18-8587

IN THE

UNITED STATES SUPREME COURT

In Re: Christopher Stegawski

PETITION FOR 28 U.S.C. § 2255 MOTION

CHRISTOPHER STEGAWSKI, Pro se

Reg. No. 58010-060

Federal Prison Camp

P.O. Box 6000

Ashland, KY 41105

QUESTIONS:

1° Was the trial fair when:

- prosecution took 5 days of testimonies and defense none
- key defense witnesses were not investigated pretrial
- court denied Defendant's request to cross examine government medical expert while expert made 31 meritorial errors on 32 presented patient charts
- court cut off Defendant after "I may have discovered cause of opiate epidemic" and "In Poland...[500 years ago there was epidemic]"
- court did not provide allocution, whereas Defendant plead not guilty
- there was no time for Defendant to present reduction of medications that led to elimination of overdose mortality and discovery of the disease that leads to massive opiate use?
- And this is just the tip of the lawberg of lack of trial time for the defense!

2° Did the defense trial counsel created the third prong of Strickland v. Washington, when he did not investigate and subpoena any witnesses, did not prepare and present any evidence, could not find charts of patients during expert testimony, and used strategy during Motion for New Trial Hearing of blaming Defendant for what he did not do? The third prong is: "Would Defendant be better off without trial defense counsel?"

3° Is United States v. Moore (1975) applicable to chronic pain treatment?

4° Does §802-Addict describe chronic pain patient treated with opiates?

5° Does usual course of medical practice §1306.04 (opening medical office, hiring office staff, opening business checking account) mean maintenance of premises, conspiracy to traffick drugs, money laundering?

6° Is "Except as authorized" of §841 an enticement to attract physicians to practice chronic pain treatment that disappears for the trial?

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1. Dose of Oxycodone - Massachusetts General Hospital, Handbook
2. Structure and Molecular Weight of Hydrocodone and Oxycodone
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4. Letter to The President Donald Trump
5. Post-trial Press Release: "Jury convicts..."
6. Index of Grounds - submitted on October 2, 2018
   and mailed to Solicitor General and Prosecutors
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CITATIONS OF THE REPORTS OF THE OPINIONS AND ORDERS

IN THE DISTRICT COURT case # 1:12-cr-00054-MRB

02/09/2015 Request to cross-examine pro se government expert (during trial) - denied

02/12/2015 Doc # 127 Rule 29 Motion - denied 02/12/2015

05/14/2015 Doc # 150 Motion for New Trial- Order overruling doc # 164 10/23/2015

11/10/2015 Doc # 167 Motion for reconsideration - Order striking doc # 168 11/16/2015

11/30/2016 Doc # 214 Motion for a copy of entire trial transcript -denied doc # 218 05/03/2017

02/21/2017 Doc # 216 Motion for settlement and approval - pending

02/16/2018 Doc # 227 Motion for new trial grounded on newly discovered evidence - pending

03/16/2018 Doc # 228 Amended Motion for new trial - pending

COURT OF APPEALS case # 15-4363

11/30/2016 Doc # 40 Appellant Motion ... to hold case in abeyance.. pending transcripts - denied doc # 41 12/13/2016

01/20/2017 Doc # 47 Notification...defendant's supplement to reply brief - not included in appeal opinion

03/17/2017 Doc # 48 Submission of briefs set for Thursday, May 4, 2017

04/28/2017 Doc # 50 Opinion filed: Affirmed (denial of Motion for New Trial)

05/01/2017 Doc # 53 Supplemental brief (cert. of service 04/26/2017)- order denial as moot Doc # 54 05/03/2017

05/18/2017 Doc # 55 Petition for panel rehearing - Order denying doc # 56 05/23/2017

06/13/2017 Doc # 58 Returning unfiled petition for rehearing en banc

06/29/2017 Doc # 59 Tendered motion to refile petition for rehearing en banc

06/29/2017 Doc # 60 Tendered petition for rehearing en banc and leave to file

IN U.S. SUPREME COURT case # 17-5675

Petition for a writ of certiorari - denied 10/02/2017

10/02/2018 Petition for §2255 Motion -

STATEMENT OF THE BASIS FOR JURISDICTION

(i) Petition for a writ of certiorari was denied on 10/02/2017.

(ii) Petition for §2255 Motion was filed on 10/02/2018 and 60 days extension was granted to reduce number of pages to 40.

This Petition is filed under Rule 20.4.(a), Rule 14, and Rule 11.

(iii)

(iv) Solicitor General of United States received first version of the Petition and will receive a copy of this one.

I N T R O D U C T I O N

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

This case is about solving the puzzle of two diseases that lead to massive opiate use. These sicken over 10 millions and kill 70.000 each year.

One is so obvious - Disease of the Poisoned Brain, that it led to overlooking the other one because of public opinion stigma.

The other one - The Eleventh Plague of Egypt. The disaster is too big to be born in criminal minds of patients and their doctors. When public blame is diverted to doctors it is a sure sign of undiagnosed disease; it was true 500 years ago and is today. After putting the puzzle together it got a name: Fibromyalgia scioto.

Physician who put the pieces of the puzzle together for eight years already is tormented by people who think they are enforcing the law.

Prosecutors claimed lollygagging and cursory examinations, to describe the way to discovery of the new disease. Such dichotomy contradicts cause leading to outcome in just prosecution.

REASON FOR NOT MAKING APPLICATION TO DISTRICT OR APPELATE COURT

The reason are two diseases that sicken millions and claim lives of up to 70.000 people per year. One disease is well known and mistakenly called "opiate epidemic". The other could have only be discovered by a physician working in the eye of the endemic; but all the physicians that could make the discovery were arrested before that happened. Only unusual combination of the rare events led Petitioner to discovery of Fibromyalgia scioto as a disease treated with opiates.

There is a lot to be done, that takes time. Identification of the causative bacterium, developement of a vaccine to prevent new cases. Available treatment are few antibiotics, but will those be effective in reversing the symptoms, or a failure like in Lyme disease. Will pain be treated with antibiotics or opiates will be the choice?

Petitioner lowered medications in sequence that led to elimination of overdose mortality; but this did not stop prosecution, that had own strategies of medical treatment. The trial without adversarial testing convinced the district court, who denied multiple Petitioner's motions and now is holding decision on 3 year motion for new trial for 10 months, delays and appeals are expected when two diseases are ravaging the country. Court of appeals on first page of denied appeal blamed Petitioner for talking about "convicted doctors" to would be defense attorney "to vouch for [Petitioner]" whereas appeal court overlooked convicted criminal who vouched for prosecutors during trial and perjured himself on the stand.

The pending issues on instant habeas corpus that will come to the Supreme Court are: lack of federal chronic pain law, applicability of §802 and §841 to chronic pain treatment, Petitioner actual innocence and inquisition for solving the mystery of massive opiate use in some states.

The War on Drugs was diverted
into War on People, whom
the War was intended to protect.
It's time to convert the War
into treatment and care of the People.

Without Supreme Court involvement this change will not come.

