must be decided is therefore not only coercive in nature but misleading in fact. It precludes the right of a defendant to rely on the possibility of disagreement by the jury (United States v Harris, 391 F.2d, 348, 355 - 6th Cir - 1968).

To start, the district court's first instruction was in essence a modified Allen charge, which was then exacerbated by the two subsequent Allen charges. In its first instruction, the district court said, "I would encourage you to resolve the conspiracy issue because ultimately all these issues have to be resolved."

After the first Allen charge, the appellate court, by way of its three panel "majority opinion" began offensive action, stating, "Defense counsel did not object." (ECF # 48-3 at 14).

Additionally, when the jury was discharged at 5 p.m. on the second day of deliberations, the judge advised them, "I want to be clear that I expect you to continue your deliberations toward a unanimous verdict" (id at p.15). The court noted, "Counsel did not object to this statement" (id).

The "majority opinion" then advances with certitude, "Counsel did not object to either the second Allen charge or the court's additional comments."

The question becomes, what might have been different had counsel objected as the appellate court so indicates? The conspicuous answer is, "something to be sure", and that bespeaks prejudice, the second prong of the Strickland Standard.

The coercive first instruction was not "cured" by the subsequent Allen charges. Instead, the instruction followed by two Allen charges given in such close proximity to each other, and accompanied by the district court's additions of "listen to one another both carefully and respectfully" and "as mature adults, every one of you has had a disagreement with someone and has been able to work through it at some point in your lives," very likely compounded the coercion.

This arguably mischaracterized the legal and constitutional import of a jury's deliberations. The district court's repeated pressing of the jury to continue deliberations exceeded the limit beyond which a trial court should not venture in urging a jury to reach a verdict." (United States v Scott, 547 F.2d 334, 336 - 6th Cir - 1977).

It is a doubtless task of some difficulty for a court, on appellate review, to weigh the prejudicial impact of

a variation of the approved Allen charges. (id at 337) (citing United States v Flannery, 451 F.2d 880, 883 - 1st Cir 1971).

Had counsel objected, as he was compelled to do in the best interest of his client, in all likelihood the evidence would have been clear that the cumulative effect of the district court's instructions and Allen charges were coercive, and likely forced the jury into believing it was obligated to return a unanimous verdict. This could then have resulted in "plain error" directed at the district court which would have further reversed and remanded this case on this issue.

Three Allen charges could easily have exerted pressure on the two "black" female jurors who simply were not prepared to vote for a "guilty" verdict.

By way of the appellate court acknowledging that trial counsel failed to object at this critical point in the case, and appellate counsel failed to bring it to light in Direct Appeal, both the performance and prejudice prongs of the Strickland Standard prevail. Noting counsel of record in both instances provided substandard performance, Dr. Floyd was deprived of his Sixth Amendment constitutional right.

The petitioner experienced inadequate legal assistance when he needed it most. This Honorable Court is directed to other reconfirming rhetoric from the appellate court "majority opinion" in its Direct Appeal review of the case at bar.

Said the Court, "Although defense counsel objected to the first Allen charge, there were no objections to any other remarks defendants now take issue with, such that the

multiplicity of the charges must be reviewed for 'plain error' ".(ECF 48-3 at p.16).

Notwithstanding, FBI Special Agent Jeffrey Rees gave lay opinion testimony in behalf of the government at trial. In the process, he "inappropriately invaded the province of the jury." He impermissibly drew conclusions that the jury was competent to draw on its own (United States v Freeman, 730 F.3d 590, 597 - 6th Cir - 2013). In his testimony Rees used words like "significant", "notable" and "suspicious" to describe certain transactions. The appellate court opined, "Defense counsel did not object at the time" (id at 18).

Rees and the prosecutor used the term "significant" numerous times, as the petitioner conveyed in his Direct Appeal, confirming "although defense counsel did not object". (id at 18). Then, witness Rees made the statement, "...forwarding a request for payment, a very significant payment of $66,000 in July..." Once more the appellate count argued the allegation with, "Defense counsel again did not object". (id)

In a cross examination exercise, trial counsel for the defense argued, "Arise's (the charter school) buy-out of Global's contract was legitimate, designating there was "nothing criminal about it." The petitioner in appeal argued Rees' response, "That's not true, they were not entitled to that money. And they got kickbacks to give them that money." Once again, the appellate court confirmed, "Defense counsel did not object." (id).

