No. 19-6540

In the Supreme Court of the United States

HOWARD GRANT, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

QUESTION ONE:

Is a 28 USC SEC. 2255 MOTION premature if filed less than 90 days after the appellate court enters its judgment in accordance with the holdings in Clay v. United States, N0. 01-1500; showing no extraordinary circumstances and in violation of the Final Judgment Rule?

QUESTION TWO:

Does the indictment filed in this defendant's case, state a violation of federal law when it *only alleges*, in respect to Grant, that Grant *ratified* prescriptions forged by his alleged co-conspirator who successfully submitted them for payment without a '*manifestation of Assent* to an illegal contract. the fact issues that comprise the theory of ratification were not explained to the jury?

TABLE OF CONTENTS

V.

APPENDIX TO PETITION FOR WRIT

OF CERTIORARI

Appendix-A

VII.

VIII.

TABLE OF AUTHORITIES

STATUTES

FEDERAL RULES

FRAP

XII.

TREATIES

MOTIONS

AGENCY LAW

CONTRACT LAW

XIII.

FEDERAL PENAL CODE

LEGISLATIVE ACTS

MISCELLANEOUS

PETITION FOR WRIT OF CERTIORARI

Howard Grant, respectfully petitions for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fifth Circuit

OPINIONS BELOW

APPELLATE COURT

8) Mandate issued in cause number 17-20702, refused issue mailed ante postal.

7) USCA NO. 17-20702 [Pet. App.1a] Unp. Op., denied, entered 12/11/2018. 6) USCA NO. 17-20702, Petition for rehearing, denied, 11-07-2018; 5) USCA NO. 16-20138, Unp. Op. denied, entered, 05-01-17 [Pet. App. 89a; 4]; 4) USCA NO. 14-20379, Unp. Op., entered, 06/18/2014, Pet. App. [[07-07-15]] Unp. Op. denied ;3) USCA NO. 13-20410 [Pet App117a.] Unp. Op., entered, 07/25/2013; 3) USCA NO. 12-20791; 2) USCA NO. 13-20410, [Pet. App 2], Unp. Op. denied, entered 09-13-2013, [Pet App. [122a; 1) USCA No. 11-20013, Pet. App. [193a], June 08, 2012; Opinion of the United States Court of Appeals for the Fifth Circuit in this direct appeal is published at *UNITED STATES V. GRANT, 683 F.3d 638, 641(5th Cir 2012),*

DISTRICT COURT

11) Forma Pauperis Petition, entered, November 7, 2017, [PET. App]; entered MAY 18, 2017, 10) Order, Motion to void (no signature), denied, entered, June 16, 2014 [Pet. App.]; Coram Nobis Petition, N0.4:17-CV-01498, Pet. App. [53a], entered 05/15/2017); 9) Reconsideration denied, May 30, 2014, in district court and subsequently independently appealed to 5th Circuit), NO. 4:12-CV-2344, [Pet. App. 181a]; 8) Case NO. 4:09-cr-00424, Motion to Vacate Void Judgment (60(b)(4), entered, May 30, 2014, [Pet. App. 110a]; Castro v. U.S. (filed in district court by mistake and containing four other issues: 1) Misapplication of Ratification Theory; 2) Violation of Brady Doctrine; 7) Prosecutorial

Misconduct; 4) Ineffective Assistance of Counsel;), denied without prejudice on May 21, 2014. Motion to vacate, 60(b)(4) based on lack of signature on order of denial, entered, May 30, 2014. 6) Motion for verdict of Direct Acquittal, entered August 13, 2010, [PET. App.]; 5) Trial court. jury verdict of guilty, entered, Dec. 20, 2010 [Pet. App.; 4) Motion for acquittal based on lack of evidence; 3) Two 28 USC 2255's, denied as premature, entered, DEC. 28, 2010, Pet. App.]. 2) Dismissed without prejudice, August 8, 2010. [Pet. App.]; December 20, 2010; 1) Order of Dismissal of sec, 2255 as premature, entered, Dec. 20, 2010, [Pet. App.]

RELEVANT STATUTORY PROVISIONS

: 18 USC SECTION 1347; 18 USC SECTION 1349; 18 USC SECTION 2. Under Statutory Provisions (1347, 1349,2) in appendices, [Pet NO.'S 148, 149, & 150].

CONSTITUTIONAL VIOLATION

FIFTH AMENDMENT: No person shall be deprived of life, liberty, or property without due process of law; nor shall any person be subject to the same offense twice...

SIXTH AMENDMENT: 1) Effective Assistance of Counsel.2) Right to be heard.

RELEVANT CIVIL LAWS AND RESTATEMENTS (RATIFICATION)

: THE THIRD RESTATEMENT OF THE LAW OF AGENCY; RETATEMENT (SECOND) OF CONRACTS (2004).

JURISDICTION:

This case was appealed after a final judgment upon rehearing on December 11, 2018, in the Fifth Circuit Court of Appeals. Jurisdiction is invoked by 28 USC SEC 1254(1).

STATEMENT OF THE CASE

I. BACKGROUND INFORMATION

The defendant, Dr. Grant, was indicted initially alleging that he had signed certain CME's but subsequently changed to *ratification* by the prosecution; after which, was convicted by a jury in the district court in the Southern District of Texas,

The charges were 1) Conspiracy, 2) Conspiracy to Commit Health Care Fraud and 3) Attempt to commit Health Care fraud, having been victimized by trial co-conspirator, Joseph Edem, who forged the defendant's name on twelve, then 14 more CME'S. The defendant allegedly *offered* to resign CME'S, allegedly for Doris Vinitski, without *any independent corroboration.*; However, later in the pretrial, the government effected a superseding indictment based upon *ratification, as it could not show those signed CME's were done by the defendant. There were initially 12, then 14 more CME's were added,* no doubt because of the requirement of ratification that all the contract to be ratified. notwithstanding the fact that ratification is a *discrete and legal act,* unique and separate acts, not arising by law but *a manifestation of assent by the principal, Northlake Development, L.L.C. v. BankPlus, Fifth Circuit* (citation below), which I may point out, was a completely *CIVIL APPLICATION.*

The defendant motioned for *rule 29* for a Direct Verdict of Acquittal, after being found guilty, or in the alternative, *FRCP 33 motion* for a new trial after the conclusion of the government's evidence and after all evidence. These motions were denied, contingent on trial evidence. However, before the court allowed the case to go to the jury, then it indicated that the government (out of the hearing of the jury) would incur an undefined explicated duty "*if Mr. Grant were convicted*". However, this admonition was never clearly

identified nor briefed by the government as per the court's previous indications, all this in face of the government's incessant representations to the jury that the defendant had a *duty* to tell law enforcement about the forged CME's.

