No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

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RONNIE KEITH DAVIS, PETITIONER

VS.

JAMES LEBLANC, DIRECTOR
LOUISANA DEPARTMENT OF PUBLIC SAFETY & CORRECTIONS,
BENJAMIN MADDIE, SHANE RACHAL, SAMUEL JOHNSON, COREY
VILLAMARETTE, CHARLES PRIEUR, LYNN COOPER, BRANDON BONNETTE, BLANE
LACHNEY, CLYDE BENSON, JAMES COOPER, BLANE VILLAMARETE, BRUCE
CAZALE, DR. RAMON SINGH, DR. DAVID VAJNAR,
RESPONDENTS.

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PETITION FOR WRIT OF CERTIORARI
TO THE
COURT OF APPEALS, FIFTH CIRCUIT
Civil Case No. 15-30486 Consolidated with Civil Case No. 15-30892
From the United States District Court
Western District of Louisiana, Civil No.: 1:09-CV-1450
Honorable U.S. District Court Judge, JAMES T. TRIMBLE, JR.
Honorable U.S. Magistrate Judge JAMES D. KIRK

_____

Original Brief

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Respectfully submitted,

RONNIE KEITH DAVIS, Petitioner
Proceeding in *Pro Se*

QUESTIONS PRESENTED

No. 15-30486 consolidated with No. 15-30892

These consolidated appellate proceedings requires the court to address a question left unanswered by this Court in *United States v. Beggerly,* 524 US 38, 47, 141 L Ed 2d 32, 118 S Ct 1862 (1998):

1. Whether a Motion to vacate the judgment pursuant to Rule 60(b)(3) timely filed within the one-year period is governed by the grave miscarriage of justice standard held in United States v. Beggerly, supra, when a petitioner alleges a fraud upon the court claim improperly used to improperly influence the jury and court decision regarding summary judgment in petitioner's civil rights proceeding pursuant to 42 U.S.C. §1983? *Hazel-Atlas Glass Co. v Hartford-Empire Co.,* 322 US 238, 244, 88 L Ed 1250, 64 S Ct 997 (1944); *Rozier v. Ford Motor Co,* 573 F.2d 1332 (5th Cir. 1978); *First Nat'l Bank of Louisville v. Lustig,* 96 F.3d 1554, 1573 (5th Cir. 1996); *Browning v. Navarro,* 826 F.2d 335, 342-45 (5th Cir. 1987).

2. Whether the district court abused its discretion in not holding an evidentiary hearing on the Rule 60(b)(3) on the ground of fraud upon the court claim, as distinguishable from other enumerated grounds for relief, after the petitioner asserted that state defense counsels were implicated in unconscionable scheme with defendants designed to prevent petitioner from presenting his Eighth Amendment claim in violation *Hazel-Atlas Glass Co. v Hartford-Empire Co.,* 322 US 238, 244, 88 L Ed 1250, 64 S Ct 997 (1944); *Rozier v. Ford Motor Co,* 573 F.2d 1332 (5th Cir. 1978); *First Nat'l Bank of Louisville v. Lustig,* 96 F.3d 1554, 1573 (5th Cir. 1996); *Browning v. Navarro,* 826 F.2d 335, 342-45 (5th Cir. 1987)?

3. Whether the district court, under these extraordinary circumstance, abused its discretion in not invoking its inherent power to award damages, punitive damages, and sanctions in the amount $1.6 million to deter this type of "outrageous" conduct when the unconscionable scheme involving state defense counsels was done with "evil motive or [with] reckless indifference to the right of [petitioner]" in effect nullifying petitioner's meritorious Eighth Amendment damages award by fraudulent means. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991) (*citing Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 88 L. Ed. 1250, 64 S. Ct. 997 (1944)) *with Smith v. Wade,* 461 US 30, 75 L Ed 2d 632, 103 S Ct 1625.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page except for their state defense counsels of record for purposes of Civil Case No. 15-30486.

All parties listed in caption appear on the cover page and other additional John or Jane Doe parties which do not appear for purposes of Civil Case No. 15-30892, due in part to a lack of an evidentiary hearing or adequate *post* remedy at law for a civil rights proceeding pursuant to 42 USC §1983 in the United States District Court for the Western District of Louisiana, Alexandria Division, Civil Action No. 09-11450 below.

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STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and under Article III, Section 2, Clause 2 of the United States Constitution.

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was November 17, 2017. Appendix A.

A timely petition for rehearing was denied on February 6, 2018 and the rehearing en banc was denied by the United States Court of Appeals for the Fifth Circuit on February 29, 2018 and a copy of the order denying rehearing en banc appears at Appendix B.

On May 5, 2018, petitioner filed a motion for extension of time that granted an extension of time to July 19, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No. 15-30486

The Eighth Amendment to the US Constitution states in pertinent part:

... *nor cruel and unusual punishments inflicted.*

Section 1 of the Ku Klux Act of 1871, Rev Stat § 1979, as amended, 42 USC § 1983 [42 USCS § 1983], provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...."

No. 15-30892

Rule 60. Relief from a Judgment or Order reads in pertinent part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: ***

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; ***

(d) Other Powers to Grant Relief. This rule does not limit a courts power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

*** or

(3) set aside a judgment for fraud on the court.

STATEMENT OF THE CASE

A. Statement of Facts

In early 2008, Offender Ronnie Keith Davis was placed in protective custody (RK Davis) in the Crawdad maximum security unit (Crawdad Unit) at the Avoyelles Parish Correction Center[1] in Cottonport, Louisiana. Davis was sent to the Crawdad maximum security dormitory (Crawdad Unit) for his protection after Davis complained to Major Jacobs that he was concerned for his personal safety after unfounded rumors began circulating on the compound which he believed stemmed from staff members for his whistleblowing activities about suspected corrupt practices at the Avoyelles Correction Center.[2]

During the course of these activities, Davis had befriended AW Corner (Corner) who supported his investigative activities but was on the verge of retiring. Corner was aware of at least one staff meeting where Davis that he had been the topic of a discussion headed by Warden Lynn Cooper (Warden Cooper) and advised Davis to "watch your back." Davis had been labeled a "rat" by staff. The rumors had caused inmates to subject him to theft of his canteen (commissary) items.[3] Upon placement in the Crawdad Unit for his protection, Lt. Colonel Bruce Cazelot (Cazelot) authorized that Davis be housed on tier D2, cell 2. Davis was housed in the cell 2 with inmate Eric Allen (Allen) who lived together until early August 2008. On or about August 4, 2008, Cazelot (Cazelot) moved Allen to cell 1 (bottom bunk) and moved offender Harold Anderson (Anderson),

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[1] **Since then Avoyelles Parish Correction Center has been renamed Raymond Laborde Correctional Center.**

[2] **Vol. 3, USDC 1;09-CV-01450-DDD-JDK, Docket No. 102, Appellant's Exhibit 1A, 1B, 1C, and 1D.**

[3] **Davis asserts that this meeting was where the conspiracy was formed to subject Davis to cruel and usual punishment in retaliation for exercising his right to file a grievances to federal and state officials. See n.2, supra. Davis was prevented from presenting portion of the facts of his case because the state defense attorneys argued in bad faith that the incident of August 20, 2008 was an "inmate on inmate fight" which did not state a claim for purposes of 42 USC §1983 and improperly shielded the prison official defendants with qualified immunity by spoliation of evidence in bad faith during the critical summary judgment proceeding and selectively released evidence supporting the defendant's truncated "snap shot" fight version of the August 20, 2008 incident.**

a known aggressive sexual predator, to Allen's former top bunk in cell 2 with Davis. Davis was a known homosexual.

During the ensuing two weeks after the cell move, Anderson began to make sexual advances against Davis, but Davis rejected his advances. Anderson nonetheless began to intimidate Davis and force himself on Davis. Davis began to complain about Anderson's repeated harassment. Anderson's threats shortly thereafter escalated from sexually assault harassment to threats of extortion and assault and battery by threatening to beat Davis if he didn't provide with canteen groceries to Anderson on a weekly basis. Davis wanted Anderson moved from the cell because he feared for his personal safety.