MOTIONS FILED BY PETITIONER, WHICH WERE NOT RULED ON THE MERITS

In District Court

Motion for Reconsideration of the Order for Motion for New Trial
- Dist. Ct. # 167, 11/10/2015 (handwritten)
- (transcribed and filed) as: Exhibit #1 with Doc # 227, 02/16/2018 Motion for New Trial

Motion for New Trial Grounded on Newly Discovered Evidence - pending
- Dist. Ct. doc # 227 and 228, 02/16/2018 and 03/16/2018

In Court of Appeals

Appellant's Supplement to Reply Brief
- App. Ct. doc # 47, 01/20/2017 as: Notification filed by Christopher Stegawski

Supplemental Brief filed by party
- App. Ct. doc # 53, 05/01/2017

Memorandum in Support of Jurisdiction
- App. Ct. doc # 55, 05/18/2017 - as: Petition for Rehearing before original panel

Petition for rehearing en banc
- App. Ct. Doc # 58, 06/13/2017 - Letter sent to Christopher Stegawski

Petition for Rehearing en banc
- App. Ct. doc # 60, 06/29/2017 - as: Temdered petition for rehearing en banc

DISCLOSURE

pending Motion for New Trial Grounded on Newly Discovered Evidence District Ct. Doc 227 and 228, 2/16/2018 and 3/16/2018 has similar claims to grounds listed in §2255 Motion:

Ground 1:Statement of the case	Claim 11° - Fibromyalgia not presented at trial
Ground 7:Lack of adversarial process	Claim 11° - Adversarial process
Ground 13:Urine toxicology guidelines	Claim 9° -Urine tests manual
Ground 14:Prosecution for IR	Claim 1° - Prosecution for IR
Ground 16-A: Reducing medications	Claim 2° - Guidelines to reduce medications
Ground 21: Witness didn't want to testify	Claim 4° - Witness didn't want to testify
Ground 24:Lollygagging	Claim 10° - Lollygagging
Ground 29:IEAC - Wettle	Claim 8° - newly discovered ineffect - Wettle
Ground 38:§ 801	Claim 7° - § 801
Ground 44-B: UC agent - Orlando shooting	Claim 6° - Orlando shooting

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Southern District of Ohio
Name *(under which you were convicted)*: CHRISTOPHER STEGAWSKI	Docket or Case No.: 1:12-cr-00054-MRB
Place of Confinement: Federal Prison Camp, Ashland, KY 41105	Prisoner No.: 58010-060
UNITED STATES OF AMERICA V.	Movant *(include name under which convicted)* CHRISTOPHER STEGAWSKI

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court, Southern District of Ohio, Wesrern Division

(b) Criminal docket or case number (if you know): 1:12-cr-00054-MRB

2. (a) Date of the judgment of conviction (if you know): February 13, 2015
(b) Date of sentencing: December 04, 2015

3. Length of sentence: 160 months

4. Nature of crime (all counts):

21 USC 841(a)(1), (b)(1)(C)	Conspiracy to Distribute Controlled Substances
21 USC 846	
21 USC 856(a)(1), (a)(2)	Maintaining a Place for the Purpose of Distribution of Controlled Substances
18 USC 1956(h)	Conspiracy to Launder Monetary Instruments

5. (a) What was your plea? (Check one)
(1) Not guilty [x] (2) Guilty [ ] (3) Nolo contendere (no contest) [ ]

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury [x] Judge only [ ]

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes [x] No [ ]

8. Did you appeal from the judgment of conviction? Yes [x] No [ ]

INDEX OF GROUNDS - reduced to 40 pages

TRIAL

GROUND ONE: STATEMENT OF THE CASE

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

"Medici, audere Patientiam tuam,
Is as valid today as ever before,
Patients are source of your wisdom,
Listen to your Patients, Doctor!"

It was beyond comprehension of any prosecutor in 2010 that there is a physician who figured out how to get patients safely out of the trap between overdose and underdose in chronic pain pharmacological treatment.

All prosecutors have been familiar with what overdose mortality and abrupt deprivation of opiates are.

The risks of overdose and underdose is real as the nation has learned between 2011 and 2018. The risk of underdose is greater than the risk of overdose, about four to six times greater.

Defendant's defense at trial should have been as judge Fletcher put it in United States v. Feingold, 454 F.3d 1001, 1013 (2006, 9th Cir)
"he earnestly adhered to some alternative, but nonetheless medically legitimate standard of care". Already in 2010 Defendant carried out reduction of medications that was not supported by medical studies till about 2013 and was not in accordance with standard of medical practice generally recognized and accepted in the country. The mentioned study indicated that one prescription for sedative/hypnotic had higher predictive value of overdose than all prescriptions of opiates.

Defendant's modification of treatment as it comes out in retrospective evaluation was equally effective for patients, users and abusers. The results were: from three medications (Soma, Xanax and opiates, mostly Oxycodone) to one

and in some patients with Xanax at below 1/6 of the initial dose. There was no overdose mortality among about 500 patients (predicted mortality about 6 from statistics). Below 1 mg Xanax daily underlying psychological causes of opiate use emerged and prompted referral of first 50 patients to psychiatrist.

At that point raid of the clinic by authorities resulted in closure of the clinic.

That is how Portsmouth Drug Cartel was removing unwanted physicians: by filing false reports to authorities. And that is explanation how "locals" kept pain business in their hands for 20 years.

By raiding the clinic authorities have interrupted modification and termination of chronic pain treatment and then at trial blamed Defendant for not finishing it. Apparently they expected miracles: overnight solution to long term medications use.

Most unusual observation was atypical, non-textbook back pain. Reports of pain did not correlate with patients imaging studies. It did not affect mobility and was not associated with nerve compressions. Then in Fall when Xanax was already reduced patients started complaining of more nighttime back pain. Defendant's interpretation was that patients were previously intoxicating themselves for the night with opiates and Xanax and when Xanax was reduced pain required more opiates. Then patients started reporting symptoms of fibromyalgia, which was considered for years patients malingering and manifestation of depression and then autoimmune disease, similarly to chronic fatigue syndrome. It could have been the result of patients waking up from sedation or Defendant increased awareness. Few patients Defendant sent to rheumatologist for opinion on fibromyalgia; it was just before clinic closed and Defendant did not receive reports from the consultations. Another possibility is that it was reinfection; possibility opens up that like in

Lyme disease, symptoms persist but after few years live bacteria cannot be identified. Hence, reinfection is possible.

PSI report indicates that Defendant became ill himself with summer malaise, like "summer flu", without cough, followed by one of the symptoms of RMSF - (Rocky Mountains Spotted Fever). Already after closure of the clinic Defendant took antibiotic. The symptoms disappeared, but came back a month after the end of antibiotic treatment with neck pain for few days. Defendant named it Stegawski's sternocleidomastoid muscles sign, as a prodrome of relapse, as it was followed by symptoms of fibromyalgia.

That was enough to conclude that tick transmitted, responding to antibiotic bacterial disease brings patients to pain clinic.

Then in 2012 Ohio Department of Health released online presentation of Prescription Opiates Epidemic. Included were five Ohio maps. One of these looked familiar, a deja vu, but which one? The medical lineup. The solution came few weeks or months later, while looking at maps recently seen. RMSF distribution in Ohio and oxycodone use look the same. It was confirmation that tick transmitted pain causing disease, possibly transmitted by the same tick as RMSF is the cause of massive opiate use.

It's not sudden proliferation of criminal minds
of patients and their doctors,
but billions, trillions and quadrillions
of tiny creatures in forests and grasses
spreading the pain around.

Giving law enforcement the task of handling what was assumed to be opiate epidemic led to predictable results: jails are full and country with largest number of prisoners per capita needs more jails, and problem is not solved.

Reducing medications and eliminating overdose mortality four years before Ohio State Medical Board issued guideliness to lower medications and seven years before FDA followed and solving the puzzle of massive opiates use shall not be viewed as acting in the "usual course of professional [medical] practice" as indicated in §1306.04 - Purpose of issue of prescription [not in §841 as commonly misstated].

Defendant named the disease Fibromyalgia scioto for similarity with Fibromyalgia and county where Defendant took care of patients.

Fibromyalgia scioto is cameleon (pleiomorphic) disease with transient musculo-skeletal symptoms, low back pain, headaches, and peripheral neuralgia. TV Lyrica commercials indicate irritated nerve endings as source of pain, but don't explain what irritates the nerve endings. Apparently it is result of unidentified as yet bacteria or their toxins.

Putting together picture of the disease was like subnoise signal detection because every patient had different presentation, transient symptoms. Only listening to many patients led to disease detection. Physicians who had 10-20 pain patients were not able to detect repetition of symptoms. This way law enforcement, arresting higher patients volume physicians, made discovery impossible. There are no specific early signs of the disease on CT or MRI scans, the pain is invisible. The late stages of the disease give nonspecific rheumatic changes.

There is a specific for the disease way to examine Achilles tendon. But the only reliable technique will be blood test, which needs to be developed.