The defendant advised the business owner, Ms. Vinitski, *who denied any knowledge of fraudulent activity*, that he probably knew where the CME's came from based on the name and address of the business which was on the CME'S, Attentive Medical Supply, because, as it turned out, coincidentally, the reputed owner, Joseph Edem, had tried to recruit the defendant, on this first try, to work with him a little earlier, necessitating a *familiarity* visit to that business for an assessment before viewing those prescriptions. Of course, the defendant declined the offer for personal reasons, having been told that Edem had been under investigation for fraud[.....] in the Los Angeles, California, area where he lived just prior to coming to Houston to start a new criminal enterprise, for which he sustained his second conviction for Medicare fraud, *both involving crimes of moral turpitude.* This warning was testified to at trial and later documentary evidence was produced [USCA N0. 13-20410], owing to the efforts of my wife and myself, about eight months post-verdict.

The defendant and three of his confederates, Clinton Lee, Okownko and Doris Vinitski, would be jointly and severally charged with restitution in the amount of $121,742.62, upon being found guilty, though the court declined to impose a fine on this defendant, as the government urged, of $50,000.00. Ms. Vinitski chose a plea bargain and did not testify at trial, nor did my attorney choose to subpoena her despite my strong suggestion that he should subpoena her and attack the indictment because untruths were being discretely told.

II.. POST-JUDGMENT LITIGATION

This defendant motioned for a *Direct Verdict of Acquittal,* which was opposed by the government and denied by the court on *June 15, 2010.*

The Defendant and his two confederates effected a direct appeal to the Fifth Circuit. This this appeal was denied on June 8, 2012. *Then, about 54 days post judgment, rather than 90 days* as required by *Clay,* on August 2, 2012, the defendant filed his first 28 USC SEC. 2255 MOTION in violation of *CLAY v. UNITED STATES, (01-1500) 537 U.S. 522 (2002),"For the purpose of starting the clock on Sec, 2255's one-year limitation period, a judgment of conviction becomes final when the time expires for filing a petition for certiorari contesting the appellate court's affirmation of the conviction." The district court, in its November 27, 2012, judgment on pg. 4, second paragraph, [Pet. App.] stated conclusory as well as the government, that this was the* end of the *direct appeal* and proceeded to adjudicate what was deemed to be a *28 USC Sec.* 2255 Motion. The court ruled that this 90-day period was non-jurisdictional, among other reasons (The defendant believed at that time to be a rule 33 motion as he was simply debunking a false statement by the government's material witness, Javonica Moten. about her sister's alleged birthday party at Kona Grill Restaurant as the reason everybody was there in the first place). Texas Dept. Pub. Safety records, self-authenticating, documented this perjurious statement.

Though the government proffered some incredulous reasons why Ms. Moten might accidentally lie about the alleged dinner taking place on her sister's birthday, the district court accepted these at *face value* and advanced even more speculative and conjectural reasons on its own, adding that the misstatements were *immaterial,* even though the appellate court had used this misstatement to decide that the jury had a right to [*i*]*nfer*

that the $10,000.00 allegation was a *statement in the furtherance [Pet. App. 81, PG 6, LINES 11-13]. Sua Spontedly and supported by rule 8, this appeared to be a perfectly predicate condition for an evidentiary hearing.* However, the district court accepted the government's advice and declined to use its rule 8 authority in the interest of justice. The government's suggestion of denial of an evidentiary hearing should be viewed as a preemptive strike. *(If she lied about the meeting, how can you reasonably believe anything said at the alleged meeting, especially when the appellant categorically stated that he was not at such a meeting?); that it was an apparent fabrication.* The government raised the possibility that she may have had more than one sister. The evidentiary proof was on the government at that time, not the defendant. It never attempted to disprove the fact that there was not another sister, *and she was never referred to. This further bolstered the need for an evidentiary hearing*, and not conjecture and speculation to *prove* the point, or otherwise try to introduce any collateral evidence in the interest of justice.

The Fifth Circuit denied the motion upon appeal apparently agreeing with the district court that the government did not know of the perjured statement, though the Supreme Court in Argurs (cited elsewhere) stated that it "should have known." This defendant filed a second or successive 2255 while still before the appellate court for COA, an original Sec. 2255 motion, on *July 25, 2013, [Pet. App. a]*. This second and successive motion, incorporating a newly-discovered violation of BRADY V. MARYLAND, 373 U.S. (1963), *material concealment of a previous felony conviction of Joseph Edem* from Los Angeles in 2002, testified to at trial, was denied on Nov. 7, 2013 as being insufficient to surmount 28 USC SEC. 2255H (though this 2255 motion could have liberally been construed as an amendment based on rule 15(a), or as an alternative, the *Relations Back*

Doctrine [Rule 15(a)(1) as the second, originally filed 2255 was filed before the year was up (10 mons.) of the first sec. 2255 motion. Though no specific request was made to do so [13-20410], though related letter was written and filed.

The defendant erroneously filed this actual third successive Sec. 2255 motion in *district court* on January 17, 2014, containing the claims of 1) violation of the Brady Doctrine; 2) Prosecutor Misconduct; 3) Ineffective Assistance of Counsel; and 4) Misapplication of the Ratification Theory; however, the trial judge denied the motion containing the above claims *without prejudice* in order for the defendant to seek a COA from the Fifth Circuit, *who, in curiam, dismissed for lack of jurisdiction, even though this its own law (see local rules) and dismissal was contrary to statute, 18 USC SEC. 1631 and the transfer order, plus it left, in any view of the situation, my issue of misapplication of the Ratification Theory, unadjudicated with no forum to seek vindication, an issue the viability of which could serve as a carrier vehicle to enable any waived issues.*

III. LOCAL RULES

, This approach put some tension on the statute 28 USC SEC. 1631 which requires a transfer of a successive sec. 2255 motion to the proper court with jurisdiction. The Fifth Circuit, exercising its option per curiam, deemed there was a lack of jurisdiction and dismissed the motion. I believe this was in conflict of local rules of app. Proc. 47(2) and the Fifth Circuit's own rules; for example, case in point: in re Bradford, 600 F.3d 226, 228-29 (5th Cir. 2011), wherein the court stated, as in Bradford,, "the appeal of the transfer order: 1) will conclusively determine the correctness of the transfer; 2) is separate from the merits of the [habeas] motion; and 3) is effectively unreviewable if the appeal is dismissed." Id. We conclude, therefore, that *we have jurisdiction* over both the district

court's order and the motion is transferred thereby. Id. In the defendant's case, there was no transfer order from the district court upon filing the successive sec. 2255; it was "denied without prejudice" and had to be independently appealed.