Initially, Davis complained to a number of lower level staff officers at the facility including Lt. Sammie Johnson (Johnson) and Sgt. Prieur (Prieur) who were deliberately indifferent to Davis' complaint about Anderson's continuing harassment and sexual assault advances, became more concern for his safety, when Johnson did nothing and condoned Anderson's conduct by remarking that *"you should be honored that Anderson wants to fuck you"* and failed to inform other high ranking officers besides Cazelot that made rounds through the tier on a daily basis.[4]

By DOC policy, security prison officials had a duty to document any offender complaints and unusual activities in the Unit and tier log books for review by unit supervisors and then forward a report to Warden Lynn Cooper. If any incidents led to serious injuries to an inmate, an Unusual Activities Report would be forwarded to Secretary James LeBlanc for him to take corrective action if necessary. The lower rank officers on duty would make entries in the tier log book every time they made a tier round at approximately one-half hour intervals. When inmates the Crawdad unit requested cell movements in the Crawdad Unit, DOC policy required that the that the Unit

[4] **Under Department of Corrects policy only a *colonel or higher ranking officer* had authority to move a prisoner within the Crawdad Unit.**

Supervisor, Cazelot or any other colonel or high ranking staff officer to authorize a cell move and a cell move form would be generated stating the reasons for the cell move and forwarded to Warden Lynn Cooper. In addition, DOC standard operating procedure required that all high ranking officers make daily rounds in Crawdad Unit tier to review the tier log books to consider any serious complaints and record the date and time they visited the tier in the D2 tier log book.

On August 18, 2008, AW Lachney and AW Benson were walking through the tiers in the Crawdad Unit and Davis stopped both of them as they approached his cell. Davis informed AW Lachney about his problems with Anderson and needed him to authorize a cell move either for Davis or Anderson for his personal safety and to stop Anderson's sexual harassment, physical threats, and extortion. Davis again reiterated his complaint to AW Lachney that Anderson was trying to sexually assault him and now wanted Davis to pay him with weekly commissary purchases for being *his* "whore" or suffer physical beatings.

Initially, AW Lachney was reluctant to taking any action on Davis' complaint until Davis told AW Lachney that he was declaring Anderson an "enemy"[5]compelling AW Lachney to separate them as a matter of DOC policy for Davis safety. After assessing the heated argument, AW Benson then intervened and told AW Lachney, "No, we better deal with this now because *he'll* have an ARP on the Warden's desk before we can get back to the office." AW Lachney then issued a directive to move Anderson from Davis' cell. Despite authorizing Anderson's cell movement, Cazelot failed to move Anderson off D2 tier and housed Anderson in the *adjoining*

[5] **DOC policy not only requires a cell move, but requires complete separation from each other including moving one or the other offender "enemy" transferred to another institution, if necessary.**

cell #1[6] As a result of his cell move on August 18, 2008, Davis's complaint caused a hostile reaction from Anderson who wanted to get even with Davis for "ratting" him out.

For the next two days, Anderson' anger intensified and began to loudly voice his hatred for Davis by shouting from the adjoining cell and calling Davis a "whore and a ratting bitch" and threatened to "kill you bitch (Davis)" if he ever ran across Davis on the street. Davis continued to be in fear for his safety since Anderson was still housed on the same tier and could not understand Cazelot's unreasonable measures to protect him from Anderson.[7] Anderson's loud threatening threats became common knowledge in the tier and heard by inmate and staff within shouting distance. Cell transfer forms and tier log books would have documented Anderson's and Eric Allen's cell moves and reasons for making the move on August 18, 2008.

Similarly, high ranking officers who made daily rounds of the Crawdad Unit such as Lachney, Benson, and Cazelot and other Crawdad Unit staff working during the period that Davis was in the Crawdad Unit aware that Anderson was still had been making threats against Davis from entries on the Crawdad Unit and D2 tier log books that were reviewed daily during the period. Despite their knowledge, none of high ranking officer defendants such as Colonel Cooper, Cazelot, Lachney, or Benson, sought to move Anderson off the tier to protect Davis. Other shift staff Major Brandon Bonnette (Bonnette), Captain Shane Rachael (Rachael), Lt. Sammie Johnson (Johnson), Sgt. Charles Prieur (Prieur) Sgt. Corey Villamarette (Villamarette) and Sgt Benjamin Maddie (Maddie) similarly failed to intervene to convince Cazelot or other high ranking staff official to move Anderson completely off the tier to protect Davis.

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[6] The DOC classification cell movement sheets were necessary to show these movements between cells which defendants never produced during the discovery process. Note also that Allen was moved to the *top bunk* when the alleged reason he was moved by Cazelot was to comply with a bottom bunk pass.

[7] *See* Vol. 7, No. 1:09-CV-01450-JTT-JDK, Dkt No. 417, Pretrial Hearing Transcripts, page 11 lines 3-9; Anderson *on the same tier in the adjacent cell (#1)*..

On August 20, 2008, around approximately 2:00 p.m. while Davis was Sgt. Maddie (Maddie), the tier D2 sergeant on duty that day, was stopped by Anderson (Anderson) as he made his rounds. During the conversation, several offenders housed on the same tier as Davis overheard Maddie and Anderson talking about all the problems that Davis had caused on the compound to staff including writing a complaint against Sgt. Maddie. Anderson was trying to convince Maddie to open the cells so that he could access Davis to teach him a lesson. Maddie replied that the best time might be when he opened all the tier D2 cell doors for recreation callout.[8] There were at least four inmates, inmate Eric Allen, inmate Darrin Martin, Inmate James Davis, and inmate Albert Stokes on the tier that overheard or were aware of the conversation between Maddie and Anderson that day.

One of the *Offender Darrin Martin (Martin)* approached Maddie and Anderson as they were talking together. Maddie told Martin "that Anderson was going to 'whip that whore Ronnie Davis in the cell next to him' and 'that motherfucker needs a good ass whipping and it is worth the paperwork for him to get it.'"[9] *Inmate James Davis* who was living in cell #3 also overheard Maddie's and Anderson's conversation. *Offender Albert Stokes,*[10] another Tier D2 orderly, who worked with Martin also talked to Maddie who confirmed Anderson's threatening remarks.

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[8] Vol. 3, No. 1:09-CV-01450-JTT-JDK, Dkt No. 102, Exhibit 1-I, Darrin Martin's Affidavit. Davis had previously filed written complaints against Rachal (being warned of risk of harm to any other inmate put into cell inmate living alone); Johnson and Prieur (beating Davis prior to incident); Maddie (abuse of authority and sexual discrimination) and all had ulterior motives for failing to intervene to protect Davis.

[9] Vol. 3, No. 1:09-CV-01450-JTT-JDK, Dkt No. 102, Exhibit 1-I, Darrin Martin's Affidavit.

[10] Vol. 3, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 102, Exhibit 1F, Albert Stokes Affidavit. In addition, Magistrate Judge Kirk issued a *court order* in which "[t]he court assured" Davis that inmates Albert Stokes and James Davis would appear at trial. Based on this "assurance" Davis was led to believe that Magistrate Kirk would comply with this order at time of the second scheduled trial on May 18, 2015 (USDC Dkt No. 452). The previous trial date was scheduled on September 29, 2014 and continued by Judge Trimble. (USDC Dkt No. 312).

Later that afternoon, Maddie made sure that Davis took his medications for his back injury as Maddie escorted the infirmary nurse Sandy [LNU] who dispensed late afternoon medications during "pill call" Davis was taking 100 mg of Elavil, 10 mg of Zyprexa, 100 mg of Benadryl, *and another 1200 mg of Neurontin* for his back pain

After ingesting his medications, Davis fell asleep. While Davis slept Maddie called "recreation" and Maddie with deliberate indifference to Davis safely recklessly opened all the cell doors on the tier for recreation knowing that Anderson had made threats to harm Davis, knew that Davis had declared Anderson declared an enemy on August 18, 2008 as defendants Rachael, Johnson, Villamarette, and Prieur watched with deliberate indifference to Davis' safety knowing that Anderson leaved in the adjoining cell (#1) as all the D2 tier inmates went to recreation on August 20, 2008.