Patients for years were going from physician to physician, complaining of pain and hearing: there is nothing wrong with you, take antidepressants. For law enforcement pain is not legitimate medical purpose, pain is lying, addiction, in medical term: malingering. "there is nothing wrong with you"

is apparently proper indication for antidepressants, not controlled substances, invisible on DEA screen.

In 2014 Defendant sitting on the couch, while on electronic leash (pretrial house arrest), next discovery: picture of Oxycodone distribution on TV screen, looked on it for two years and not noticing it. The background map of Doppler weather forecast of Ohio shows distribution of Oxycodone and RMSF. It is geospatial effect, caused by topography and vegetation. The weather map of southern Ohio, eastern Kentucky and W. Virginia shows extension of the shadow from Ohio to Kentucky and West Virginia, states of the highest opiate use in US. These states have also highest rate of nicotine smoking at 35%, while US average was 23% in 2010. Nicotine use correlates with highest massive opiate use. Almost all Defendant's patients were smokers.

When Defendant reported the disease to CDC in 2011-2012, CDC requested blood for testing. Pretrial attorney warned Defendant not to contact patients as it could be charged as witness tampering. During trial Defendant identified patients charts with fibromyalgia from evidence room "upstairs" but did not get the charts, defense attorney Cheselka keeps these.

Since getting the disease Defendant wakes up 2-3 times every night from pain and admits: The patients were correct, the were telling the truth!

After hostile article in newspaper Defendant wrote reply and named patients: Lucky Children of the Meaner God. Defendant's daughter came to court to read it. There was no time. Now they became Les Miserables of the XXI century.

No reasonable juror or judge hearing that Defendant established the protocol how to eliminate mortality and limit medications, discovered disease

that led to massive opiate use for treatment of pain, changed understanding of epidemic and explained that patients were victims of the unknown disease, not perpetrators as commonly assumed, would never find the Defendant guilty.

Why it was not presented at trial? Comes next

GROUND TWO - Actual Innocence

and Brady/Jencks violation: failure to produce Urine Tests Manual seized during clinic raid

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant physician who years before Medical Board and FDA issued recommendations to lower medications accomplished it without patients overdose mortality and discovered disease that leads to massive opiate use for treatment of associated pain shall not be afraid to take his case to trial.

Conviction was assured by mischaracterization and fabrication of evidence, lack of adversarial testing because of conflict of the defense counsel and public opinion that every physician treating pain is pill-miller.

also:

FN-1 Government medical expert made 31 mistakes on 32 presented patient cases

Eldorado of Science - discoveries and observations on needed changes in pain treatment.

GROUND TWO; Actual innocence

and Brady/Jencks violation: failure to produce Urine Tests Manual seized during clinic raid

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant plead not guilty from the beginning of the case. Because of appeal counsel, Mr. Wettle, choice of two claims of ineffective assistance of the trial counsel (failure to search for and appoint defense medical expert and failure to cross-examine government medical expert) as the only issue for direct appeal all other claims usually presented on direct appeal are waived or reviewable in less advantageous way.

When government presents voluminous fabricated and mischaracterized evidence it takes long time to adversarily test it.

Also, if prosecution had 3 hours to present evidence and defense had 5 days for their part, prosecutors would rage. Defendant's trial was in reverse to it: prosecution took five days, and defense took only 3 hours. There was no time for defendant to present his work and contradict false accusations.[1]

No physician who discovered Second Disease as a cause of opiates massive use, corrected patients medications and eliminated patients overdose mortality shall be afraid to to take his case to trial. Corrections were made when chapter in textbooks: Modification and Termination of Chronic Pain Treatment was not written yet, patients were not interested to get off medications and were treated on outpatient voluntary basis. It was ahead of the times. Ohio State Medical Board issued guideliness to lower medications 4 years after Defendant (in 2013) and FDA came with guidelines (in 2016) 7 years after Defendant initiated reduction of medications.

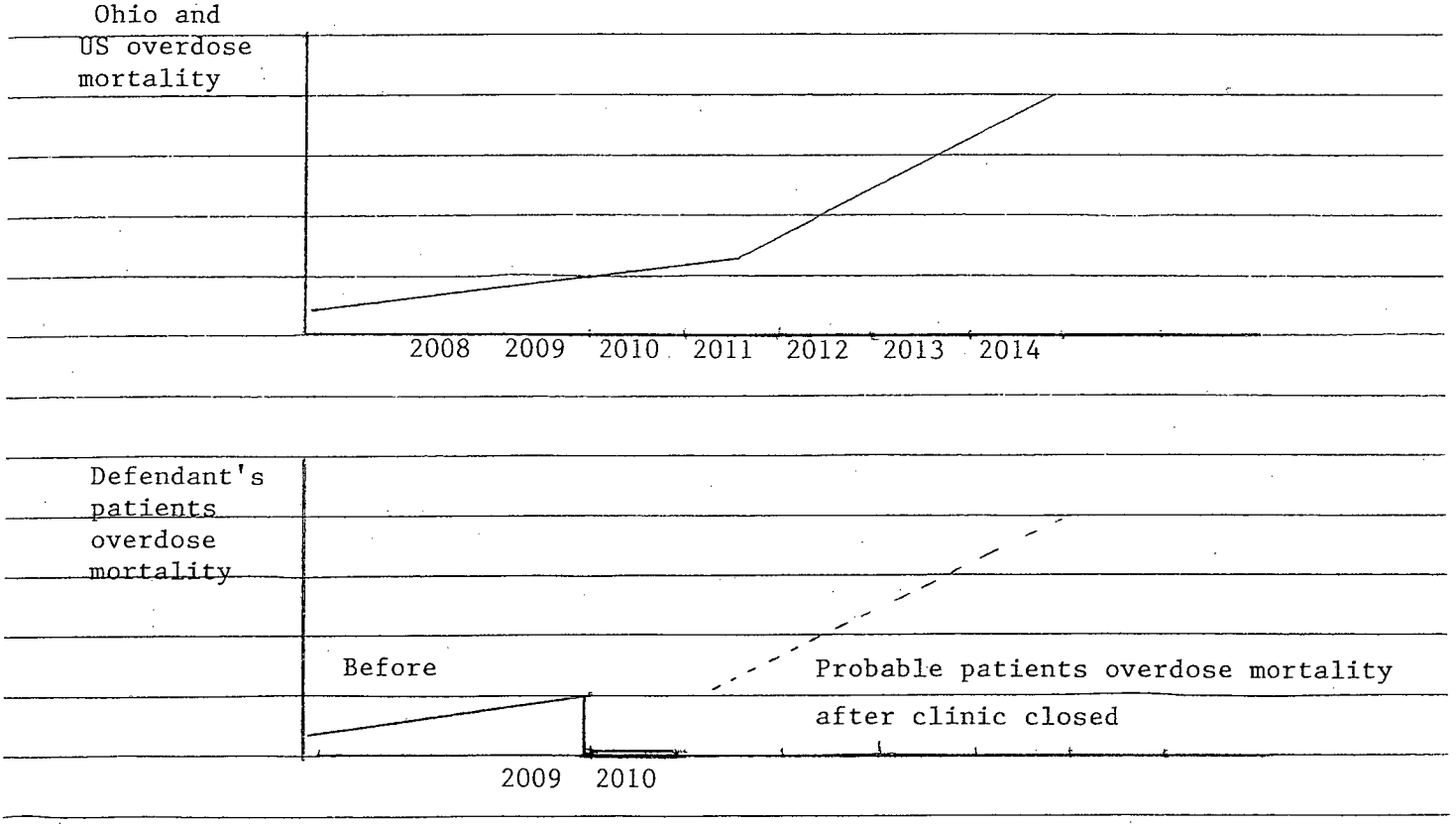
The first employee who made statement to investigators said: "they are reducing medications because patients are dying." When clinic was raided in November 2010 patients were off Soma, Xanax was reduced below 1 mg and opiates

mainly oxycodone, within FDA recommended dosing expectation. There was no just cause for prosecution.

Defendant's work was interrupted by the raid and during trial Defendant was blamed for not finishing it.