This was all based on its *local rules*, and the Court cited a couple of cases to support its lack of jurisdiction by its own local rule, irrespective of the statutory requirements of 28 USC SEC. 1631 to accept such motions and adjudicate in accordance with another statute, 28 USC SEC. 2253(c)(1), which itself imposes a jurisdictional duty on appellate courts.

However, the Fifth Circuit dismissed the motion for a lack of jurisdiction based on their *local rule (which cannot conflict with federal statues or cause loss of rights)* because the trial judge failed to follow habeas *rule 11(a)* which requires the trial judge, upon denial of the defendant's motion, to state whether or not a COA should issue. [Pet. App. a]

USC 2253(c)(1), which, being jurisdictional, required the reviewing appellate court to grant or deny the motion. According to a *28 USC SEC. 1631:* a district court without jurisdiction to process a successive 2255 can transfer that motion to an appellate court with jurisdiction through this authorization without a COA,*" and action shall proceed on that motion as if it had been filed in the appellate court",* not dismissed for lack of jurisdiction as was in this case.[Pet. App.a] *Therefore, those 4 issues were never formally adjudicated, except the Brady violation by a 2255H standard, especially if the first 2255 is found to be premature, Coram Nobis review*, or subsequent review by the Fifth Circuit.

Subsequent to this Third successive Sec. 2255 and its denial on June 4, 2015, a petition for a writ of certiorari was timely filed with the Supreme Court on September 15, 2015, and denied November 04, 2015, sustaining its dismissal for a lack of jurisdiction by the Fifth Circuit, but leaving the motion without prejudice in unadjudicated suspension.

This would be a sixth Amendment violation, issues not heard, including the ratification issue.

IV. MOTION TO VACATE (60 (b)(4)

Whereupon a 60(b)(4) motion was filed in the district court on February 10, 2016, denied on December 10, 2016. It was appealed to the Fifth Circuit because, in my opinion, the first Sec. 2255 motion filed August 2, 2012, was filed before the end of the direct appeal and within the 90 days after circuit court's judgment of denial on June 8, 2012, was entered, and this prematurity was admitted by the court [Pet. App. 81a] It was also filed before the period for filing with the Supreme Court had ended as no Petition for a Writ of Certiorari was filed on this appeal. This procedure was proscribed by *Clay v. U.S., (01-1500) 537 522 (2002).* This opinion was also held in the 5th Circuit, United States v. Gamble, 208 F.3d 536, 537 (5th Cir. 2000). *"Fidelity to the reasoning of Thomas and to the developing majority rule compel us to conclude that Gamble's petition was timely. It was filed within a year after the ninety-day period for seeking certiorari review of his conviction as finalized in this court".* The one -year statute of limitation in these situations is defined by 2255, para 6(1). A 2255 Motion is no substitute for a direct appeal, which is a well-settled doctrine.

V. CORAM NOBIS PETITION

A Petition for a Writ of Coram Nobis was filed in the District Court on May 15, 2016, after the completion of supervision. In reviewing the judgment, I believe the District Court made three errors of law [Pet App.47 c]: *In the first instance, it miscited the standard for evaluating the writ by stating that the writ only pertained to errors of fact in its final judgment; when, in fact, it is reviewed for* errors of law and fact. *It also actually* denied my appeal *to the Fifth Circuit based on a Sec. 2255 standard, i,e,, Slack v.*

McDaniels, 529 U.S. 473, 484-85 (2000), and not the procedure required by Rule 3 (appeal by right. How taken). The writ was denied by the district court on September 11, 2016, refusing to issue a COA, though none was required. These were abuses of discretion. The district court even gave some advice to the government on how to handle the writ. If any of the four issues were still extant, then I was surely prejudiced.

VI. FINDING OF FACT AND CONCLUSION OF LAW

A request was made to the district court for a *Finding of Fact and Conclusion of law under rule 52(a)* because defendant did not see any evidence that the four issues alluded to above had been considered (They were denied without prejudice in the prior 2255). *The court declined to comply stating that it felt the 10 pages or so in its memorandum were sufficient.* Therefore, it is more than a reasonable assumption that I may have been prejudiced by this incorrect construction of the law. *An abuse of discretion* requires that a court has no discretion to misinterpret the law; based on the district court's stated standard and memorandum, it seems that it did not consider the legal aspects of the Coram Nobis Motion, which necessarily causes an incorrect construction of the law, in my opinion, *or deal with the issue of Ratification. None of these errors were noticed by the Fifth Circuit.*

VII. FORMA PAUPERIS MOTIONS IN DISTRICT AND FIFTH CIRCUIT COURTS

I sincerely requested Forma Pauperis assistance but was denied due to *a lack of good faith effort(?) in the district court after it denied my Coram Nobis Petition.*, whereupon I appealed to the Fifth Circuit, with essentially the same results *after the fifth Circuit* court reviewed my brief, including a request for panel rehearing, only on the question of *ratification* and how criminality affects that civil law of agency in a criminal trial [Pet. App.73c]. The defendant filed the appeal to the Fifth Circuit on November 3, 2017, was

posted (FCCA NO. 17-20702),

VIII. ILLEGAL SUBJECT MATTER

The Fifth Circuit denied the appeal, agreeing with the district court and, moreover, *sanctioning* the defendant $300.00 for the submission of a *frivolous* appeal, which the appellant paid in order to get his request for a rehearing considered, which turned out to be futile in spite of asserting the issue of *criminality* involving the contracts that were supposedly *ratified* in the *allegations in the indictment* and my belief, consistent with Agency Law AND the Second(restatement) of Contracts, that the use of *illegal subject* matter (*in this case forged documents used in the execution of fraudulent submissions to Medicare*) voided *the contracts, making them non ratifiable.* And, among other reasons, includes the fact that a principal cannot ratify a criminal contract as it would be, among other things, vicarious, self- incrimination and proscribed by the Fifth Amendment. Therefore, I would propose the following statement that. *Conspiracy is a specific intent crime*, not amenable to ratification.

QUESTION ONE:

MOTION TO VACATE (60(B)(4)

I. STANDARD OF REVIEW

I believe the facts and circumstances of this issue require a de novo standard of evaluation to interpret what the Supreme Court meant in *Clay* pertaining to the end of the direct appeal and the ushering in of post judgment litigation. It involves the age-old rule of one final judgment in one case if the Supreme Court's holding defining the end of the direct appeal in *Clay* is to be observed; of course, a premature motion cannot be appealed, and the district court loses jurisdiction upon the entering. It is well-settled law that it will

survive res judicata and collateral estoppel as well as the law of the case; those who would work against him are in trespass of his rights.