Lt Johnson saw Anderson run into Davis' cell (#2) as he was sleeping after ingesting his back injury medications during "pill call". Johnson approached Davis' cell to investigate Anderson's intrusion into cell #2. Unsurprisingly, Johnson found Anderson *stabbing* Davis with a make-shift *"pen knife"* as Davis tried to fight him off in an attempt to protect himself from further harm. Because of the severity of the attack, Johnson called for back-up. He hollered "Oh, fuck, it's aggravated, hit *your* beeper."[11] Prieur was the first to appear and saw Johnson struggling to prevent Anderson from injuring Davis anymore with his "pen knife". Anymore. Johnson eventually subdued Anderson and convinced him to "drop the weapon".[12] Johnson and Prieur

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[11] This was a common practice in the Crawdad Unit as evidenced by Davis complaints to Warden Cooper about Captain Rachal placing two offenders in the same cell to fight it out, but for the suppression of evidence.

[12] The chain of custody for the "weapon" by Lt. Johnson to Captain Rachal is unaccounted after it was handed to Captain Rachal. Davis filed a subpoena seeking production of the "weapon" at the Clerk of Court's Office, Western District of Louisiana, 300 Fannin St. in Shreveport, Louisiana whose service was also obstructed by Magistrate Judge Kirk.

separated Anderson from Davis. Prieur took Davis to the infirmary for medical treatment where photos of his injuries were taken and his medical records documented his injuries of that day and Unusual Incident Reports were completed and forwarded to the Warden Cooper who then forwarded a copy to Secretary James LeBlanc.

B. Procedural Background

On August 9, 2009, Plaintiff filed a 42 U.S.C.S §1983 complaint against Defendant James LeBlanc, Secretary of the Louisiana Department of Public Safety & Corrections (DPS&C) and thirteen other defendants employed at the Avoyelles Correctional Center in Cottonport, Louisiana suing them in their individual and official capacity asking for $1,600,000.00 in compensatory and punitive damages for their deliberate indifference to his constitutional right to be protected from violence from Anderson at the Avoyelles Correctional Center, Crawdad maximum security housing unit (D tier) and indifference to his medical needs.[13] Appellant Davis filed the first of six motions for appointment of counsel to assist him in this complex case.[14] Three of those motions were filed prior to summary judgment.[15]

Initially, the case was assigned to District Judge Dee D. Drell, Western District of Louisiana (Alexandria) and referred to U.S. Magistrate James D. Kirk (Magistrate).[16] The Magistrate denied Davis counsel.[17] On January 4, 2010, Magistrate issued a memorandum order instructing Davis to amend his complaint to cure deficiences regarding lack of factual allegations in respect to Secretary James LeBlanc, Warden Lynn Cooper, Assistant Warden Blaine Lachney,

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[13] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 1.**

[14] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 3; Dkt No. 48, 08/17, 2010; Dkt No. 173, 07/10/2012; Dkt No. 218, 03/24/2014; Dkt No. 253, 06/09/214.**

[15] **Id., Dkt No. 3; Dkt No. 48; Dkt No. 173.**

[16] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK.**

[17] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 5.**

Assistant Warden Clyde Benson, Unit Manager James Cooper, Lt. Colonel Bruce Cazelot, and Major Brandon Bonnette who were primarily supervisory personnel defendants.[18]

On February 1, 2010, Davis filed an amended complaint in response to the Magistrate to the memorandum order and requested reconsideration of appointment of counsel.[19] On March 17, 2010, the Magistrate issues a second memorandum order instructing Davis to cure a deficiency in Davis first amended complaint which still lacked sufficient factual allegations regarding the supervisory personnel noted in his first memorandum order.[20]

On May 7, 2010, Davis filed his Second Amended Complaint specifically addressing each supervisory defendant with sufficient factual allegations to sustain a prima facie case of deliberate indifference and liability and reiterating his plea for assistance of counsel notifying the court "that he has done everything within his knowledge of the law, as well as made every attempt to seek outside aid in trying to meet the requirements that this court requested. He further submits that his *petition for appointment of counsel is renewed and required in order that he may proceed in this matter without being at a total disadvantage.*"[21]

On May 19, 2010, the Magistrate accepted Davis Second Amended Complaint and ordered the clerk of the court to issue two summons and one subpoena (USM Form 285) for each defendant and mail them to Davis.[22] Upon receipt, Davis immediately filled out the two summons and subpoena on each defendant and on June 2, 2010, filed them with the clerk of the court for service of process.[23] On June 26, 2010, defense counsel, James E. Calhoun (Calhoun) enrolls as defense counsel of record and files a motion for extension of time to file an answer to Davis' Second

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[18] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 6.**
[19] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 7.**
[20] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 9.**
[21] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 12.**
[22] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 16.**
[23] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 18.**

Amended Complaint.[24] On July 23, 2010, Counsel Laurel I. White enrolls as defense counsel of record for all the defendants.[25]

On July 23, 2010, Davis files a motion for court intervention in the district court after being locked up in the Crawdad maximum security unit on falsified charges and was being denied access to any legal materials in the segregation unit.[26]

On August 17, 2010, the district court held a hearing to address the motion for court intervention issue and Davis made an oral motion to the court asking the court compel the defendants to response to his motion for discovery plan conference between parties and served defense counsel White a copy of his request for production of documents, interrogatories, and an amended request for production of documents based on White's averment in open court that she had not received any of these documents.[27] Davis also moved the court for appointment of counsel.[28]

On October 22, 2010, Magistrate Kirk issued an *electronic* order instructing the parties to comply with the Memorandum Order for filing motion for summary judgment or statement of issues within 7 days.[29] On October 29, 2010, Davis filed a motion for summary judgment be denied or stayed because he had not received *any* of the discovery documents and only part of the interrogatories.[30] And, on November 18, 2010, Davis filed in part a motion to compel defendants to produce the requested documents.[31] On February 1, 2011, Magistrate Kirk held a hearing on the motion to compel granting in part and denying in part Davis' motion.

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[24] **Vol. 1, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 22.**
[25] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 36.**
[26] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 37.**
[27] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 47.**
[28] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 48.**
[29] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 55.**
[30] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 56.**
[31] **Vol. 2, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 57.**

On June 2, 2011, the defendants filed their first Motion for Summary Judgment seeking dismissal of the action for all 14 defendants on various grounds including Eleventh Amendment immunity, qualified immunity, and failure to state a claim seeking a judgment as a matter of law rigidly sticking to their defense that they had no prior knowledge of the risk of harm that Anderson posed to Davis prior to the date of the incident at issue in the case and therefore lacked any genuine issues of material fact.[32] On July 6, 2011, Appellant Davis filed his Motion in Opposition to Defendants Motion for Summary Judgment and in support attached documents provided by offenders Albert Stokes, James Davis, Eric Allen including an affidavit of Darrin Martin showing their knowledge of the events of August 18, 2008 through August 20, 2008.[33] On October 28, 2011, U.S. Magistrate Judge issued its Report and Recommendation recommending that Defendants Motion for Summary Judgment be granted.[34]

On June 4, 2012, the District Court below adopted the Report and Recommendations and ordered the dismissal of the claims in the suit with prejudice.[35] On June 21, 2012, Davis filed a motion for reconsideration[36] which was denied by the district court on June 26, 2012.[37] On July 10, 2012, Appellant Davis appealed.[38]

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[32] Vol. 3, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 97.

[33] Vol. 3, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 101, 101-2.

[34] Vol. 3, USDC, No. 1:09-CV-01450-DDD-JDK, Dkt No. 108. At the time of the filing of the Magistrate Report and Recommendation Appellant Davis was not provided with timely notice or a copy of said report. Id., No. 109; Davis was prejudiced by his transfer to Dixon Correctional Institution in Jackson, Louisiana and led to his separation from his offender witnesses which led to unnecessary additional pleadings because of lack of competent counsel assistance. Id., No. 110-127.