In 9 months of work Defendant found Eldorado of Science.

Knowing Defendant's results of patients care and progress of medical science no reasonable juror and no reasonable justice would have found the Defendant guilty.



The graphs above show trends of overdose mortality in Ohio and U.S. around time Defendant practiced and Defendant's patients' overdose mortality. Before coming to Defendant patients' mortality was most likely the same as average, disappeared during time Defendant worked and probably returned to average after that. It was not exigent event, it was direct result of changes Defendant made to their treatment. If Defendant practiced as irresponsibly as prosecution claims, patients overdose mortality would be sky high. It indicates

that prosecution claims don't correlate with objective results of Defendant's practice.

Both urine toxicology technician, Tammy Mallot, and Defendant were checking the results, but prosecutor Oakley during trial announced that Defendant was not checking test results. Tammy Mallot was factory trained and worked for the manufacturer, not Defendant and she was always marking inconsistent results.

Dr. Gronbach, expert, probably never worked with instant urine tests, but was sending patients to hospital lab. Hospitals usually have mass spectrometer, but it's cost is reportedly $ 600.000, so doctors offices mail specimens to central lab, which has mass spectrometer. It causes that on the day of the visit physician has only instant test result.

Dr. Gronbach also didn't know that test for marijuana was so unreliable that company quit providing it. Prosecutor Oakley interpreted it that Defendant intentionally was not performing marijuana testing.

Dr. Gronbach also didn't know that oxymorphone is metabolite of oxycodone and indicated that Defendant didn't pay attention and didn't notice that patient was using non-prescribed oxymorphone.

FN 1: Mistakes of government expert, Dr. Gronbach

Government medical expert made 31 mistakes on 32 patient cases presented, most because he was not familiar with Guideliness for Urine Toxicology Tests evaluation and prosecutors did not know §3563 (18 USCS) (e) - Conditions of probation, Results of drug testing:

" The results of a drug test administered in accordance with subsection (a)(5) shall be subject to confirmation only if results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test... A drug test confirmed using gas chromatography/mass spectrometry techniques ..."

Explanation: instant urine tests are very useful, because test is performed without use of any laboratory equipment, disadvantage is that tests are sometimes or always false positive. In used tests when oxycodone was used sometimes hydrocodone was also showing up because of similarity of molecules. Company technician asked by defendant couldn't explain why sometimes it is false positive, said that there is no information on it. Defendant asked if it depends if patient adding medication to the urine or taking medication just before the test can change the results and again technician said that there is no data on it. Dr. Gronbach and prosecutor Oakley assumed falsely that it is a result of patient taking also hydrocodone, which was not prescribed, and with Xanax assumed that patient added medication to urine. That was not according to company manual that Defendant red and was using as reference.

The manual was seized durig clinic raid and not produced in Brady/Jencks, creating violation of Brady and Jencks. It was done maliciously because exculpatory evidence was seized from Defendant and not produced for trial. It was fabrication of evidence against Defendant.

1. Discovery of Fibromyalgia scioto as cause of massive opiate use
   - cause of low back pain
   - cause of failed shoulder surgery, rotator cuff syndrome
   - cause of failed back surgery
   - cause of spinal stenosis
   - cause of peripheral neuralgia
   - memory impairment

2. Oxycodone use (in Ohio) correlates with Rocky Mountain Spotted Fever distribution - discovery

3. Geospatial effect correlates with oxycodone use - discovery

4. Formulation of Guideliness for Reduction and Termination of Pain Treatment

5. Description of Factors Leading to Opiate Use - similar to prof. of Pediatric Psychiatry Patricia Conrod

6. Formulation of Fiest after Famine Syndrome - cause of mortality in long term users

7. Opioid Induced Rigidity is cause of mortality after release from prison

8. Role of nicotine in opiate dependency

9. Role of opiates in alcohol addiction

10. How long it takes to recover from one alcoholic drink. Dr. Parran contribution

11. Soma should not be released as medication

12. Xanax - effective dose of Xanax in combination with opiates is 1 mg or less
    - opiates cause six times potentiation of Xanax
    - suppression of bipolar, anxiety and panic attacks by Xanax
    - Xanax and other benzodiazepines should not be used in combination in outpatients

13. Opioid Risk Tool does not include nicotine, factor of opiate dependency

14. Four levels pain clinics - to handle behavioral comorbidity

15. Difference in potency of hydrocodone and oxycodone depends on molecular weight. 1 mg oxycodone has equal potency with 1.5 mg hydrocodone.

16. Controlled relapse is better than uncontrolled relapse. Requires NIH study.

17. Medication Guardian - family member to supervise treatment

18. Computerized home dispensing will lower abuse

19. Bubble foil packaging and serial number to track pills

20. Methadone - should it become obsolete or tablets 1.25, 2.5, 3.75, 5, 6.25, 7.5 mg be introduced to correspond with 5, 10, 15, 20, 25, 30 mg MED.

21. Defining addiction as quasi-instinct caused by opiate poisoning

GROUND THREE: Inquisition

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Dogma was developed 100 years ago how to deal with illegally used, illegal substances and became a current guide how to deal with medical epidemic of new or newly realized disease. Dogma was created in the era of alcohol prohibition. Alcohol prohibition was abandoned in 1933 after 10 years of failure and worsening problems. Heroin was prohibited but allowed as PMS - Pre Menstrual Syndrome medication; 3 years later heroin was recalled.

Around 1990 chronic pain treatment with opiates was allowed after overwhelming success of cancer pain treatment.

Federal law was legislated in 1914 according to dogma how to deal with people who illegally used illegally obtained opium and heroine. That law is applied today to patients who legally obtained legal medications for treatment of pain.

One disease, Disease of the Poisoned Brain is result of brain poisoning with functional poison, it distorts function of the brain and as Defendant testified, forms false, artificial, quasi-instinct that is also called addiction. There are many similarities between instinct and addiction with one major difference, addiction is not supporting life but distorting functions of instincts. Most distortion comes from heroin.

Existing federal law was adopted to prosecute chronic pain treatment in the absence of federal chronic pain and chronic pain treatment law. Adoption was supported by case of Dr. Moore in 1975, apparently insane physician who was treating with methadone heroin addicted people during post-Vietnam war heroin epidemic. During his withdrawal treatment amount of prescribed methadone was going up, not down; his marketing was free visits with charges depending on amount of delivered methadone, what is un-usual medical practice. This case

became legal standard for prosecution of physicians treating chronic pain.

Legal chronic pain treatment of patients with pain is a different specialty from addiction treatment. Rock mining, building demolition, terrorism and medicine have in common use of nitroglycerine, but applicable laws are different. Sublingual nitroglycerine and nitroglycerine skin patches are used to treat chest pain. Building demolition and chest pain treatment have as much in common as maintenance treatment of heroin addiction and chronic pain treatment with legal medications; those are different applications and uses.

Pain does not exist in federal law. But for physicians chronic pain is indication (legitimate purpose) for chronic pain treatment. Because in federal law pain doesn't exist it cannot justify prosecution; therefore prosecutors call patients addicts and junkies - with this conversion of semantics prosecution is justified. Prosecution for prescribing to addicts gains ground. Absence of pain in federal law, not presence of pain in the patient, makes in prosecutor's mind, chronic pain treatment deprived of legitimate purpose.

When patient has pain, it is still non-existent [legally and in prosecutor's mind], because pain doesn't exist in federal law.

Second disease, beside Disease of the Poisoned Brain, was not recognized till Defendant described it in 2011. But there was no time given to Defendant during trial to present the disease. With this discovery it becomes apparent that patients and physicians were blamed for unexplained, unknown cause, like witches were blaimed for floods, hurricaines, famine and other natural disasters. Society blamed opiate users, when opiates are used to treat pain associated with second disease.

It's not criminal minds of doctors and their patients, but tiny creatures sharing the Earth with us, billions, trillions or quadrillions of them, only entomologists know how to count them. Their habitat is shown on your TV everyday. Lyrica commercials show irritated nerve endings, but does not explain what irritates these. That irritation is one of the signs of the second disease.