ARGUMENT:

The three elements as defined by the Supreme Court in *Clay* should have cleared up any ambiguity in deciding the proper time to act. One is allowed to deviate from these elements only in *extraordinary circumstances*, not herein found in the case sub judice. In the circumstances of this case, wherein no Writ of certiorari was filed, the defendant had 90 calendar days to file the Writ after the entering of the circuit court's judgment. There is no question that everybody understands this simple rule, so then all that is left to determine is whether extraordinary circumstances exist as was true in *Prows v. United States, 05-4164, 05-4242*, wherein the government filed the motion to object to the trial court's judgment as being erroneous and inconsistent with the new sentencing guidelines wherein probation, which *Prows* was given, was not an option; that a direct appeal and a collateral action could not be simultaneously sustained in a direct appeal as the direct appeal could moot the sec. 2255 outcome; that a sec. 2255 motion was no substitute for a direct appeal The Fifth Circuit, however, asserted that there were cases, non-extraordinary, it could cite to defeat those rules, but the defendant believes that the one cited failed to measure up. is a, especially since the case in point was eradicated in 1987. Primarily, I would cite to Gamble v. United States, and Welsh v. United States, both from the Fifth Circuit, whose sec. 2255 motions were dismissed without prejudice when filed during the pendency of a direct review.

I hereby adopt, under the authority of Rule 10(c), the pleading in the exhibit designated (Pet. App. 132a), Motion to Vacate Void Judgment, under authority of 60(b)(4),

filed 12/23/2015, for incorporation into this argument. In denying this brief, the Fifth Circuit stated in their final judgment, "Precedent forecloses Grant's argument that a district court is without jurisdiction to adjudicate a sec. 2255 motion before a direct appeal is terminated by expiration of the period for seeking a writ of certiorari from the Supreme Court. See *Ortega*, 859 F.2d 327, 334 (5th Cir.1988) (before ATDPA, 1996)." Grant's claim is thus unsupported by "legal points arguable on their merits" and is *frivolous.* See *Howard v. King, 707 F.3d 215, 220 (5th Cir. 1983). All this in spite of the fact that that Ortega and Rule 35(b) jurisprudence had been replaced on September 1,1984; changes, including, including the 4(b)5 element, to take place in 1987; Franks v. U.S., 404 F2d,* case NO.09-40135 (5th Cir. 2010), or *Gamble, 208 F.3d at 537,* "a 2255 motion is thereby deemed timely [i]f it was filed within a year after the ninety-day period for seeking certiorari review of his conviction as finalized by this court." It is a gargantuan undertaking to reconcile these two diametrically opposed views by the Fifth Circuit.

While the government and the court stated that there was jurisdiction to adjudicate this case because the Fifth Circuit had ruled on it bringing about the end of the direct appeal, neither party bothered to adduce facts in support of jurisdiction to support the conclusory statements. It was the government's responsibility, as the plaintiff, to support jurisdiction by alleging the proper facts in support to prove jurisdiction, even agreements and stipulations are insufficient.

QUESTION TWO:

RATIFICATION

II. STANDARD OF REVIEW

In addressing *question presented*, the standard of review must be de novo given the

unique legal question which it poses; since it does not appear to meet the objectives of a criminal indictment but invites confusion and tension between that which is criminal and that which is essentially civil; and to .confuse the defendant (and counsel) about how the government's too ambiguous and terse allegations of facts are related to *Sec. 3231* criminal statute and how the liability for double jeopardy may be affected by this?.

II. ARGUMENT

The Supreme Court has declared that the Writ of Coram Nobis may be issued to correct *factual and legal errors*. The Writ of Coram Nobis is an extraordinary one requiring compelling circumstances for its issuance in order to achieve justice. I believe this petition meets these stringent requirements, as there are aspects of this case that make it both extraordinary and compelling, featuring, as it does, the *ratification theory*, though ubiquitous in civil law and the Law of Agency and Commercial law, though a distinct rarity in a criminal law context, along with some fundamental errors of the court which tend to result in a manifest miscarriage of justice and abuse of discretion..

I can assure you that very few criminal lawyers are familiar with this application of the ratification theory in criminal law. Neither trial nor appellate counsel addressed the issue, except to question its application. *An indictment must set out facts which, if true, state a violation of federal law as well as show the nature and cause of the crime*, 7(c)(1).

When accompanied by the exhaustion of statutory defenses containing the Coram Nobis issues, the demonstration of extant civil disabilities and the demonstration of fundamental errors that were not in the *record of the trial* in spite of due diligence on the part of the petitioner; overcoming the presumption of correctness; that had these been known at the time of trial and before judgment, they would have made a difference. These

are requirements which demonstrate the standard for the issuance of the Writ of Coram Nobis, i.e., extraordinary cases that present 'compelling circumstances' where no other remedies are available, depend. *UNITED STATES V. MORGAN, 346 U.S. 502, 510-511 (1954).* I truly believe the evidence shows that I have met my burden of proof.

A. EFFECTS OF ILLEGAL CONTRACTS

It is very appropriate to raise the issue of illegality and void contracts, which I believe control this petition and expose its strengths. I would cite the scholarly work entitled, *"Breach of Contract" and Defenses to Contract and Excuses for Breach," excerpts from Business Law Basics. 2013-2014 by Brian Gottesman and Samuel D. Brickley 2nd...all rights reserved.* Edem was in a contractual relationship with Medicare and HHS, having signed all the relevant documents to effect the contract. The defendant signed nothing with Medicare, HHS or Joseph Edem, nor did he ratify any contract.

Illegality, unconscionability, and a breach of public policy have a significant negative and unenforceable effect on contracts. A contract is void if it requires the performance of an act that violates a relevant law, such as a statute or regulation. A court may also refuse to enforce a contract that contains unconscionable elements, or terms that would lead to a result that would offend justice, or public policy. In such a case, a court may choose to enforce the contract in a limited way that avoids an unconscionable result. These illegal acts cannot be; indeed, are not subject to ratification.