[35] Vol. 3, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 157. See *Davis v. LeBlanc*, 2012 U.S. Dist. LEXIS 77278 (W.D. La. June 4, 2012).

[36] Vol. 3, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 165.

[37] Vol. 3, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 169.

[38] Vol. 3, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 171.

On September 12, 2013, the Fifth Circuit granted partial summary judgment in favor of all the defendants except Maddie.[39] The Fifth Circuit reversed the district court's summary judgment order in part in respect to Maddie based on the affidavit of offender Darrin Martin.[40]

On February 19, 2014, after this Court's direct review decision and partial summary judgment determination, Davis was summoned to an untranscribed telephone conference hearing held before U.S. Magistrate Judge Kirk (Magistrate Judge) "to discuss remaining discovery needed in this case." Davis and Defense attorney Laurie White were present at the status conference hearing via telephone. Davis continued to protest that he had not received some of the critical discovery material he was seeking to establish that that defendant Maddie was well aware of the danger that Anderson posed to Davis for being on the same tier and adjoining cell prior to the date of the incident which should have been documented in "*the log book for the date and time of the assault, photographs, missing medical records, and APR records and records of Risk Management's investigation into the incident.*"

As a consequence, *Magistrate Judge found Davis might be entitled to spoliation instruction* [41] "since the missing records are for the very time period he seeks."[42] After reading Magistrate Judge' Minute Entry Report, Davis filed motion in opposition of Magistrate Minute Entry Report complaining of Magistrate Judge findings were clearly erroneous or based on incomplete discovery from the defendants.[43]

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[39] See *Davis v. LeBlanc*, 539 Fed. Appx. 626 (5th Cir. 2013); see also Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 182.

[40] See *Davis v. LeBlanc*, 539 Fed. Appx. 626, 628 (5th Cir. 2013).

[41] Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 196. (*spoliation instruction was not provided at trial because of Defendant's factual stipulation).*

[42] Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 196 (missing from court record on review).

[43] Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 196, 201.

On March 13, 2014, Davis filed a motion in the district court entitled Motion For Court Order Administrative Immediate Transfer To AVC in attempt to Fill Discovery Gaps in order to have access to his witnesses, Eric Allen, Darrin Martin, Albert Stokes, and James Davis and *requested an appointment of counsel* to assist to clarify the record for Judge Trimble who had found in a prior order that *"the records of the matter [are] convoluted, and requires them to be clarified"*[44]

On July 3, 2014, White sends Davis three notice letters, dated July 3, 2014 for each of his three witnesses, James Davis, Allen [Darrin] Martin, and Eric Allen[45] which Davis discovers was never filed with the clerk of court. On July 14, 2014, Davis files a response letter to his three (3) witnesses essentially warning them not to meet with White unless Davis is present and may be a scheme to prevent them from testifying.[46]

On August 5, 2014, Plaintiff Davis filed subpoenas for James LeBlanc, Jeffrey Travis, Linda Ramsey, Dr. Ramon Singh, Charles Riddle, Lynn Cooper, Blaine Lachney, Clyde Benson, James Cooper, *Bruce Cazelot*, Brandon Bonnette, Shane Rachal, Sammie Johnson, Benjamin Maddie, Corey Villamarette, Charles Prieur, Alice Gentry, James Longino, Blaine Villamarette, James Fournette, James Laborde, Sammie Lemoine, *Eric Allen, James Davis, Albert Stokes,* and *Darrin Martin* in preparation for trial on September 29, 2014. At this time, Davis was attempting to elicit testimony from the defendants to fill the gap of the missing evidence regarding the events of August 2008 and had forewarned his key witnesses in his July 14th letter not to talk to defense counsels without requesting his presence.[47]

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[44] Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 209 (quoting Judge Trimble's Memo Order (Dkt No. 139)).
[45] See Supplemental Exhibits 1 (1a, 1b, 1c respectively) attached hereto and incorporated herein in its entirety for all purposes. Davis later discovered that White never filed copies of this letter with the clerk of court.
[46] See Supplemental Exhibit 2, Davis Letter to James Davis, Eric Allen, and Darrin Martin, dated July 14, 2014 attached hereto and incorporated herein in its entirety for all purposes.
[47] See footnotes 28, infra.

On August 11, 2014, Appellant Davis complained to the district court that he still had *not* been provided three vital pieces of evidence: (1) the logbook for AVC maximum security housing unit for the period of February 20, 2008 to August 20, 2008; (2) medical photos of his injury sustained on the day of the incident; and (3) complete copy of his medical records file, even though the district court issued numerous orders compelling their production.[48]

On August 28, 2014, defense counsel Victoria Murry sought a continuance of trial scheduled on September 29, 2014.[49] Murry claimed that defense counsel White was on medical leave under the Family Medical Leave Act and had begun her leave since August 21, 2014.[50] The district court granted the continuance on September 4, 2014.[51] On September 5, 2014, Davis filed his objections claiming that White and Murry were misleading the court since James E. Calhoun was already enrolled as defense counsel of record and appellant Davis had subpoenaed all his witnesses and prepared to proceed to trial with his key witnesses, Allen, Martin, James Davis, and Stokes still prepared to testify in accordance with their original declarations about Maddie's conspiracy with Anderson prior to the attack August 20, 2008.[52]

On February 11, 2015, at the (untranscribed) telephone status conference on that date and defense counsel White stated: ***"Defendants express willingness to stipulate to the fact that plaintiff declared his alleged attacker an enemy prior to the incident [August 20, 2008] at issue***

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[48] Vol. 5, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 290.
[49] Vol. 5, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 306.
[50] Vol. 5, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 307.
[51] Vol. 5, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 312.
[52] Vol. 5, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 334-4. An examination of this executed subpoena on its face shows that Davis' subpoena to Eric Allen was diverted to (DPS&C Central Office in) "Baton Rouge" on "8/20/14" a day prior to White going on "medical leave" on "8/21/14" and just prior to Murry seeking a "continuance" of the trial suggesting White's medical leave was a sham. "Eric Allen" was eventually compromised on "5/12/15" after being *secretly* transported to AVC in Cottonport, La. This inmate transfer could only come out of DPS&C "Baton Rouge." Note also Davis' DOC number: "455331" on the face of the docket entry.

in this case."[53] Davis immediate orally moved Magistrate Judge to reinstate the originally dismissed 13 defendants since the stipulation was not qualified and logically extended to all the defendants.[54]

On March 17, 2015, White filed a memorandum in response to the telephone status conference hearing on February 11, 2015 with internally inconsistent statements regarding in part the existence of portions of the Crawdad Unit "logbook" "for the week of 8-14-08 to 8-20-08" and in part the factual finding that the Crawdad Unit "logbook" was "misfiled, misplaced, or destroyed." In addition, the Magistrate Minute Report excluded any reference to Davis' oral motion to reinstate all the dismissed defendants.[55]

On March 31, 2015, Magistrate Judge issued an order (Dkt No. 378, 380) instructing the clerk of court to send out subpoenas and writs of habeas corpus for inmates, Darrin Martin, Harold Anderson, and Eric Allen ***(excluding James Davis and Albert Stokes)*** and ordered Davis to provide the court with a brief statements as to the specific facts, substance, and subject matter that each witness is expected to testify to at the scheduled trial on May 18, 2015.[56]

On the same day, Magistrate Kirk issued a writ of habeas corpus ad testificandum *to Wade Correctional Center in Homer, Louisiana (WCC)* for the appearance of Eric Allen *at trial* on the 18th of April, 2015[57] subsequently amended to 18th of May, 2015 on April 1, 2015.[58]

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[53] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 365. At this hearing, there was also discussions about inmate counsel Joseph Badeaux, DCI, to assist appellant at this hearing. However, appellant Davis refused his assistance because of an actual conflict of interest regarding the contents of the DCI Law Library Logs which Davis felt was prejudicial and beyond the scope of the court order. See, p. 35, 9/26/14 entry. (Dkt. No. 356).

[54] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt Nos. 368, 369.

[55] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt Nos. 369, pp. 1-2; No. 376, pp. 2-3.