Progress of science has been stopped with Defendant's prosecution. Stopping progress of science and promoting accepted but invalid cause is an inqusition.

Without working in southern Ohio, where prevalence of the second disease is common, Defendant would not discover the disease. And now Defendant is prosecuted for the discovery.

GROUND FOUR – Lack of probable cause for prosecution – Prosecution knew about lowering medications and lack of patients overdose mortality. **PART-A**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Investigation report in November 2009 of the discharged employee Kimberly Bryan [or Ryan] from Eastside Medical when Defendant worked their indicated her statement: "they are lowering medications because patients are dying". Defendant red that report first time after the trial. Defense counsel, Cheselka testified during Hearing on Motion for New Trial that he red discovery "page by page", but did not admit it into evidence during trial. It was Brady or Jencks material. Prosecutors had access to it, since they produced it and did not ask any question about it during trial.

Investigation report from meeting of two UC agents with Defendant in May 2010 contained Defendant's statement: I am lowering Xanax". Soma was not indicated among medications prescribed.

Investigation report from the raid of the clinic on November 18, 2010 by two agents indicates that Defendant "took patients of the Xanax.

Above combined with lack of patients overdose mortality and consideration of nationally increasing overdose mortality (10,000 in 2010), already called an epidemic, was reason for further explanation, not prosecution and arranging meeting with all county physicians, involved in chronic pain treatment, to suggest modification of their treatment.

Reducing medications and daily patients volume of 26.7 patients [derived from IRS revenue calculation] were not the signs of a pill-mill.

The results were obtained by stopping Soma, limiting oxycodone to 8 tablets daily (as recommended by Federation of State Medical Boards in endorsed book by Scott Fishman, M.D.) and titrating down Xanax.

Most surprising was that it was enough to begin Xanax reduction for overdose mortality to disappear.

None of the patients switched to heroin during reduction.

Physicians had authority to conduct treatment, especially reduction and all Defendant's actions were within that authority.

GROUND FOUR – Lack of probable cause for prosecution – John and Stephanie Callihan filed snitch report in order to remove competing Defendant from the area. **PART-B**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

In post-factum analysis Defendant realized that Portsmouth Drug Cartel kept control over pain treatment by filing reports to authorities to have physicians arrested, when they became "inconvenient."

Based on questions asked by investigators during clinic raid and proffer Defendant realized that only Callihan's could have provided false but accusatory information. Within short time eight reports by patients were filed with State Medical Board, what corresponded in time with John Callihan talking loudly to waiting patients, gave them address to State Medical Board and gave false information about Defendant. Similarily Drs. Volkman and Karel were dealt with by clinics "owners".

John Callihan had additional reason to file snitch report on Defendant; he was to be shortly arrested for cocaine trafficking, repeat offense.

Apparently for filing snitch report he received "forgiveness" of cocaine trafficking charge. He plead guilty, received five years sentence, instead 30 years.

Third reason was: His clinic was falling apart after Dr. Woodward left. Patients, whom he bought from previous clinic, were finding new doctors. He offer high share of income to Defendant to organize clinic and decided to hire new physician, Dr. Khan for fraction of the money he agreed to pay Defendant.

Prosecutors knew about Callihans' past criminal activities, but decided to "support" him against physician.

This was the way Portsmouth Drug Cartel kept business and was removing competition for 20 years.

GROUND FIVE - Brady/Jencs violations

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

After arrest in May 2012 Defendant was kept on house arrest in Cleveland, OH. Seized evidence from Defendant and co-defendant offices was kept 260 miles away in Dayton, OH. Defendant was not allowed to travel alone, both pretrial services and agents on the case required attorney to come with Defendant to evidence room. Defense attorney Cheselka was delaying travel to Dayton. Defendant arranged with junior attorney, also on the case to travel to Dayton, but Mr. Cheselka disapproved it. Mr. Cheselka scheduled visit to evidence room one day before beginning of the case for February 4, 2015, left Cleveland but did not obtain release for the Defendant to travel. Result: Mr. Cheselka was never with Defendant in the evidence room.

Mr. Cheselka filed though discovery motions. The government did not comply fully with discovery motions; biggest issues were:

1. Defendant kept in South Point office Manual (guideliness) of urine toxicology tests interpretation. Tammy Mallot, urine tests technician kept her copy in codefendant's Callihan office in Lucasville, OH. Both copies were seized on November 18, 2010. Both copies were not produced by the government, despite medical expert, Dr. Gronbach's testimony concentrated mainly on alleged errors of urine tests interpretation. If Defendant had the copy during trial contradiction of Dr. Gronbach's error would have been very easy and whole expert's testimony would have been discredited. Jury would likely not convicted Defendant.

2. Agents seized from Defendant hotel income statements (logs) and slips of income written by Callihan. From the daily income it was possible to calculate number of patients seen each day. This evidence would counteract prosecutor's Parker statement of seeing 40 patients daily. It would also allow to impeach

codefendant's John Callihan testimony of seeing 36 patients in one day and would undermine his statement that sign in sheets accurately indicate number of patients seen by Defendant each day.

Front office upon instructions from Callihans overbooked patients for each day, signed them in and then cancelled them throughout the day. 36 and 40 patients daily do not indicate pill-mill volume what prosecutor Oakley claimed in closing speech. Defendant measured time necessary to see patients and informed Callihans that 25 patients daily can be seen. Even IRS income calculation indicate 26.7 patients daily when income divided by number of worked days dy Defendant.

Income logs would also indicate that Mr. Callihan gave perjured testimony. 36 patients were seen in one day when Defendant and Dr. Lee worked. 40 patients were signed in one day in the morning, but it was not number of patients seen. Callihan initially was hoping for 40 patients daily, but later was scheduling only 25-30 patients daily, like documented on scheduling calendar, which was also seized and not produced.

Presenting to jury evidence of actual number seen daily, below 30, would have convinced jury that Defendant was not pill-miller. In pill-mills number of daily seen per physicians patients was 70-150. In instant case prosecutor overinflated number of daily patients seen by 50% to reach 40 patients.

Defendant worked 8-10 hours daily to see 25-28 patients.

Government seizing income logs and slips of daily data and not producing it as Brady/Jencs evidence, made mischaracterization of daily patients volume possible and misled jury as to character of the clinic, making conviction more likely and unfair.

GROUND FIVE - Brady/Jencks violations

Exculpatory evidence not produced with Brady/Jecks

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Government seized documents from clinics in South Point and Lucasville. Listed are exculpatory documents that were not produced to Defendant:

1. Manuals (Guidelines) of Urine Toxicology Tests Interpretation - it is not exact title. Seized from both clinics
2. Stick on notes indicating daily income and logs in notebook taken from Defendant's hotel
3. Charts (patient files) of patients terminated, discharged, dismissed, not accepted.
4. Charts of patients who testified on Day2- including pt Steele.
5. Notes of events during "fall out" with Callihan. - seized from hotel.
6. Office lease from Stephanie Callihan and termination letters.
7. Letter to Pharmacy Board prepared by att. Mearan, regarding resolution of all problems indicated by inspector Kineer.
8. Copies of signature cards on Lucasville Medical accounts at Bank One, which show signatures of both Stephanie and John Callihan.
9. Charts of 17 selected patients "upstairs" during trial. - Set of copies was delivered to attorney Cheselka, but he did not show these to Defendant.
10. Copies of all sign in sheets from Eastside Medical and Lucasville Medical
11. Appointment calendar from Lucasville Medical in Callihans possession.
12. Charts of alleged addicts who's names prosecutor Oakley revealed during Mrs. Steele testimony
13. Pharmacy inspector Kineer reports on contacts with John Callihan
14. Charts of 48 patients selected for review, including # 47.
15. Charts of all above indicated patients generatated by other physicians who treated these patients before and after Defendant, which were seized during raids of their clinics.

GROUND SIX – Lack of transcripts

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant has no access to transcripts and is unable to provide exact citaions from the trial. Rule 10 Record on Appeal provides for Appellant to order transcript. Appeal attorney Wettle placed that order.