B. FIDELITY OF INDICTMENT

FRCP 7(c)(1) requires an indictment to provide "a plain, concise and definite written statement of the essential facts constituting the offense charged". *UNITED STATES V. YEFSKY, 944 f.2d 885, 893 (1st. Cir. 1993), ".* The Supreme Court has instructed that an

indictment is sufficient if it contains the element of the offense, fairly informs the defendant of the charges against which he must defend and enables him to enter a plea without fear of double jeopardy. *Collins v. Markley, 346 F.2d 230, 232 (7th Cir.) (In Banc)* ("The sufficiency of an indictment is to be measured by certain guidelines. First, the indictment, 'standing alone' must contain the elements of the offense tending to be charged, and it must be sufficient to appraise the accused of the nature of the offense. Second, after conviction, the record of the case must be sufficient so that the accused can plead the judgment in bar of any subsequent prosecution for the same offense." *Cert. Denied, 380 U.S. 946 (1965).*

C. ALLEGATION OF FACTS

I do not see where the word, *ratification*, standing alone and trying to define a substantive violation, satisfies the above requirement. *Ratification is a discrete act, meaning separate or distinct, requiring, in this case, 26 separate acts of ratification.* ("The indictment may incorporate the words of the statute to set forth the offense, *but the statutory language must "be accompanied with such a statement of facts and circumstances as to inform the accused of the specific offense, coming under the general description with which he is charged.")* *The Fifth Amendment requires an indictment to be a plain, concise, and written statement of the essential facts constituting the offense charged.* Not one, let alone 26, legal manifestations can be found.

As courts have explained, with respect to a criminal indictment, *"Dismissal* is proper when the complaint does not make out a cognizable legal theory (Ratification) *or does not allege sufficient facts to support a cognizable legal theory."* In other words, the *allegations must add up to a plausible cause of action.* If they don't, the court dismisses the complaint.

From a factual, plausible aspect, the Supreme has held that complaints must be dismissed if their factual allegations do not tell a plausible story of liability under *"recognized" legal standards. The Fifth Circuit in the Northlake case (cited elsewhere) states that a ratification does not arise by operation of law but by a manifestation of assent by the principal*; that is, assuming a legal contract in the first instance.

In this regard, the indictment sub judice, [Pet. App 92a] was critically lacking. In fact, the Law of Agency, which speak directly to the issue of ratification in sec. 4, and the Second (restatement) of Contracts *(rule 69(1)(b) with respect to ratification by silence, as the government has alleged, requires that wherein the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction; and the offeree, in remaining silent and inactive, intends to accept the offer.* The contract would have to be *legitimate and enforceable* in the first instance. In the absence of a legal contract, I would not need to have received the *required notice, as the contract could not be ratified in the first place. These contracts must be voided as these are against public policy or are unconscionable.* The court, I believe, had an obligation to aid the jury's understanding of this alien concept in criminal law applications. If highly experienced lawyers did not understand its meaning and application in this criminal context, then how does one expect a lay jury to comprehend it *without instructions on the fact issues* that comprise the offense, sua sponte if necessary; otherwise, this omission would comprise a fundamental error not to instruct on this theory, Pinkerton v. United States, 328 U.S. 640, 66 S. Ct.1180 90 ED. 1489, 1946. This would also induce the occurrence of manifest injustice would and did occur. *Counsel had an obligation to challenge this omission.*

I believe that an enumeration of the elements of a valid ratification is in order at this

juncture: (the numbers in parenthesis refer to relevant governing rules from the Law of Agency). *Furthermore, conspiracy is a specific- intent crime, not amenable to ratification.*

D. REQUIREMENTS OF RATIFICATION

The specific elements of ratification as found in Sec. 4 of the Third restatement of the law of agency are the following, and it cannot be overstated that to be enforceable in court, a contract *must be legal* in the first place!

1) The principal should be in existence;
2) The agent must have purported to act *for* the principal;
3) The principal should have contractual capacity [4:04)];
4) The act should be *capable* of ratification. [(4:03)];
5) The principal should have full knowledge of material facts;
6) Ratification cannot be partial. (Which is why the PSR staff added the fourteen CME'S that were done *before* I ever knew Edem was apparently forging my name.)

Additionally, ratification is not effective (a) in favor of a person who causes it by misrepresentation or other conduct that would make a contract voidable [*5:03(a)as was done in this case.*

A special situation exists with respect to *ratification by silence* as defined in the Restatement (Second) of Contracts. *Since ratification can involve an innocent bystander with no prior relationship with the principal(?),* the need is at once apparent for the law to take a precautionary step and require that a contract can be ratified by silence as it does *ONLY* when the principal has *notice* that others will infer from his silence that he intends to manifest his assent to the act, see[(69(1)(b)] of restatement (second) of contracts" *Of course, failure of the agent to notice the principal would not only absolve him of any legal*

responsibility for the act but would constitute a violation of due process which would void the transaction and divest the court of subject matter jurisdiction in the particular transaction, see *Northlake Development, L.L.C. v. BankPlus, No. 09-60743, 5th Circuit.*

There was no evidence that this notice was given in this case, although it was not necessary, due to the illegality which would cause a self-imploding of any proposed agreement, *Earle v. McVeigh, 91 U.S. 503. 23 L. Ed. 398,*" A judgment founded upon an inadequate notice is void. A void contract is a legal nullity that can be raised at any time by any person whose rights have been affected adversely by it; and all who would enforce it are in trespass of the law;" It does not lend itself to collateral estoppel or res judicata or law of the case or the statute of limitations as numerous and sundry courts have held and is well settled. "A court must vacate any judgment entered in excess of its jurisdiction," *(Lubben v. Selective service System Local Board, No. 27, 453 F.2d 645 (1st.).* II believe the court in this instance exceeded its jurisdiction by entertaining illegal contracts.

E. REQUIREMENTS OF A LEGAL CONTRACT

The three basic elements of a valid contract are an offer, acceptance and consideration. There are several restraints written into the Law of Agency to prevent the *unbridled and unlawful* application of ratification. I might mention that there can be no ratification of an act wherein the agent does something on *his own account* as the evidence shows in this case. Edem kept all the money for himself of which he conned the government, which was consistent with his criminal purpose. Therefore, he could not have been a *gratuitous agent* [1:04(3)]by his actions; thereby *requiring* the element of consideration to make an enforceable contract as well. Rule [5:04] of *the Law of Agency* denies third party knowledge of the agent's actions attributed to the principle wherein the agent acts

adversely to the principle's interest as in this case.