[56] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 378.

[57] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 379.

[58] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 382.

In a *sealed* document,[59] Magistrate Judge Kirk ***excluded James Davis and Albert Stokes*** before *D*avis has responded and provided him with the "specific facts, substance, and subject matter of each witness" and is inconsistent with his own order which states in relevant part:

"Plaintiff asked the court to address the issuance of subpoenas in this case. Plaintiff previous filed subpoenas[60] which were beginning to *served when the case was continued.* The court *assured plaintiff that any subpoenas he wished to have served would be served by the U.S. Marshal Service.*

On April 23, 2015, appellant Davis was summoned to the final pretrial telephone conference assisted by "Chaplain Clyde Ennis" and "inmate counsel" "Gerrod Allen" and given a choice by Judge Trimble of picking one of the two to "assist" appellant Davis at that hearing and at the trial.[61] During this hearing, Judge Trimble informed defense counsels LeAnne Broussard and White that "[t]his is really serious ground that we're fixing to tread on, Ms. White." Judge Trimble confirmed White's previous stipulation presented at the status hearing on February 11, 2015 and had his law clerk, Elizabeth Randall, read her notes of the hearing confirming both White's previous stipulation on that date and the fact that it was inconsistent with Davis and Anderson living on the same tier at the time of the incident in 2008[62] and Davis' complaint that he had not been furnished with Crawdad unit "logbook" to establish defendant's prior knowledge.[63]

On May 11, 2015, defense counsels secretly moved RK Davis' witness, inmate Eric Allen, to Avoyelles Correctional Center in Cottonport, Louisiana and placed in the *Crawdad maximum security unit* where the core Crawdad defendants including defendant Maddie had access to him

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[59] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 380.

[60] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 323, 324, 325 (sealed), 334, 335, 336 (sealed). (In Vol 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt Nos. 348, 352 Appellant Davis filed a motion to the court ordering the clerk of court to forward copies of all the subpoenas process, receipt, and return, executed and unexecuted. In his order, Magistrate Kirk reveals that several of the subpoenas were sealed, 323, 324, 334 and 336 *"and 325 may not be provided. However, the document reflects service of process on Mr. Cazelot August 29, 2014;")(emphasis added).*

[61] Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406. pp. 2 lines 12-25; p. 4 lines 15-25; see also

[62] Id., p. 10 lines 1-24, p. 11 lines 1-8.

[63] Id., p. 12 lines 1-24, p. 13 lines 13-17.

without providing Davis any notice of his movement to that facility.[64] Davis was also not informed of any oral or written compensation agreements reached with Eric Allen that caused Allen to change his testimony in favor of the defendants.[65]

On May 12, 2015, the following day, Allen was subjected to favorable treatment by defendants Benjamin Maddie, Sammie Johnson, Shane Rachal, and Charles Prieur, and Colonel Kent Gremillion who identified himself as the investigating officer. At this meeting, Allen was offered a compensation agreement in exchange for his *change* in testimony.[66] Gremillion presented Allen a prepared statement. Gremillion informed Allen to rewrite it his own writing and to sign the statement as his own.

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[64] **The USDC Docket record shows that Magistrate Judge Kirk was unwittingly used by defense counsels Murry and White to authorize Plaintiff witness, Eric Allen's secret move to AVC at Cottonport, Louisiana under the court's authority to issue writ of habeas corpus ad testificandum *to WCC* (Dkt No. 379, 382). Once there, on May 11, 2015, Eric Allen was offered a deal through Colonel Gremillon at AVC by a defense counsel on the telephone that included a transfer him to *Avoyelles Correctional Center* in Cottonport from WCC extended lockdown and remain in population in AVC in exchange for changing in testimony in favor of defendant Maddie without notifying Davis that prevented Davis him from subpoenaing *James Davis and Albert Stokes* at Hunt Correctional Center in St. Gabriels, Louisiana without any notice. This new information was provided to Davis at Allen Correction Center *after trial* where appellant Davis ran into Eric Allen by coincidence which was part of the Rule 60(b)(3), (6) motion.**

[65] **Under Firth Circuit's governing case, *United States v. Cervantes-Pacheco,* 826 F.2d 310, 315-316, (5th Cir. 1987) *Failure to disclose a compensation agreement is a Brady violation* under *United States v. Bagley.* Id. at 315-316. case. While not governing, Bagley, is instructive. Withholding of impeachment evidence of this nature lulls a trial counsel to assume there is no agreement that constitutionally impermissible allows the witnesses to falsely testify to curry favor with the state and wrongfully convict a defendant.**

In this 1983 civil rights action, defense counsels and defendants compromised the only two key plaintiff witnesses *Allen and Martin* subpoenaed to trial with compensation agreements that were not timely disclosed lulling petitioner Davis, representing himself not by choice, into believing that Allen and Martin would testify consistent with their information relied upon by the Fifth Circuit *reverse Maddie's summary judgment.*. *See Davis v. LeBlanc, 539 Fed. Appx. 626, 628 (5th Cir. 2013).* Had he been timely notified, petitioner Davis would have subpoenaed James Davis and Albert Stokes who were at Hunt Correctional Center in St. Gabriels, Louisiana.

[66] **At Wade Correctional Center, Eric Allen was in extended lockdown in the maximum security center. He had been there for over three years. *Under the terms of the compensation agreement, Allen was offered the following compensation: (1) Allen would be allowed to remain at AVC at Cottonport, Louisiana after trial; (2) and placed in general population status and (3) guaranteed to be sent to work release at six months from his discharge date.* Allen was transferred to Allen Correctional Center in Kinder, Louisiana after being raped in Wade Correctional Center maximum security center after the state defense counsels reneged on their oral compensation agreement noted above.**

Once Allen completed rewriting the prepared statement in his own writing, Colonel Gremillion made a call to the Attorney General's Office which was transcribed *in ex parte* a conversation between Allen and an unidentified attorney from the Louisiana Attorney General's Office in Alexandria, Louisiana.[67] *At trial, Murry inadvertently presented the document which caught Davis' attention and forced Murry to file in the trial record as Defendant's Exhibit D2 (sealed).*[68]

On June 8, 2015, after a trial by jury proceeding, plaintiff's 42 U.S.C.S. §1983 civil rights lawsuit was dismissed with prejudice by a jury verdict. Plaintiff filed a timely notice of appeal and was docketed as No. 15-30486, dated September 28, 2015.

On August 26, 2015, plaintiff filed a motion for relief from the judgment of June 8, 2015 under Rule 60(b) (3) alleging that the defendants had engaged in a "fraud upon the court" implicating defense counsels of record that included claims of (1) "tampering with [plaintiff's] witnesses; (2) "entered into a scheme to obstruct justice"; (3) "jury coercion and tampering"; and (4) "abundance of questions as to what part the court may have played in this matter" and (5) requested the Chief Judge of the Western District of Louisiana to oversee the evidentiary hearing." The district court dismissed the motion without an evidentiary hearing on September 3, 2015.[69]

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[67] Jury Trial Transcripts, Vol 2 of 4, May 18, 2015, p. 231 lines 17-25, pp. 227 line 18-25 through p. 232 line 1-18. During trial, defense attorney Murry inadvertently laid the transcribed document where Davis could see it and aroused his curiosity since it was dated "May 12, 2015" and concerned Davis' *key witness.* Davis made Murry admit the document as evidence as Defense Exhibit D2 (sealed) and never provided to Davis to prepare this appeal although requested. See RK Davis' Supplemental Exhibit A, Tony Moore, Clerk Letter, dated 12/4/2015, Notification of Missing Exhibits from Original Record for 15-30486 [USCA5]; See RK Davis' Supplemental Exhibit B, District Court Clerk Response Letter, dated 12/10/2015, informing Appellant that "Defense Exhibit D2" is a "sealed/restricted filings." The state defense attorneys have once again impeded Appellant from examining the document by improperly shielding the D2 under a "seal."

[68] Jury Trial Transcripts, Vol 2 of 4, May 18, 2015, p. 231 lines 17-25, pp. 227 line 18-25 through p. 232 line 1-18.