The appellate court also clarified that witness Rees' testimony falls into the category of personal experience testimony (id), "rather than impermissible spoon-feeding of the Government's theory of the case." (id). The court

averred it was "further cemented by the standard of review." (id).

The court illustrated that defense counsel only objected to one use of the terms "notable" and "significant" which allowed an "abuse of discretion" review for that one statement. (United States v Kilpatrick, 798 F.3d 365, 379 - 6th Cir - 2015). "All other statements were not objected to", thereby only permitting "plain error" review. (id).

Counsel ineffectiveness forfeited any opportunity to pursue "the abuse of discretion" review for all the statements.

In Direct Appeal, the petitioner pursued constant usage of the word "kickback", which was considered to be "egregious spoon-feeding of the government's theory of the case to the jury." (id at 19).

The petitioner maintained this line of reasoning concluded witness Rees was exploiting the jury to a conclusion. "It had to be discarded by the appellate court in review with the statement, "This is not enough for a retrial, especially since defense counsel did not object to this remark..." (id).

In his appeal, the petitioner argued jury instructions. The district court had instructed the jury to "consider the factors discussed...for weighing the credibility of witnesses." (id). It also added, "With regard to testimony opinions...you do not have to accept the opinions of Jeffrey Rees..."(id).

The appellate court added, "Defense counsel did not object to these instructions at the time, and so this court again must review for plain error." (Kilpatrick, 798 F.3d at 378).

Dr. Floyd also initiated a major argument stipulating the district court incorrectly calculated the government loss.

He argued the $420,919 actual loss amount; he argued the 14 points he received under Table § 2B1.1(b); and he argued an offsetting value of the legitimate services that Global did provide to Arise (id at 25). With all this "smoke", however, there was no "fire".

Not only did Dr. Floyd's trial counsel not raise objections before the district court, suggesting the actual loss should be reduced by services rendered, counsel was so ineffective he actually objected to the $420,919 in actual loss on the grounds holding ""this man (Dr. Floyd) cannot be held liable for the acts of someone else", and suggested a loss amount closer to $169,000 (id at 26).

Consequently, the appellate court demonstrated this is an argument for reduction based on apportionment among the co-conspirators, which is different from the legitimate-value-of-services argument the petitioner was making in his appeal.

Decisively, the petitioner need not detain this judicial assembly any longer. In the preceding pages, the statements of fact are comprehensible, proclaimed by an appellate court. These authenticated incidents cannot be misconstrued or ignored, since they engage facts of constitutional magnitude. Admittedly they distinguish the glaring ineffectiveness of Dr. Floyd's attorneys of record at his trial with certitude and later conjoined by his first appeal in failure to present the delinquencies.

A fortiori, the petitioner's second question to this Court of last resort persists, can the form of expression from an appellate court in denial of a defendant's first appeal, which openly satisfies both prongs of the Strickland Standard (performance and prejudice), proving counsel of

record provided substandard legal assistance, affirm the defendant's constitutional rights were violated by way of the Sixth Amendment. A fair trial, Dr. Floyd never had, substantiated by the two questions in presentment herewith.

The U.S. Court of Appeals, Sixth Circuit, in its denial of Dr. Floyd's Direct Appeal was very clear in its message.

First, racial bias infected the jury deliberations; second, counsel for the defense failed to provide adequate legal assistance as directly supported by the U.S. Court of Appeals, Sixth Circuit. In uniting both instances, the end result is the violation of Dr. Floyd's constituional rights via the Sixth Amendment to the Constitution, demanding this case be remanded for further proceedings as may be appropriate under the circumstances and consistent with this opinion.

"You can't win the lottery if you don't buy a ticket", in translation which equates (in a court of law) to, "..if you don't object to errors of judgment, fact and law in a legal proceeding. the courts cannot make precedents which amplify justice."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 1st of March 2018