The act cannot be illegal, against public policy, unconscionable, ultra vires, in the case of a corporation, to be ratifiable, such as in this discrete case due to the billings of Onward Medical Supply, a corporate entity. Onward Medical *Supply* was owned by Doris Vinitske, the business owner with which Edem was actually in a beneficial working relationship and of which I had no knowledge until defendant went to the company to verify the forged signatures. Joseph Edem had forged defendant's name on twelve CME's in order to illegally and successfully bill the government for durable medical supplies. (Ironically, the fact that the defendant took time out of his day to go over there to Onward and confirm with the owner the forged signatures caused the fear and anxiety in Ms. Moten and the beginning of the end for Onward Medical Supply), though the government used this moral act in an inculpatory way. I had also contemplated a qui tam suit although I was too busy to do much about it but listen to Ms. Vinitske on the phone for necessary information and finessing Joseph Edem's solicitations for work at his clinic. Forgery is criminalized by statute in Title 18 Chap. 25, Sec. 496 of the U.S. Penal Code, as well as the Common Law; therefore, it is well known that it cannot form the basis for a legal contract, just the opposite, especially when used in the execution of a fraud, as here done.

The United States Supreme court spoke to the issue of illegal contracts as far back as 1826 in the case, *Armstrong v. Toler, 24 U.S. 11 Wheat, 25,"* Where a contract grows immediately out of and connected with an illegal or immoral act, a *court of justice will not lend its aid to enforce."* It is clear, then, that the contract forming the basis of this case was unenforceable and void on its face and could not be ratified, let alone left to the vagaries of silence.

F. AMBIGUITY IN APPLICATION OF LAW-INSTRUCTIONS

As an initial consideration, "the burden of proof as to the existence of an agency relationship rests with the party asserting it," *Aladdin Company v. John Hancock Life Insurance Company, 914 So. 2d.* 169, 197 (Miss. 2005). There was no attempt in this whole case to establish an agency relationship between Joseph Edem and the defendant, though ratification does not require one due to its discreteness. In re: *Bollenbach v. U.S,326 U.S. 607 (1946,)," A conviction ought not rest on an equivocal direction to the jury on a basic issue."* which was done in this case, raising another "*fundamental*' issue regarding ratification. The jury was left to decide "in a vacuum", without substantially a word of law or fact issues regarding the concept of ratification to guide them in making a decision based on a very common theory of *civil law*, very controversial and confusingly misapplied in this criminal context, that finds abundant application in the law of torts, contracts and property, but not criminal law. There, too, is the specter of *Armstrong v. Toler, 24 U.S. 258 (1826)," It is a salutary rule, founded on morality and good policy, and recommends itself to the good sense of every one , that no man ought to be heard in a court of justice who seeks to enforce a contract founded in or arising out of moral or political turpitude(fraud.)".*

In *the UNITED STATES V. CHRISTO, 614 F. 2d 486, 492 (5th Cir. 1980), "We held that the district court committed reversible error when it "permitted the government to produce substantial evidence concerning violations of a civil statute that was irrelevant to the crimes charged.* Essentially, the convictions were aided by the government's attempt to bootstrap a series of checking account overdrafts, a civil regulatory violation, into an equal amount of misapplication felonies cannot be allowed to stand." This theory was all very confusing to everybody and invited a "*hypothetical*' from the court. A violation of *18*

USC SEC. 1347 must stand on its own without any irrelevant and confusing intermediary allegations of a civil nature and proven beyond a reasonable doubt. It would have a high propensity to produce a variance at best in the indictment. *A criminal act, if proven, comports with personal responsibility for doing the criminal act.* There are no elements of crime in the ratification theory, but, on the contrary, proscribed by its own terms and the Second (restatement) of contracts on which it is based *(chap. 8, Sec. 178, 208, 318(1)).* On this same subject of ratification, Professors Perkins & Boyce, Criminal Law 704-05 (Third Edition 1982*),* write, "Although *joining* a conspiracy subjects the late joiner to some of the consequences of earlier activities by others in the furtherance of the conspiracy.an individual cannot be held criminally liable for substantive offenses committed by members of the conspiracy before that individual had joined or after he had withdrawn from the conspiracy. Furthermore, in the case right out of the old 5th Circuit (before September 24, 1981) whose holdings are adopted by the present (5th Circuit), *LEVINE V. UNITED STATES, 383 U.S. 265, 266 86 S. Ct. 265 295, 926, 15 L. Ed 737, (1966),"A newcomer to a conspiracy cannot be convicted of substantive offense committed before he entered a conspiracy or after he withdrew from it."* The Supreme Court adopted this same holding upon the instance of the Solicitor General for the government, Thurgood Marshall, to the effect that, "A late comer to a conspiracy cannot be charged with substantive offense committed before he joined or after he withdrew from the conspiracy (16 years before *Perkins & Boyce, supra);"* all of which is consistent with the dictum in Pinkerton. The government only charged "*ratification*" in its indictment without any attempt to elucidate the nature or elements of this novel theory through factual allegations that, if believed, would state a violation of federal law. How was the jury or anybody else supposed to

connect this theory to *18 USC 1347?*

United States v. Cotton, 535 U.S. 625 (2002), "Because subject matter jurisdiction involves a court's power to hear a case, it can never be waived or forfeited." Thus, fundamental (due process) error, usurpation of power, or structural defects require correction, *regardless of whether the error was raised in district court.* But a defective indictment does not deprive a court of jurisdiction. However, the wholesale absence of necessary factual information can divest the court of jurisdiction", *United States v. Meacham, 626 F.2d 503 (5th Cir. 1980). Agnew v. United States, 165 U.S. 36, 5217 S. Ct. 235, 241,* "A jury charge should not be misleading" (certainly misleading if it is absent).

This instruction was not covered in the *patterned jury instructions*, nor were the pattered instructions *modified in any way* to effect clarity to this nebulous and novel ratification theory, even as the government aggressively advocated this theory of omission and failure to report a crime, causing the court to give a "hypothetical" on this, the proverbial elephant in the room. We all were confused thinking that it was not consistent with individual criminal responsibility. This ratification in the indictment was not explained as to the legal basis for it: Agency Law. Of the three defendants who went to trial and the seventeen who pled guilty, *Grant was the only one charged with ratification because he signed no documents or CME'S, or took any of the government's money, and no proof of this was adduced at trial. No allowance was made for this different set of factual allegations in the patterned jury instructions.*

I would invoke the dicta of *Judge Kearse in the Labat (cited elsewhere)* case in the Supreme Court,(citations below), essentially that "if the fact issues were not explained to the jury, then the theory was not available to the government, and the Court cannot

permissibly infer that the jury would have convicted Labat on a theory that was not explained to them." A federal criminal indictment is within the subject matter jurisdiction of the district court if the indictment charges that the defendant committed a crime described in title 18 or in one of the other statutes defining federal crimes as the district court has original jurisdiction," *18 USC SEC. 3231, United States v. Jacques-Beltran, 326 F.3d 661, 662 n. 1 (5Th Cir. 2003).*

III. CIVIL AND COLLATERAL CONSEQUENCES

The Fifth Circuit takes a lenient view of collateral consequences of a conviction, *UNITED STATES V. MARCELLO, 876 F. 2d 1147 (5th Cir. 1989).* (noting collateral-consequences requirement and granting writ but not identifying any particularized consequence suffered.)