Defendant entered on 11.23.15 Notice of Appearance as co-counsel Hybrid Defense, doc. #173.

Defendant requested twice copies of transcripts from attorney Wettle, who first advised to get it from former trial attorney Cheselka. Defendant sent him a letter and received no reply. Next letter to attorney Wettle was certified. When that did not work, Defendant filed in Court of Appeals Motion to hold appeal in abeyance till copies of transcripts are provided. Mr. Wettle could have print those or send computer files to two Defendant's family members. He neglected to do it. On the same day 11.30.16 Defendant filed #214 Motion for copy of entire transcript, which was denied on 5.3.17, doc. #218.
Motion for Settlement and Approval Defendant filed on 2.21.17, doc#216, which is still pending.

As a result Defendant could not participate with attorney Wettle in the appeal. And Defendant cannot verify citations for purpose of this, §2255 motion.

Defendant is also unable to locate corrections for government medical expert, Dr. Gronbach.

Defendant was requested to leave the courtroom for presentation of evidence and did not receive transcipts from that part.

GROUND SEVEN - Lack of Adversarial process **PART A**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Romian law had clause "audiatur altera pars", listen also to the other side.

"our system of justice is adversarial and depends for its legitimacy on the fair and adequate representation of all parties at all levels of the judicial process. The trial is the main event in this system, where the prosecution and the defense do battle to reach a presumptively reliable result". Mc Farland v Scott 512 US 1256, 129 LED2D 896 at pg 502.
What is "confrontation clause for one issue is an adversarial process for entire case". It is not only right to answer accusations, but also right to bring the issues that other side did not bring.

Answering accusations and presenting defense takes time. There should be reasonable time for the defense. During trial Defendant thought that it should be equal. But when prosecution mischaracterize the evidence, defense needs time to explain mischaracterizations and bring the correct version. There should be about 1/3 of time for the prosecution and 2/3 of time for the defense to create possibility of a fair trial and need to correct effect of first impression. The novel "Death of the salesman" and "Raport from the business trip" by Arthur Miller is known across the world. It is reverse of the trial; first the defense, prosecution later. All readers Defendant talked to and Defendant himself think that salesman was innocent and proper and disbelieve second, accusations part.

In Defendant's trial the whole setup worked against Defendant. One day before trial started, defense attorney, Mr. Cheselka informed Defendant that he has next trial scheduled in Cleveland, OH on February 17, 2010 and therefore Defendant's trial has to end no later than February 13, 2010 and judge will not forgive him for not showing up this time. Prosecution took five days for

their about 20 witnesses. Mr. Cheselka did not prepare any witnesses and put Defendant on the stand for short testimony, which was followed by cross examination, that took longer. Defendant's estimate is 93% of time for prosecution and 7% for the defense, including cross examination of government witnesses. Just because of time allocation 86% of the time spent on prosecution was not followed by defense. There was no time for adversarial process, the defense. Such time allocation tilted the scale for the prosecution and made trial unfair.

On the first day of testimonies, when government brought accusations of patients switching to heroine, Mr. Cheselka did not cross examine even one witness and did not object, despite judge questioning, "any objections Mr. Cheselka" and him answering: "no your Honor" or "just for the record". Objections without explanations are considered invalid on appeal. On the second day of testimonies, when Mr. Cheselka was indicating to the judge that he will not cross examine, Defendant was announcing that he will cross examine, what prompted Mr. Cheselka to conduct brief cross examination.

Two agents testified and Mr. Cheselka, provoked by Defendant into cross examination, obtained from both agents statements that Defendant did not break any law [it was not noticed by appeal counsel and was not brought into appeal].

Cross examination of co-defendant John Callihan was brief and Mr. Cheselka did not bring any of his illegal actions and criminal history, including repeated cocaine trafficking, who by filing fraudulent report on Defendant and initiated Defendant's prosecution accomplished only 3 years sentence, avoiding 30 years sentence.

Beside accusations of switching to heroine, huge was lack of cross examination of government medical expert, Dr. Gronbach, who made significant mistakes on 31 out of 32 presented cases. Mr. Cheselka refused to cross examine, Defendant requested to conduct examination pro se, judge ordered

recess and after recess asked only Mr. Cheselka, who stated that can't be cross examination of Dr. Gronbach. Mr. Cheselka sat down, Defendant continued to stand, waiting for judge to ask him and frightened, because Mr. Cheselka told Defendant that judge will issue contempt of court on Defendant for insisting on cross examination and trial will be lost.

Lack of medical expert, Dr. Gronbach's cross examination was one of the biggest violations of the adversary process. Dr. Gronbach made many errors easy to expose, as Defendant described in Supplement to Reply Appeal Brief, which was declared moot for appeal.

The medical issue of patients switching to heroine was brought by prosecution, and not supported by expert Dr. Gronbach. It was only justified by patient and witness Mrs. Steele.

Defendant learned how and when patients switched to heroine, while in Campbell County Detention Center ater the trial. Both dealers and patients were telling the same. When patients after closure of the clinics came to buy medical opiates, they heard: "Oxycodone is expensive and I am out of it, but I have something cheaper and better, it is Heron".

Defendant was blamed during trial for causing heroin addiction, because patients were addicted to opiates. It was also indicated that most of the patients were already addicted, when they came to Defendant [and Dr. Woodward before Defendant.

But during the time Defendant took care of patients, urine tests did not show use of heroine (only one patient in one test was positive for morphine, what could have been metabolite of heroine but was likely false positive error, patient did not look like heroine addict).

Witnesses did not testify when they switched to heroine; immediately after clinic closed or years later when many clinics were closed at the same time.

GROUND SEVEN - Lack of adversarial process **PART B**

Conflict of interest of defense attorney Cheselka

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Day before start of the trial, on WED February 4, 2010, Mr. Cheselka, defense counsel, informed Defendant that trial has to end next FRI, February 13, because he has next trial in Cleveland, OH starting TUE February 17 [President's Day] and judge will not forgive him delaying it. Defendant informed Mr. Cheselka in 2013, during first meeting to take case to trial and explained reasons for this decision. Mr. Cheselka arranged for guilty plea conference during lunchtime. When this failed, Mr. Cheselka arranged with prosecutors that they will cancel some of the scheduled government witnesses to accomodate finishing trial on FRI February 13. Bart Journey, owner of four pain clinic and Tammy Mallot, urine toxicology technician were on the list and never testified. For 4 ½ days government witnesses testified. Mr. Cheselka did not investigate and subpoena any witnesses. On last day he put Defendant on the stand and allow for cross examination of Defendant.

On FRI February 6 he did not cross examine any of the witnesses, who claimed switch to heroine after closure of the clinic and gave well prepared, damaging testimony. On MON February 9 Mr. Cheselka announced that he will not cross examine the witness. Defendant stood up and stated that since attorney doesn't want, he will cross examine himself. All cross examination conducted by Mr. Cheselka, defense attorney, were preceded by Defendant repeating offer to cross examine, except one, cross examination of government expert witness, Dr. Kort Gronbach, when offer to cross examine did not work (see Ground Judicial Bias).

Reason Mr. Cheselka did not agree to cross examine expert, Dr. Gronbach was conflict of interest. Cross examination on 31 patients would have taken long time, easily one half hour per patient, that would be two days. As a result Mr. Cheselka would have not been able to be in Cleveland on TUE, February 17 in time for next trial. Mr. Cheselka either decided to shorten Defendant's trial long before or overlooked timing of both trials.

If Mr. Cheselka examined Defendant during his testimony, Defendant would have been able to properly present each patient's history and explain reduction of medications on each patient and prove by showing charts what mistakes Dr. Gronbach made, and include 32nd patient with neck tumor.

Scheduled witness was Tammy Mallot, urine tests technician. She was trained by tests manufacturing company how to interpret false positive results which were caused by similarities of medications structure and did not indicate that patients were taking also non-prescribed medications. Dr. Gronbach did not know it and gave wrongful testimony. Government witness, Mallot, would have exonerated Defendant. With her testimony conviction would have been highly unlikely. Tammy Mallot did not testify because Mr. Cheselka entered into agreement with prosecutors to shorten trial.