[69] Vol 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 482, 483.

On October 1, 2015, petitioner Davis timely filed a notice of appeal[70] and received a briefing schedule order under No. 15-30892, dated October 22, 2015 allowing 40 days.

On November 13, 2015, Appellant filed a motion to consolidate Appeal No. 15-30486 and Appeal No. 15-30892 to simplify the appellate procedure and sought an extension of time to on or before January 10, 2016 to file the consolidated appeal brief.

On December 3, 2015, this Court granted in part plaintiff's motion to consolidate appeal No. 15-30486 and No. 15-30892 and in part granted Davis additional time to submit the consolidated appellate brief to on or before January 8, 2016.

On January 4, 2016, the Court granted plaintiff to on or before February 5, 2016 to file the consolidated appellate brief,[71] as extended to March 4, 2016,[72] as extended by March 11, 2016 order to correct insufficiencies for 14 days for exceeding the appellate brief page limitation,[73] and extended on March 22, 2016 Order to April 11, 2016 after motion for leave[74] was denied for final submission in compliance with FRAP 32(a)(7)(A).[75]

On November 17, 2017, the Fifth Circuit issued its Per Curiam opinion finding that the district court had not abused its discretion in denying appointment of counsel on appeal; district court had not erred in denying petitioner's motion for temporary restraining order, and its findings of fact were not clearly erroneous in denying the judicial estoppel claim, and had not abused its discretion denying petitioner's motion to vacate pursuant to Rule 60(b)(3) and had not abused its

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[70] **Vol 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 490.**
[71] **See Appendix 1, Fifth Circuit Order (not returned by legal programs);**
[72] **See Appendix 1a, Fifth Circuit Order, February 2, 2016**
[73] **See Appendix 1b, Fifth Circuit Order, March 11, 2016**
[74] **Motion to Request Leave to Brief in Excess of Page Limitation.**
[75] **See Appendix 1c, Fifth Circuit Order, March 22, 2016**

discretion in denying the motion without an evidentiary hearing despite allegations of fraud, witness tampering, and improper actions by opposing counsel.[76]

REASONS FOR GRANTING THE PETITION

In Chambers v. NASCO, Inc., 501 U.S. 32, 44, 115 L. Ed. 2d 27, 111 S. Ct. 2123 (1991) (*citing Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 88 L. Ed. 1250, 64 S. Ct. 997 (1944)) this Court reiterated the nature and purpose of the inherent power of federal courts:

"... the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court. See Hazel-Atlas Glass Co. v Hartford-Empire Co. 322 US 238, 88 L Ed 1250, 64 S Ct 997 (1944); Universal Oil Products Co. v Root Refining Co. 328 US 575, 580, 90 L Ed 1447, 66 S Ct 1176 (1946). This "historic power of equity to set aside fraudulently begotten judgments," Hazel-Atlas, 322 US, at 245, 88 L Ed 1250, 64 S Ct 997, is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safe-guard the public." Id., at 246, 88 L Ed 1250, 64 S Ct 997. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil, supra, at 580, 90 L Ed 1447, 66 S Ct 1176.

ARGUMENT

Petitioner Davis seeks relief form the Fifth Circuit judgment Case as consolidated in No. 15-30486 and No. 15-30892 instructing them to remand the case to the district court for a full and fair evidentiary hearing on the Rule 60(b)(3) motion for relief from the trial judgment of June 8, 2015 and vacate the denial order of August 26, 2015 under its long historic inherent power as clearly established in *United States v. Beggerly,* 524 US 38, 47, 141 L Ed 2d 32, 118 S Ct 1862 (1998) (citing *Hazel-Atlas Glass Co. v Hartford-Empire Co.,* 322 US 238, 244, 88 L Ed 1250, 64 S Ct 997 (1944)) for the reasons, authorities, and supporting facts found in the court record as presented herein.

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[76] **In a pretrial conference, District Judge Trimble offered Davis a choice between *"the chaplain or inmate counsel substitute"* as the only options for appointment of counsel to represent him at trial. Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406. pp. 2 lines 12-25; p. 4 lines 15-25;**

Petitioner Davis asserts an the supplemental material facts developed in an evidentiary hearing would confirm his contentions that the state defense counsels engaged in a fraud upon the court with the defendants that should be heard in this application writ of certiorari under its inherent power to conduct an independent investigation in order to determine whether the federal district court below and the Fifth Circuit has been victim of a fraud, the integrity of those proceedings have been corrupted and prevented from performing their proper administration of justice to "safe guard the public" and whether this case meets the "grave miscarriage of justice" standard established by this court in *United States v. Beggerly,* 524 US 38, 47, 141 L Ed 2d 32, 118 S Ct 1862 (1998) (citing *Hazel-Atlas Glass Co. v Hartford-Empire Co.,* 322 US 238, 244, 88 L Ed 1250, 64 S Ct 997 (1944)).

The Elements of an "Independent Action" involving Fraud Upon the Court

Citing the *Beggerly v United States,* 114 F.3d 484, 487 (5th Cir. 1997), this Court adopted the following elements;

> "(1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law." Id.

In *First Nat'l Bank of Louisville v. Lustig*, 96 F.3d 1554, 1573 (5th Cir. 1996), the Fifth Circuits followed the definition of a fraud upon the court as articulated in *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978) (quoting *England v. Doyle*, 281 F.2d 304, 309 (9th Cir. 1960)) which states the elements of a fraud upon a court claim:

> To establish fraud on the court, "'it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision.'" *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978) (quoting *England v. Doyle*, 281 F.2d 304, 309 (9th Cir. 1960)).

> Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, *or the fabrication of evidence by a party in which an attorney is implicated*, will constitute a fraud on the court. *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S. Ct. 997, 88 L. Ed. 1250 (1944); *Root Refin. Co. v. Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948); 7 J. Moore, FEDERAL PRACTICE, P 60.33 at 510-11. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court. *See Kupferman v. Consolidated Research & Mfg. Co.*, 459 F.2d 1072 (2d Cir. 1972); *see also England v. Doyle*, 281 F.2d 304, 310 (9th Cir. 1960). *Id.* (quoting *United States v. International Tel. & Tel. Corp.*, 349 F. Supp. 22, 29 (D. Conn. 1972), *aff'd without opinion*, 410 U.S. 919, 93 S. Ct. 1363, 35 L. Ed. 2d 582 (1973)). (Italicized text for emphasis)

Petitioner is a Victim of Fraud & Greater Harm is to the Judicial System

Petitioner Davis asserts that his fraud upon the court claim began to unravel at a pretrial conference after the district court had dismissed 13 of the 14 defendants based on failure to state a claim and qualified immunity fabricated by state defense counsels in bad faith[77] and the Fifth Circuit[78] on February 11, 2015 Magistrate Kirk when defense attorney Laurie White introduced a factual stipulation submitted on behalf of the defendant's which read: **"*defendants* express willingness to stipulate to the fact that plaintiff declared his alleged attacker an enemy prior to the incident [August 20, 2008] at issue in this case"**[79] that was judicially accepted by Magistrate Kirk and incorporated into the District Court Minute Entry Report memorializing the pretrial status conference hearing of that date.[80]

At this February 11, 2015 pretrial hearing, the record clearly and convincingly shows that petitioner Davis sought to reinstate *all the defendants summarily dismissed because the factual stipulation read "defendants"* and *not "defendant Maddie"* the sole surviving defendant post

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[77] **See footnotes 35-37, supra.**

[78] **See *Davis v. LeBlanc*, 539 Fed. Appx. 626, 628 (5th Cir. 2013).**

[79] **Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 365, Magistrate Judge Minute Entry Report, February 11, 2015 *(italicized text emphasis added).***

[80] **Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 365, Magistrate Judge Minute Entry Report, February 11, 2015.**

summary judgment. Petitioner Davis knew that something was wrong with the factual stipulation since it was inconsistent with the fact that there was only a single defendant remaining. Davis was still not sure what it meant, but knew that its legal implications led to the conclusion that a fraud upon the appellate court had been practiced by the state defense counsels during on the Fifth Circuit on summary judgment proceeding and raised the issue on appeal under the doctrine of judicial estoppel after trial.