As stated below, this case has and continues to cause severe employment opportunities and professional opportunities; while I hold degrees in medicine and pharmacy, I am unable to engage in either; also, the loss of the possession of weapons for recreation and to accompany my friends on deer- hunting trips to Colorado or exercise the right to vote. The loss of professional reputation and exposure to a more severe sentence if ever convicted of a crime again. The loss of an opportunity to hold public office or work for the government and many other employers, or to take my family on Spring Break to the Caribbean sometime.

IV. STATUTORY EXHAUSTION

I have exhausted every statutory opportunity available, including a Petition for a Writ of Certiorari and two Successive 28 USC SEC. 2255 Motions with the district and circuit courts (six times), as well as a 60(b) motion and Supreme Court appeal. I have never

missed an opportunity to declare my innocence to the world. All these motions contained claims that raised fundamental issues, both constitutional and jurisdictional, as well as the documentation of serial lies; which if taken kaleidoscopically, strongly suggest prosecutorial design and misconduct, as well as fundamental violations of law and usurpation of federal power to say the least; therefore, material and reversible in themselves as violations of due process, the kind that usurps federal power.

V. IMPORTANCE OF REVERSAL

A. CERTIFIED FOR PUBLICATION

I believe the evidence shows that this case was void on its face due to a *contrived* trial court's jurisdiction (see LUBBEN V. SELECTIVE SERVICE ABOVE). This is especially important because the Fifth Circuit certified this case for *publication, UNITED STATES V. GRANT, 683 F.3d 638, 641(5th Cir 2012),* subjecting it to citations by any number of criminal defendants who will rightfully feel that this information came from a correct and authoritative source and a fair trial. Contract law should be clearly separated from criminal law as criminal and illegal contracts are intuitively disharmonic on their faces and against public policy and not subserve the civil law.

The defendant hopes that this idea of ratification of a criminal act does not find repose in the criminal law and *disseminate even more,* like a bad viral infection and infect the whole corpus of American jurisprudence but represents an evanescent application that engendered confusion. I believe a state of exigency exists for its correction now. I have already seen the Fifth Circuit cite to this case once, however, in all honesty, for the things that occurred after ratification, especially the plethora of misstatements from what we

have since learned after trial are incompetent and legally-impaired witnesses, including the government's material witness, Javonica Moten (impeached four times by evidence discovered since trial) [Pet. App. 58a]. See *United States v. Pramela Ganji; Elaine Davis, NO. 116-31119,* a Louisiana case containing very wrong and unsubstantiated fact issues from *Grant v. United States;* for example, it states that doctors from my, *Dr. Grant's clinic,* were paid $100.00 for each signed CME. However, the defendant, Dr. Grant, had been in business since 1986, the last fifteen of which at 2616 South loop West in solo practice. The only time another doctor has worked in my office was during the Desert Storm, 1990-91, military operation when his whole Medical Reserve Unit was called to active duty in defense of this country; that doctor, Michael Williams, has not worked at my office since about 1994-5! This allegation was never established at trial nor could it have been. The only source had to have been, if any, Joseph Edem himself, the legally impaired witness whose true status was concealed by the government in violation *of Kyle v. Whitley, 514 U.S. 419 (1955), "a prosecutor has an affirmative duty to disclose evidence favorable to the defense...case must be reevaluated in new light excluding all that was testified to by the offender...the sufficiency of the evidence is not to be considered"* After all that is said and done, the court thought that there must be confidence in the outcome from the evidence presented. One can only bemoan such misinformation. It is not dissimilar to a cancer upon the judicial system and a loss of positive public perception for the entire judicial process.

B. RATIFICATION OF ILLEGAL CONTRACTS

Armstrong v. Toler has been good law for over a century. No court must be allowed to tread upon its holding for any reason; for doing so would not be consistent with well settled law. I believe that the Fifth Circuit erred and conflated that which is civil and that

which is criminal; This discrete error was a very important and prejudicial one and can easily insert itself into the jurisprudential fabric and replicate to cause the incarceration and impoverishment of many innocent people by *unscrupulous practitioners and overzealous prosecutors.*

C. REEMPHASIS OF *CLAY* (END OF DIRECT APPEAL)

It would appear from the details of this case and the pleadings in the Extraordinary Motions captioned above that there is a continuing need to revisit your holdings in *Clay* (cited above) inasmuch as there appears to be a reemergence of the differing applications of the law governing the end of the direct appeal ante *Clay*, indicating that the issue has not *been put to bed(or simply ignored).* Among the reasons for non-compliance asserted by the district court in this case, include 1) the 90-day period is not jurisdictional; 2) cases from other circuits are still extant, including some after *Clay*; 3) If the case is filed before the end of the direct appeal but adjudicated three months later, it is consistent with *Clay*. These types of reasonings invite, indeed demand, correction.

D. SUA SPONTE NOTICE OF FUNDAMENTAL, STRUCTURAL AND PLAIN ERRORS THAT AFFECT SUBSTANTIAL RIGHTS

The 5th Circuit has stated that it is customary in its circuit to notice cases, and this has been sanctioned by the Supreme Court, that show particularly egregious overtones as well as clear error I believe that on trial and collateral errors we committed that justify these characterizations, errors occurred in the trial court that resulted in a manifest miscarriage of justice," *Montemayor v. United States, 703 F.2d 109, 114 n. 7 (5th Cir. 1983); United States v. Musquiz, 445 F.2d 963. 966 (5th Cir. 1971); United States v. Olano, 507 U.S. at 736,* all the above-cited cases based on a Plain Error review; those based in some

cases on egregious errors which the judge or prosecutor should have noticed includes, 1) *United States v. Hope, 545 F3d 293, 296 (5th Cir. 2008); 2) quoting, United States v. Frady, 456 U.S.152, 163, 102 S. CT. 1584, 71 L. Ed. 2d 816 (1982).* The plain error review is based on unpreserved claims and is highly deferential. However, the polar- opposite with respect to the standard of review is a fundamental-error case wherein notice is required because the *proven and unadulterated* facts do not support a violation of federal law as in this case; that inferring a conclusion requires, at the least, *proven direct evidence from credible sources and competent witnesses, not present herein; that inference upon inference invites error.* in a high percentage of the time, as well as irrational, subliminal and uncorroborated co-conspirator evidence, such as, why would somebody pay some doctor to sign a CME when he can do it himself and save the money, as Edem was really doing. when nobody can decipher a doctor's signature anyway, sometimes not even the doctor himself....doesn't sound like a prudent businessman or doctor?