GROUND SEVEN - Lack of Adversarial Process, **PART C**

Explanation of mortality after release from prison

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant prepared to be introduced at trial explanation of mortality after release from prison occurring after first intravenous injection and possibly snorting of opioids.

4.3% prisoners die shortly after release from prison, 10% of these within one week of the release. It is commonly accepted as overdose of "re-naive" person who's tolerance dissipated during long incarceration.

There is another reason: first rapid injection deactivates endorphines' system, what is manifested by muscles spasms, sometimes of the entire body, presenting as a rigidity for up to 20 minutes, making breathing impossible. It is described in Miller and Banash Textbooks of Anesthesiology as "Opioid Induced Rigidity" and is commonly observed in the operating room. It does not occur in person who has some opioid in the body. Taking po. tablet of any opiate, possibly as little as 5 mg MED (of morphine, hydrocodone, oxycodone) 1 hour before would prevent rigidity.

The second known reason for mortality is the commonly appreciated large dose for a person who's tolerance dissipated, the "re-naive".

Defendant prepared this issue as a topic for defense trial attorney, Mr. Cheselka to ask during Defendant's trial testimony. Some jurors realizing that this knowledge would prevent several death, would not, most likely, found the Defendant guilty. Prosecutor had uninterrupted week for their presentations, but not the Defendant. Lack of time for introduction of adversarial presentations was prejudicial and lower chance for not guilty verdict.

This knowledge would prevent several deaths, probably would not found the Defendant guilty. Prosecutors had uninterrupted week for their presentations, but not the Defendant. Lack of time for introduction of adversarial presentations was prejudicial and lowered chance for not guilty verdict.

GROUND EIGHT - Prosecutor found the Defendant guilty before Jury deliberated
Prosecutorial misconduct, prosecutor Oakley: structural error

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prosecutor Oakley in opening speech twice stated that the Defendant is guilty.

US Justice provides for jury to declare a defendant guilty after proven guilty. Proof is to be trial and evidence. By doing it before he violated basic rule of the law. He planted the seed of the poisonous weed in the brains of the jurors, it stayed in the consciousness or subconsciousness alike of the jurors entire case, from the beginning of it: "Defendant is guilty!"

By doing it he took Justice into his own hands. The coup de Justice, like coup d'ete. Change from democratic to dictatorial Justice. Prosecutors declare who is guilty or not guilty, who will or will not be prosecuted, like John Callihan, codefendant, who was put to work by his wife, Stephanie Callihan, office manager, owner of the medical office building and leasor. In opening speech, full of fabricated stories not backed up by the evidence, declared the Defendant guilty and made powerfull impression. No curative instructions were given by the court. Defense counsel did not protest. Strongman Oakley took away from the jury right to decide if Defendant is guilty and gave jury right to copycat.

It is prohibited to call defendant killer or murderer during murder trial by prosecutors. In the same category is the word guilty. It takes the decision away from the jury. Trial by jury, decision made by prosecutor!

It is structural error. It is more than simple prosecutorial misconduct. It misrepresented structure of the Justice.

No physician would call on admission to emergency room the alive patient dead, no matter how grave his status is. No physician would fill death certificate before patient's death. For it would take away from the staff and physician himself willingness to save the patient. Why bother, it's too late!

What would prosecutor Oakley say in his defense: I didn't know!

GROUND

EIGHTEEN AND NINETEEN — Constructive Amendment of the Indictment

Patients switching to use of heroine instead of medical opiates

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Fifth Amendment requires that a defendant be tried only on charge made by the Grand Jury. United States v Kelly, 722 F2d 873 (1st Cir 1983).

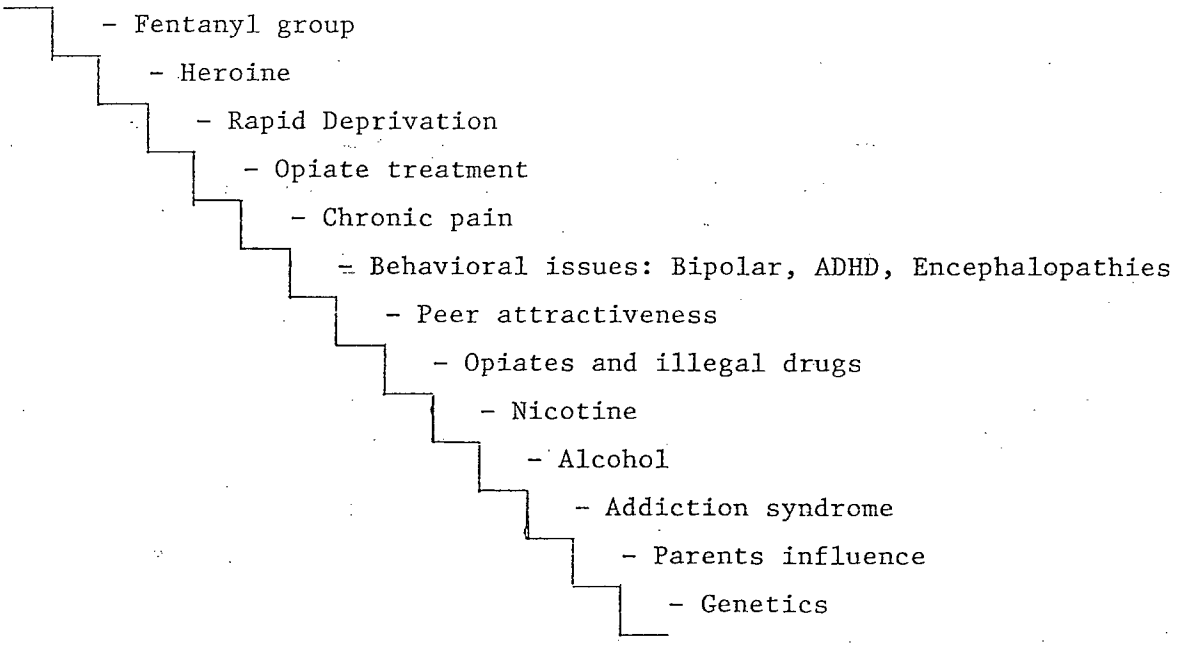
Defendant's Indictment does not contain charge of patients switching and becoming addicted to heroine. On second day of the trial prosecution presented about five witnesses, patients who switched to heroin use after raid and closure of Defendant's clinic. Patients blamed Defendant for the use of heroine because they were patients of Defendant and became addicted or used heroine. It was very powerful presentation, jury must have become convicted of Defendant's guilt. Defendant felt that trial is lost on the first day of presentation of the evidence. Defense attorney, Mr. Cheselka did not cross examine any ot the witnesses; he was not prepared for it by the Defendant, because this charge was not in the Indictment. Indictment did not contain medical criminal offenses, but secondary charges of: maintenance of the premises, drug trafficking, conspiracy, money laundering. Defendant's perception was that if trial ended that day all jurors would have founded the Defendant guilty of anything they could, including listed secondary offenses, just to convict for anything.

Governor Kasich of Ohio frequently blamed physicians for patients switching to heroine as newspapers reported. That influenced public opinion, and made trial unfair. If jurors did not have formed opinion based on witnesses testimonies, they would have based on newspapers publishing governor's statements. Trial was in Cincinnati, Ohio.

Brady and Jencks materials produced by prosecution did not contain charts of those witnesses and did not contain reports of their investigations. Defendant could not review evidence and prepare Mr. Cheselka, defense attorney

for cross examination. Defendant learned names of the witnesses just before testimonies.

Factors Affecting Addiction



Not only switch to heroine was not in the indictment, but also Dr. Gronbach, prosecution's medical expert was not asked to speak on causes of switch to heroine during his testimony.