This factual stipulation was not a "mistake" as claimed by a state defense attorney at trial, but was more consistent with the pattern of having been concealed prior to summary judgment and may have served the defendants with a defense strategic to concede the eighth amendment and either settle the damages or have the jury decide the issue but eventually abandoned and replaced with the fraud upon the court scheme.

The scheme is patterned to follow the governing law on summary judgment and general "norm" of shielding public officials with qualified immunity. *Harlow v. Fitzgerald,* 457 US 800, 818, 73 L Ed 2d 396, 102 S Ct 2727 (1982). ("officials performing discretionary function[s] generally are shielded from liability for civil damages insofar as their conduct *does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.")* (emphasis added).

In other words, when read with those *Harlow* principles the state defense counsels fabricated "inmate on inmate fight" to create the false impression that defendants did "not violate clearly established constitutional law [an eighth amendment claim under Farmer, supra,] of which a reasonable person would have known" Harlow, supra.

"Secondly, when the complaint fails to allege a claim of clearly established law or *when discovery fails to uncover evidence sufficient to create a genuine issue whether the defendant*

committed such a violation, it provides the defendant with an immunity from the burdens of trial as well as a defense to *liability." Johnson v. Fankell,* 520 US 911, 915, 138 L Ed 2d 108, 117 S Ct 1800 (1997) (emphasis added)

In sum, to assure the defendants would not face "trial" and damages "liability, the state defense counsels *created* the false impression that *discovery fail[ed] to uncover evidence sufficient to create a genuine issue that the defendant[s] did not commit[] such a violation." Id. at 915, `138 L Ed 2d 108, 117 S Ct 1800.* To that end, the state defense counsels engaged in the spoliation of evidence in bad (including the factual stipulation at issue) in order for the scheme to succeed during summary judgment.

The sophistication of the scheme was also designed to interfere with petitioner Davis' statutory privilege for appointment of counsel pursuant to 28 USC §1915(e) in the civil rights action pursuant to 42 USC §1983 in the first filing on August 11, 2009.[81] That outcome was also necessary to prevent petitioner Davis from getting outside counsel assistance during "discovery" especially evidence regarding the actual events of August 18, 2008 through August 20, 2008 because that material evidence would have exposed *all* the defendants to "trial" and liability." Johnson, supra, at 915.

Without appointed counsel, prisoner litigants operate on the assumption that state defense counsels will provide them with the material evidence they request during initial discovery which was a clearly erroneous assumption in this case.

As the records clearly shows, the factual stipulation was a device used in bad faith by the state defense counsels to quell petitioner Davis complaints about missing evidence that the Magistrate

[81] **Vol 1, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 3.**

Judge described as warranting a "spoliation of evidence instruction" as the following procedural record entries clearly show:

> On February 19, 2014, after partial summary judgment had been, Davis was again summoned to an untranscribed telephone conference hearing held before U.S. Magistrate Judge Kirk "to discuss remaining discovery needed in this case."
>
> Davis and Defense attorney Laurie White were present at the status conference hearing via telephone. Davis continued to protest that he had not received some of the critical discovery material he was seeking [from state defense counsels or defendants] to establish that that defendant Maddie was well aware of the danger that Anderson posed to Davis for being on the same tier and adjoining cell prior to the date of the incident which should have been documented in "*the log book for the date and time of the assault, photographs, missing medical records, and APR records and records of Risk Management's investigation into the incident.*"
>
> As a consequence, *Magistrate Judge found Davis might be entitled to spoliation instruction* [82] "since the missing records are for the very time period he seeks."[83] After reading Magistrate Judge' Minute Entry Report, Davis filed motion in opposition of Magistrate Minute Entry Report complaining of Magistrate Judge findings were clearly erroneous or based on incomplete discovery from the defendants.[84]

The enumerated documents, supra, were the same evidentiary records that petitioner Davis had sought since the initial discovery prior to summary judgment. In response, defense counsel Laurie White gambled and exposed in part the factual stipulation that she had concealed during summary judgment to avoid sanctions for her discovery misconduct.

However, the state defense counsels had a secondary ulterior motive for its introduction – the exclusion of witnesses *James Davis* and Albert Stokes from being called to testify on behalf of petitioner Davis as the record documents following the same pattern of excluding or suppressing evidence not in their possession:

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[82] **Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 196. (*spoliation instruction was not provided at trial because of Defendant's factual stipulation).***

[83] **Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 196 (missing from court record on review).**

[84] **Vol. 4, USDC, No. 1:09-CV-01450-JTT-JDK, Dkt No. 196, 201.**

On March 31, 2015, Magistrate Judge issued an order[85] instructing the clerk of court to send out subpoenas and writs of habeas corpus for inmates, Darrin Martin, Harold Anderson, and Eric Allen ***(excluding James Davis and Albert Stokes)*** and ordered Davis to provide the court with a brief statements as to the specific facts, substance, and subject matter that each witness is expected to testify to at the scheduled trial on May 18, 2015.[86]

On April 23, 2015, appellant Davis was summoned to a critical final pretrial telephone conference hearing assisted by inmate counsel Gerrod Allen and Chaplain "Ennis". During this hearing, Judge Trimble critical issues arose where competent counsel was absolutely necessary and neither Gerrod Allen nor Chaplain could offer any legal assistance at all.

Among the issues addressed at this pretrial hearing were: (1) *that inmate counsel Gerrod Allen would assist Davis at the civil proceeding.* [87] (2) staff and prisoner witnesses to be subpoenaed and excluded;[88] (3) Davis brings to the court's attention the state [defendants] made an admission of liability by the factual stipulation of prior knowledge at the status hearing on February 11, 2015 as confirmed by Judge Trimble's law clerk, Elizabeth Randall;[89] (4) Court recognizes defendants inconsistent position that places Davis at a disadvantage for relying on state' prior knowledge stipulation since February 11, 2015;[90] (5) Court confronts defense counsel White for her failure to produce the Crawdad Unit "Logbook" and inconsistent statements in her memorandum response;[91]

At first blush, this appointment of counsel issue appears voluntary but was induced by fraud caused by the misconduct of the state defense counsels to effectively execute the fraud scheme for the simple reason that inmate counsel substitute "Gerrod Allen" under 28 U.S.C. §1915(e)(1)[92] as a result of his prisoner status was like petitioner Davis operating on the erroneous assumption that the state defense attorneys were acting good faith and would provide the material evidence requested which was never going to happen under the unconscionable scheme.

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[85] **Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 378, 380.**

[86] **Vol. 6, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 378.**

[87] **Vol. 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406. Final Pretrial Conference hearing (Via Telephone) transcripts, April 23, 2015, pp. 2 lines 12-25; p. 4 lines 15-25;**

[88] **Vol. 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406; id, at p. 5 lines 7-25, pp. 6-9;**

[89] **Vol. 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406; id., at p. 9 lines 20-25; pp. 10-14 lines 1-10;**

[90] **Vol. 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406; id., at p. 14 lines 11-16.**

[91] **Vol. 7, USDC No. 1:09-CV-01450-JTT-JDK, Dkt No. 406.Id., at p. 14 lines 14-25; p. 15-16 lines 1-11.**

[92] ***Naranjo v. Thompson,* No. 13-50541, Cons. w/14-50200, 2015 U.S. App. LEXIS 19799 (November 13, 2015) *(Stewart, Chief Judge, Clement, Circuit, Judge, Elrod, Circuit Judge)* (citing *Ulmer, supra.)***

At this critical stage, the real object of the scheme two eliminate the last two evidentiary obstacles to the defendant's defense, Eric Allen and Darrin Martin, testimony would expose their scheme and prevent the defense team and defendant Maddie to manipulate the outcome of the trial to avoid damage liability. Their egregious misconduct followed a similar pattern employed during summary judgment proceeding to suppress material evidence and testimony about the relevant time period in August 2008 and foist their sham defense (inmate to inmate fight) through trial to defeat damages liability.