E. STATUTORY CONFLATION

In criminal law, the rule of lenity requires the court to resolve any statutory ambiguity in favor of the criminal defendant. See *Leocal v. Ashcroft, 543 U.S. 1, 11 n.8 (2004).* In two recent cases, the Supreme Court has made it unequivocally clear that the government is entitled to no deference for its interpretation of a criminal statute. *United States v. Apel, 134 S. CT. 1144 (2014); Abramski v. United States, 134 S. Ct. 2259 (2014). Criminal statutes are for the courts, not the government, to construe.* See Apel, 134 S. Ct. at 1146, Abramski, 134 S. Ct. at 2274. While the rule of lenity and Chevron deference seem at odds, in reality they can be harmonized.

The rule of lenity is a canon of statutory construction, which means that it which means

it must be used by the court to actually interpret the statute and is thus applied to resolve a statutory ambiguity. Thompson/ Center Arms Co., 504, 505 n. 10 (plural opinion). Chevron deference, on the other hand, is a legal principle that kicks in only after the court has applied all the canons of statutory construction and still finds that the statute remains ambiguous. *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 843 n. 9 (1984);* in other words, lenity trumps Chevron Deference.

While it is widely appreciated that there are two main bifurcations of the law, criminal and civil, there is much less awareness of an equally important but lesser known entity called Administrative Law. In terms of application, the difference, especially given the difference in prominence, is mind boggling. Every year Congress passes about 300 bills; however, at the same time, it passes about 10,000 administrative agency regulations! The problem is that though these CFR's do not fall under the judicial branch, *many of them provide for civil as well as criminal sanctions.* Wherein there is *ambiguity in the statues or hybridization,* if you will; that is, a conflict between that which is civil and that which is criminal, courts have mostly applied The Law of Lenity and strict construction to favor the civil application. This historical practice has been reviewed in the work, The Rule of Lenity: A Five-Minute Guide to Navigating the Intersection of Administrative and Criminal Law. Topics: Criminal Law & Procedure. In Lexology by Buckley, L.L.P., November 12, 2014, by Eric Marshall, Counsel at Cause of Action Institute. The following are a few cases offered for illustrative purposes: 1) The Lacey Act of 1900, or simply the Lacey Act (16 U.S.C. Sec. 3371-3378) is a conservation law in the United States that prohibits trade in wildlife, fish and plants that have been illegally taken, possessed, transported or sold. Under the Marine Animal Protection Act (MMPA). This enabling

legislation authorizes NOAA AGENCY to promulgate regulations that have both civil and criminal components and would conform to the Law of Lenity ordinarily such that any penalties for violations thereof would be civil; 2) Another more celebrated example would be Securities & Exchange Commission and the Securities & Exchange Act of 1934, which has been revised several times, particularly provision 10(b), which is codified with criminal sanctions in 15 U.S.C. Sec. 781, the primary anti-fraud provision.

These agency hybrid regulations are embedding themselves in agency law incrementally every year, tempting courts and prosecutors to adopt a criminal bias. However, the Supreme Court has seemingly come down on the side of the Law of Lenity and strict construction in two cases, Apel, 134 S. Ct. at 1144 and Abramski, 134 S. Ct. at 2259. However, the Chevron standard which favors the criminal part of the statute in these hybrid enactments only require a Reasonableness Standard.

Notably, probably the two most conservative members of the Court, Antonio Scalia and Clarence Thomas, have lately highlighted the role courts should play in this burgeoning controversy between civil and criminal interpretations. the Law of Lenity in these situations, saying that" it was the exclusive province of the legislature to promulgate criminal laws; that if a law has both criminal and civil applications, The Law of Lenity should govern in both cases." While this case cannot be characterized as a hybrid one as the above examples clearly illustrate, it has been treated as one in this instance. Ratification and its parent, The Law of Agency as subsumed by the Restatement (second) of Contracts is not a statute but a creature of The American Law Institute and Agency authority itself as regards contracts.

There is no doubt many more of these same types of conflation are out there and

doubtlessly there will be many more. Circuits have inherently conflicted on these as their holdings are inherently ambiguous. This case would give the Supreme Court an excellent opportunity to address this ambiguity, in the words of Bollenbach, cited above, "in a concrete way," if that is possible. Otherwise, these kinds of cases, featuring hybridization, will be all over the place, even in the same circuit.

F. GENERAL CONSIDERATIONS

For all the above-listed reasons, I believe this court has been presented with a unique and fortuitous opportunity and act to correct a plain injustice, the kind of case that would reflect poorly upon the public reputation of judicial proceeding. The DOJ manual instructs federal prosecutors to strike hard blows but nevertheless fair ones. This defendant was convicted based o n a theory that does not comport with criminal law as stated in several Supreme Court opinions and legal scholars,' thereby justifying its review and vacation. *Not only was the weak evidence not corroborated independently as all the prosecution's witnesses quoted third parties who themselves had seriously legal and character problems, nobody saw or heard this evidence directly. This case also featured plain judicial errors of note* and prosecutor concealment of evidence.

There always have been differences among the circuits on a given question of law. This, one thinks, reflects the vagaries of the human perception; however, where there has been clear and numerical guidance from the Supreme Court on an erstwhile contentious question, there should be no further disparity. The question of the end of the direct appeal and its processing is a case in point. The Fifth Circuit, in the instance of this case, neglected to synchronize the holdings of the Court with respect to the judgment of the trial court of the defendant's motion to vacate a void judgment wherein that judgment was

premature [Pet. App. 58a] and permitted liberal application of civil law in a criminal case.

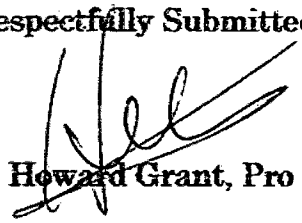
I want to thank this Honorable Court for listening.to my prayer for justice. Hats off to the Fifth Circuit in noticing the *Cristo* case referred to above as introducing civil elements into a criminal case; however, I believe it was wrong on this one.

VIII: CONCLUSION

Thank you for the opportunity to address this August Court on this issue. I feel that the whole jurisprudential world will be enriched by your supervision and will be elevated by your decision.

I want to thank this Honorable Court again for listening to my prayer for justice.

Respectfully Submitted,



Howard Grant, Pro Se