Patients, while under Defendant's care were not taking heroine. Urine tests included MAM and morphine, metabolites of heroine and were negative, except one, likely false positive morphine test, what was quite common problem with the tests. Defendant did not advise and did not supply patients with heroine.

Raid of the clinic is physician's professional death, sometimes also physical death as multiple physicians committed suicides after the raids. Blaming physicians for patients switch to heroine is blaming physicians for their professional or physical death.

There was no consideration at trial what would have happened with patients if Defendant continued to practice if there was no clinic raid - would patients have switched to heroine or not. The cost of medical visit and medications was lower than cost of heroine.

It was similar to priest Popieluszko, active supporter of Solidarity in Poland, who was arrested by communist police, handcuffed behind the back and hobbled, throwed into the lake and drowned. Policemen put on trial claimed that he drowned because he did not want to swim.

To prove physician's causation of switch to heroine it would be necessary to prove that it was limited to his patients only. But it was happening to patients across the country, whom Defendant did not even see as well as people who were not receiving medical opiates. It was systemic event, much greater than any physician could cause.

Dr. Gronbach, prosecution's medical expert attended Ohio Statehouse meeting in preparation for HB-93 with Mr. Hays, addiction counselor from Portsmouth, OH. Mr. Hays, like Cassandra, warned that depriving patients access to medical opiates would result in substitution with heroine; that what he observed in his practice. Dr. Gronbach spoke recommending Oxycontin, but he did not support Mr. Hays. At that meeting he was in a position to save patients in Ohio, or even in United States.

This may have been a reason why he was not questioned on causation of switch to heroine during expert testimony in Defendant's trial.

Defendant learned while incarcerated after trial how switch to heroine happened. When patients went to "street" dealers to buy their medications, they heard: "I don't have oxycodone, but there is something cheaper and better, the name is HERON."

To prove Defendant's causation, prosecution would have to prove that it was evenement caused only by Defendant and not caused by DEA and Law Enforcement own action, which was deprivation of patients of access to physician and resulting lack of medical care. Making it impossible for physician to practice and then blaming him for not providing care.
From the results of Defendant's care (lowering medications and lack of mortality) a reasonable jurist and jurors could conclude that at the minimum patients would stay alive and taking most recent dose of oxycodone, and at the maximum oxycodone would have been weaned off.

First group of patients has been referred to psychiatrist. Goal was to control their behavioral problems before lowering opiates. If their opiate use was due to behavioral problems, treatment of those would have removed cause of opiate use.

Treatment of fibromyalgia would be the benefit nobody expected at that time.

The legal standard is:

" a court cannot permit a defendant to be tried on charges that are not made in the indictment against him" - Stirone v United States, 361 US 212 217, 80 S Ct 270 4L Ed 2d 252, 1960

"a defendant cannot be held to answer a charge not contained in the indictment brought against him", "this prohibition derives from the Fifth Amendment guarantee that no person shall be held to answer for a[n] ...infamous crime, unless on a presentment or indictment of a Grand Jury" - U.S. Const. Amend V - Schmuch v United States, 489 US 705 717, 109 S Ct 1443, 103L Ed 2d 734 (1989)

Similarity of United States v Arny and Defendant's case

Different ruling on Motion for New Trial. Ineffective trial attorney, Mr. Cheselka

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Motion for New Trial, 137 F Supp 3d 981, U.S. v Arny, 6th Cir, Sep 28, 2015.

Judge Amul Thapar in BACKGROUND (137 F. Supp 3d 983) stated:

"Pain is not like a broken leg, torn muscle, or tumor; objective tests can neither prove nor disprove the existence of pain. Doctors can...use objective tests to identify an injury that might cause pain. But doctors must rely on their patients' subjective reports to determine the level of pain their patients are experiencing. It is now common for doctors to treat pain with medication, including opiates. ... doctors can use their intuition and experience to guide them as to when and how much pain medication is appropriate, there is no magic formula. One place where doctors focus on treating pain is a pain clinic..."

The phrase "doctors must rely on their patients subjective reports" is main cause of doctors prosecution in pain treatment cases. Pain is invisible sensation. There is no objective, reliable test for pain that would indicate: pain intensity is 89 on scale 0-100. From person to person there is different perception of pain intensity from the same disease or injury. Our endorphines, a hormonal system of the brain controlling pain and hedonism is regulating pain. Nicotine may be important factor influencing pain level as Defendant's observation on nicotine use among his patients indicate - almost all patients chronically using opiates in Scioto County were also nicotine users; it is first such observation in medicine.

Lack of objective test of oxygen and carbon dioxide in blood before 1980 was reason for general anesthesia mortality 1 in 2000 operations. When electronic monitors, pulse oximeter and capnograph were introduced mortality went down to 1:600.000; 300 times reduction. On 20 millions operations per year number of deaths due to anesthesia changed from 10.000 to 33. Doctors got 6th and 7th sense to see saturation with oxygen of hemoglobin and invisible CO_2 in exhaled air.

No test like this is available for acute or chronic pain nowadays. Lack of such test is the reason for doctors prosecution by law enforcement, which is using the same methodology: "what patient tells". Of course what patient tells doctor is not true, but what client/customer tells prosecutor is absolutely true.

The common in both cases was that trial attorneys did not investigate key witnesses. Dr Saxman worked before Dr Arny and Dr Woodward worked before Defendant. After Defendant Dr Khan worked.

The difference was cause for prosecution. In Dr Arny's case an alcoholic landlord (or rather cliniclord) was stopped on the road with $ 1 mln in cash and change; in Defendant's case husband of cliniclord was caught with second business - trucking cocaine from Florida filed protective snitch report, it protected him from cocaine charges but incriminated Defendant. That is how Portsmouth Drug Cartel was extraditing unwanted physicians, throwing them to the "lions". There was second reason: Defendant separated from Callihans and took patients with him.[1]

There was significant clinical difference. Dr Arny continued Dr Saxman dosing and lowered on some patients; Defendant conducted withdrawal across the board. Prosecutors worked hard to imply that there was something wrong with it. Beside lowering medications, Defendant discovered massive pandemic of tick transmitted disease - but there was no time to present it during trial.

Why the difference in legal outcomes:
Dr Arny's trial lawyer got an expert and another witness, for New Trial Motion new lawyer got affidavits from patients; whereas Mr. Cheselka got no witnesses for trial and attorney for New Trial Motion got noone. Mr. Wettle, Defendant's appeal attorney forgot integration clause: overwhelming evidence of lack of defense and adversarial testing.

Like in most chronic pain trials accurate information about doses of

FN 1 - In Defendant's appeal opinion (687 Fed Appx 511) it is documented as: "The first two doctors assigned by the placement agency to work with Callihan didn't approve of what he was doing, and left.[It is hearsay from phantom doctors who did not testify at trial]. Stegawski was a better match" Actually, Defendant stayed longer, accomplished more and also left like predecessors. Same fact described differently by appeal judge, or quoted prosecutor's statement.

Defendant took patients with him when he left; other doctors left the patients behind. This may have been a reason for Callihans' snitch report that initiated prosecution in Portsmouth Drug Cartel style. Second reason may have been pending prosecution of Callihan's cocaine business.

controlled substances in both cases is not published.

The both cases: Arny's and Defendant's were in the same area. One was awarded new trial, Defendant's denied. Dr Arny's trial attorney was prepared for trial, Defendant's trial attorney had one objective: to make it for following week trial in Cleveland, because that judge put him on notice. Defendant's trial attorney did not produce one piece of evidence, did not investigate any prospective witness pre-trial. When Defendant identified during trial charts in evidence room "upstairs", trial attorney Cheselka did not use them: these charts contained contradictions of government claims of not providing care and about half of them had diagnosis fibromyalgia. Presentation of these charts would have changed outcome of the trial. During Hearing on Motion for New Trial Mr. Cheselka testified that these charts had "the same pattern". "The same" was that Mr. Cheselka did not know what the charts contained.

GROUND FORTY-EIGHT - New evidence: Letter to The President Donald Trump

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The letter was mailed to the President at the time of Inauguration and another one when there was no reply.

It is attached as Evidence # **4**