The Final Step of the Fraudulent Scheme in the District Court

As the trial approached, on May 12, 2015, the state defense counsels and defendant silenced the remaining plaintiff witnesses, Eric Allen and Darrin Martin, by a species of bribery known as compensation agreements presented to them by a member of the state defense counsel, John or Jane Doe acting over the telephone with the cooperation of Colonel Gremillion assigned to the Avoyelles Correctional Center to assist in the case as revealed by Eric Allen to Davis after the trial.[93]

The gist of compensation agreements was to get them to falsely change their trial testimony in exchange for termination of extended lockdown in respect to Eric Allen and a favorable plea agreement on a new criminal case in the case of Darrin Martin[94] to control the outcome of the trial on their fraudulent terms.

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[93] **The subject matter of the Rule 60(b)(3) motion for relief from the judgment for fraud.**

[94] **The Darrin Martin affidavit had been the key piece of evidence that the Fifth Circuit relied upon reverse summary judgment on Sgt. Benjamin Maddie implicating him in petitioner Davis' eighth amendment claim for failure to protect Davis clearly established under Farmer v. Brennan, 511 US 825, 829, 128 L Ed 2d 811, 114 S Ct 1970 (1994) and it predecessors Helling v McKinney 509 US 25, 125 L Ed 2d 22, 113 S Ct 2475 (1993); Wilson v Seiter, 501 US 294, 115 L Ed 2d 271, 111 S Ct 2321 (1991); Estelle v Gamble, 429 US 97, 50 L Ed 2d 251, 97 S Ct 285 (1976)).**

The trial record will show that both of petitioner Davis's witness became "hostile witnesses" ambushing petitioner Davis at trial testifying contrary to initial statements without notice of their change of testimony and preventing Davis from timely using legal process to obtain the presence of his two remaining witness James Davis and Albert Stokes to trial.

The egregious methods employed by defense counsels is a variant of a Brady violation as discussed by this Court in *United States v. Bagley,* 473 U.S. 667, 678, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985) failing to disclose the terms of Eric Allen and Darrin Martin agreements lulled petitioner Davis into assuming that no agreement existed and his witnesses will testify consistent with their initial statements and affidavit allowing both witnesses to testify falsely without correction, interferes with effective cross examination, eliminates special jury instruction cautioning that the jury about the witnesses' allows the [state defense] witnesses to testify falsely knowingly to curry favor with defense counsels to gain the benefit of the bargain. See *United States v. Cervantes-Pacheco*, 826 F.2d 310, 315-316, (5th Cir. 1987) (en banc); *Cf. Connick v. Thompson*, 563 US 51, 131 S Ct 1350, 179 L Ed 2d 417 (2011)

Once petitioner Davis' only two witnesses had been compromised three days before trial. The state defense counsels knew "inmate and inmate fight" defense would succeed unopposed. to improperly influence the jury verdict and the final judgment of the trial court.

Defense counsel, Laurie White also knew that her false testimony that the factual stipulation at issue was a "mistake" but a device to eliminate two of the four witnesses under the control of Petitioner Davis by Magistrate Judge who relied on the factual stipulation and unwittingly used for that purpose.

Scheme Denied Petitioner Damages

The egregious misconduct denied petitioner Davis' right to present his meritorious eighth amendment claim and impeded Davis from holding defendants' liable for damages or punitive damages in the amount of $1.6 million dollars.

District Court had Inherent Power to Grant Damages and Punitive Damages

In *Smith v. Wade*, 461 US 30, 42,75 L Ed 2d 632, 103 S Ct 1625 (1983) this Court held that it had inherent power to grant damages and punitive damages to redress willful misconduct or was the result of reckless indifference to the rights of others.

Petitioner Davis had a meritorious Eighth Amendment claim for failure of the prison official defendants to protect him from violence., Davis' Eighth Amendment claim was clearly established in 2008 under *Farmer v. Brennan,* 511 US 825, 829, 128 L Ed 2d 811, 114 S Ct 1970 (1994) and it predecessors Helling v McKinney 509 US 25, 125 L Ed 2d 22, 113 S Ct 2475 (1993); Wilson v Seiter, 501 US 294, 115 L Ed 2d 271, 111 S Ct 2321 (1991); Estelle v Gamble, 429 US 97, 50 L Ed 2d 251, 97 S Ct 285 (1976)). Moreover, there was no question that the state defense attorneys and defendants knew or should have known that "prison official[s] [could] ... be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer, supra,* 511 US at 847, 128 L Ed 2d 811, 114 S Ct 1970

In this case, as the record procedural history, circumstantial evidence, and reasonable factual inferences drawn from the evidence presented herein clearly and convincing show, the defendants had a constitutional duty under the Eighth Amendment to protect petitioner Davis from any further substantial risk of harm from the assailant Anderson and failed to take adequate

measures to protect petitioner Davis by leaving Anderson in the same tier and adjoining cell which on August 20, 2018 facilitated access to petitioner Davis adjoining cell and stabbing as Davis slept. This cell move was objectively unreasonable and constitutionally inadequate to abate further harm to Davis as held by this Court in *Farmer v. Brennan*, 511 US 825, 829, 128 L Ed 2d 811, 114 S Ct 1970.

The state defense counsels and defendants in this case practiced a fraud upon the court to deny petitioner Davis damages liability for the egregious unconscionable scheme reckless indifference to his Eight Amendment claim to be protected from violence in a prison setting through defense counsels willful mischaracterization of Anderson's attack on Davis as a "inmate on inmate", suppression and spoliation of evidence in bad faith through the abuse of process of appearing to comply with *Harlow v. Fitzgerald,* 457 US 800, 818, 73 L Ed 2d 396, 102 S Ct 2727 (1982) ("officials performing discretionary function[s] generally are shielded from liability for civil damages insofar as their conduct *does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.")* (emphasis added).

In *Hazel-Atlas*, the Court held that fraud on the court occurred when the defendant prepared and arranged for publication in a trade journal a favorable article signed, but not actually written by, an independent expert. *Id.* at 250. The Court found that the defendant had engaged in an elaborate scheme to defraud the Patent Office and the Third Circuit and emphasized that the article was effective in that the defendant obtained a patent and prevailed on appeal. The Court stated "the article, even if true, should have stood or fallen under the only title it could have honestly have been given -- that of a brief in behalf of Hartford prepared by Hartford's agents, attorneys and collaborators." *Id.* at 247.

In this case, the state defense counsels "should have stood or fallen" under the merits of Petitioner Davis' eighth amendment claim on the honest facts and willfully chose to defraud petitioner Davis. The egregious misconduct that has robbed petitioner Davis of his right to damages. The court should invoke its inherent power to award damages and punitive damages to deter any future willful misconduct of the kind presented herein in the amount of $1.6 million dollars or whatever the Court deems appropriate in light that it occurred in the context of a Section 1983 civil rights action. See also *Chambers v. NASCO, Inc,* 501 US 32, 115 L Ed 2d 27, 111 S Ct 2123 (1992) (court has inherent to award attorney fees).

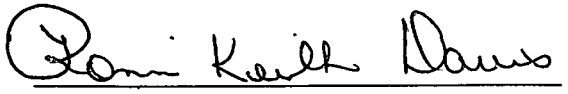
In light of this grave miscarriage of justice, Davis also contends that a Rule 60(b)(3) evidentiary hearing should be mandatory when the claim involves a fraud upon the court since a 42 USC §1983 has no adequate remedy at law. Davis asserts that both district court and Fifth Circuit relied on an unreasonable determination of the facts in the federal district court in violation of *Hazel-Atlas Glass Co. v Hartford-Empire Co.,* 322 US 238, 88 L Ed 1250, 64 S Ct 997 (1944) which provides courts to use their inherent equitable discretion when there is no adequate remedy at law within the realm of its equitable jurisdiction.

CONCLUSION

The petition for writ of certiorari should be granted.

Date: May 27, 2018

Respectfully submitted,



RONNIE KEITH DAVIS, Petitioner
Proceeding Pro Se